



## Decision and Reasons for Decision

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Citation:	<i>WL1T8P and Queensland Police Service [2014] QICmr 40 (16 October 2014)</i>
Application Number:	311862
Applicant:	WL1T8P
Respondent:	Queensland Police Service
Decision Date:	16 October 2014
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information about Queensland Police Service investigation into allegations against the applicant - personal information and privacy - administration of justice - prejudice the flow of information - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b></p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - UNLOCATABLE DOCUMENTS - audio recording of interview between Queensland Police Service and the applicant - interview occurred 15 years ago - whether reasonable steps have been taken to find the recording - sections 47(3)(e) and 52(1)(b) of the <i>Right to Information Act 2009</i> (Qld)</b></p>

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to investigation files about a sexual assault complaint made against him. No charges were laid against the applicant as a result of the investigations.
2. After consulting with the complainant, who objected to disclosure, QPS decided to refuse access to all of the information it located on the basis that its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.

4. On external review, QPS was unable to locate an audio recording of an interview it conducted with the applicant during the investigation.
5. The applicant submits that he is entitled to access the investigation files because they contain his personal information, and because there is a strong public interest in QPS being accountable for the way it conducts its investigations. The applicant states that he is seeking the information to include in an application for review of findings made against him in the Towards Healing process<sup>1</sup> and also considers that the information will assist him in commencing a defamation action against the complainant. The applicant also submits that QPS should be required to make further inquiries to locate the audio recording of his interview.
6. For the reasons set out below, I affirm QPS's decision to refuse access to information under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest. In addition, I find that access to the audio recording may be refused under section 47(3)(e) of the RTI Act on the basis that all reasonable steps have been taken to locate the recording, but it cannot be located.

### Background

7. Significant procedural steps relating to the application and the external review process are set out in the Appendix.

### Reviewable decision

8. The decision under review is QPS's decision dated 2 December 2013 refusing access to information under section 47(3)(b) of the RTI Act.

### Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching this decision is disclosed in these reasons (including footnotes and Appendix).

### Information in issue

10. QPS refused the applicant access to 99 pages and two cassette tape recordings relating to QPS's investigations<sup>2</sup> into the complaint against the applicant (**Investigation Documents**). The documents include case investigation notes, QPS notebook entries, internal QPS correspondence, statement of the complainant and recorded interview with the complainant. I am prevented from describing the content of the documents in any further detail.<sup>3</sup>
11. The unlocatable audio recording of an interview between QPS and the applicant in 1999 also forms part of the information in issue in this review (**Audio Recording**).

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<sup>1</sup> Towards Healing is a document published by the Catholic Church which sets out the principles that must form the basis of the Church's response to complaints of abuse and the procedures to be followed in responding to individual complaints. See <https://www.catholic.org.au/professional-standards/towards-healing>.

<sup>2</sup> QPS initially investigated the complaint in 1999 and conducted further investigations between 2003-2004.

<sup>3</sup> Section 108(3) of the RTI Act provides that the Information Commissioner must not, in a decision, or in reasons for a decision, on an external review, include information that is claimed to be contrary to the public interest information.

## Issues for determination

12. The issues for determination in this review are:
- 1) would disclosure of the Investigation Documents, on balance, be contrary to the public interest; and
  - 2) have all reasonable steps been taken to find the Audio Recording.

### 1) Would disclosure of the Investigation Documents, on balance, be contrary to the public interest?

13. Yes, for the reasons set out below.

## Relevant law

14. Section 23 of the RTI Act confers a general right of access to documents of an agency. This right is subject to limitations, including the grounds for refusing access to information set out in section 47 of the RTI Act. Relevantly, access to information may be refused if its disclosure would, on balance, be contrary to the public interest.<sup>4</sup>
15. The term 'public interest' 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
16. The RTI Act identifies various factors that may be relevant in deciding where the balance of the public interest lies<sup>5</sup> and sets out the following steps for decision makers:
- 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 would, on balance, be contrary to the public interest.<sup>6</sup>

## Findings

### Irrelevant factors

17. The applicant submits that he fully cooperated with QPS's investigations and voluntarily participated in a police interview.<sup>7</sup> The applicant also considers that the complainant has acted in bad faith by objecting to the disclosure of the information.<sup>8</sup> The applicant submits that OIC *'must determine if the complainant is an honest person'*<sup>9</sup> in order to protect the public interest.
18. I do not consider the above submissions raise any relevant public interest factors. Therefore, I have not taken them, or any other irrelevant factors, into account in making this decision.

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<sup>4</sup> Section 47(3)(b) of the RTI Act.

<sup>5</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

<sup>6</sup> Section 49(3) of the RTI Act.

<sup>7</sup> Applicant's submission to OIC dated 21 May 2014 (**Applicant's Submission**), page 2.

<sup>8</sup> Applicant's Submission, page 2.

<sup>9</sup> Applicant's Submission, page 15.

### **Factors favouring disclosure**

19. Based on the applicant's submissions and the content of the Investigation Documents, the following factors favouring disclosure arise for consideration in this external review:
- disclosure could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability<sup>10</sup>
  - disclosure could reasonably be expected to reveal the reason for a government decision and any background/contextual information that informed the decision<sup>11</sup>
  - some of the information is the applicant's personal information;<sup>12</sup> and
  - disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness, or for a person.<sup>13</sup>

### **Accountability and reasons for a government decision**

20. I accept that there is a public interest in law enforcement agencies, such as QPS, being accountable and transparent in the conduct of their investigations. The applicant has submitted that there is also a strong public interest in revealing why QPS decided not to prosecute the complaint.<sup>14</sup>
21. I am satisfied that disclosure of the Investigation Documents could reasonably be expected to inform the applicant of information that was available to QPS during its investigation, the steps taken during the investigation, and some information which explains QPS's decision not to prosecute. In the circumstances, I afford these factors moderately high weight in favour of disclosure.

### **Personal information**

22. Generally, there is a strong public interest in individuals accessing their personal information held by government agencies.<sup>15</sup> As the applicant was the subject of the complaint, his personal information<sup>16</sup> appears in *some* of the Investigation Documents.
23. However, due to the very nature of the Investigation Documents, the applicant's personal information appears together with that of other individuals, primarily the complainant. In the circumstances, I am satisfied that the personal information of the applicant could not be severed from the Investigation Documents so as to allow him access to it, without also disclosing the personal information of the complainant. For this reason, I must also consider the weight of the factor favouring nondisclosure of other individuals' personal information.<sup>17</sup>
24. The applicant has submitted that he is already aware of the complainant's personal information and that therefore, this factor should be given full weight in favour of disclosure.<sup>18</sup>

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<sup>10</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>11</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>12</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>13</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

<sup>14</sup> Applicant's Submission, page 3.

<sup>15</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>16</sup> 'Personal information' is defined in schedule 6 of the RTI Act, and section 12 of the *Information Privacy Act 2009* (Qld) as '*...information or an opinion, including information or an opinion forming part of a database, 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*'.

<sup>17</sup> See paragraphs [35] to [40] below.

<sup>18</sup> Applicant's Submission, page 2.

25. I acknowledge that the applicant and complainant are known to each other and that the applicant may be generally aware of some of the complainant's personal information. However, in the Investigation Documents, the complainant's personal information appears in the specific context of QPS's investigations into allegations of sexual assault against a child. There is no evidence available to OIC to indicate that the complainant has provided the applicant with a copy of her statement, nor the specific details of the complaint to QPS. In fact, when consulted by QPS about this application,<sup>19</sup> the complainant raised strong objections to disclosure of her personal information.<sup>20</sup> For these reasons, I do not consider the applicant's submission at paragraph 24 adds any further weight in favour of disclosure.
26. On the basis of the above, I find that this factor carries moderately high weight in favour of disclosure of the applicant's personal information which appears in the Investigation Documents.

### ***Administration of justice***

27. The applicant submits that he has an action in defamation against the complainant and that disclosure of the Investigation Documents will assist him in pursuing defamation proceedings.<sup>21</sup> The applicant has provided OIC with a copy of his application for a review of the Towards Healing findings against him. The applicant relies on that material, in addition to the below submissions, to support his argument about the administration of justice:
- as a result of the complaint, the applicant was removed from active ministry, placed in early retirement, refused permission to visit former parishioners, suffered damage to his reputation and experienced a decline in his mental and physical wellbeing
  - one remedy available to the applicant would be for a court to order the complainant make a public apology; and
  - the applicant expects that the Investigation Documents will contain documents which contradict the complaint and demonstrate that it was false.<sup>22</sup>
28. In *Willsford and Brisbane City Council*<sup>23</sup>, the Information Commissioner found that the administration of justice factor will arise if an applicant can demonstrate that:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be available under the law
  - they have a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>24</sup>
29. The applicant submits that statements from other individuals, contained in his Towards Healing submission, contradict the complaint.<sup>25</sup> It appears that the applicant relies on this material to support his belief that the complaint was false, and considers that by obtaining the Investigation Documents, he will have further evidence to support his assertions of a false complaint, thereby assisting him in pursuing a defamation action.

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<sup>19</sup> Letter from QPS to the complainant dated 25 November 2013.

<sup>20</sup> Letter from the complainant to QPS dated 2 December 2013.

<sup>21</sup> Applicant's Submission, pages 3-4.

<sup>22</sup> Applicant's Submission, pages 3-4.

<sup>23</sup> (Unreported, Queensland Information Commissioner, 27 August 1996) (*Willsford*).

<sup>24</sup> *Willsford* at [17].

<sup>25</sup> Applicant's Submission, page 4.

30. Complaint information is, by its very nature, an individual's particular version of events which is shaped by factors including the individual's memory and subjective impressions.<sup>26</sup> This inherent subjectivity does not necessarily mean that the resulting account or statement is defamatory.<sup>27</sup> Rather, it means that complaint information comprises a personal interpretation of relevant events, which must be balanced against other (often contradicting) statements and evidence in deciding whether to take further action on a complaint. Further, a decision not to prosecute a complaint does not necessarily mean that the complaint was assessed to be false.
31. On the evidence available to OIC, I am not satisfied that the applicant has demonstrated the elements required to establish the administration of justice factor. While I am unable to provide any further description of the Investigation Documents, other than that set out at paragraph 10 above, I am not satisfied that disclosure of the information would enable the applicant to pursue a legal remedy, or evaluate whether a legal remedy is available.
32. QPS did not charge the applicant with any offence as a result of the complaint, nor is there any evidence available to OIC to suggest that QPS is currently requiring the applicant to provide any further response to the allegations. Therefore, I am satisfied that disclosure of the Investigation Documents could not reasonably be expected to advance procedural fairness for the applicant in relation to QPS's investigation of the complaint.
33. I have also considered whether disclosure of the Investigation Documents would advance procedural fairness for the applicant in the context of the Towards Healing review process. I have carefully considered the content of the Investigation Documents and the information in the applicant's Towards Healing submission. I am satisfied that in obtaining access to the Investigation Documents, the applicant would be able to include further background information to the complaint, in his Towards Healing submission. I am not in any position to assess the relevance of the Investigation Documents to the Towards Healing review process or whether they will have any impact on the findings made against the applicant in that process. However, I accept that there may be some, however slight, advancement in procedural fairness for the applicant in terms of him providing a more detailed submission in that process.
34. On the basis of the above, I do not consider the circumstances of this review give rise to the administration of justice factors, aside from affording the applicant some level of procedural fairness in relation to the Towards Healing review process. In the circumstances, I afford this factor limited weight in favour of disclosure.

### **Factors favouring nondisclosure**

#### ***Personal information***

35. The RTI Act provides that disclosing another individual's personal information could reasonably be expected to cause a public interest harm.<sup>28</sup>
36. The Investigation Documents concern a complaint of sexual offences against the complainant (as a child), allegedly committed by the applicant. I am satisfied that the personal information of other individuals, primarily the complainant, appears throughout

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<sup>26</sup> *Mathews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [17] - [18].

<sup>27</sup> *6XY7LE and child of 6XY7LE and Department of Education, Training and Employment* [2014] QICmr 1 (15 January 2014) at [22].

<sup>28</sup> Schedule 4, part 4, item 6 of the RTI Act.

the Investigation Documents. In this particular context, I consider the personal information is of a highly sensitive nature.

37. The applicant contests the application of this factor on the basis that:
- (i) the complainant has previously volunteered all her '*highly personal information*' to the applicant<sup>29</sup> and has previously informed the applicant of complaints of a similar nature to those that were made to QPS<sup>30</sup>; and
  - (ii) the media regularly reports complaints of sexual assault, including identities of complainants and Australian society encourages and expects that allegations of this nature and the complainant identities will be made public.<sup>31</sup>
38. As the applicant was interviewed by QPS in relation to the complaint, I accept that he may be aware of some of the complainant's personal information, and the substance of the complaint, to the extent this was conveyed by QPS during the interview. However, I do not consider this reduces the sensitivity of the applicant's personal information. I am satisfied that the complainant's personal information derives its sensitivity due to the particular context in which it appears in the Investigation Documents, that is, in relation to the QPS investigation of a complaint about sexual offences against a child.
39. Queensland legislation prohibits the publication of complainant identities in relation to sexual offences.<sup>32</sup> This directly contradicts the applicant's submission at (ii) above, that media practices and society expectations require publication of a complainant's identity. Accordingly, I am not persuaded that this reduces the sensitivity of the complainant's personal information.
40. On the basis of the above, I am satisfied that the public interest harm that could reasonably be expected to result from the disclosure of the Investigation Documents would be significant. Therefore, I afford this factor significant weight in favour of nondisclosure.

### **Privacy**

41. If disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy, a public interest factor favouring nondisclosure will arise.<sup>33</sup> As I have found above, the Investigation Documents identify the complainant and other individuals in connection with a police complaint that is particularly sensitive in nature. I am satisfied that this factor applies on the basis that disclosing such information would constitute an intrusion into the privacy of other individuals, particularly the complainant.
42. The applicant has submitted that the public interest in preserving the complainant's privacy is non-existent because the complainant has ventilated the complaint in other forums, including the Royal Commission into Institutional Responses into Child Sexual Abuse and Towards Healing, and has also made '*public allegations*' to the Queensland Public Interest Law Clearing House, the Society of Jesus, '*a stranger on a bus*' and a '*social worker*'.<sup>34</sup>
43. I do not consider that the complainant's participation in the Royal Commission reduces the privacy interest to any extent. That process is aimed at achieving outcomes that are different from, and completely independent to, making a complaint to QPS about an

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<sup>29</sup> Applicant's Submission, page 5.

<sup>30</sup> Applicant's Submission, page 6.

<sup>31</sup> Applicant's Submission, page 6.

<sup>32</sup> *Criminal Law (Sexual Offences) Act 1978* (Qld).

<sup>33</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>34</sup> Applicant's Submission, pages 8-9 and email to OIC dated 10 January 2014.

alleged criminal offence. The nature and extent of evidence required from a complainant, also differs between the two processes. Further, when witnesses and complainants give evidence to a royal commission, procedures are established to preserve a complainant's dignity, and manage any resulting distress, in recognition of the high level of privacy intrinsic to these matters.

44. I acknowledge that the applicant has had allegations concerning the complainant put to him as part of the Towards Healing process<sup>35</sup> and that some of this may reflect information which appears in the Investigation Documents. Further, I accept that in participating in the interview with QPS, the applicant is likely to have been made aware of some of the complaint information. I consider these circumstances reduce, to some degree, the weight of the privacy interest attaching to the Investigation Documents. However, there is no evidence available to OIC to suggest that the specific content of the Investigation Documents has been publicised by the complainant through the other avenues referred to by the applicant. Accordingly, I do not consider the privacy interest is reduced to any further extent.
45. The applicant made extensive submissions about the limited use to which he intends to put the Investigation Documents, ie, for the sole purpose of submission to the Towards Healing review process, and the strict security measures he would adhere to in storing the Investigation Documents, if they were released to him.<sup>36</sup>
46. It is not possible to place restrictions on the use, dissemination or republication of information released under the RTI Act. In *OKP and Department of Communities*<sup>37</sup> the Information Commissioner explained that a decision maker should not assume that disclosure of information to an applicant is disclosure to the 'world at large' but should not exclude from consideration evidence about the intended or likely extent of dissemination by the applicant. While I have no reason to believe that the applicant has made this submission other than in good faith, I cannot exclude the possibility that the Investigation Documents could be further disseminated, and must also take into account that there is no mechanism under the RTI Act to prevent such disclosure.
47. On the basis of the above, I am satisfied that the public interest in protecting the privacy of the complainant, and any other individuals referred to in connection with the QPS investigation of a complaint about sexual offences against a child, carries high weight in favour of nondisclosure of the Investigation Documents.

#### ***Prejudice to the flow of information to QPS***

48. If disclosure of information could reasonably be expected to prejudice the flow of information to QPS, this will raise a factor in favour of nondisclosure.<sup>38</sup>
49. By releasing information in the nature of the Investigation Documents, I am satisfied there is a real prospect that complainants and witnesses would be less inclined to assist QPS with investigations into alleged criminal offences. Therefore, I find that this factor applies in this case.
50. The applicant submits that this factor does not apply because '*only a person making a false complaint*' would be '*dissuaded from making a complaint to the QPS*' in the

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<sup>35</sup> This is evident from documents provided by the applicant to OIC, including an Assessment Report dated 9 June 2011 completed by assessors appointed under the Towards Healing protocols, and a letter of allegation from the assessors to the applicant dated 4 April 2011.

<sup>36</sup> Applicant's Submission, pages 9-10

<sup>37</sup> Unreported, Queensland Information Commissioner, 9 July 2009) at [119] – [131] referring to the Victorian Court of Appeal decision in *Victoria Police v Marke* [2008] VSCA 218.

<sup>38</sup> Schedule 4, part 3, item 13 of the RTI Act.

knowledge that it could be released under the RTI Act.<sup>39</sup> Additionally, the applicant submits that a member of the public who was considering making a complaint to QPS about an allegation of a sexual assault would not be reluctant to complain to QPS once they understood the circumstances of this external review, ie, that the complainant's identity and the allegation is already known to the accused.<sup>40</sup>

51. It is generally recognised that there is a very strong public interest in protecting the free flow of information to law enforcement agencies, even where this may result in the investigation of false complaints or unsubstantiated allegations.<sup>41</sup> QPS relies on information from the public to be alerted to and pursue breaches of the law. Routinely disclosing information such as the Investigation Documents would discourage persons from providing information to police or cooperating with future inquiries, even where the subject of the allegations is aware of the complainant's identity. I am satisfied that, in turn, this would significantly prejudice QPS's ability to discharge its law enforcement functions. In this case, I find that this factor weighs heavily against disclosure of the Investigation Documents.

### **Balancing the public interest**

52. In the circumstances of this review, I have found that there is a moderately high weight to be afforded to the public interest in the applicant accessing his personal information and in enhancing QPS's accountability and revealing reasons/background information for QPS's decision not to prosecute the applicant. There is also some weight, though limited, favouring disclosure of the Investigation Documents in terms of advancing procedural fairness for the applicant in the context of the Towards Healing review process.
53. Balanced against these pro-disclosure factors however, is the public interest in minimising harm to the personal information of other individuals, primarily the complainant, and the public interest in protecting the privacy of the complainant (in relation to the majority of the Investigation Documents) and other individuals referred to in connection with the complaint. In this case, there is also the key public interest in protecting the free flow of information to QPS from members of the community. I consider the significant weight of these public interest factors outweighs the factors favouring disclosure, in this case.
54. I find that disclosure of the Investigation Documents would, on balance, be contrary to the public interest and that access to all of the information may be refused under section 47(3)(b) of the RTI Act.

## **2) Have all reasonable steps been taken to find the Audio Recording?**

55. Yes, for the reasons set out below.

### **Relevant law**

56. Access may be refused to unlocatable documents.<sup>42</sup> A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to locate the document but it cannot be found.<sup>43</sup>

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<sup>39</sup> Applicant's Submission, pages 12-13.

<sup>40</sup> Applicant's Submission, page 13.

<sup>41</sup> *McEniery and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 28 February 1994).

<sup>42</sup> Section 47(3)(e) of the RTI Act.

<sup>43</sup> Section 52(1)(b) of the RTI Act.

57. The RTI Act is silent on what constitutes 'all reasonable steps'.<sup>44</sup> In determining whether all reasonable steps have been taken to locate a document, the relevant agency's knowledge and experience must be considered, including key factors<sup>45</sup> such as the administrative arrangements of government, the agency structure, the agency's functions and responsibilities, the agency's practices and procedures and other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.

### ***QPS's searches and inquiries***

58. QPS submitted<sup>46</sup> that it took the following steps to locate the Audio Recording:

- examined the Tapes Index Entry, which indicates that the Audio Recording was made using a compact recorder, by a QPS officer who has since left QPS's employment
- made inquiries with QPS's Central Tapes Facility (**CTF**) which confirmed that searches of CTF show that the Audio Recording was never lodged with CTF
- made inquiries with the investigating officer who advised that he was never in possession of the Audio Recording
- examined the Child Safety and Sexual Crimes Group tapes spreadsheet, however, it did not contain records from 1999; and
- searched the hard copy investigation file.

59. QPS explained that in 1999, the process which officers were required to follow when storing interview recordings was to log it into the Central Exhibit System (**CES**). QPS confirmed that searches of CES revealed no record of the Audio Recording and suggested that this may be because QPS introduced QPRIME, its current recordkeeping system, around the same time.<sup>47</sup>

60. QPS also submitted that its recordkeeping practices require only one physical file to be retained in relation to the investigation into the complaint against the applicant.<sup>48</sup>

61. QPS concluded that '*A thorough search of this group has failed to locate the audio tape*'.<sup>49</sup>

### ***Applicant's submissions***

62. The applicant has submitted<sup>50</sup> that all reasonable steps have not been taken to find the Audio Recording and that the following further steps must be undertaken:

- conduct an interview with the ex-police officer who made the Audio Recording
- make inquiries with the second interviewing officer
- examine the '*second investigation file*'; and
- examine the Child Safety and Sexual Crime Group tapes spreadsheet for the years 2000 to 2003.

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<sup>44</sup> Section 130(2) of the RTI Act provides that the Information Commissioner's functions on external review include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.

<sup>45</sup> *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (**PDE**) at [37]. *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), which replicated the requirements of section 52 of the RTI Act.

<sup>46</sup> Submissions to OIC dated 4, 18 and 20 August 2014.

<sup>47</sup> Telephone conversation between OIC and QPS on 1 July 2014.

<sup>48</sup> Telephone conversation between OIC and QPS on 3 October 2014.

<sup>49</sup> QPS submission to OIC dated 4 August 2014.

<sup>50</sup> Applicant's submission to OIC dated 9 September 2014, pages 1-2.

63. The applicant considers that the *'absence of the audio tape means [the applicant] is denied the benefit of a significant document that is highly persuasive ... as to the [OIC] decision and ... ultimately as to his innocence'*.<sup>51</sup>

### **Findings**

64. The information available to OIC in this review confirms that the Audio Recording was created on or about 21 October 1999. I am satisfied that the Audio Recording is a document that has been, or should be, in the possession of QPS.
65. I have carefully considered the information provided by QPS about the searches and inquiries it undertook for the Audio Recording. I am satisfied that QPS conducted searches in appropriate locations, having regard to its recordkeeping practices and procedures, and taking into account the age of the Audio Recording. I also consider that it was reasonable for QPS to make direct inquiries with the investigating officer.
66. As noted above, the officer who made the Audio Recording has left QPS's employment. There is nothing in QPS's policies or procedures, or any other evidence available to OIC to suggest that the officer would have personally retained an audio recording, made approximately 15 years ago. Further, I do not consider it would be reasonable to expect an ex-police officer to recall the location in which a 15 year old recording was stored, particularly given that searches of the locations which QPS would have reasonably expected it to be kept in, have been unsuccessful. For these reasons, I am satisfied that it would not be a reasonable step to contact the ex-police officer to inquire as to the whereabouts of the Audio Recording.
67. With respect to the other steps which the applicant considers must be taken by QPS to locate the Audio Recording, I am satisfied that none of them would be reasonable in the circumstances of this case, because:
- there is no evidence in the Investigation Documents to suggest any further officers were involved in the interview, other than the officer who created the recording and the investigating officer who has been contacted about his recollection of the Audio Recording location
  - QPS has confirmed that only one hardcopy file exists in relation to investigation of the complaint and that searches of this file have been conducted; and
  - as the Audio Recording was created in 1999 and in view of the unsuccessful searches of relevant databases, it is not reasonable to expect that the Child Safety and Sexual Crime Group tapes spreadsheet for the years 2000 to 2003 would contain records from previous years.
68. I acknowledge the applicant's submission at 63 above and the significance which he places on the Audio Recording. However, such considerations are not, in my view, relevant to the issue of whether all reasonable steps have been taken to locate the Audio Recording.
69. On the basis of the above, I find that QPS has taken all reasonable steps to find the Audio Recording, but it cannot be found. Accordingly, I am satisfied that QPS may refuse access to the Audio Recording under section 47(3)(e) of the RTI Act on the basis that it is an unlocatable document under section 52(1)(b) of the RTI Act.

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<sup>51</sup> Applicant's submission to OIC dated 9 September 2014, page 2.

## **DECISION**

70. I affirm QPS's decision to refuse access to the Investigation Documents under section 47(3)(b) of the RTI Act.
71. I also find that access to the Audio Recording may be refused under section 47(3)(e) of the RTI Act.
72. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 16 October 2014**

## APPENDIX

### Significant procedural steps

Date	Event
17 October 2013	QPS received the access application.
25 November 2013	QPS sought the complainant's views on disclosure of the information.
2 December 2013	The complainant objected to disclosure of the information.
2 December 2013	QPS issued its decision on the access application, refusing access to all information under section 47(3)(b) of the RTI Act.
23 December 2013	OIC received the application for external review.
23 December 2013	OIC notified QPS of the external review application and asked QPS to provide procedural documents.
2 January 2014	QPS provided OIC with the relevant procedural documents and the documents to which access had been refused.
9 January 2014	OIC informed the applicant and QPS that the application had been accepted for review.
21 March 2014	OIC conveyed a written preliminary view to the applicant that access to the Investigation Documents may be refused under section 47(3)(b) of the RTI Act.
21 May 2014	The applicant advised OIC that he contested the preliminary view and provided submissions in support of his case.
19 June 2014	OIC asked QPS to provide submissions about its searches for the Audio Recording.
4 July 2014	OIC provided the applicant with an update on the status of the external review
4 August 2014	QPS provided a submission about its searches for the Audio Recording.
14 August 2014	OIC asked QPS for further information about its searches for the Audio Recording.
15 August 2014	OIC provided the applicant with a written update on the external review.
18 August 2014	QPS provided further information about its searches for the Audio Recording.
19 August 2014	OIC asked QPS for further information about its searches for the Audio Recording.
20 August 2014	QPS provided further information about its searches for the Audio Recording.
2 September 2014	OIC conveyed a written preliminary view to the applicant that the Audio Recording was unlocatable.
16 September 2014	The applicant advised OIC that he contested the preliminary view about the Audio Recording, and provided submissions in support of his case.