



Decision and Reasons for Decision

Citation:	<i>D79 and Queensland Police Service [2023] QICmr 27 (13 June 2023)</i>
Application Number:	317041
Applicant:	D79
Respondent:	Queensland Police Service
Decision Date:	13 June 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - police investigative documents relating to a fatal traffic accident - body worn camera footage - whether disclosure would, on balance, be contrary to the public interest - section 47(3)(b) and section 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)¹ for access to information concerning QPS's investigation into a traffic accident in which the applicant's son was killed.
2. QPS decided² to grant access to some information and refused access to other information on the grounds that its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for review of QPS's decision specifically on the grounds that further information should have been released, including Body Worn Camera footage of police officers at the scene of the accident.
4. For the reasons explained below, I decide to affirm QPS's decision refusing access to particular documents and the Body Worn Camera footage.

¹ Application dated 16 June 2022, but made compliant on 1 August 2022. The applicant initially made her application under the *Information Privacy Act 2009* (Qld) (**IP Act**). However, as she was seeking access to the personal information of other individuals, the application was transferred to the RTI Act and became compliant upon payment of the application fee on 1 August 2022.

² Decision dated 25 November 2022. QPS requested several extensions of time in order to process the application. On 1 November 2022, it issued a notice under section 42 of the RTI Act. The applicant subsequently narrowed the terms of her application and the application was processed on that basis.

³ Application dated 14 December 2022.

Background

5. The applicant's son was killed in a traffic accident when he collided with a car driven by a person hereinafter referred to as 'AB'.
6. QPS investigated the collision and AB was charged with driving without due care and attention. The charge was heard in the Magistrates Court. AB was found not guilty and discharged.

Reviewable decision

7. The decision under review is QPS's decision dated 25 November 2022.

Evidence considered

8. Significant procedural steps relating to the external review are set out in the appendix.
9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁴ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and the IP Act.⁵ 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:⁶ '*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.*'⁷

Information in issue

11. Some additional information was released to the applicant by QPS during the external review. The applicant continues to pursue access to the remaining information to which QPS refused access, either in whole or in part, as follows:
 - parts of pages 1-17, 23-61, 63, 65-75 and 78-101, and all of pages 18-22 (**Category A documents**); and
 - all of documents 102-107 (which comprise police body worn camera footage (**BWCF**)).
12. In her application for external review, the applicant stated that, while she particularly wanted access to the BWCF, she continued to pursue access to all information to which QPS had refused access.

⁴ Section 21(2) of the HR Act.

⁵ *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].

⁶ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁷ *XYZ* at [573].

Issue for determination

13. The issue for determination is whether disclosure of the Category A documents and the BWCF would, on balance, be contrary to the public interest.

Relevant law

14. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.⁸ The Act must be applied and interpreted to further this primary object,⁹ and is to be administered with a pro-disclosure bias.¹⁰
15. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,¹¹ including grounds on which access may be refused.¹² One of these grounds (which are to be interpreted narrowly)¹³ permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.¹⁴
16. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest,¹⁵ are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
17. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have had regard to these factors,¹⁶ and to the applicant's submissions,¹⁷ in reaching my decision.

Applicant's submissions

18. In her application for external review, the applicant submitted as follows:

I AM REQUESTING THAT THE REST of THE INFORMATION THAT WAS REQUESTED BE RELEASE[D] TO MYSELF.

In particular I want the body worn footage worn by the police officer that preformed [sic] the breath test on [AB] at the screen [sic] of the accident, showing [AB] being breath tested and the result of the said test.

Was Alcohol and drug blood test done. (PROOF)

⁸ Section 3(1) of the RTI Act.

⁹ Section 3(2) of the RTI Act.

¹⁰ Section 44 of the RTI Act.

¹¹ Section 23(1) of the RTI Act.

¹² Section 47 of the RTI Act.

¹³ Section 47(2)(a) of the RTI Act.

¹⁴ Sections 47(3)(b) and 49 of the RTI Act.

¹⁵ The concept refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

¹⁶ Taking care to disregard irrelevant factors.

¹⁷ Contained in her external review application and in her submission of 11 April 2023.

I also want the proof as to whether the phone call [AB] was on at the time of the accident was blue toothed TO [THEIR] VEHICLE OR NOT.

Should you decide the names of witnesses be blacked out I accept this, BUT REQUEST ALL OTHER DETAILS.

I understand some of the body worn footage could be distressing to watch, this involved the death of my son and I HAVE A RIGHT AS HIS MOTHER AND NEXT OF KID [sic] to know all the details.

[Applicant's emphasis]

19. The relevant submissions made by the applicant in her email of 11 April 2023 may be summarised as follows:

- a) access to the BWCF is vital *'as it provides an accurate account of what took place without any bias or misrecollection from any of the parties involved'*
- b) there has been conjecture and rumours in the community about some of the circumstances surrounding the accident and whether fair and proper procedures were followed in investigating the accident and AB's actions
- c) OIC has the power to compel QPS to release the information in issue so as to satisfy the community that fair and proper procedures were followed
- d) as the holder of a public office, AB is accountable to the community and required to adhere to high standards of conduct and public administration¹⁸
- e) the police prosecution during the Magistrates Court hearing was *'inept'*
- f) except for the BWCF, nearly all the information in issue is already in the public domain via the Magistrates Court hearing, and many witnesses posted and commented on social media platforms about the accident or gave television interviews: disclosure of the BWCF under the RTI Act could not expose them publicly any further than they have already done so themselves; and
- g) QPS is accountable for the decisions it makes and is required to be open and transparent in its conduct, including *'demonstrating that the investigation was handled justly, fairly and in the interest of public good rather than for the benefit of a few individuals as quite frequently insinuated'*.

20. In response to item c) above, I note that OIC has no power to compel an agency to give access to information that may otherwise be refused under the RTI Act. OIC's external review function is to conduct a merits review of the access decision made by the relevant agency and decide whether that decision should be affirmed, varied or set aside.¹⁹

Public interest factors favouring disclosure

21. Having considered the applicant's submissions, as well as schedule 4, part 2 of the RTI Act, the relevant public interest factors favouring disclosure I have identified are as follows:

- a) disclosure could reasonably be expected to promote open discussion of public affairs and enhance Government's accountability²⁰
- b) disclosure could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest²¹
- c) disclosure could reasonably be expected to inform the community of the government's operations²²

¹⁸ Citing the Queensland Public Service *Code of Conduct* and the *Public Sector Ethics Act 1994* (Qld).

¹⁹ See section 110 of the RTI Act.

²⁰ Schedule 4, part 2, item 1 of the RTI Act.

²¹ Schedule 4, part 2, item 2 of the RTI Act.

²² Schedule 4, part 2, item 3 of the RTI Act.

- d) disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official²³
- e) disclosure could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct, or negligent, improper or unlawful conduct²⁴
- f) the information would be the personal information of the applicant's son if he were alive, and the applicant is an eligible family member for her son²⁵
- g) disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision;²⁶ and
- h) disclosure could reasonably be expected to contribute to the administration of justice for a person.²⁷

Public interest factors favouring nondisclosure

22. Having considered the particular Information in Issue, I have identified the following nondisclosure/harm factors contained in schedule 4, parts 3 and 4 of the RTI Act, as relevant:

- a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy²⁸
- b) the information is the personal information²⁹ of a person who has died; the applicant is an eligible family member; and disclosure could reasonably be expected, if the person were alive, to impact on their privacy;³⁰ and
- c) disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose the personal information of a person, whether living or dead.³¹

Discussion

Category A documents

23. The Category A documents comprise:

- all or parts of witness statements, including identifying and other personal information
- parts of statements by QPS officers, including references to the personal information of the applicant's son and AB, names of hospital staff, and names of witnesses
- information contained in QPS activity logs, including names and contact details of witnesses and other third parties, mobile phone numbers for police officers, identifying information for hospital and coronial staff, personal information of AB and personal information of the applicant's son; and

²³ Schedule 4, part 2, item 5 of the RTI Act.

²⁴ Schedule 4, part 2, item 6 of the RTI Act.

²⁵ Schedule 4, part 2, item 9 of the RTI Act.

²⁶ Schedule 4, part 2, item 11 of the RTI Act.

²⁷ Schedule 4, part 2, item 17 of the RTI Act.

²⁸ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" *Australian Law Reform Commission Report No. 108* released 11 August 2008, at paragraph 1.56).

²⁹ 'Personal information' is defined in section 12 of the IP Act as *information or an opinion, ... whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

³⁰ Schedule 4, part 3, item 5 of the RTI Act.

³¹ Schedule 4, part 4, section 6 of the RTI Act.

- information contained in police notebooks including names and contact details of witnesses, information provided by witnesses, and personal information of AB and of the applicant's son.
24. With the exception of pages 18-22, the applicant has been given access to the bulk of the witness statements. In her external review application, she stated that she did not seek access to the identities of witnesses. I have therefore treated all such identifying information contained in the Category A documents as not in issue.
 25. As regards the witness statement at pages 18-22, the relevant witness was consulted regarding disclosure, and objected on the grounds that disclosure could reasonably be expected to have a prejudicial effect on their emotional wellbeing, given the anxiety they had experienced (and were continuing to experience) regarding the accident.
 26. As regards the small segments of information that have been redacted from the remaining witness statements (and the corresponding information where it appears in the police notebooks), I am satisfied that the information in question comprises the personal information of a variety of persons, including the witness and/or their family members, as well as others present at the accident scene, including AB. It includes information about, for example, the witnesses' family circumstances, their movements on the day of the accident, their recollections of conversations they had with others at the accident scene (including AB), and their thoughts, feelings and emotional reaction to the events they witnessed.
 27. Under the RTI Act, a public interest harm in disclosure of the personal information contained in the witness statements automatically arises. Having regard to the highly personal and sensitive nature of the information, I afford that harm significant weight here.
 28. I am also satisfied that significant weight should be afforded to the associated public interest in protecting the right to privacy of the relevant individuals. The bulk of the information in question is not directly relevant to the circumstances of the accident, nor to QPS's investigation into those circumstances. I do not accept that its disclosure would significantly enhance either the accountability of QPS in its investigation of the accident, nor contribute in any meaningful way to the applicant's understanding of QPS's investigation. In respect of the statement at pages 18-22, QPS advised³² that information provided by the witness that was pertinent to the investigation was referred to in the Coroner's findings, to which the applicant has had access. The remainder of the statement refers to the witness' emotional reaction to the events.
 29. I have considered the application to the witness statement information of the various public interest factors favouring disclosure listed at paragraph 21 above. However, taking account of the nature of the information, I am unable to identify factors favouring disclosure that would be of sufficient weight to outweigh the significant weight that I afford to the public interest in protecting the personal information of the relevant persons, and their associated right to privacy.
 30. As noted, QPS also refused access to references in the Category A documents to the mobile numbers of police officers. I accept that it is contrary to the public interest to disclose mobile telephone numbers of public sector employees because it could reasonably be expected to prejudice their right to privacy. This is in recognition of the fact that government-issued mobile phones are generally permitted to be used for both

³² Email of 31 May 2023.

personal and employment purposes.³³ Again, I can identify no public interest factors favouring disclosure of this information that would be sufficient to outweigh the public interest in the protection of the personal information and privacy interests of the relevant officers.

31. There are brief references in the Category A documents to the personal information of the applicant's son. The applicant has received access to the bulk of her son's personal information, however, QPS refused access to these references on the grounds that the highly personal and sensitive nature of the information made its disclosure, on balance, contrary to the public interest because of the significant detrimental impact on the deceased's right to privacy. I recognise the countervailing public interest factors that weigh both for and against disclosure of this information to the applicant as an eligible family member for her son. However, I agree with QPS's assessment of this information. It is of a highly personal nature and I consider its disclosure could reasonably be expected, if the applicant's son were alive, to impact his privacy. I am not satisfied that disclosure could reasonably be expected to enhance either the accountability of QPS for the manner in which it investigated the accident, nor contribute in any meaningful way to the applicant's understanding of QPS's investigation as it related to AB. Once again, I have considered the application to this information of the various public interest factors listed at paragraph 21 above. However, I am unable to identify public interest factors favouring disclosure of this information that would be of sufficient weight to outweigh the significant weight that I afford to the public interest in protecting the personal information of the applicant's son and his associated privacy.
32. As regards the personal information of AB that is scattered throughout the Category A documents, this includes their identifying and contact information, licence and registration details, details of conversations with others at the accident scene, and information provided to police in the aftermath of the accident. A public interest harm in disclosure of this personal information again automatically arises to which I afford significant weight when balancing the public interest, given the sensitive nature of the information and the context in which it was provided.
33. I accept that some of this information, including identifying information for AB, is in the public domain via the Magistrates Court proceedings. However, while the fact that personal information is in the public domain may serve to reduce the public interest in protecting the relevant person's associated right to privacy, it does not extinguish it. There exists a residual privacy interest that must be recognised. This was discussed in OIC's decision in *Queensland Newspapers Pty Ltd and Department of Justice and Attorney-General*.³⁴ In that case, the applicant applied for access to police recordings, interviews, etc., relating to the police investigation into Mr Gerard Baden-Clay, who was found guilty of murdering his wife. The Right to Information Commissioner stated as follows in that decision:

While I accept that the privacy interests of a person may be reduced where the relevant information is already in the public domain, that interest is reduced rather than destroyed. There exists a residual privacy interest that must be recognised. In this case, it is necessary to take account of the highly personal and extremely sensitive nature of the information in question and the significant detrimental impact that re-publication of this information could reasonably be expected to have on the residual privacy interests of the many persons involved in the investigation, including Mr and Mrs Baden-Clay's children, parents and siblings. Given that the court processes concluded nearly two and a half years ago, with the matter now largely out of the public eye, my view [is] that the public interest in protecting the right to privacy of

³³ See, for example, *L78 and Queensland Health* [2020] QICmr 5 (10 February 2020) at paragraph 28.

³⁴ [2018] QICmr 52 (18 December 2018) at paragraph 31.

the persons involved, and referred to, in the recordings, even in respect of information that was disclosed at trial, remain[s] significant. ...

...

... even in respect of information that has already been released publicly, I maintain the view that the re-publication of this information in all the circumstances of this extremely high-profile and well-known case could reasonably be expected to cause a significant prejudice to the protection of the relevant persons' residual right to privacy.

34. I am satisfied that the same considerations apply here. The charge against AB was heard in the Magistrates Court and AB was found not guilty of driving without due care and attention, with the charge dismissed. I consider that release under the RTI Act of the personal information of AB that was disclosed at the hearing could reasonably be expected to cause a significant prejudice to the ongoing protection of AB's residual right to privacy. The legal proceedings were finalised some time ago, and were widely reported upon by the media at the relevant time. However, they are now largely out of the public eye. The applicant is aware of the evidence that was relied upon by both the prosecution and defence during the hearing, including the account given by AB to police of AB's actions at the time of the accident. Given the volume of information to which the applicant has already been given access, by both QPS and the Coroner, and disclosed at the hearing, I am not satisfied that disclosure of AB's personal information as contained in the Category A documents could reasonably be expected to significantly enhance any of the relevant public interest factors favouring disclosure listed in paragraph 21 above. I do not consider that it would, for example, significantly enhance the accountability of QPS regarding its investigation, nor contribute in any meaningful way to a better understanding of the processes followed by QPS in its investigation or prosecution of AB, or the relevant decisions that were made in that context. Nor am I satisfied that it would contribute to the administration of justice. The applicant appears to speculate that AB may have been given preferential treatment by police. I can only observe that there is nothing in the Category A documents that would support that assertion. As such, I am not satisfied that disclosure of the Category A information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official, nor reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct, or negligent, improper or unlawful conduct.
35. I consider that the re-publication of AB's personal information now, under the RTI Act, could reasonably be expected to have a significant detrimental impact on the protection of AB's residual privacy interests, particularly in circumstances where the legal proceedings were finalised some time ago and AB was acquitted of the charge laid against them. In forming this view, I have taken account of the fact that there are no restrictions upon what a person may do with information that is released to them under the RTI Act.³⁵
36. Accordingly, I am satisfied in the circumstances that the public interest in protecting the personal information, and residual privacy rights, of AB remain high. I am unable to identify any public interest factors favouring disclosure that would be of sufficient weight to outweigh these factors favouring nondisclosure.

³⁵ As Judicial Member McGill SC of QCAT recently observed '*... the effect of the... [Information Privacy Act 2009 (Qld)] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17]. These observations apply equally to the cognate right of access conferred by the RTI Act.

Finding

37. For the reasons explained, I find that the public interest factors favouring nondisclosure of the Category A information outweigh the factors favouring disclosure, such that disclosure would, on balance, be contrary to the public interest.

BWCF

38. The applicant has submitted that she primarily requires access to the BWCF to prove whether or not AB was subject to an alcohol and drug test following the accident, and whether or not AB's phone was connected to their car's Bluetooth system³⁶ at the time of the accident.
39. There are several pieces of BWCF in issue. Some records the attendance of police at the hospital to which the applicant's son was transported following the accident. It records vision in the emergency department and conversations between police and various hospital personnel about the accident, the applicant's son, and the personal effects of the applicant's son that were transported with him to the hospital. It therefore comprises the personal information of a number of persons. As noted above, the RTI Act automatically presumes that disclosure of personal information would give rise to a public interest harm.
40. In terms of the associated public interest in protecting the privacy interests of the relevant individuals, the Information Commissioner has previously decided that, when considering audio and video recordings, the privacy interests of the persons involved should generally be accorded greater weight than might otherwise be the case for purely text-based documents.³⁷
41. Given the nature of the information contained in the BWCF, the context in which it was recorded (that is, in a hospital emergency department), and its highly personal and sensitive nature, particularly vis-à-vis the applicant's son, I would afford significant weight to the public interest in protecting the personal information and associated right to privacy of the applicant's son and the other individuals recorded in the footage. Again, I acknowledge the applicant's position as her son's eligible family member/next-of-kin, and the countervailing public interest factors that apply to the release of personal information of a deceased person in these circumstances. However, I am also satisfied that the personal information in issue is inextricably intertwined, such that it cannot easily be separated. I also note that the recordings in question do not reveal anything relating to AB's conduct regarding the accident. I am therefore not satisfied that their disclosure could reasonably be expected to enhance the accountability of QPS for the manner in which it investigated AB's conduct in connection with the accident, which appears to be of primary concern to the applicant.
42. I have considered the application to this footage of the various public interest factors favouring disclosure listed at paragraph 21 above. I accept that disclosure would, to a

³⁶ Evidence presented at the Magistrates Court hearing was to the effect that AB had stated to police that AB was on a 'hands-free' telephone call with a work colleague at the time of the accident.

³⁷ As regards voice recordings comprising personal information, see *New York Times Co. and National Aeronautics and Space Administration*, 920 F.2d 1002 (D.C. Cir. 1990) (**New York Times and NASA**). The majority of the United States Court of Appeals for the District of Columbia in that case stated that '*... information is not conveyed by words alone. The information recorded through the capture of a person's voice is distinct and in addition to the information contained in the words themselves. ... voice inflections and other "nonlexical" information can constitute personal information...*'. *New York Times and NASA* was cited with approval by the Information Commissioner in *Williamson and Queensland Police Service; "A" (Third Party)* (2005) 7 QAR 51 (**Williamson**), in affirming the QPS' decision to refuse access under the former *Freedom of Information Act 1992* (Qld) (**FOI Act**) to an audio and video recording of a police interview. *Williamson* considered the application of the former '*personal affairs*' exemption as contained in section 44(1) of the FOI Act; relevant observations may nevertheless be usefully applied in the present case.

very limited extent, inform the community about how police carry out their functions and thereby enhance the accountability and transparency of QPS in general terms. However, I am unable to identify any public interest factors favouring disclosure of the footage that would carry sufficient weight to outweigh the significant weight I afford to the public interest in protecting the personal information of the relevant persons involved in the footage, including the applicant's son, and their associated right to privacy.

43. The remainder of the BWCF in issue was recorded at the scene of the accident. It appears from media reports at the relevant time, that at least some footage was played to the court during the Magistrates Court proceedings. I will discuss that further below.
44. I am satisfied that the footage contains the inextricably intertwined personal information of numerous persons who were involved in, or witnessed, the traffic accident or its aftermath, including the applicant's son, AB, numerous members of the public, police officers, as well as various other emergency and medical personnel. Again, the RTI Act automatically presumes that disclosure of personal information would give rise to a public interest harm.
45. I am satisfied that highly sensitive information is contained in the BWCF, which includes vision/audio of:
 - the accident scene and emergency personnel, including police, ambulance and fire brigade attending at the scene
 - conversations between police officers; between police officers and witnesses; and between police officers and emergency personnel, regarding the accident, including the expression of thoughts, feelings and emotions in response to the accident; and
 - conversations with AB by police and others at the scene, again, including the expression of thoughts, feelings and emotions in response to the accident.
46. I have noted at paragraph 40 above that the public interest in protecting the privacy interests of persons involved in audio and video recordings should generally be accorded greater weight than might otherwise be the case for purely text-based documents.
47. I am satisfied that disclosure of the BWCF could reasonably be expected to cause significant prejudice to the protection of the right to privacy of the relevant individuals given that it contains highly sensitive images of the accident scene and the many persons present at the scene, and records sensitive and at times emotional comments and conversations between those persons and police in the immediate aftermath of what was a traumatic event. Given the nature of the images shown in the footage and the numerous persons depicted at any one time, I am satisfied that pixelation is not practicable in terms of attempting to redact the identities of those involved.
48. The applicant contends that some witnesses made comments on social media about what they had witnessed and that this, combined with the fact that some gave evidence at the Magistrates Court hearing, means that they have, in effect, waived any right to privacy they have in respect of the BWCF.
49. I do not consider that the fact that some persons depicted in the footage may have commented about the accident on social media,³⁸ or may subsequently have given evidence at the Magistrates Court hearing, lessens to any significant degree the public interest in protecting their right to privacy in respect of their images and voices as

³⁸ This is an assertion made by the applicant on external review. While I have not seen evidence of this, I have considered that does not materially impact on my assessment of the public interest factors in any event.

captured in the BWCF. This is particularly so given the context in which this information was recorded, that is, in the immediate aftermath of a traumatic and distressing incident when emotions were heightened. Again I have had regard to the fact that there are no restrictions upon what a person may do with information that is released to them under the RTI Act, including re-publication of that information.

50. In terms of the public interest considerations favouring disclosure, I accept that disclosure would enhance the general accountability and transparency of QPS regarding the way in which it managed the accident scene and its interactions with those present at the scene, and would assist in informing the community about the conduct of police operations in such circumstances. However, given the information about those matters, and the circumstances of the accident, that was made available to the public during the Magistrates Court proceedings, I would afford only low weight to these public interest factors favouring disclosure of the footage under the RTI Act.
51. The applicant asserts in her submissions that there have been 'rumours' and 'conjecture' in the community about whether AB's conduct was properly investigated by police. She contends that giving access to the BWCF would contribute to the administration of justice by proving to the community that proper procedures in dealing with AB were followed by police in the areas of alcohol and drug testing of AB, and investigating whether AB was using a hands-free car kit.
52. I do not accept the applicant's mere assertion that there have been rumours and conjecture in the community about aspects of QPS's investigation as it related to AB, of itself, gives rise to a public interest in disclosure of the BWCF beyond the general public interest that exists in the accountability of QPS for the manner in which it discharged its investigative obligations regarding the accident, and in the accountability of AB as a public official. Similarly, I do not accept the applicant's personal opinion of QPS's prosecution of the charge against AB as 'inept' as adding greater weight to the general public interest in QPS's accountability for the prosecution of AB. The charge against AB was heard in open court and the evidence presented, and the proceedings generally, were open to public scrutiny at that time.
53. In respect of any investigation conducted by police regarding the use by AB of a hands-free car kit, I can see nothing in the BWCF that is relevant to that issue beyond what was disclosed at the time of the Magistrates Court hearing.³⁹ I reiterate the comments I have made at paragraphs 33 and 34 above regarding when an individual's personal information is in the public domain: that is, while this may serve to reduce the public interest in protecting a person's right to privacy, it does not extinguish it. There exists a residual privacy interest that must be recognised. I am satisfied that re-publication of this material now, under the RTI Act, when the legal proceedings were finalised some time ago, AB was acquitted, and the matter is now out of the public eye, could reasonably be expected to have a significant detrimental impact on the residual privacy interests of AB.
54. As regards blood and alcohol testing of AB, the applicant has been given access to the sworn statement of the police officer who attested to the fact that he administered an alcohol breath test to AB following the accident. The police officer stated that the result was a reading of 0.00%. I am not satisfied that disclosing the BWCF as it depicts the administration of this breath test to AB would significantly enhance the accountability of QPS beyond the information contained in the sworn statement of the police officer. I do consider, however, that it would cause significant prejudice to the protection of AB's

³⁹ Media reports of the hearing indicate that a segment of BWCF recording a conversation between AB and a police officer in the aftermath of the accident was played to the court.

ongoing right to privacy. I reject the submission that such prejudice to AB's privacy interests is justified merely because the applicant is not satisfied with the sworn evidence of police and relies upon an unsupported assertion that there have been rumours in the community about the interactions between police and AB. There is nothing in the BWCF that supports such an assertion.

55. In summary, I have considered the application of all of the public interest factors relied upon by the applicant in favour of disclosure of the BWCF recorded at the scene of the accident. For the reasons explained above, I do not consider that any of them carry sufficient weight to outweigh the significant weight I afford to the public interest in protecting the personal information and right to privacy of the many persons depicted in the footage (including the applicant's son and AB). Given the volume of information that is already in the public domain via the Magistrates Court proceedings, and that has been released to the applicant by QPS and the Coroner, I am not satisfied that disclosure of the BWCF could reasonably be expected to significantly enhance the accountability and transparency of QPS for its investigation of the accident or its decision to charge AB. Nor am I satisfied that disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official, nor reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct, or negligent, improper or unlawful conduct. Similarly, I am not satisfied that disclosure could reasonably be expected to contribute to the administration of justice either generally, or for the applicant's son specifically. As noted, the charge against AB, and the evidence gathered by police in making the decision to lay that charge, were open to public scrutiny in the Magistrates Court proceedings, as were the Magistrate's reasons for dismissing the charge.
56. Regardless of the volume of information about the accident that is in the public domain, I consider that the prejudice to the residual privacy rights of all those concerned that would be caused through disclosure/republication of the BWCF under the RTI Act, would be significant.

Finding

57. For the reasons explained, I find that the public interest factors favouring nondisclosure of the BWCF outweigh the factors favouring disclosure, such that disclosure would, on balance, be contrary to the public interest.

DECISION

58. I affirm that decision under review by finding that disclosure under the RTI Act of the Category A information and the BWCF would, on balance, be contrary to the public interest. Access under the RTI Act may therefore be refused.
59. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

S Martin
Assistant Information Commissioner

Date: 13 June 2023

APPENDIX**Significant procedural steps**

Date	Event
15 December 2022	OIC received the application for external review.
11 January 2023	OIC received preliminary documents from QPS.
18 January 2023	OIC advised the parties that the application for external review had been accepted.
20 February 2023	OIC received copies of the information in issue from QPS.
28 February 2023	OIC communicated a preliminary view to the applicant.
8 March 2023	OIC granted the applicant an extension of time to respond.
11 April 2023	OIC received a submission from the applicant.
19 April 2023	OIC communicated a preliminary view to QPS.
15 May 2023	OIC received a response from QPS.
1 June 2023	OIC consulted with a third party.
5 June 2023	OIC received further information from QPS. OIC received a response from the third party.