



Decision and Reasons for Decision

Citation:	<i>Laloyianni and Queensland Police Service</i> [2018] QICmr 33 (24 July 2018)
Application Number:	313872
Applicant:	Laloyianni
Respondent:	Queensland Police Service
Decision Date:	24 July 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - request for information about complaints involving a named individual - whether section 55 of the <i>Right to Information Act 2009</i> (Qld) applies to neither confirm nor deny the existence of documents containing the requested information

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 any information about complaints made by or about a named individual.¹
2. QPS decided, under section 55 of the RTI Act, to neither confirm nor deny the existence of any documents containing the requested information.² The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.³
3. For the reasons set out below, I affirm QPS's decision.

Background

4. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix.

Reviewable decision

5. The decision under review is QPS's decision dated 21 March 2018.

¹ Access application dated 9 November 2017, received by QPS on 4 January 2018 and validated on 2 March 2018.

² Decision dated 21 March 2018.

³ External review application dated 15 April 2018.

Evidence considered

6. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

Issue for determination

7. The access application requested ‘*any information*’ about the named individual, ‘*any complaints*’ the named individual had ‘*made about anyone and any complaints made by anyone about*’ the named individual. The applicant also stated that she wished to ‘*make contact with people*’ that had been complained about, or who had made complaints about the named individual.⁴
8. The issue for determination is whether section 55 of the RTI Act can apply to neither confirm nor deny the existence of documents containing the type of information requested in the access application.

Relevant law

9. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to certain limitations, including section 55 of the RTI Act which allows an agency to neither confirm nor deny the existence of a document containing ‘*prescribed information*’. The RTI Act defines⁵ ‘*prescribed information*’ to include personal information⁶ the disclosure of which would, on balance, be contrary to the public interest⁷ under section 47(3)(b) of the RTI Act. In deciding where the balance of the public interest lies, various factors may be taken into account⁸ and a decision-maker must take specific steps in reaching a decision.⁹
10. The Information Commissioner has previously decided¹⁰ that section 55 of the RTI Act will apply where, due to the particular way the access application is framed, acknowledging the existence or non-existence of the requested information is liable to cause the very kind of detriment that the prescribed information provisions¹¹ are intended to avoid.

Findings

11. A person’s involvement in a QPS complaint matter, whether as complainant or as the subject of a complaint, comprises that individual’s personal information and forms part of their private sphere, which should be free from intrusion.¹² By dealing with an application requesting such information, an agency would be impliedly confirming *whether or not* complaints have been made by/about the subject person, thereby revealing their sensitive, personal information.
12. In this case, I am satisfied that the requested information falls at the higher end of the spectrum in terms of sensitivity as it would, *if it exists*, concern the relevant individual’s

⁴ Access application dated 9 November 2017.

⁵ Schedule 5 of the RTI Act.

⁶ Defined in schedule 5 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*’.

⁷ 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.

⁸ See the non-exhaustive list in schedule 4 of the RTI Act.

⁹ Section 49 of the RTI Act.

¹⁰ *Tolone and Department of Police* (Unreported, Queensland Information Commissioner, 9 October 2009) at [47]-[50], *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) (**Phyland**) at [30] and *Winchester and Queensland Police Service* [2017] QICmr 56 (4 December 2017) (**Winchester**) at [16].

¹¹ See definition of ‘prescribed information’ in schedule 5 of the RTI Act, and paragraph 9 above.

¹² *Van Veenendaal and Queensland Police Service* [2018] QICmr 28 (12 June 2018) at [31]-[34], *Phyland* at [29]-[30] and *Winchester* at [17].

personal and private sphere.¹³ I also consider the harm that would flow from disclosure of documents containing the requested information, *if they exist*, would be very high as it would associate the named individual with a QPS complaint process. In the circumstances of this case, I am unable to identify any public interest factors to favour disclosure of the requested information, other than the pro-disclosure bias.¹⁴

13. Complaints to QPS are generally dealt with confidentially (with disclosure limited to affected individuals) and in accordance with relevant QPS policies and procedures.¹⁵ Information about whether or not a particular person has been the subject of a complaint/s to QPS or made a complaint/s against other person/s to QPS would only be disclosed under the RTI Act in exceptional circumstances. This may occur for example, where the complaints later become the subject of open court proceedings—there is however, no evidence that is the case here. Further, there is no evidence that the applicant has herself been the subject of any alleged complaints, nor that she has been directly involved in any other capacity, with any of the alleged complaints.¹⁶
14. The applicant submitted that third party consultation should have been conducted to obtain the views of other individuals about disclosure of the requested information.¹⁷ Where section 55 of the RTI Act is found to apply, there is no provision for third party consultation. Further, engaging with any relevant third parties would, in my view, cause the very kind of harm to an individual's private and personal sphere, that the RTI Act intends to avoid through the operation of section 55 of the RTI Act.
15. The applicant also emphasised that she was not just seeking access to 'documents' but wanted any 'information' responding to her application. The RTI Act grants a right of access to 'documents' of an agency or Minister.¹⁸ Access may be granted, or refused, to information that appears within a document of an agency or Minister.¹⁹ The RTI Act is not however, intended to provide answers to questions.²⁰ Given my findings on this application, I do not consider it necessary to examine this line of argument any further.
16. On the basis of the above, I find that disclosure of the requested information, *if it exists*, would on balance, be contrary to the public interest and therefore, it comprises prescribed information to which section 55 of the RTI Act applies.

DECISION

17. I affirm QPS's decision to neither confirm nor deny the existence of the requested information, pursuant to section 55 of the RTI Act.
18. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 24 July 2018

¹³ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ See generally the *QPS Operational Procedures Manual Issue 64*, and specifically *Chapter 2 - Investigative Process* <<https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>> accessed on 24 July 2018.

¹⁶ If such evidence was available, section 55 of the RTI Act may not apply.

¹⁷ Reasons for external review application dated 15 April 2018.

¹⁸ Section 23 of the RTI Act.

¹⁹ See section 47 and 54 of the RTI Act.

²⁰ *Hearl and Mulgrave Shire Council* (1994) 1 QAR 557 at [30] and *DH6QO5 and Department of Health* (Unreported, Queensland Information Commissioner, 11 May 2011) at [44].

APPENDIX**Significant procedural steps**

Date	Event
15 April 2018	OIC received the external review application from the applicant.
16 April 2018	OIC asked QPS to provide the relevant procedural documents.
17 April 2018	OIC received the requested procedural documents from QPS.
20 April 2018	OIC notified the applicant that the external review had been accepted and conveyed a written preliminary view to the applicant which invited her to provide submissions supporting her case.
4 May 2018	OIC received correspondence from the applicant
10 May 2018	OIC confirmed to the applicant that OIC had accepted the review and provided her with further time to provide submissions supporting her case.
17 May 2018	OIC received submissions from the applicant.
19 June 2018	OIC wrote to the applicant to again confirm the issues under review and OIC's preliminary view, and to advise that this matter would proceed to a formal decision. The applicant was given a final opportunity to provide submissions, however, no response was received by OIC.
5 July 2018	OIC notified the applicant that a formal written decision would be required to finalise the review.