



Decision and Reasons for Decision

Citation:	<i>P55 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development [2024] QICmr 59 (12 November 2024)</i>
Application Number:	317172
Applicant:	P55
Respondent:	Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development
Decision Date:	12 November 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - INVESTIGATION BY PRESCRIBED CRIME BODY - information concerning withdrawal of employment offer - whether information was obtained, used or prepared for an investigation by a prescribed crime body or another agency in the performance of the prescribed functions of the prescribed crime body - whether information is about the applicant - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a), 48 and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the then Department of Resources² (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documents about him that were sent to or received by named Departmental officers between 1 January 2019 and 31 August 2022.³
2. The Department located 699 pages in response to this application; released 455 pages and decided⁴ to refuse access to 62 pages and parts of 182 pages on various grounds.⁵

¹ On 20 September 2022.

² In terms of the respondent agency, following a machinery of government change on 1 November 2024, the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development was named as the agency responsible for administering the legislation administered by the former Department of Resources.

³ In terms of the agency processing the application on the respondent agency's behalf, at the time of the access application and decision under review, the Department of Environment and Science was authorised to deal with access applications on behalf of the Department under section 50(3) of the IP Act. Following machinery of government changes on 18 December 2023, the authorised agency became Department of Environment, Science and Innovation. Following further machinery of government changes on 1 November 2024, the authorised agency became the Department of Environment, Tourism, Science and Innovation.

⁴ Decision dated 16 January 2023. Prior to this the Department issued a notice of intention to refuse to deal with the access application on 10 November 2022 and, following consultation, the applicant agreed to exclude duplicate attachments and particular recruitment documents on 11 November 2022.

3. The applicant sought⁶ internal review of the Department's decision. The Department then affirmed its original decision⁷ and, in relation to six additional pages located during the internal review, decided to release three pages and refuse access to parts of the remaining three pages.
4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review, seeking access to the refused information and contending that all relevant documents had not been located.⁸
5. For the reasons set out below, I vary the Department's internal review decision and find that access may be refused to the 14 pages remaining in issue in this review on the ground that the information comprises exempt information under schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

Background

6. The applicant was offered a permanent role (AO4) following a recruitment process conducted by the Department in 2020.
7. This offer of employment was subsequently withdrawn and the applicant was advised that this was due to the impacts of COVID-19 on the State's economy.⁹

Reviewable decision

8. The decision under review is the Department's internal review decision dated 27 February 2023.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁰ 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 IP Act.¹¹ 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 the equivalent pieces of Victorian legislation:¹² '*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.*'¹³

⁵ There appears to be an error in the Department's decision in relation to the number of pages released and partially refused. The figures at paragraph 2 were taken from a 'Redax Report to File' generated by OIC. The Department also deleted irrelevant information from the disclosed documents pursuant to section 88 of the IP Act.

⁶ On 6 February 2023. It is noted that the applicant sent an email to the Department requesting an internal review on 27 January 2023, but this was sent to the wrong email address.

⁷ Decision dated 27 February 2023.

⁸ Email dated 5 March 2023.

⁹ Letter to the applicant dated 21 May 2020.

¹⁰ As embodied in section 21 of the HR Act.

¹¹ *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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw 'no reason to differ' from our position).

¹² *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹³ *XYZ* at [573].

Information in issue

11. During the external review, the applicant raised specific documents that he considered the Department had failed to locate: documents sent to or received by a named Departmental officer in connection with, or which influenced, the Department's decision to withdraw the offer of employment it made to the applicant. It was agreed that the focus of the external review would be to determine whether the Department had taken all reasonable steps to locate these documents.¹⁴
12. OIC requested that the Department conduct additional searches and make further enquiries for the documents referred to at paragraph 11. The Department located an additional 14 pages.¹⁵ These 14 pages comprise the remaining information in issue (**Information in Issue**) in this external review.

Issue for determination

13. The issue for determination is whether the Information in Issue may be refused on the ground that it is exempt information under schedule 3, section 10(4) of the RTI Act and whether the exception in schedule 3, section 10(6) of the RTI Act applies and prevents the Information in Issue from qualifying as exempt information.

Steps taken during the external review process

14. The access application was made to the Department on 20 September 2022. I acknowledge that a large amount of time has passed since the application was made. This can largely be attributed to a series of complex issues which arose during the external review.
15. The significant steps taken by OIC during the external review are set out in the Appendix and explained in more detail below, to provide context of the history of this matter.
16. As explained at paragraph 11, it was agreed that the focus of the review would be to determine whether the Department had taken all reasonable steps to locate documents sent to or received by a named Departmental officer in connection with, or which influenced, the Department's decision to withdraw the offer of employment it made to the applicant.
17. The Department located 14 pages¹⁶ meeting this description and, other than small portions of other individuals' personal information appearing on two pages, initially agreed to fully release the remaining pages.¹⁷ At this stage, the Department did not propose third party consultation under section 56 of the IP Act. Rather, it stated that no such consultation had been undertaken¹⁸ and asked to be notified about the potential timing for release of the documents to the applicant.
18. OIC wrote to the Department in October 2023, and:¹⁹

¹⁴ Email dated 17 August 2023.

¹⁵ The 14 additional pages were provided to OIC on 14 December 2023.

¹⁶ The Department located 16 pages, however, two pages were blank.

¹⁷ Email dated 11 September 2023.

¹⁸ Section 56 of the IP Act.

¹⁹ Email dated 11 October 2023.

- indicated that, while third party consultation was not required, as part of the informal resolution process, it may be suitable for the Department to provide some level of notification to other individuals involved
 - conveyed a preliminary view that the public interest favours disclosure of the Information in Issue to the applicant; and
 - invited the Department to consider any mechanisms to resolve this matter informally.
19. The Department responded in November 2023²⁰ and advised that it now considered that third party consultation with three individuals should occur.²¹ Taking into account the information now before it, OIC then requested²² the Department to consult with two of the three individuals and to advise the outcome of those consultations. The Department provided OIC with the responses from the individuals it consulted with in December 2023.²³
20. After careful consideration of the information provided by the Department during the course of the external review, in February 2024, a matter was referred by OIC²⁴ to the Crime and Corruption Commission (**CCC**).²⁵ At the CCC's request,²⁶ to assess the referral, a copy of relevant information provided to OIC during the external review (including the Information in Issue) was provided to the CCC to determine if section 15 of the CC Act was satisfied.²⁷
21. In June 2024, the CCC advised OIC that it considered the allegations raised could, if proved, amount to corrupt conduct as defined by the CC Act. The CCC also advised that it had assessed the allegations as appropriate to refer to the Department to deal with, and that it had done so.

Relevant law

22. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁸ However, this right is subject to other provisions of the IP Act and RTI Act, including the grounds on which an agency may refuse access to documents. Relevantly, an agency may refuse access to documents to the extent they comprise exempt information.²⁹ Schedule 3 of the RTI Act sets out the various types of exempt information.³⁰
23. One category of exempt information is set out in schedule 3, section 10(4) of the RTI Act—being information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body (**Prescribed Crime Body Exemption**). However, this exemption will not apply if the information consists of information about the applicant and the investigation is finalised.³¹

²⁰ Email dated 10 November 2023.

²¹ Section 56 of the IP Act.

²² Email dated 13 November 2023.

²³ Email dated 13 December 2023.

²⁴ Pursuant to OIC's obligation under sections 38 and 39 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

²⁵ Email dated 14 February 2023.

²⁶ Letter dated 20 March 2024.

²⁷ Following a request by the CCC by letter dated 20 March 2024.

²⁸ Section 40 of the IP Act.

²⁹ Section 67(1) of the IP Act and section 47(3)(a) of the RTI Act. Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent that 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 the RTI Act.

³⁰ Section 48(2) of the RTI Act.

³¹ Schedule 3, section 10(6) of the RTI Act.

Applicant's submissions

24. The applicant has made no submissions addressing the application of the Prescribed Crime Body Exemption or the exception to the Prescribed Crime Body Exemption.³²

Findings

Did the CCC 'obtain, use or prepare' the Information in Issue for an investigation?

25. Yes.
26. The terms '*obtained, used or prepared*' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning. The term '*investigation*' as used in the Prescribed Crime Body Exemption has been defined broadly and includes the mere examination or consideration of information.³³
27. As explained at paragraph 20, the Information in Issue was provided by OIC to the CCC in support of OIC's referral. On the information before OIC,³⁴ I am satisfied that the Information in Issue was obtained, used or prepared by the CCC for an investigation by the Department.³⁵

Were relevant investigations conducted by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body?

28. Yes.
29. The CCC is a 'prescribed crime body' for the purposes of the RTI Act.³⁶
30. As explained at paragraph 21, I am satisfied that the allegations raised (which are the subject of an investigation) could, if proven, amount to corrupt conduct under the CC Act. On the information before OIC,³⁷ I am satisfied that the investigation was devolved to the Department by the CCC in the performance of its corruption function, and the investigation is subject to the CCC's monitoring role, in accordance with the requirements of the CC Act.³⁸

Does the exception to the exemption apply?

31. No.

³² In response to OIC's preliminary view dated 20 June 2024, in an email dated 26 June 2024, the applicant stated '*I do not agree*' and then on 16 July 2024, when provided with a further opportunity to make a submission in response to OIC's preliminary view, the applicant responded '*No further submissions. Formal decision still being requested*'.

³³ Paraphrasing the definition of 'investigate' in schedule 2 of the CC Act. *Springborg MP and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party) (2006) 7 QAR 77* contains a detailed analysis of the concept of an 'investigation' as used in the provision of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**) that was the material equivalent of schedule 3, section 10(4) of the RTI Act. The Information Commissioner in that decision determined that it can encompass the process of examining, considering, "*dealing with*" and "*assessing*" a complaint: [55]-[59]. The provisions of the *Crime and Misconduct Act 2001* analysed in *Springborg* are the equivalent to those contained in the CC Act.

³⁴ Including a letter from the CCC dated 13 June 2024.

³⁵ Although the CCC has primary responsibility for dealing with corrupt conduct complaints, the CCC may refer such a complaint to a public official (which includes the chief executive officer of a unit of public administration) to be dealt with by the public official or in cooperation with the CCC, subject to the CCC's monitoring role: sections 45 and 46(2) of the CC Act.

³⁶ Schedule 3, section 10(9) of the RTI Act.

³⁷ Including a letter from the CCC dated 13 June 2024.

³⁸ Section 48(1) of the CC Act.

32. The exception to the Prescribed Crime Body Exemption only applies where the investigation is finalised and the information is *about* the applicant. I have been advised³⁹ that the investigation is ongoing, and therefore the exception cannot apply.⁴⁰

Conclusion

33. As the requirements of the Prescribed Crime Body Exemption are met and the exception does not apply, I find that access to the Information in Issue may be refused as it comprises exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act.

DECISION

34. For the reasons explained above, I vary⁴¹ the Department's decision and find that access to the Information in Issue may be refused on the ground that it is exempt information⁴² under schedule 3, section 10(4) of the RTI Act, namely information that was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body.
35. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 12 November 2024

³⁹ Email dated 8 November 2024.

⁴⁰ As both elements of the exception must be satisfied in order for it to apply and the investigation is ongoing, it is unnecessary for me to consider whether the information is about the applicant. OIC received confirmation from the Department on 8 November 2024 that its investigation was ongoing.

⁴¹ Section 123(1)(b) of the IP Act.

⁴² Section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
5 March 2023	OIC received the external review application.
6 March 2023	OIC notified the applicant and Department that the application for external review had been received and requested information from the Department.
13 March 2023	OIC received the requested information from the Department.
5 April 2023	OIC notified the applicant and Department that the external review had been accepted. OIC requested further information from the Department.
26 April 2023	OIC received the further requested information from the Department.
15 August 2023	OIC contacted the applicant by telephone.
23 August 2023	OIC requested further information from the Department.
11 September 2023	OIC received the further requested information from the Department.
11 October 2023	OIC conveyed a preliminary view to the Department and requested that it identify any mechanisms by which to informally resolve this matter.
10 November 2023	OIC received a response from the Department.
13 November 2023	OIC requested the Department undertake third party consultation.
13 December 2023	OIC received the responses from third parties who were consulted by the Department.
14 February 2024	OIC sent a referral to the CCC on suspicion of corrupt conduct.
12 March 2024	OIC received a telephone call from a CCC officer in relation to the referral.
19 March 2024	OIC requested confirmation from the CCC for the production of the required information.
20 March 2024	OIC received a response from the CCC requesting the production of information to assess the referral.
28 March 2024	OIC provided relevant information obtained during the review to the CCC (including the Information in Issue) in support of OIC's referral.
13 June 2024	OIC received outcome advice from the CCC in relation to OIC's referral.
20 June 2024	OIC conveyed a preliminary view to the applicant.
26 June 2024	OIC received a response from the applicant confirming that he did not agree with the preliminary view.

Date	Event
16 July 2024	OIC requested confirmation from the applicant about how he wanted to proceed with external review. OIC received a response from the applicant confirming that he had no further submissions and required a formal decision.
8 November 2024	OIC received confirmation from the Department that its investigation is ongoing.