



Decision and Reasons for Decision

Citation:	<i>L62 and Queensland Police Service [2021] QICmr 4 (10 February 2021)</i>
Application Number:	315317
Applicant:	L62
Respondent:	Queensland Police Service
Decision Date:	10 February 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH ACCESS APPLICATION - PREVIOUS APPLICATION FOR SAME DOCUMENTS - request for traffic stop video footage of the applicant and police officers - agency previously decided to refuse access to the requested documents - whether the later application, on its face, discloses any reasonable basis for again seeking access to the documents - section 62 of the <i>Information Privacy Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**), under the *Information Privacy Act 2009 (Qld)* (**IP Act**), for access to 'Traffic stop video footage' (specifically 'police bodycamera footage') of himself and two police officers.¹
2. QPS decided² to refuse to deal with the access application on the basis that the applicant had previously applied to QPS to access the same documents.³ The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision.⁴
3. For the reasons set out below, I affirm QPS' decision and find that QPS was entitled to refuse to deal with the applicant's access application under section 62 of the IP Act.

Background

4. Significant procedural steps taken in the external review are set out in the Appendix.
5. On 10 August 2013, the applicant was stopped by two police officers (the **Traffic Stop**). Shortly afterwards, the applicant made a complaint to the Crime and Corruption

¹ Access application dated 6 March 2020.

² Decision dated 9 April 2020.

³ Under section 62 of the IP Act.

⁴ On 9 April 2020.

Commission (the **CCC**, then called the Crime and Misconduct Commission), about the conduct of the officers during the Traffic Stop. The CCC assessed this complaint as raising allegations which, if proved, could amount to official misconduct, and devolved the complaint to QPS to deal with, subject to the CCC's monitoring role.

6. In 2015, the applicant applied to QPS under the IP Act for access to documents about the conduct of the two police officers at the Traffic Stop (**2015 Application**).⁵ The types of documents sought were 'video/audio/photos'. QPS decided⁶ to refuse access to all requested documents on the basis that they were exempt under sections 47(3)(a) and 48 and schedule 3, section 10(4) (the **CCC Exemption**) of the *Right to Information Act 2009* (Qld) (**RTI Act**).⁷
7. On 6 March 2020, the applicant again applied to QPS for information concerning the Traffic Stop (**Later Application**). This time, the applicant specifically sought 'Traffic stop video footage' of himself and the two named officers at the Traffic Stop.⁸ The types of documents sought were 'police bodycamera footage'.

Reviewable decision

8. The only decision under review is QPS' decision dated 9 April 2020 to refuse to deal with the Later Application.
9. This decision does not relate to QPS' decision to refuse access to information in response to the 2015 Application.

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including in footnotes and Appendix).
11. Throughout this review, the applicant (via his representative), has made submissions about the merit of QPS' decision on the 2015 Application. To the extent that these submissions are relevant to the issues in this review, they are dealt with below. To the extent that they seek review of QPS' decision on the 2015 Application, this is the subject of a separate external review application being considered by our Office.
12. The applicant's representative also raised broader issues concerning QPS' conduct, 'whether they acted properly in regards to the handling of the footage', and requesting that our Office refer allegations to other agencies.⁹ He sought that the Information Commissioner publish a general declaration of law about the CCC Exemption and its application.¹⁰ To the extent that these submissions are relevant to the issues in this review, they are dealt with below. However, much of these submissions canvas issues that I am not able to consider on external review.¹¹

⁵ This access application appears to have been inadvertently dated with the applicant's date of birth. However, QPS records show that it was received by QPS on 15 May 2015. The application seeks documents about the 'conduct of two named police officers at the location, date and time of the Traffic Stop.

⁶ On 25 June 2015. This decision was made by the Public Safety Business Agency (**PSBA**), which provided corporate and business services on behalf of QPS at that time.

⁷ Under the IP Act, an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

⁸ Which again, was identified by reference to the time and date.

⁹ Submissions by email dated 18 September and 20 September 2020.

¹⁰ By email dated 21 September 2020 and 1 October 2020.

¹¹ While the Information Commissioner does have the power to issue a guideline about a matter for or in connection with any of the commissioner's functions, this is within the Information Commissioner's discretion and not part of the external review process. The Information Commissioner has issued a guide titled 'Crime and Corruption Commission investigation - a guide for applicants' and another titled 'Crime and Corruption Commission' for agencies, both of which are available online.

13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),¹² particularly the right to seek and receive information.¹³ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right and other prescribed in the HR Act when applying the law prescribed in the IP Act and RTI Act.¹⁴ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁵ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹⁶

Issues for determination

14. The only issue for determination is whether QPS was entitled to refuse to deal with the Later Application under section 62 of the IP Act.

Relevant law

15. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁷ The IP Act provides that there is a '*pro-disclosure bias*' in deciding to deal with applications, and an agency should deal with the application unless it would not be in the public interest.¹⁸ However, this is subject to certain limitations, and there are certain circumstances in which the Parliament considers it would not be in the public interest to deal with an application.¹⁹
16. Relevantly, under section 62 of the IP Act, an agency may refuse to deal with an access application in certain circumstances, including relevantly, where:
- an applicant makes an access application to an agency, and then makes a later access application to the same agency seeking access to one or more of the same documents²⁰
 - the agency's decision on the previous application was that access was refused to the documents under section 67;²¹ and
 - the later application does not, on its face, disclose any reasonable basis for again seeking access to the documents.²²
17. Given that QPS decided to refuse access to all documents in response to the 2015 Application on the basis of the CCC Exemption, it is also relevant to briefly outline this provision. Information is exempt under schedule 3, section 10(4) of the RTI Act if it consists of information obtained, used or prepared for an investigation by a prescribed crime body (which, relevantly, includes the CCC), or another agency, in the performance of the prescribed functions²³ of the body. However, information is not exempt if consists of information about the applicant and the investigation has been finalised.²⁴

¹² Which came into force on 1 January 2020.

¹³ Section 21 of the HR Act.

¹⁴ *XYZ v Victoria Police* (General) [2010] VCAT 255 (16 March 2010) (XYZ) at [573]; *Horrocks v Department of Justice* (General) [2012] VCAT 241 (2 March 2012) at [111].

¹⁵ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁶ XYZ at [573].

¹⁷ Section 40 of the IP Act.

¹⁸ Section 58 of the RTI Act.

¹⁹ Set out in sections 59, 60 and 62 of the IP Act.

²⁰ Section 62(1) of the IP Act.

²¹ Section 62(3)(iii) of the IP Act.

²² Section 62(1) of the IP Act.

²³ In relation to the CCC, this means the crime function, the intelligence function and the corruption function.

²⁴ Schedule 3, section 10(6) of the RTI Act.

Findings

Does the later application seek access to one or more of the same documents sought under a previous application?

18. Yes.
19. In the 2015 Application, the applicant sought documents about '*the conduct*' of the two police officers at the Traffic Stop. The types of documents sought were '*video/audio/photos*'. In the Later Application, the applicant sought '*traffic stop video footage*' (specifically '*police bodycamera footage*') of himself and the same two named police officers at the same Traffic Stop.²⁵
20. Although the wording of the Later Application is slightly different (and captures a narrower range of documents), I am satisfied that the same '*traffic stop video footage*' was sought in the 2015 Application and the Later Application.

Was the agency's decision on the previous application that access was refused to the documents under section 67?

21. Yes.
22. Section 67 of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.
23. QPS' decision in relation to the 2015 Application was to refuse access to all the documents requested under section 47(3)(a) and section 48 of the RTI Act, on the basis of the CCC exemption.²⁶
24. On this basis, I am satisfied that QPS' decision on the previous application was to refuse access to the documents under section 67 of the IP Act .

Does the later application, on its face, disclose any reasonable basis for again seeking access to the documents?

25. No, for the following reasons.
26. In the Later Application, the applicant explains the basis for re-applying as follows:

...[the applicant] made an application a few years ago which was rejected by the PBSA (on QPS's behalf). I am reapplying on his behalf and have attached the previous reasons for decision from PBSA for you to read. The previous response stated that the footage was not 'about' the applicant (i.e. it was 'about' the officer). The source for that law is given on page 2, footnote 1 of the reasons citing 'Cameron and Queensland Police Service 2012'. However, if you read the facts of that case, you will see that the case was entirely different and therefore cannot be used as authority for [the applicant's] case. If you use 'Cameron' as an authority again, you should explain why the reasoning applies even though the facts are completely different. Also consider what parliament intended when creating RTI legislation because based on the previous reasoning, the QPS could refer any matter to the CCC for an investigation, with the sole purpose of defeating an RTI application. And if it was a legitimate investigation,

²⁵ For the same time and date in 2013.

²⁶ Under schedule 3, section 10(4) of the RTI Act.

which according to the CCC (at first paragraph of page 5 of PBSA reasons): 'certainly contains possible corrupt conduct'- then it raises the question of whether the CCC dealt with the complaint appropriately.²⁷

27. This is, in essence, an expression of disagreement with QPS' Decision on the 2015 Application, and the application of the CCC Exemption. The applicant contends that the decision on the 2015 Application was '*clearly wrong*',²⁸ relied on authority that could be distinguished, and that the exception under schedule 3, section 10(6) applies.
28. I have considered these submissions, and I am not satisfied that disagreement with the decision, or the related contention that the decision was '*incorrect/unlawful/fraudulent*'²⁹ is a reasonable basis for again seeking access to the same footage. There is no evidence before me – on the face of the application or otherwise – of any change in circumstance or other reasonable basis for again seeking access to the documents.³⁰ The RTI Act provides a statutory mechanism (and statutory timeframes) for contesting the basis for agency decisions, through the internal and external review process, as opposed to reapplying for the same information in a separate application process.
29. For these reasons, I am satisfied that the Later Application, on its face, does not disclose any reasonable basis for again seeking access to the same footage.
30. Finally, it should be noted that in the circumstances of this matter, there is no meaningful outcome to be achieved by QPS processing the Later Application. I am satisfied, based on the evidence provided by QPS that the police body camera footage sought by the applicant does not exist.³¹ The only footage held by QPS is footage that was taken on the applicant's own mobile telephone. This does not fall within the terms of the Later Application, which only sought '*police bodycamera footage*'.

DECISION

31. For the reasons set out above, I affirm QPS' decision and find that QPS was entitled to refuse to deal with the Later Application under section 62 of the IP Act.
32. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Shiv Martin
Assistant Information Commissioner

10 February 2021

APPENDIX

²⁷ The case referred to here is *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012), which is a decision of the Information Commissioner that considered the exception to the CCC Exemption (then called the CMC Exemption).

²⁸ Submissions received by email on 10 October 2020.

²⁹ Submissions received by email on 6 October 2020.

³⁰ The investigation into the Traffic Stop has been finalised, which is relevant to the exception to the CCC Exemption. However, it was finalised prior to QPS' decision on the 2015 Application.

³¹ Submissions received by email on 10 September 2020 and 18 September 2020.

Significant procedural steps

Date	Event
9 April 2020	OIC received the application for external review.
15 April 2020	OIC requested preliminary documents from QPS.
23 April 2020	OIC received preliminary documents from QPS.
11 May 2020	OIC informed the applicant and agency that the application for external review had been accepted.
20 May 2020	OIC sought further information from QPS.
28 May 2020	OIC received further information from QPS.
22 June 2020	OIC requested a copy of the traffic stop video footage from QPS.
25 June 2020	OIC received footage and submissions by email from QPS.
26 June 2020	OIC received confirmation from QPS of its position on disclosure.
31 August 2020	OIC asked QPS to clarify the source of the footage.
10 September 2020	OIC received evidence of searches and submissions from QPS concerning the nonexistence of body worn camera footage.
16 September 2020	The applicant's representative provided a submission to OIC by phone.
17 September 2020	OIC provided the applicant with an update, and the applicant provided submissions by email in response.
18 September 2020	QPS confirmed the source of the located footage. OIC emailed the applicant to clarify the issues in the review, the limits of OIC's jurisdiction and to set out the next steps. The email also conveyed a view to the applicant on the refusal to deal issue.
18, 19, 20, and 21 September 2020	OIC received submissions from the applicant.
23 September 2020	OIC received further information from QPS.
1 October 2020	OIC received submissions from the applicant.
6 October 2020	OIC conveyed a second preliminary view to the applicant.
6 and 9 October 2020	OIC received submissions from the applicant.
10 October 2020	The applicant formally requested external review of QPS' decision on the 2015 Application. ³²

³² This is a separate external review application, which is being considered by our Office.