



Decision and Reasons for Decision

Citation: *H40 and Queensland Police Service [2023] QICmr 30 (28 June 2023)*

Application Number: 316370

Applicant: H40

Respondent: Queensland Police Service

Decision Date: 28 June 2023

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - applicant contended scope of access application should be interpreted to include additional documents - construction of scope of access application made under section 24 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents can be refused on the ground they are nonexistent or unlocatable under sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY AN ACT - documents about domestic violence where children are mentioned - whether disclosure prohibited by sections 186-188 of the *Child Protection Act 1999* (Qld) - whether information is exempt information - whether access may be refused under sections 47(3)(a) and 48 and schedule 3, section 12(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information of other individuals - personal information and right to privacy - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Queensland Police Service (**QPS**) for access to all records about her and a specified individual (**Individual A**) involving domestic violence matters between 1995 to 2021. The type of documents sought by the applicant were QPRIME records and records on historical databases that existed before QPRIME was created.²
2. QPS located 120 pages and decided³ to grant full access to 10 pages and partial access to the remaining 110 pages, subject to the removal of information that would, on balance, be contrary to the public interest to disclose.⁴ QPS also decided to refuse access to statements and images of the applicant and court briefs on the basis other access was fully available through an alternative access method (whether or not the access is subject to a fee or charge).⁵ Finally, in relation to a particular document,⁶ being CCTV footage of an occurrence of domestic violence in November 2010 (**CCTV Footage**) QPS undertook searches but refused access on the grounds it was unlocatable.⁷
3. The applicant applied⁸ to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.⁹
4. For the reasons outlined below, I vary QPS's decision.¹⁰ I am satisfied that QPS has taken all reasonable steps to locate documents responsive to the scope of the access application, and access to further documents may be refused on the ground they are nonexistent or unlocatable.¹¹ With respect to the CCTV Footage I am satisfied that QPS possessed the footage in 2010, but cannot locate it despite taking all reasonable steps to do so, and therefore may refuse access to the CCTV Footage on the ground it is unlocatable.¹² I also find that QPS may refuse access to exempt information, disclosure of which is prohibited by an Act;¹³ and may refuse access to information on the grounds disclosure would be, on balance, contrary to the public interest.¹⁴

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.
6. During the review OIC conveyed a preliminary view on several issues to each participant.¹⁵ QPS accepted OIC's view on disclosure of certain information and disclosed this information to the applicant including the applicant's formal statements,

¹ On 26 May 2021.

² QPRIME is the Queensland Police Records and Information Management Exchange and is QPS's primary electronic database for recording occurrences of crime.

³ On 16 September 2021. QPS sought and received several extensions of time from the applicant.

⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁵ Section 47(3)(f) and 53 of the RTI Act.

⁶ Schedule 1 of the *Acts Interpretation Act 1954* (Qld) (**AI Act**) provides a non-exhaustive definition of 'document'.

⁷ Section 47(3)(e) and 52(1)(b) of the RTI Act.

⁸ On 19 October 2021.

⁹ The application for external review was received 2 business days out of time, but the Information Commissioner allowed the longer period in this instance – section 88(1)(d) of the RTI Act.

¹⁰ Section 110(1)(a) of the RTI Act.

¹¹ Sections 47(3)(e) and 52(1) of the RTI Act.

¹² Sections 47(3)(e) and 52(1)(b) of the RTI Act.

¹³ Sections 47(3)(a), 48, and schedule 3, section 12(1) of the RTI Act.

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

¹⁵ Issued to the applicant on 16 and 31 August 2022, and 13 December 2022; and issued to QPS on 9 August 2022, 13 September 2022, 13 and 25 October 2022, 10 November 2022, 16 February 2023 and 21 April 2023.

forensic images, and court briefs.¹⁶ The applicant did not accept OIC's view that the steps taken by QPS to locate responsive documents including the missing CCTV Footage were reasonable. The applicant also did not accept OIC's view regarding the scope of the access application that is the subject of this external review; exempt information, disclosure of which is prohibited by an Act; and information that would, on balance, be contrary to the public interest to disclose. Consequently, those issues remain to be determined in this decision.

7. The applicant disclosed a protected attribute early in the review process and in accordance with the provisions and purposes of the *Anti-Discrimination Act 1991* (Qld) (**A-D Act**) I took particular steps to tailor our process to the applicant's needs as far as possible throughout the review, making adjustments during the review process.
8. I further note that I considered the *Victims of Crime Assistance Act 2009* (Qld) (**VOCA Act**) throughout the conduct of this review in my dealings with the applicant, ensuring that the conduct of my staff towards the applicant was consistent with her rights in the VOCA Act.

Reviewable decision

9. The reviewable decision is QPS's decision issued on 16 September 2021.

Evidence considered

10. 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).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to recognition and equality before the law and the right to seek and receive information.¹⁷ 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 IP Act and the RTI Act.¹⁸ 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:¹⁹ '*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.*'

Issues for determination

12. The issues for determination are:
 - whether certain categories of documents sought by the applicant respond to the scope of the access application the subject of this external review
 - whether access to the CCTV Footage may be refused on the basis it was previously in QPS's possession but despite all reasonable searches cannot be located²⁰

¹⁶ QPS disclosed this information to the applicant on 16 August 2022, 16 September 2022 and 22 December 2022.

¹⁷ Sections 15 and 21 of the HR Act.

¹⁸ *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]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134 (26 September 2022) at [23], noting that he saw '*no reason to differ*' from OIC's position.

¹⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

²⁰ Sections 47(3)(e) and 52(1)(b) of the RTI Act.

- whether access to further documents may be refused on the ground they are nonexistent or unlocatable²¹
- whether certain information about children qualifies as exempt information to which access may be refused, as disclosure is prohibited by an Act;²² and
- whether access may be refused to the balance of the information²³ on the ground disclosure would, on balance, be contrary to the public interest.²⁴

Scope of access application

Relevant Law

13. The terms of an access application set the parameters for the documents that an agency is to identify and locate when processing the access application. The general rule is that the terms of an RTI Act access application should not be interpreted narrowly or with the same degree of precision as a piece of legislation.²⁵ However an access application must give sufficient information concerning the requested document to enable a responsible officer of the agency to identify the document.²⁶ There are sound practical reasons for requiring the documents sought in an access application to be clearly and unambiguously identified, including that the terms of the access application set the parameters for an agency's response and the direction of an agency's search efforts.²⁷ The scope of an access application cannot be unilaterally broadened on external review.²⁸ An access application can only apply to documents in existence on the day the application is received.²⁹

Applicant's Submissions

14. The applicant made submissions regarding the scope of the access application that is the subject of this external review. The applicant submitted:³⁰
- that she required '*ALL EVIDENCE (ie video surveillance footage, police Southport station footage, police camera worn footages, ALL forensic photographs of my 3 car's, ALL police report's, 000 calls etc etc... in addition to **any information** that is in relation to [herself]*' [sic]
 - that '[her] request is still yet to be fulfilled'
 - '*in [her] previous email to [OIC she] forgot to add to [her] further request for evidence to the RTI to which [she] also requested and enquired to obtain*'
 - '[She had] been trying to obtain [her] right to information for the past 3 years and since April last year (2021) [she] ensured that the request was paid for'; and
 - '*[she had] twice by the RTI been denied and refused ALL court documents, statements, affidavits, photographs, video footage, video surveillance footage, voice messages, text messages and ALL police reports to which [she sought*

²¹ Sections 47(3)(e) and 52(1) of the RTI Act.

²² Sections 47(3)(a), 48, and schedule 3, section 12(1) of the RTI Act.

²³ See paragraph 61 for a description of this information.

²⁴ Sections 47(3)(b) and 49 of the RTI Act.

²⁵ *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) (**Fennelly**) at [21] and *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (**O80PCE**) at [35].

²⁶ Section 24(2)(b) of the RTI Act.

²⁷ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] considering equivalent provisions in the now repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**); *O80PCE* at [33].

²⁸ See *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]; *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013) at [17] to [21]; *Simpson MP and Department of Transport*

and *Main Roads* (Unreported, Queensland Information Commissioner, 29 July 2011) at [11] to [22]; and *Fennelly* at [15].

²⁹ Section 27(1) of the RTI Act.

³⁰ Applicant submissions received by email on 20 June 2022, 19 August 2022, 16 September 2022, 6 and 14 December 2022, and 6 January 2023; and by telephone on 13 September 2022.

access] and have for over 3 years now have tried to obtain as the OIC have been aware of for quite some time.'

15. The applicant also made submissions about missing or unlocated documents relating to an incident of alleged violence between herself and a QPS Officer at a court appearance in 2017 (**Court Incident**).³¹

Findings

16. The applicant's submissions appeared to expand the terms of the access application (summarised at paragraph 1 above) by seeking 'all police reports' and 'any information' about herself. However, it is evident from the applicant's submissions that she had lodged at least two access applications with QPS (noting her submissions at paragraph 14) and may have held a mistaken belief that this external review was a review of multiple access applications. The applicant also appeared, by her own submission, to be 'add[ing] to [her] further request for evidence' as the external review progressed.³²
17. This review deals solely with QPS's access decision issued on 16 September 2021. Accordingly, this decision only considers documents within the scope of the access application lodged by the applicant to QPS on 26 May 2021 the subject of that decision: namely, documents about the applicant and Individual A in the context of domestic violence, and the type of documents sought by the applicant is limited to QPRIME documents and to documents on historical databases predating QPRIME.
18. I consider that documents about the Court Incident from 2017 are out of scope of the access application by subject, as the QPS Officer allegedly involved in the 2017 incident is not Individual A as named by the applicant in her access application at paragraph 1.
19. In respect of triple zero calls to QPS, I requested further information from QPS, who submitted the following:³³

The PCC [Police Communications Centre] Unit [have advised] they are not able to retrieve triple zero calls prior to 2012. It is as a result of historic equipment malfunctioning or no longer able to connect to networks. They would still have the tape it was recorded on but no ability to play it. The system used by PCC to store the recordings is not associated with QPrime and the recordings cannot be accessed through the QPrime database.

20. In light of the above I am satisfied triple zero calls are out of scope of the applicant's access application as they are neither QPRIME documents nor documents of a historical database predating QPRIME, they are from a system which sits apart from QPRIME and its predecessors.
21. In relation to Police Body Worn Camera (**BWC**) footage, it is not created in, nor saved in QPRIME.³⁴ The QPS approved storage facility for BWC footage is *evidence.com*. BWC footage must be uploaded to *evidence.com* by the QPS officer and retained in accordance with the QPS Retention and Disposal Schedule. It therefore follows, for

³¹ The QPS Officer in this 2017 incident is not included in the scope of the access application currently the subject of this review.

³² Applicant email received on 16 September 2022 at 3:31pm in which the applicant stated 'In my previous email to you I forgot to add to my further request for evidence to the RTI to which I have also requested and enquired to obtain' and listed further documents to which she sought access.

³³ On 23 May 2023.

³⁴ Based on information provided to OIC by QPS in various external reviews and sections 4.3 and 4.4 of the QPS Digital Electronic Recording of Interviews and Evidence (**DERIE**) Manual < <https://www.police.qld.gov.au/sites/default/files/2023-02/DERIE-s.4-Field-Audio-and-Video-Recordings.pdf> >.

the purpose of this review, that BWC footage is not a QPRIME record or a document from a historical database pre-dating QPRIME and is therefore not within the scope of the applicant's access application.

22. I note that QPS located BWC footage in the course of this review by searching in *evidence.com*. While that footage was outside the scope of the applicant's access application, QPS nonetheless agreed to grant access to that footage by way of inspection.³⁵
23. As for the submission in the final dot point of the applicant's submissions at paragraph 14 above, I will address the applicant's concerns in the discussion about the sufficiency of QPS' searches below. I am mindful that a number of the documents discussed in the remainder of this decision are technically outside the scope of the access application (not being QPRIME records or records from a database preceding QPRIME). However, the documents were searched for and, where possible, disclosed to the applicant as part of a trauma informed process in the external review taking into account the applicant's status as a victim of crime and her rights prescribed in the VOCA Act and in accordance with our obligation to promote settlement of the external review.³⁶

Sufficiency of search

Relevant law

24. Under the RTI Act a person has a right to be given access to documents of an agency.³⁷ However, this right is subject to provisions of the RTI Act including the grounds on which an agency may refuse access to documents.³⁸ Relevantly, access to a document may be refused if the document is nonexistent or unlocatable.³⁹
25. To be satisfied that a document does not exist, various key factors will be relevant including, but not limited to:⁴⁰
 - the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
26. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and, if so, whether the agency has taken all reasonable steps to find the document.⁴¹

³⁵ QPS located 3 files of BWC footage on 28 February 2023. QPS agreed to provide the applicant inspection access to the 3 BWC files on 21 April 2023, and OIC conveyed this offer and the details of the contact person to the applicant in a letter on 10 May 2023.

³⁶ Section 90(1) of the RTI Act.

³⁷ Section 23 of the RTI Act.

³⁸ Including section 47(3) of the RTI Act.

³⁹ Sections 47(3)(e) and 52(1) of the RTI Act.

⁴⁰ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19] which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009).

⁴¹ *Pryor* at [20]-[21].

27. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.
28. An additional consideration when assessing whether an agency has taken reasonable steps to identify and locate documents applied for by an applicant is the terms of the access application or its scope.
29. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁴² Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁴³ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to be satisfied that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.⁴⁴

Applicant's submissions

30. The applicant made extensive submissions throughout the review process, including those noted at paragraph 14 above.⁴⁵ While some of the applicant's submissions were unclear (understandably, due to the trauma suffered by the applicant), I have used my best endeavours to elucidate her meaning. I have considered the applicant's full submissions carefully and have summarised the relevant parts of the various submissions below.
31. The applicant was most concerned to have QPS locate the CCTV Footage submitting:
 - she had spoken with many QPS officers over the years, including as recently as August 2021 (some of whom she identified), and all of the QPS Officers she spoke with specifically told her they could see the CCTV Footage, or had watched the CCTV Footage and described the footage and her injuries to her
 - she was entitled to all documents about herself including the CCTV Footage and her review will not resolve until QPS located the CCTV Footage
 - she possessed extensive email evidence to prove that QPS is lying to OIC when it states it cannot locate the CCTV Footage
 - she required the CCTV Footage and all of the requested documents to support her victim assist application; and
 - she found it very hard to believe and very questionable that the CCTV Footage was unable to be located. This *'is an additional crime to be withholding and/or destroying of evidence.'*

⁴² Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review.

⁴³ Section 87(1) of the RTI Act.

⁴⁴ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁴⁵ Submissions from the applicant or her support person received by email on on 21 October 2021, 10 and 24 November 2021, 3, 6 and 14 December 2021, 11 April 2022, 29 May 2022, 13 and 20 June 2022, 19 August 2022, 6, 8, 12 and 16 September 2022, 25 October 2022, 14 December 2022, 6, 18 and 21 January 2023, and 3 March 2023; and by telephone on 13 September 2022.

32. I invited the applicant to provide any evidence she believed may assist QPS locate the CCTV Footage, in particular the email evidence, and any other information.
33. The applicant provided five emails to OIC in response to this request, with attached email threads and screenshots of emails between herself and QPS officers and employees.⁴⁶
34. The applicant was also generally concerned (including about the matters noted in the final dot point in paragraph 14 above) that other documents responsive to the terms of her access application had not been located by QPS, and specifically (**List of Documents**):
 - DNA evidence
 - All forensic photographs of the applicant
 - Photographs of damage to a vehicle
 - Voice messages; and
 - Text messages.

Findings

CCTV Footage

35. In documents located by QPS in its initial processing, 17 pages relate to a particular occurrence of reported violence on 5-6 November 2010. One page in this occurrence⁴⁷ notes the following regarding the CCTV Footage:

[13/12/2010] *Case Officer has viewed the CCTV Footage.*
...
A copy of the CCTV has been orderd [sic] to be picked up on the 14/12/2010.
...
[15/12/2010] *CCTV footage picked up from [address] by Constable [J.]*
36. Further to the evidence above, I also note QPS did not resile from the existence of the CCTV Footage and specifically refused access on the ground it was unlocatable in its decision notice.⁴⁸
37. I am satisfied that the CCTV Footage existed, and QPS was in possession of it on 15 December 2010.
38. Therefore, the question becomes, has QPS taken all reasonable steps to locate the CCTV Footage? I am satisfied the answer to this question is yes, for the reasons that follow.
39. When processing the access application, QPS searched for, and located, 120 pages responsive to the access application. Those searches did not locate the CCTV Footage and QPS refused access to the CCTV Footage on the ground it was unlocatable.
40. On external review OIC required further searches by QPS, as well as direct enquiries with QPS officers and employees identified by the applicant.

⁴⁶ On 6, 8 and 12 September 2022 (the email received on 12 September 2022 was a duplicate of an email received on 8 September 2022). In total, the applicant attached 3 emails and 30 screenshots of emails to her five emails to OIC, by way of supporting evidence.

⁴⁷ Page 40 of the 120 pages QPS originally located.

⁴⁸ On 16 September 2021.

41. QPS submitted it took the following steps to locate responsive documents, including the CCTV Footage:
- S/CON BD of Nerang Police Station conducted searches for tapes
 - SGT RP conducted searches in QPRIME
 - direct enquiries were made with A/SGT CR at Beenleigh Police Station
 - direct enquiries were made with Officer GD of Nerang Forensics
 - the Police Information Centre conducted further searches of QPRIME and searches of 'docs web', which is a digital database of old records converted from microfilm
 - Gold Coast District Prosecutions searched their records
 - QPS searched its Forensic Imaging Section
 - QPS conducted a search of *evidence.com*⁴⁹ (a system that stores downloaded BWC footage, introduced in 2017-2018) solely for the CCTV Footage
 - QPS conducted searches for the court briefs (also known as QP9's)
 - QPS searched QPRIME again for any further statements and documents that responded to the scope of the access application; and
 - the QPS RTI Officer searched *evidence.com* and QPRIME again, using each individual QP number.⁵⁰
42. QPS provided OIC with signed search declarations and search records from several QPS officers and stations where searches were undertaken or direct enquiries were made.⁵¹
43. Despite the additional searches and enquiries noted above, the CCTV footage was not located.
44. I queried with QPS whether it had searched its Central Tapes Facility. QPS stated that the Central Tapes Facility is largely where Electronic Records of Interview (**EROI**) are saved, and it links back to QPRIME so if there was a tape of any kind linked to the relevant QP number, it would show on QPRIME under the property tab. QPS submitted there was nothing showing in the QPRIME property tab of the QP number relevant to this matter.⁵²
45. In addition to requiring further searches by QPS to locate the CCTV footage, I carefully reviewed each of the email threads and screenshots the applicant provided as evidence that QPS should be able to locate the CCTV footage.
46. In the emails provided by the applicant, two QPS officers asked the applicant to telephone them. Another QPS officer confirmed they had sent a task, and contacted a potential witness. A fourth QPS officer apologised for not responding to the applicant sooner and confirmed they had re-tasked contact with the applicant to another officer, as the first officer was no longer at the relevant station. The fourth QPS officer also sent another email asking the applicant about support services she was linked in with, offering assistance with the applicant's exclusion from a program, and confirming they had escalated the applicant's matter to the Officer in Charge at the station. The fourth

⁴⁹ Initially for any footage from 5-6 November 2010, and then broadened to include any BWC footage for occurrences from 2017 onwards (when BWC commenced rolling out across QPS).

⁵⁰ QPS located 8 pages of notebook entries, 3 photographs of the applicant, and 3 files of BWC footage. QPS provided the signed search certificate and these further documents to OIC on 28 February 2023.

⁵¹ Search records dated and/or provided on 24 September 2021, 7 and 8 February 2022, 9 and 14 June 2022, 3, 5, and 12 July 2022, and 28 February 2023.

⁵² By telephone on 21 June 2022 and 5 July 2022.

QPS officer sent a third email seeking information from the applicant and advising they had been on leave and training. These are the extent of the QPS responses provided by the applicant as evidence for her submission that QPS should be able to locate the CCTV Footage. I find that there is no evidence within this material as to the present whereabouts of the CCTV Footage.

47. In considering whether QPS has taken all reasonable steps to locate the CCTV Footage, I have considered QPS's submissions about its searches and enquiries (at paragraphs 41 and 44), the signed search records provided by QPS, the documents confirming the previous existence of the CCTV Footage, the documents located, and the applicant's submissions.
48. I find that the searches and inquiries conducted by QPS to locate the CCTV Footage, have been reasonable in the circumstances. QPS appears to have searched the areas and databases in which it usually stores such information.
49. I am satisfied that access to the CCTV Footage may be refused by QPS as it is unlocatable.⁵³

Other Documents Generally and the List of Documents

50. As noted at paragraph 40 above, QPS were required to undertake additional searches in the course of the external review to locate documents responsive to the access application. As a result of those searches (outlined above at 41), QPS located a further 98 pages comprising the applicant's formal statements and forensic images (**Forensic Images**) which it disclosed to the applicant in full;⁵⁴ and a further 19 pages comprising court documents (**QP9**) and 2 QPS Officer statements also disclosed to the applicant.⁵⁵
51. I have carefully reviewed the documents disclosed to the applicant both in the first instance by QPS and in the course of this external review.
52. As regards DNA evidence. I have reviewed the QPRIME documents located by QPS. There is no mention of DNA evidence having been obtained in any of the QPRIME documents. Consequently, I am satisfied that no documents exist that are responsive to the applicant's request and access to such documents may be refused pursuant to sections 47(3)(e) and 52(1)(a) of the RTI Act on the grounds they do not exist.
53. I am satisfied on the material before me, that QPS has located and disclosed Forensic Images of the applicant and of damage to a vehicle,⁵⁶ and other photographs of the applicant.⁵⁷ In light of the searches undertaken by QPS, I consider that all reasonable steps have been taken to locate all photographs and no further documents exist and therefore access to such documents may be refused pursuant to sections 47(3)(e) and 52(1)(a) of the RTI Act.
54. In respect of voice messages and text messages, on the material before me, it is evident that QPS officers typed out the text messages and voice messages relevant to the QPRIME occurrences into the QPRIME occurrence and/or QP9, and those

⁵³ Sections 47(3)(e) and 52(1)(b) of the RTI Act.

⁵⁴ Subject to the redaction of the vehicle registration on 4 pages. QPS disclosed this information to the applicant on 16 August 2022 and 16 September 2022.

⁵⁵ QPS refused access to third party personal information and intertwined personal information in the QP9's on the basis it would, on balance, be contrary to the public interest to disclose. The QPS officer statements were disclosed in full. QPS disclosed the QP9's and QPS officer statements to the applicant and her support person on 22 December 2022, along with further information on 26 pages identified by OIC as not contrary to the public interest to disclose.

⁵⁶ Disclosed on 16 August 2022 and 16 September 2022.

⁵⁷ Disclosed on 11 May 2023.

documents have been disclosed to the applicant.⁵⁸ I consider that any voice message or text message not entered into QPRIME would be outside the scope of the applicant's access application. Additionally, I am satisfied, in light of the searches undertaken by QPS, that all reasonable steps have been taken to locate voice messages and text messages in QPRIME and no further documents exist and therefore access to such documents may be refused pursuant to sections 47(3)(e) and 52(1)(a) of the RTI Act on the grounds they do not exist.

55. In light of the above, I am satisfied that the documents identified in the List of Documents have either been located and disclosed to the applicant or do not exist.
56. As regards the applicant's general concerns that information has not been located that is responsive to her access application, I have considered the scope of the access application, QPS's original searches, the searches I required QPS to undertake on external review, the documents located by QPS, and the applicant's submissions, outlined above at paragraphs 1, 14, 17, 31, 39 and 41.
57. I am satisfied that all reasonable steps have been taken by QPS to locate QPRIME documents responsive to the applicant's access application and no further documents can be located. Consequently access to any further QPRIME documents may be refused under sections 47(3)(e) and 52(1)(b) of the RTI Act on the grounds that they cannot be located.
58. In reviewing the located documents I noticed that QPS had only located records from 2009 onwards while the applicant had applied for domestic violence records between herself and Individual A from 1995. When I queried this with QPS, it submitted the system QPS used prior to QPRIME was a system called CRISP.⁵⁹ CRISP was a central data collection system in operation from approximately 1997 until its replacement by QPRIME in 2007. QPS further stated that CRISP can no longer be searched – however, all information that QPS was required to retain in accordance with its obligations under its retention and disposal schedules was migrated to QPRIME when CRISP was decommissioned. The system used prior to CRISP was handwritten or typed Crime Offence Reports (**CO Report**) these were hard copy reports that were filed at the relevant station. QPS stated that the CO number would be required in order to search for a CO Report and, given the age of such reports, they may now have been destroyed under the retention and disposal schedule.
59. Based on QPS's submission, I consider there are three possible conclusions in relation to any CRISP records; either, none of the CRISP records concerning the applicant were required to be rolled over into the QPRIME system and were therefore destroyed (because QPS has undertaken reasonable searches and none could be found); or, CRISP records should have been rolled over into the QPRIME system and were not, and now cannot be located as the CRISP database is not searchable; or, there were no CRISP records responsive to the terms of the applicant's access application rolled over into the QPRIME system (because QPS has undertaken reasonable searches and none could be found). I consider that there is insufficient evidence before me to make a finding on this point. I also consider that even if there were clear evidence that one of the above scenarios were the case, the outcome would be the same – a finding that access to the documents can be refused on the basis that they are either nonexistent or unlocatable pursuant to sections 47(3)(e) and 52(1)(a) or (b) of the RTI Act.

⁵⁸ For example, pages 60, 67-72, 75-80, 83-84, 86-88, 90-93, 95-96, 100-101, 108, 111-112, 119-120 of the Original Documents; and pages 6, 11, 12 of the QP9's.

⁵⁹ Email received from QPS on 23 May 2023. CRISP was the Crime Reporting Information System for Police.

60. I have considered the information provided by QPS about CO Reports and that they are only searchable by a CO number. I reviewed the documents located by QPS, their submissions, and their signed search records, and did not locate any reference to a CO number within any of these documents. I reviewed the submissions received from the applicant, and could not find any reference to a CO number. I have also considered that if any responsive records existed in the form of a CO Report in the relevant timeframe of 1995-1997, given the passage of time, it is likely they have been disposed of and are unlocatable. In these circumstances I consider it would not be reasonable to require QPS to conduct searches of all CO Reports. Accordingly, in the particular circumstances of this matter, I conclude that access to the CO Reports may be refused on the basis that they are unlocatable pursuant to sections 47(3)(e) and 52(1)(b) of the RTI Act.

Exempt Information and Contrary to Public Interest Information

Information in Issue

61. The information in issue for the purpose of this part of the decision is comprised of information on 131 part pages.⁶⁰ It appears in emails, notebook entries, QPRIME reports/occurrences, and QP9's. More particularly it is:
- a small amount of information about children in the context of QPS's role as a core member of the Suspected Child Abuse and Neglect (**SCAN**) system⁶¹ (**Child Protection Information**)⁶²
 - a small amount of personal information of government employees including signatures, email addresses and mobile telephone numbers (**Government Employee Information**);⁶³ and
 - the personal information of the applicant intertwined with the personal information of individuals other than the applicant, and the sole personal information of individuals other than the applicant (**Third Party Information**).⁶⁴

Child Protection Information

Relevant law

62. Under the RTI Act, a person has a right to be given access to documents of an agency.⁶⁵ However, this right is subject to provisions of the RTI Act including the grounds on which an agency may refuse access to documents.⁶⁶ An agency may refuse access to information that is exempt information because disclosure is prohibited by an Act.⁶⁷
63. Information will be exempt information if its disclosure is prohibited by sections 186 to 188 of the Child Protection Act. Relevantly, disclosure of information is prohibited under the CP Act if the information is about '*another person's affairs*' and was acquired by a person performing particular functions under the CP Act.⁶⁸

⁶⁰ 110 part pages (**Original Documents**); 4 part pages of **Forensic Images**; 14 part pages of **QP9's**; and 3 part pages of notebook entries (**Notebook Entries**).

⁶¹ Sections 159I to 159L of the *Child Protection Act 1999* (Qld) (**CP Act**).

⁶² Pages 27, 30, 31, 35, 36, 37, 38, 39, 41, 42, 55, 57, 58, 59, 60, 62, 63, 68, 70, 75, 76, 91, 99, 101 of the Original Documents.

⁶³ Pages 5, 6, 7, 8, 10, 11, 13, 17, 21 of the Original Documents.

⁶⁴ Pages 1-3, 6-7, 9-14, 18, 21, 23, 27-31, 33-37, 39-40, 42-51, 53-55, 57-120 of the Original Documents; pages 39-41, 49 of the Forensic Images; pages 1-14 of the QP9's; and pages 2, 6 and 8 of the Notebook Entries.

⁶⁵ Section 23 of the RTI Act.

⁶⁶ Section 47 of the RTI Act.

⁶⁷ Section 47(3)(a), 48, and schedule 3, section 12(1) of the RTI Act.

⁶⁸ Section 187 of the CP Act.

64. The prohibition on disclosure is subject to the exceptions set out in schedule 3, section 12(2) of the RTI Act and sections 187 and 188 of the CP Act. In particular, section 187(1)(a) of the CP Act provides that access may be given to another person if the information is about that other person. In addition to the CP Act exception, the RTI Act exception to nondisclosure applies if the information is the applicant's personal information alone.⁶⁹
65. The term '*person's affairs*' is not defined in the CP Act or the AI Act. '*Person*' is defined in the AI Act as '*includ[ing] an individual and a corporation*'.⁷⁰ The relevant dictionary definitions for '*affair/s*' are '*matters of interest or concern*' and '*a private or personal concern*'.⁷¹

Findings

66. As noted above at paragraph 61 the Child Protection Information comprises a small amount of information about children in the context of QPS's role as a core member of the SCAN system.⁷²
67. I have carefully examined the Child Protection Information and I am satisfied that it is about matters of personal interest or concern to other persons, including the applicant's children and other individuals and falls within s187 of the CP Act.
68. The Child Protection Information was acquired by a representative of a SCAN member under the CP Act, namely a police officer.⁷³ The CP Act lists '*a member of the SCAN system or representative of a member performing functions in relation to chapter 5A, part 3*' as a person to whom section 187 applies.⁷⁴
69. I am therefore satisfied that the Child Protection Information is:
- about other persons' affairs and has been given to or received by a person performing functions under or in relation to the administration of the CP Act
 - subject to the prohibition on disclosure in section 187(2) of the CP Act; and
 - subject to the exemption in schedule 3, section 12(1) of the RTI Act.
70. The exemption in schedule 3, section 12(1) of the RTI Act will not apply if the relevant information comprises solely the applicant's personal information.⁷⁵ This means that where information is simultaneously about the applicant and other individuals, or where an applicant's personal information cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.

⁶⁹ This exception only applies to schedule 3, section 12(1) and (1A) information, and does not negate other grounds of refusal that may apply to the information.

⁷⁰ Schedule 1 of the AI Act.

⁷¹ As established in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30].

⁷² A SCAN member is defined in the CP Act as a '*core member*' comprising the chief executive, the chief executive of the department mainly responsible for public health, the chief executive mainly responsible for education, and the police commissioner; and other prescribed entities or service providers contributing to the operation of the system by invitation of the core members. See sections 159A - 159R of the CP Act which outlines the legislative framework of the SCAN system and information sharing between its members.

⁷³ Sections 159I to 159L of the CP Act.

⁷⁴ Section 187(1)(a)(ix) of the CP Act.

⁷⁵ Schedule 3, section 12(2) of the RTI Act. '*Personal information*' comprises '*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*': schedule 5 of the RTI Act, and section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**).

71. I have considered the exceptions in section 187(3) and (4) and I am satisfied none apply to the Child Protection Information.
72. The applicant did not specifically address this issue in the review. She did advise that she sought '*all information...I do not accept this view... withholding evidence is a crime.*'⁷⁶ I acknowledge the applicant's concerns and consider her submissions to relate to public interest factors that may apply to favour disclosure.
73. Where information falls into one of the categories of exempt information which Parliament has set out in schedule 3 of the RTI Act, public interest factors favouring disclosure cannot be taken into account. This is because Parliament has determined that the information falling into any of the categories in Schedule 3 will always be information that is exempt and cannot be disclosed.
74. For the reasons outlined above I am satisfied that the Child Protection Information is subject to the prohibition on disclosure in section 187(2) of the CP Act and the exemption in schedule 3, section 12(1) of the RTI Act; that no exceptions apply; and that access to this information may be refused on the ground it comprises exempt information.⁷⁷

Government Employee Information and Third Party Information

Relevant law

75. As previously noted, a person's right under the RTI Act to be given access to documents of an agency is⁷⁸ subject to provisions of the RTI Act including the grounds on which an agency may refuse access to documents.⁷⁹ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁸⁰
76. I note that an external review by the Information Commissioner is a merits review⁸¹ and as such the Information Commissioner has power to make any decision the agency decision maker could have made under the RTI Act.⁸²
77. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁸³
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

⁷⁶ Submissions received on 14 December 2022.

⁷⁷ Sections 47(3)(a) and 48 of the RTI Act.

⁷⁸ Section 23 of the RTI Act.

⁷⁹ Section 47 of the RTI Act.

⁸⁰ Sections 47(3)(b) and 49 of the RTI Act. 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.

⁸¹ This means that OIC stands in the shoes of the agency and can make any decision that was open to the agency to make. OIC's role is to conduct a fresh review of the relevant facts and law and make a fresh decision. See *V45 and Queensland Police Service* [2021] QICmr 30 (16 June 2021) at [17].

⁸² Section 105 of the RTI Act particularly notes the Information Commissioner has, in addition to any other power, the power to review any decision that has been made by the agency or Minister in relation to the access application and the power to decide any matter in relation to the access application that could, under the RTI Act, have been decided by an agency or Minister.

⁸³ Section 49(3) of the RTI Act.

78. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case.

Findings

Applicant's submissions

79. As previously noted, the applicant made a number of submissions during the review,⁸⁴ all of which I have carefully considered. Set out below are the pertinent parts of the various submissions regarding the issue of the public interest balancing test:⁸⁵

...my quest to obtain ALL EVIDENCE (ie video surveillance footage, police Southport station footage, police camera worn footages, ALL forensic photographs of my 3 car's, ALL police report's, 000 calls etc etc)I have requested and informed yourself, RTI and OIC to which I need and am entitled to for me to be able to obtain my restitution, victim's compensation and justice I seek and so deserve.

...

*All meaning: **every one (of), or the complete amount or number (of), or the whole (of):***

Documents meaning: ALL documents, photos, video footage, CCT footage and statements.

The purpose of this requested information is to seek my justice and accountability from the QLD police for no action taken on the many crimes commitment and for failure of duty of care and misconduct. I have never stated that it was ONLY to support a victims assist application.

...

This a violation of my civil rights. I am in the process of submitting my letter to the human rights as this further highlight the violence in my humans rights.

You have commented on the interest of the public, however I am the victim, where is my justice.

...

I require this evidence in order to pursuit my justice as a victim of horrific domestic violence.

....

As previously requested I am requiring and awaiting further documents such receipts, affidavits, evidence, photos and additional information required for my restitution of damages to my property (cars) that the police have previously stated I am entitled too.

...

Withholding my evidence is a crime, not acting on a crime is a crime in itself.

[sic]

Irrelevant factors

80. I have not identified or considered any irrelevant factors that apply to the circumstances of this matter.

Factors favouring disclosure

⁸⁴ See footnote 45.

⁸⁵ On 14 December 2022 and 6 January 2023. The submissions in the 6 January email were initially sent to QPS directly, then forwarded to OIC by the applicant. While the 6 January email largely refers to matters outside the scope of this external review I have considered the applicant's submissions in this email, and in all correspondence received from the applicant throughout the review, to the extent the submissions are relevant to the issues for determination.

81. A small amount of the Third Party Information comprises the personal information⁸⁶ of the applicant. There is a substantial public interest in individuals accessing their personal information held by government and I afford correspondingly substantial weight to this public interest factor favouring disclosure.⁸⁷ However, where the applicant's personal information appears it is intertwined with the personal information of other individuals. It cannot be carved out and disclosed without simultaneously disclosing the personal information of the other individuals. This raises two public interest factors favouring nondisclosure, discussed below.
82. I have also considered whether disclosing the Third Party Information and Government Employee Information could reasonably be expected to contribute to the accountability and transparency of QPS, contribute to positive and informed debate on important issues, inform the community of QPS's operations, advance the fair treatment of individuals in their dealings with agencies, and reveal reasons for decisions (all public interest factors which favour the disclosure of information).⁸⁸ Relevant to these factors, is the information that QPS disclosed to the applicant in its initial decision, and the further information it agreed to disclose to the applicant during this review,⁸⁹ taking into account the applicant's status as a victim of crime and her rights prescribed in the VOCA Act. In particular, information regarding names of QPS officers, QPS workloads, capacity, tasks, attendance, and decision making, was disclosed. Such disclosure has already significantly advanced the public interest factors noted above.
83. Consequently I consider that disclosure of the Third Party Information does not advance the public interests noted above in the circumstances of this matter, and I therefore consider very low weight applies to those factors.
84. The Government Employee Information is the personal information and personal work information of QPS officers and Court employees, comprising signatures, email addresses and mobile telephone numbers. I have carefully considered the documents and am satisfied that this information is ephemeral to the substantive information disclosed to the applicant (noting that the QPS Officer names originally refused by QPS were disclosed to the applicant during the review).⁹⁰ The public interests noted above are very minimally advanced through the disclosure of this information and I am satisfied these public interest factors in favour of disclosure of the Government Employee Information carry very low weight.
85. The applicant has made submissions throughout the review about the past and present conduct of QPS in its dealings with her when reporting incidents of violence.⁹¹ This raises public interest factors regarding deficiencies of conduct, or misconduct, by QPS.⁹²
86. QPS has disclosed almost all of the information in the located pages regarding their attendance or involvement with the matters described, and decision making.⁹³ The small amounts of QPS information that have not been disclosed include email addresses of QPS officers, and small amounts of information regarding QPS interactions with individuals other than the applicant. I am satisfied that there is nothing

⁸⁶ Schedule 5 of the RTI Act and section 12 of the IP Act.

⁸⁷ Schedule 4, part 2, item 7 of the RTI Act.

⁸⁸ Schedule 4, part 2, items 1, 2, 3, 10 and 11 of the RTI Act.

⁸⁹ Further information on 26 pages and information on 19 pages disclosed by QPS on 22 December 2022.

⁹⁰ On 22 December 2022.

⁹¹ In a telephone call on 13 September 2022, and by email on 3 December 2021, the applicant submitted she required information about the QPS officers involved in the 2010 incident to which the CCTV Footage relates, as she wished to lodge a complaint about the conduct of some of the officers.

⁹² Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁹³ Further information on 26 pages of the Original Documents and information on 19 pages comprising QP9's and QPS officer statements disclosed by QPS to the applicant on 22 December 2022.

in the Government Employee Information or Third Party Information (noting its ephemeral nature) that enlivens the misconduct or deficiencies of conduct factors. Accordingly, I find that neither of these factors apply.

87. As noted above, the applicant has submitted that she requires the requested documents to support her application to Victim Assist Queensland (VAQ) for financial assistance.⁹⁴ Accordingly I have considered whether disclosure of the Government Employee Information or the Third Party Information would contribute to the administration of justice for a person.⁹⁵ In order for this factor to apply to disclosure of information, the applicant must be able to demonstrate that:

- (i) loss, damage or some kind of legal wrong has been suffered, in respect of which a legal remedy is, or may be available
- (ii) they have a reasonable basis for pursuing the legal remedy; **and**
- (iii) disclosure of the information would assist them pursue that remedy or evaluate whether they may pursue that legal remedy.⁹⁶

88. During the review, and in response to the applicant's submissions, I obtained information from VAQ about its process for individuals applying for financial assistance.⁹⁷ VAQ advised that it has arrangements with government agencies, including QPS, to obtain the relevant information on behalf of applicants, as long as the applicant signs the authority in the application form.⁹⁸ I have carefully considered the Government Employee Information and the Third Party Information against the information provided by VAQ regarding victim's compensation applications, and the information disclosed by QPS initially and in this review.⁹⁹ I have also considered the confirmation by the applicant's support officer that the applicant has already lodged an application with VAQ.¹⁰⁰ Crucially for my decision, the applicant does not require any further information to apply for, or receive, financial assistance from VAQ.

89. Consequently, I am satisfied that disclosure of the Government Employee Information or Third Party Information would not assist the applicant to pursue a remedy through VAQ or evaluate whether she may pursue the remedy with VAQ, and therefore the administration of justice for a person factor does not apply to favour disclosure of the Government Employee Information or Third Party Information in this case.

90. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the Government Employee Information or the Third Party Information, beyond that identified above.¹⁰¹

Factors favouring nondisclosure

⁹⁴ Submissions received by email on 21 October 2021, 10 and 24 November 2021, 3, 6 and 14 December 2021, 11 April 2022, 29 May 2022, 13 and 20 June 2022, 19 August 2022, 6, 8, 12 and 16 September 2022, 25 October 2022, 14 December 2022, 6, 18 and 21 January 2023, 3 March 2023; and by telephone on 13 September 2022.

⁹⁵ Schedule 4, part 2, item 17 of the RTI Act. See *Willsford and Brisbane City Council* (1996) 3 QAR 368 (**Willsford**) at [17].

⁹⁶ *Willsford* at [17].

⁹⁷ On 19 October 2022. See section 95(1)(c) of the RTI Act.

⁹⁸ See also sections 52(c), 64, 65, 66, 67, 67A, 74 and 77 of the VOCA Act.

⁹⁹ Including 120 part and full pages of QPRIME reports, emails and notebook entries, the applicant's formal statements, Forensic Images of the applicant's injuries and damage to a vehicle, two full QPS officer statements, and information in the QP9's.

¹⁰⁰ In an email to OIC on 25 October 2022.

¹⁰¹ I cannot see how disclosure of the Government Employee Information could, for example, reasonably be expected to contribute to the protection of the environment, or reveal environmental or health risks or measures relating to public health and safety. I cannot see how disclosure of the Third Party Information could, for example, reasonably be expected to contribute to innovation and the facilitation of research, or contribute to the maintenance of peace and order.

91. As noted above, the Third Party Information comprises the personal information of individuals other than the applicant, or the shared personal information of the applicant and other individuals. This raises two factors favouring nondisclosure, as disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, and cause a public interest harm by disclosing personal information of an individual other than the applicant.¹⁰²
92. The nature of the Third Party Information is extremely sensitive. I am satisfied disclosing it would be likely to result in a significant intrusion into the privacy of the other individuals and the anticipated harm resulting from disclosure of this personal information would also be significant. I consider significant weight applies to each of these nondisclosure factors.
93. The Government Employee Information also comprises personal information of individuals other than the applicant, in the form of signatures, email addresses and mobile telephone numbers. This type of personal information also enlivens the two factors favouring nondisclosure noted above, as disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy, and cause a public interest harm by disclosing personal information of an individual other than the applicant.¹⁰³ I consider moderate weight applies to each of these nondisclosure factors for the Government Employee Information.
94. QPS submitted that the *Domestic and Family Violence Protection Act 2012* (Qld) (**DFVP Act**) prohibits publication of information about any party in a proceeding under the DFVP Act except in limited and specific circumstances.¹⁰⁴ This raises a potential public interest factor favouring nondisclosure of the Government Employee Information and Third Party Information, where disclosure of the information is prohibited by an Act.¹⁰⁵
95. In considering this submission from QPS I have reviewed the relevant provision in the DFVP Act which states:

Section 159

(1) *A person must not publish—*

- (a) *information given in evidence in a proceeding under this Act in a court; or*
- (b) *information that identifies, or is likely to lead to the identification of, a person as—*
 - (i) *a party to a proceeding under this Act; or*
 - (ii) *a witness in a proceeding under this Act (other than a police officer); or*
 - (iii) *a child concerned in a proceeding under this Act.*

...

(3) *In this section—*

...

publish means *publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.*¹⁰⁶

96. There is no information in the Government Employee Information which enlivens this section of the DFVP Act as it is not information given in evidence in a proceeding under the DFVP Act nor information which identifies a person concerned in a proceeding under the DFVP Act.

¹⁰² Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹⁰³ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹⁰⁴ Section 159(1) of the DFVP Act. QPS identified this prohibition on publication in its decision letter to the applicant on 16 September 2021.

¹⁰⁵ Schedule 4, part 3, item 22 of the RTI Act.

¹⁰⁶ Section 159(3) of the DFVP Act.

97. The Third Party Information includes information about the parties to a proceeding under the DFVP Act, including the applicant and Individual A, and thus is captured by section 159 of the DFVP Act.¹⁰⁷
98. At first blush it would appear that the public interest factor favouring non-disclosure is enlivened, however, there is an important distinction to be drawn between the word 'publish' in the DFVP Act and the word 'disclosure' under the RTI Act. In short, disclosure in the context of an access application means giving the applicant a copy of the information, whereas publishing information to the public under the DFVP Act contemplates something much more broad or widespread.
99. Section 159(3) of the DFVP Act defines '*publish*', in significantly broad terms, both in terms of the methods of communication, and the audience to whom the information is published. The definition clearly envisages the broadcast of information to the wider community and it is this act which is prohibited.
100. The word '*disclosure*' is not defined in the RTI Act or the AI Act. Accordingly I have considered its ordinary dictionary meaning. The Macquarie Dictionary defines it as '*the act of disclosing; exposure; revelation*'.¹⁰⁸ Thus in the context of an RTI Act application, disclosure is revealing information to an applicant.
101. Section 23 of the RTI Act provides a person with a right to be given access under the RTI Act to documents of a Minister or agency, subject to the RTI Act. A person may apply to a Minister or agency under the RTI Act for access to a document (section 24). A person is defined non-exhaustively in the AI Act as '*includ[ing] an individual and a corporation*'¹⁰⁹ and an applicant is defined in the RTI Act as '*in relation to an application, means—(a) if the application is made for a person--the person; or (b) otherwise—the person making the application.*'¹¹⁰ Thus, disclosure under the RTI Act is made to the applicant, a person, and is not the same as publication to the broader community as envisaged by the prohibition under the DFVP Act.
102. Having considered the terms outlined above, I am satisfied that disclosure of a document under the RTI Act does not satisfy the definition of '*publish*' as defined by section 159(3) of the DFVP Act, and the provision prohibiting publication does not enliven the public interest factor favouring nondisclosure as disclosure of the information is not prohibited by the DFVP, only publication is prohibited.¹¹¹
103. Accordingly, the public interest factor favouring nondisclosure where disclosure is prohibited by an Act, does not apply to the Government Employee Information or the Third Party Information.¹¹²

Balancing the factors

104. I have considered the lists of public interest factors in schedule 4 of the RTI Act, together with all other relevant information, in reaching my conclusion with regard to the public interest balance. I have applied the RTI Act's pro-disclosure bias¹¹³ and

¹⁰⁷ Proceeding is not defined in the DFVP Act. It is defined in schedule 1 of the AI Act as '*a legal or other action or proceeding.*'

¹⁰⁸ Macquarie Dictionary Online accessed on 20 June 2023.

¹⁰⁹ Schedule 1 of the AI Act.

¹¹⁰ Schedule 5 of the RTI Act.

¹¹¹ This can be distinguished from the Information Commissioner's finding in *N31ZEO and Department of Justice and Attorney-General; Queensland Newspapers Pty Ltd* (Unreported, Queensland Information Commissioner, 8 November 2013); in which the public interest factor was enlivened because the provision of the Act being considered specifically prohibited disclosure of information as distinct from publication of information.

¹¹² Schedule 4, part 3, item 22 of the RTI Act.

¹¹³ Section 44 of the RTI Act.

Parliament's requirement that grounds for refusing access to information be interpreted narrowly.¹¹⁴

105. In respect of the Government Employee Information I consider the public interest factors that apply to favour disclosure carry very low weight.¹¹⁵ Against this, I note the two nondisclosure factors with respect to personal information and the right to privacy, and the moderate weight applying to each.¹¹⁶ On balance, I consider the nondisclosure factors are determinative. I am satisfied access may be refused to this information as disclosure would, on balance, be contrary to the public interest.¹¹⁷
106. In respect of the Third Party Information, to the extent it comprises the applicant's personal information, the public interest factor in favour of disclosure carries substantial weight.¹¹⁸ I acknowledge the very low weights of the public interest factors favouring disclosure with respect to accountability and transparency, contributing to positive and informed debate, informing the community of QPS operations, advancing the fair treatment of individuals and revealing the reason for a decision.¹¹⁹
107. Against this, I have considered the significant weights of the public interest factors favouring nondisclosure of the Third Party Information, regarding the public interest harm caused by disclosing the personal information of other individuals, and the prejudice to the right to privacy of other individuals.¹²⁰ On balance, the nondisclosure factors outweigh the disclosure factors and are determinative. Consequently I am satisfied QPS may refuse access to the Third Party Information as disclosure would, on balance, be contrary to the public interest.¹²¹

DECISION

108. For the reasons set out above I vary QPS's decision and, pursuant to section 110 of the RTI Act, I find that:
- access to the CCTV Footage may be refused as unlocatable, under sections 47(3)(e) and 52(1)(b) of the RTI Act
 - access to further documents may be refused as nonexistent or unlocatable under sections 47(3)(e) and 52(1) of the RTI Act
 - access to the Child Protection Information may be refused as exempt information disclosure of which is prohibited by the CP Act, under sections 47(3)(a) and 48 of the RTI Act; and
 - access to the Government Employee Information and Third Party Information may be refused as disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.
109. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

¹¹⁴ Section 47(2) of the RTI Act.

¹¹⁵ Schedule 4, part 2, items 1, 2, 3, 10 and 11 of the RTI Act.

¹¹⁶ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹¹⁷ Sections 47(3)(b) and 49 of the RTI Act.

¹¹⁸ Schedule 4, part 2, item 7 of the RTI Act.

¹¹⁹ Schedule 4, part 2, items 1, 2, 3, 10 and 11 of the RTI Act.

¹²⁰ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹²¹ Sections 47(3)(b) and 49 of the RTI Act.

Date: 28 June 2023

APPENDIX

Significant procedural steps

Date	Event
19 October 2021	OIC received the application for external review.
19 October 2021	OIC requested the procedural documents from QPS.
1, 9, 19 and 22 November 2021	OIC requested the overdue procedural documents from QPS.
10 and 12 November 2021	OIC received correspondence from the applicant.
19 November 2021	OIC updated the applicant.
22 November 2021	OIC received the procedural documents from QPS.
24 November 2021	OIC received correspondence from the applicant.
25 November 2021	OIC wrote to the applicant about the application being received out of time.
3 and 6 December 2021	OIC received correspondence from the applicant. OIC had a telephone call with the applicant's support person.
7 December 2021	OIC confirmed the applicant's submissions and explained the timeframes for review processes.
14 December 2021	OIC received correspondence from the applicant.
14 December 2021	OIC notified the applicant and QPS the application for review had been accepted. OIC requested information and documents from QPS.
24 January 2022	OIC requested overdue information and documents from QPS.
31 January 2022	OIC received a partial response from QPS.
1 February 2022	OIC updated the applicant.
3 February 2022	OIC requested the outstanding information from QPS.
7 and 8 February 2022	OIC received a partial response from QPS and granted an extension of time for the outstanding information.
2 March 2022	OIC received correspondence from the applicant.
7 March 2022	OIC updated the applicant. OIC requested the overdue information from QPS.
29 March 2022	OIC requested the overdue information from QPS.
30 March 2022	OIC received correspondence from the applicant.
11 April 2022	OIC received correspondence from the applicant.
21 April 2022	OIC provided a telephone update to the applicant's support person.
3 and 10 May 2022	OIC received correspondence from the applicant.
11 May 2022	OIC updated the applicant. OIC received correspondence from the applicant.

Date	Event
26 May 2022	<p>OIC updated the applicant.</p> <p>OIC requested outstanding and overdue search information from QPS, and relayed a proposal regarding disclosure of the applicant's statements and images.</p>
29 May 2022	OIC received correspondence from the applicant.
9 June 2022	OIC received some information and documents from QPS.
13 June 2022	OIC received correspondence from the applicant.
14 June 2022	OIC received information from QPS.
21 June 2022	OIC contacted QPS by telephone to discuss our requests and its response.
22 June 2022	OIC requested the outstanding search information and documents from QPS.
5 July 2022	<p>OIC received search information and documents from QPS.</p> <p>OIC contacted QPS by telephone to clarify the information provided.</p>
7 July 2022	OIC contacted QPS by telephone to confirm searches and propose disclosure of the applicant's full statements in accordance with the QPS Management Support Manual.
12 July 2022	OIC received a response from QPS declining full disclosure of the applicant's statements.
25 July 2022	OIC received correspondence from the applicant.
28 July 2022	OIC updated the applicant.
9 August 2022	OIC issued a preliminary view to QPS regarding information disclosure.
11 August 2022	QPS advised it accepted OIC's preliminary view.
16 August 2022	<p>OIC issued a preliminary view to the applicant.</p> <p>OIC asked QPS to disclose images and statements to the applicant.</p> <p>QPS disclosed images and statements to the applicant.</p>
19 August 2022	OIC received submissions from the applicant contesting OIC's preliminary view.
31 August 2022	OIC responded to the applicant's submissions.
6, 8 and 12 September 2022	OIC received correspondence from the applicant.
13 September 2022	<p>OIC issued a preliminary view to QPS regarding further information disclosure.</p> <p>OIC received a telephone call from the applicant.</p> <p>OIC received correspondence from QPS accepting our view.</p>
16 September 2022	<p>OIC issued correspondence to the applicant and QPS.</p> <p>QPS disclosed images to the applicant.</p> <p>OIC received correspondence from the applicant.</p>

Date	Event
28 September 2022	OIC updated the applicant.
13 October 2022	OIC issued a preliminary view to QPS regarding further information disclosure.
17 October 2022	QPS accepted OIC's preliminary view on further information disclosure.
25 October 2022	OIC requested a further search by QPS and further information regarding its administrative access scheme for court documents. OIC updated the applicant and provided information about VAQ. OIC received correspondence from the applicant.
1 November 2022	OIC received information and documents from QPS.
10 November 2022	OIC issued a preliminary view to QPS regarding further information disclosure.
25 November 2022	QPS advised it accepted OIC's view on disclosure and provided further information about its searches.
6 December 2022	OIC received an email from the applicant's support person requesting an update.
13 December 2022	OIC issued a preliminary view to the applicant. OIC asked QPS to disclose further information to the applicant as agreed.
14 December 2022	OIC received submissions from the applicant contesting the preliminary view.
22 December 2022	QPS disclosed further documents to the applicant.
6 January 2023	OIC received further submissions from the applicant.
18 January 2023	OIC updated the applicant. OIC received further submissions from the applicant. OIC requested further information from the applicant.
21 January 2023	OIC received further submissions from the applicant.
16 February 2023	OIC updated the applicant. OIC issued a further preliminary view to QPS requiring further searches for documents.
28 February 2023	QPS provided further documents and information to OIC.
3 March 2023	OIC received further submissions from the applicant and a request for an update.
9 March 2023	OIC updated the applicant.
14 March 2023	OIC received further information and submissions from QPS.
29 March 2023	OIC updated the applicant.
21 April 2023	OIC conveyed a preliminary view to QPS about the further documents. QPS confirmed its offer to disclose the further documents by email and inspection access.

Date	Event
10 May 2023	OIC updated the applicant and confirmed the next step was a formal decision to finalise the external review.
11 May 2023	QPS disclosed documents by email to the applicant.
16 May 2023	OIC requested written confirmation by QPS of some of its submissions regarding searches.
23 May 2023	OIC received written submissions from QPS.