



Decision and Reasons for Decision

Citation:	<i>S13 and Queensland Police Service [2020] QICmr 13 (28 February 2020)</i>
Application Number:	314390
Applicant:	S13
Respondent:	Queensland Police Service
Decision Date:	28 February 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENT - applicant seeks details on public interest disclosure register about himself - whether the public interest disclosure register is nonexistent - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Public Service Commission under the *Information Privacy Act 2009* (Qld) (**IP Act**) for all details on the '*Public Interest Disclosure Register*' (**PID Register**) regarding him² within a particular date range.³
2. The Public Service Commission made enquiries about where a PID Register may be held and, after receiving submissions from the applicant, transferred the application to the Queensland Police Service (**QPS**).⁴
3. QPS consented to the transfer of the application and decided⁵ to refuse access on the basis that the PID Register is nonexistent. The applicant applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of this decision.
4. During the review, the applicant provided evidence of records held by QPS, and made submissions concerning the meaning of PID Register, QPS locations that should be searched and QPS' record-keeping obligations under the *Public Interest Disclosure Act 2010* (Qld) (**PID Act**) and the now repealed *Whistleblowers Protection Act 1994* (Qld).

¹ Application dated 2 December 2018.

² Or another name he had used.

³ Between 2010-2018.

⁴ On 10 December 2018 under section 57 of the IP Act.

⁵ On 10 January 2019.

⁶ External review application received 11 January 2019.

5. QPS also provided submissions on external review, particularly concerning:
 - the scope of the application, and information held on its Internal Witness Support (IWS) database and QPS' Client Service System (CSS)⁷
 - its enquiries within the Ethical Standards Command, including within its IWS Unit (including enquiries with an individual named by the applicant)⁸
 - its legislative obligations and administrative arrangements for recording public interest disclosures; and
 - information uploaded onto the Queensland Ombudsman's RaPID database.⁹
6. Having considered the relevant law, the applicant and QPS' submissions, for the reasons set out below, I affirm QPS' decision and find that the PID Register¹⁰ is nonexistent.

Background

7. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix.

Reviewable decision

8. The decision under review is QPS' decision dated 10 January 2019.
9. After applying to the Information Commissioner for external review of QPS' decision, the applicant made two subsequent applications to QPS for similar information.¹¹ The last of these applications sought his '*Internal Witness Support Unit, Person History Report*'.¹² These later applications are not the subject of this review.¹³

Evidence considered

10. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (particularly footnotes and Appendix).

Issue for determination

11. The issue for determination is whether QPS was entitled to refuse access to requested details on a PID Register on the basis that it is nonexistent under section 67(1) of the IP Act and section 47(3)(e) of the *Right to Information Act 2009* (Qld) (RTI Act).
12. For the reasons described below, I have not considered whether the applicant is entitled to access individual records or references to public interest disclosures that are not collated within a PID Register. It is also not within my jurisdiction to review QPS' subsequent decisions as detailed at paragraph 9 above.

⁷ CSS Summary Reports were provided to OIC by QPS on 4 September 2019. Person History Reports were addressed in QPS submissions to OIC dated 10 January 2020. For the reasons set out in this decision, I do not consider that such reports fall within the terms of the applicant's access application.

⁸ QPS has provided OIC, on 10 January 2020, with records of searches and certifications indicating that it has conducted searches and enquires with the Ethical Standards Command, IWS Unit, including with the officer named. The records indicate that further searches were conducted to determine whether '*there is a possible way of identifying all PIDS by a specific person*'.

⁹ Submissions made by QPS by telephone to OIC on 8 October 2019, and outlined in submissions dated 10 January 2020.

¹⁰ And accordingly, the applicant's details on such a register.

¹¹ Applications dated 11 January 2019 and 25 January 2019.

¹² This scope was clarified by the applicant by email to QPS on 28 February 2019.

¹³ On 7 February 2019, the applicant requested an external review in relation to one of his later applications, however at this point QPS had not made a reviewable decision in relation to that application. OIC wrote to the applicant and advised him of this on 12 February 2019.

13. I also do not make any findings on whether QPS is meeting its legislative obligations under the PID Act, as explained below.¹⁴

Relevant law

14. Access to a document may be refused if it is nonexistent or unlocatable.¹⁵ A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.¹⁶
15. The RTI Act is silent on how an agency may satisfy itself about the existence of a document. However, the Information Commissioner has previously recognised that it will be necessary for the agency to rely upon a number of key factors, including its particular knowledge and experience regarding:¹⁷
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it); and
 - the agency's administrative practices and procedures (including, but not limited to, its information management approaches).
16. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
17. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents, and searches should not be indiscriminate.¹⁸ In searching, the agency may rely on the factors listed above, together with key factors within the access application, other factors reasonably inferred from information supplied by the applicant, the nature and age of the requested documents and the nature of the government activity to which the request relates.¹⁹

Analysis

Scope of the access request

18. In his access application, which was directed initially to the Public Service Commission, the applicant described the '*type of documents*' he was seeking as an '*Electronic PID Registry*', and indicated he thought the documents would be located in the '*PID Registry*'.

¹⁴ In his external review application, the applicant indicated he is '*...seeking the information as requested from the QPS records (as registered in CSS) or that these legislative obligations are not being met with regards to PID made by myself...*'

¹⁵ Section 67(1) of the IP Act and Sections 47(3)(e) and 52(1) of the RTI Act.

¹⁶ Section 52(1)(a) of the RTI Act. 'Being satisfied' is an evaluative judgment based on the knowledge and experience of the agency. Such judgement requires that the decision be based on reasonable grounds: *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [43], citing Finn J in *Chu v Telstra Corp Ltd* [2005] FCA 1730 (Unreported, Finn J, 1 December 2005) at [10] to [11]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

¹⁷ *PDE* at [37]-[38].

¹⁸ As set out in *PDE* at [38] and [49]. See also section 137(2) of the IP Act.

¹⁹ *PDE* at [38] and *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

19. I accept that as a general rule, the scope of an access application should not be interpreted narrowly or with the same degree of precision as a piece of legislation.²⁰ However, the access application must give sufficient information concerning the document to enable a responsible officer of the agency to identify the document.²¹ There are sound reasons for this, as a clear and unambiguous scope allows the agency to set the parameters of its response and the directions of its search efforts.²² I also note that:

*The search for relevant documents is frequently difficult, and has to be conducted under tight time constraints. Applicants should assist the process by describing with precision the document or documents to which they seek access.*²³

20. In conducting a merits review and standing in the shoes of the decision-making agency, I am also bound by the terms of the access application. To consider whether an applicant is entitled to documents that fall outside the scope of an access application, would be in effect, deciding on matters outside my jurisdiction on external review. It is not open to the access applicant to unilaterally expand the scope of the application on external review.²⁴ Rather, the correct avenue available to the applicant in such circumstance, is to make a new access application.
21. Being mindful of these principles, I interpret the term 'register' broadly to mean any book, list, database or record of acts, occurrences and/or names.²⁵ A PID Register (even if is not named as such) is any compilation or collation of acts, occurrences and names (and the like) about identifiable public interest disclosures into a book, list, database or record. In this case, details about the applicant²⁶ within a certain date range appearing within such a register would fall within the terms of his application.
22. In relation to the meaning of PID Register, the applicant submits that a register is a broad term that encompasses any list of records that records public interest disclosures:²⁷

...a register includes a 'Person History Report' but it also includes the 'CSS database' as a register that included PID's. The CSS database is a list of records and therefore a register. There maybe another register that I am not aware of hence the word register was used to encompass all records. I understand that not all the records contained in the registers should be released to me but I am only asking for those made by Myself, as defined in my RTI request. It may be the case there the QPS have not recorded any PID's made by me or are unable to locate them. If this is the situation then they need to confirm that they have NO records of any PID's made by me for the time frame I have requested in my RTI application.

23. I accept that the word 'register' is a broad term. However, in order to be a PID Register, a document needs to collate together acts, occurrences and names (and the like) about public interest disclosures. Based on this interpretation, and after considering the applicant's submissions, I have considered a number of extracts from CSS²⁸ and an extracted Person History Report from the IWS database.²⁹

²⁰ *Mewburn and Department of Natural Resources and Mines* [2016] QICmr 31 (19 August 2016) at [22].

²¹ Section 43(2)(b) of the IP Act.

²² *Lonsdale and James Cook University* [2015] QICmr 34 (15 December 2015) at [9] citing *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].

²³ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8].

²⁴ *Ibid.*

²⁵ The *Macquarie Dictionary Online* defines 'register' to include a book in which entries of acts, occurrences, names, or the like are made for record (accessed 24 February 2020).

²⁶ Or another name he had used.

²⁷ Submissions to OIC on 31 January 2020.

²⁸ Copies provided to OIC by QPS on 4 September 2019.

²⁹ A redacted example of the Person History Report was provided to OIC by the applicant under cover of his email dated 13 October 2019.

24. I understand that the Person History Report is a document of interest to the applicant, and the subject of a separate access application to QPS.³⁰ Broadly speaking, this document relates to internal witnesses and contains one checkbox to indicate whether or not an individual has '*PID status*'. I do not consider that this singular reference can be described as a PID Register. While the applicant may have established during the review that this was the information he was seeking, his original application was not framed to seek '*all records of*' or '*all references to*' public interest disclosures made by him.
25. Similarly, CSS is a QPS system for recording complaints, and while it may contain records/references that relate to public interest disclosures, it is not capable of collating entries that relate to identifiable public interest disclosures. The application was originally made to the Public Service Commission, and within this context, it is apparent that the applicant was not intending to seek '*all QPS records*' of public interest disclosures but rather seeking information from a distinct PID Register.
26. In summary, having considered the words and construction of the access application, I do not consider that CSS or the IWS database (or reports/summaries created through these systems) **collate** identifiable public interest disclosures into a book, list, database or record. The applicant has expressed concern that this interpretation of his application is '*semantics*'.³¹ He has also referred to a court decision³² involving statutory interpretation in support of his contention that the term '*PID Register*' should be interpreted more broadly. I have considered the decision referred to by the applicant, and I do not consider that the findings in that matter apply in this case.
27. The Information Commissioner's jurisdiction in this external review is limited to reviewing the decision described in foot 8 above, which relates to information recorded on a PID Register. It is not open to the access applicant to expand the scope of the application on external review to include all records of public interest disclosures involving him. He is, however, able to make a fresh application directly to QPS requesting a different document (and I understand he has done so, as outlined at paragraph 9 above).

Existence of PID Register

28. The applicant has made extensive submissions to OIC regarding the existence of a PID Register within QPS. To the extent that these submissions relate to the interpretation of the scope of his access application, I have addressed them above.
29. Turning now to the question of whether a PID Register exists, I note that the applicant submits that QPS is required to keep this document under section 29 of the PID Act.³³ Accordingly, as a starting point, I have considered QPS' legislative obligations in relation to recording public interest disclosures, and whether the legislation requires QPS to keep a PID Register.

³⁰ As set out in paragraph 9 above. On 25 January 2019, the applicant contacted OIC to indicate this was '*where to look for the PID register/record*'.

³¹ Telephone submissions made by the applicant on 7 February 2019 and 31 January 2020.

³² A copy of the decision was provided to OIC with the applicant's submissions dated 31 January 2020. The matter involved the applicant as an identified party, and accordingly, I have not cited it here.

³³ There was a similar requirement under section 29 of the now repealed *Whistleblowers Protection Act 1994* (Qld). This section's objectives were expressly stated as being to ensure that disclosures are sufficiently identifiable to allow part 5 (concerning the privilege, protection and rights of a person who makes a public interest disclosure) to be easily applied and assist in the preparation of accurate reports to the Legislative Assembly.

30. Section 29 of the PID Act provides that the chief executive officer of a public sector entity to which a public interest disclosure is made must keep a proper record of the disclosure, including:
- the name of the person making the disclosure, if known; and
 - the information disclosed; and
 - any action taken on the disclosure; and
 - any other information required under a standard made under the *Public Interest Disclosure Standard No. 3/2019 (PID Standard)*.
31. Under the PID Standard, agencies are required (among other things) to establish and maintain a record-keeping system to:³⁴
- record PIDs and possible PIDs
 - search for PIDs and possible PIDs; and
 - extract data about PIDs and possible PIDs for reporting purposes.
32. In relation to the last point above, QPS is required to report data using the Queensland Ombudsman's RaPID reporting database.³⁵ The information reported via this database is anonymous, and as submitted by QPS, does not allow for information to be collated by the name of discloser. In relation to RaPID data, QPS has submitted:³⁶

As required by the PID Act QPS uploads PIDS to the RaPID database administered by the QLD Ombudsman by entering data on to their system as opposed to recording or maintaining a QPS register or list of PIDS. This information is statistical in nature and does not identify the PID by name.

33. QPS provided a summary of its practice for recording public interest disclosures as follows:³⁷

Whilst in practice most agencies likely maintain a 'PID Register', the PID Act does not explicitly require one, it only requires certain information to be recorded. The QPS stands unique to most public sector entities in that it has its detailed statutory regime for internal discipline and investigations under the Police Service Administration Act 1990 (PSAA). In this respect, for many matters that may for others be considered discrete issues under the PID Act, these are for the QPS subsumed by a more rigorous regime under the PSAA. The QPS satisfies its requirements under the PID Act through the recording of complaints in the Ethical Standards Command Complaints Management system. However complaints are not classified as PIDs through this recording mechanism. There is no meaningful way of filtering 'possible PIDs' through this system.

34. I acknowledge that the applicant does not accept this submission³⁸ and provided evidence in response to suggest that QPS records public interest disclosures in its system (particularly CSS), is able to quantify the number of public interest disclosures made within a particular period,³⁹ and that CSS is searchable (ie. that particular complaints can be found within this system).⁴⁰ In one document provided by the applicant QPS refers to the 'registration' of a particular public interest disclosure.⁴¹

³⁴ Clause 3.1.2. Similar but less detailed recording and reporting requirements also appeared in the superseded standards.

³⁵ Clause 3.2.1 – 3.2.3 of the PID Standard.

³⁶ Submissions dated 10 January 2020.

³⁷ Submissions dated 23 May 2019.

³⁸ Submissions dated 13 October 2019.

³⁹ Submissions dated 13 October 2019, and attached documents.

⁴⁰ Submissions dated 9 December 2019.

⁴¹ Evidence provided under cover of his submissions dated 13 October 2019.

35. I have considered the applicant's submissions and supporting evidence, and I do not accept that the legislative regime, or the evidence, point definitively to the existence of a PID Register. I acknowledge that QPS has record-keeping obligations under the PID Act, however the existence of such obligations alone do not establish the existence of a PID Register, particularly in circumstances where QPS maintains that it does not create any internal PID Register (with complainant names) that otherwise mirrors the Queensland Ombudsman's anonymised RaPID database.
36. I accept QPS' submission that although some of the evidence appears to support the contention that such a register exists, when analysed more closely it supports the view that QPS has multiple processes for maintaining a record of complaints (including public interest disclosures). It uploads public interest disclosures to RaPID (and is able to obtain anonymised quantitative data through this system). This point is summarised by the following QPS submission:⁴²

Although the points raised by the applicant could be construed to indicate that the QPS does maintain a PID register or a register of PID information, when considered in context these points actually show that the QPS provides information to the QLD Ombudsman by manually entering data directly onto the RaPID system. The QPS maintains a proper record via multiple processes including the CSS system and the IWS database and does not maintain a separate register of PIDs, or a system by which PIDs are readily identified.

Findings

37. The applicant's submissions focus on whether QPS is required to keep a 'proper record' of public interest disclosures. Having closely analysed the submissions of the applicant and QPS, it is evident that both parties disagree as to QPS' specific record-keeping obligations under the PID Act. In this case, the question of fact that I must consider is whether a PID Register exists within QPS, regardless of what its recordkeeping obligations may be.
38. On the evidence before me, and having considered QPS' relevant functions, responsibilities, administrative policies and procedures, as well as the specific enquiries it has conducted on external review, I am satisfied that a PID Register does not exist within QPS. Accordingly, access to the information requested by the applicant can be refused on the basis it does not exist.

DECISION

39. I affirm QPS' decision to refuse access to details on the PID Register regarding the applicant,⁴³ under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis that it is nonexistent.
40. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

28 February 2020

⁴² Submissions dated 10 January 2020.

⁴³ Or another name he used.

APPENDIX

Significant procedural steps

Date	Event
11 January 2019	OIC received the application for external review.
25 January 2019	OIC received an email submission from the applicant.
30 January 2019	OIC received preliminary information and documents from QPS.
6 February 2019	OIC received an email submission from the applicant.
7 February 2019	OIC received submissions by telephone from the applicant.
12 February 2019	OIC notified the applicant and QPS that the application for external review had been accepted.
18 April 2019	OIC requested that QPS conduct further searches.
24 May 2019	OIC received submissions from QPS.
22 August 2019	OIC sought additional information from QPS.
23 August 2019	OIC conveyed the substance of QPS's submissions to the applicant and sought additional information from the applicant.
26 August 2019	OIC received submissions and the requested information from the applicant.
30 August 2019	OIC requested additional information from QPS.
4 September 2019	OIC received additional information from QPS.
27 September 2019	OIC requested outstanding information from QPS.
30 September 2019	OIC received requested information from QPS.
8 October 2019	OIC received submissions by telephone from QPS.
9 October 2019	OIC conveyed a preliminary view to the applicant.
13 October 2019	OIC received submissions in response from the applicant.
15 October 2019	The applicant agreed to OIC providing his submissions to QPS for a response.
16 October 2019	OIC provided a copy of the applicant's submissions (and attached evidence) to QPS for a response and sought evidence of searches and enquiries.
4 December 2019	OIC updated the applicant and advised that QPS had sought two extensions to provide submissions.
9 December 2019	OIC received additional submissions from the applicant.
11 December 2019	OIC wrote to the applicant and clarified the issue under consideration.
10 January 2020	OIC received a submission and search certification from QPS.
21 January 2020	OIC wrote to the applicant and confirmed the preliminary view dated 9 October 2019.
31 January 2020	OIC received submissions from the applicant. OIC spoke to the applicant and received additional submissions.