



Decision and Reasons for Decision

Citation:	<i>K84 and Queensland Police Service [2020] QICmr 33 (18 June 2020)</i>
Application Number:	315106
Applicant:	K84
Respondent:	Queensland Police Service
Decision Date:	18 June 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - access refused to personal information of applicant and other individuals - personal information inextricably intertwined - personal information and privacy - whether disclosure would, on balance, be contrary to public interest - whether access may be refused under section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to all documents relating to a complaint that had been made about him to QPS on 30 January 2017 by a named person (**the complainant**).
2. QPS decided² to refuse to deal with the application under section 59 of the IP Act and schedule 3, section 10(1)(d) of the *Right to Information Act 2009 (Qld)* (**RTI Act**). QPS decided that all information that the applicant had applied to access was exempt information on the basis that its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.
4. On external review, QPS advised OIC that it no longer relied upon section 59 of the IP Act and schedule 3, section 10(1)(d) of the RTI Act on the basis that the bulk of the responsive information had been generated by the applicant. It advised that it was prepared to give the applicant access to the bulk of the information, except for some

¹ 10 November 2019.

² 27 December 2019.

³ 9 January 2020.

personal information, the disclosure of which QPS considered would, on balance, be contrary to the public interest.

5. For the reasons set out below, I set aside QPS's decision to refuse to deal with the access application. In substitution for it, I find that there are no grounds under the IP Act to refuse access to a small segment of additional information, but that access to the remaining information which has not been disclosed to the applicant during the course of the external review should be refused on the grounds that its disclosure would, on balance, be contrary to the public interest.

Background

6. In late January 2017, the complainant, who was at that time the applicant's employer, attended at the Caboolture Police Station to make a complaint that the applicant had sent them a series of increasingly harassing and threatening emails in connection with a workplace issue. The complainant provided police with a brief statement in support of their complaint and, subsequently, with copies of the emails sent by the applicant that formed the basis for the complaint. In December 2017, the complainant advised police that they wished to withdraw their criminal complaint because they had been successful in civil proceedings that their company had brought against the applicant.
7. In terms of relevant background information, I note that on 31 January 2017, the applicant was charged with using a carriage service to menace, harass or cause offence to the complainant under section 474.17(1) of the *Criminal Code Act 1995* (Cth). When heard before a Queensland Magistrates Court in August 2017, the charge was dismissed under section 20BQ(1)(c)(iii) of the *Crimes Act 1914* (Cth), which provides a diversionary approach for the summary disposition of a federal offence and person suffering from a mental illness or intellectual disability.
8. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

Reviewable decision

9. The decision under review is QPS's decision dated 27 December 2019.

Evidence considered

10. The applicant sent OIC a significant number of emails over the course of the external review.⁴ The bulk of these emails and attachments discuss matters that are unrelated to the issues for determination in this review.
11. I have considered the applicant's many emails. As I stated in my correspondence to the applicant, to the extent that I am able to identify information in the emails that is relevant to the issues to be determined in this review, I will discuss it below.
12. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

⁴ It is common for OIC to receive between 10 and 15 emails in a day from the applicant, including on weekends. These emails can relate to a variety of his external review applications, complaints, allegations, grievances and demands, and are often intertwined. They are either directed to OIC or directed to multiple other agencies and copied to OIC. Over the weekend of 13 and 14 June 2020, for example, the applicant sent OIC over 50 emails with multiple attachments.

Allegations by the applicant including bias

13. On 1 April 2020, after examining the information remaining in issue, I wrote to the applicant to explain that I had formed the preliminary view that disclosure of the bulk of the information would, on balance, be contrary to the public interest. In the event that he did not accept my preliminary view, the applicant was invited to lodge a submission in support of his case for disclosure.
14. My letter provoked the applicant to send me a series of emails accusing me of bias, incompetence, stupidity, dishonesty and corrupt conduct. Some emails are addressed to me as *'the criminal as usual'* or *'the criminal first and foremost'*.⁵ The applicant accuses me of protecting the complainant and QPS, questions my legal qualifications, competence and intelligence, and demands my resignation. It is clear from the many emails that he sends to other agencies, and copies to OIC, that the applicant has sought to make complaints about me to QPS, the Crime and Corruption Commission (CCC), the Queensland Human Rights Commission (QHRC), the Integrity Commissioner, the Queensland Ombudsman, the Department of Justice, and the Legal Services Commission. He demands that I be charged with a variety of criminal offences. He regularly copies his complaint emails to the Premier, the Minister for Police, and to media outlets and current affairs programmes.
15. I am aware from information that the applicant himself has provided that the applicant has been referred to QPS's Fixated Threat Assessment Centre (QFTAC)⁶ on a number of occasions, including by the Office of the Premier,⁷ and has also been subject to a number of mental health assessments due to his concerning behaviour directed towards various public officials.⁸ It is clear from the email correspondence that he has sent to OIC that he makes angry and persistent complaints against many public officers with whom he comes into contact. He has also pursued complaints against the complainant and their lawyer since January 2017 by sending numerous emails making serious accusations about those persons to numerous agencies. He seeks to have the complainant charged with criminal offences and jailed, and their lawyer struck off.
16. On 22 April 2020, given the volume of emails and complaints that the applicant was sending to OIC about this review as well as a range of his other interactions with both OIC and other agencies, I wrote to the applicant simply to acknowledge receipt of the emails and to advise that I would not be responding to them individually. I stated that, as it was clear that the applicant did not accept my preliminary view, I would proceed to prepare a written decision in order to finalise this review, and, to the extent that any of his emails contained submissions that were relevant to the issues to be determined, I would deal with them in the decision. This resulted in the applicant sending another series of emails, some examples of which include:

*I refer to your email. Your request is denied as you have not complied with Section 103 & 108 & 110 (2), (a) & (b) of the Information Privacy Act 2009 (Qld) and Section 32 CA2 of the Acts Interpretation Act 1954 (Qld). Don't dictate to myself about helping your best friend [the complainant]. Don't ever dictate to myself what you are going to do as you have committed every criminal offence imaginable in this matter. You have until Wednesday the 6 May 2020 otherwise I will file a complaint with [the Queensland Ombudsman]. Now stop harassing me. Besides I am preparing my material to [have] [the complainant's] solicitor struck off the roll to practice [sic] law. Now leave me alone.*⁹

⁵ Email received by OIC on 3 April 2020 and attachment to emails received by OIC on 22 and 23 April 2020.

⁶ QFTAC assesses and manages risks posed by individuals to public office holders.

⁷ See the hospital notes attached to the applicant's email to the Office of the Health Ombudsman dated 13 January 2020 and copied to OIC at 6.25pm. These notes were again provided by the applicant as an attachment to his email to OIC dated 8 June 2020.

⁸ See footnote 7 above.

⁹ Email from the applicant on 22 April 2020 at 5.29pm.

*I am giving once [sic] chance to get over your stupidity. You are not entitled to anything as you have not complied with any of the relevant Law. I couldn't care less if you respond to me or note [sic]. If I have to go to QCAT you will loose [sic] like [another OIC officer]. Get off your high horse and not to mention to contravening provisions under the Anti Discrimination [sic] Act 1991 (Qld).*¹⁰

I refer to my email correspondence to the Crime & Corruption Commission, ("CCC") on Ms Louisa Lynch and I refer to Ms Lynch's ridiculous email of the 22 April 2020.

*Please note at Law, Ms Lynch can not dictate to myself that she will send me a written decision and that she will determine the review. Firstly, Ms Lynch is acting Ultra Viries [sic] and I refer the CCC to the decision of Dalton J in *Mc Cleverty [sic] v Australian Karting Assoc Ltd [2015] QSC 223*. Now my advice to Ms Lynch is resign as you are incompetent. You are dishonest and if I go to QCAT you will loose [sic]. So I suggest you get legal advice as you are obviously a [sic] useless at your job and you simply don't have a clue about the Law. So I suggest you get advice from Crown Law.*¹¹

17. Amongst the many allegations made against me by the applicant, he alleges a reasonable apprehension of bias arising out of my preliminary view letter of 1 April 2020. He has apparently made a complaint to the Queensland Ombudsman of apprehended bias.¹² The applicant repeatedly accuses me in this review of siding with the complainant and with QPS, and of protecting the complainant and being the complainant's 'best friend'.
18. I have considered this allegation, alongside the High Court's test for assessing apprehended bias for a decision maker. The High Court's test requires consideration of 'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide'.¹³ The High Court has also noted that:

*[t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made.*¹⁴
19. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.¹⁵ In order to ensure procedural fairness (as required by both the IP Act¹⁶ and common law), it is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected party. This appraises that party of the issues under consideration and affords them the opportunity to put forward any further information they consider relevant to those issues.
20. For this review, I am the delegate of the Information Commissioner.¹⁷ I am satisfied that, in the conduct of this review, the applicant has been treated in the same way as any other applicant for review. He has been afforded procedural fairness. I explained to him why I had formed the preliminary view that disclosure of the bulk of the information in issue would, on balance, be contrary to the public interest. In the event that he disagreed, he was provided with an opportunity to provide relevant submissions in

¹⁰ Email from the applicant on 23 April 2020 at 12.02am.

¹¹ Email to the CCC dated 25 April 2020 at 5.05pm and copied to OIC.

¹² Email to OIC dated 4 April 2020 at 7.07pm.

¹³ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

¹⁴ *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Kiefel, Bell, Keane and Nettle JJ.

¹⁵ Section 108 of the IP Act.

¹⁶ Section 110(2) of the IP Act.

¹⁷ Section 139 of the IP Act.

support of his position which I would take into account before making a final decision. He has availed himself of that opportunity.

21. I acknowledge the applicant's disagreement with the review process and with my view about how the IP and RTI Acts apply to the circumstances of this case. I respect the applicant's right to disagree. I do not intend to respond to each and every allegation he has made against me, except to state that I reject each as being without substance. I have at no stage had any contact with the complainant, either directly or indirectly, in the context of this review, or at all. I do not consider that the fact that the applicant has made complaints against me during the course of this review has altered my conduct of the review or my consideration of the relevant issues before me. I expressed my preliminary view to the applicant about the issues for determination before he began making his various complaints about me. The information in his emails in response to my preliminary view has not persuaded me to alter my preliminary view. I have applied the provisions of the IP Act to the information in issue and explained my reasoning to the applicant. In those circumstances, paraphrasing the High Court's test, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter.

Application of the Human Rights Act and the Anti-Discrimination Act

22. The applicant alleges that OIC has violated his human rights under the *Human Rights Act 2019 (Qld) (HR Act)* and also breached the *Anti-Discrimination Act 1991 (Qld) (A-D Act)*:

I refer to the continual violation of my human rights by the Office of the Information Commissioner and in particular, who else but Ms Louisa Lynch. Ms Lynch is so determined. She has continually violated my human rights pursuant to the Human Rights Act 2019 (Qld) and not to mention the Anti Discrimination [sic] Act 1991 (Qld) and this is because Ms Lynch is an evil, spiteful and wicked person and thrives on picking on Senior citizens and this is because she loves every minute and I am simply mortified. Please see [sic] this email to my case mangers as evidence.¹⁸

23. I have had regard to the HR Act, particularly to the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI/IP decision-maker will be '*respecting and acting compatibly with*¹⁹ this right and others prescribed in the HR Act, such as privacy and health,' and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI/IP Acts and HR Act: '*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*'.²⁰
24. As regards the A-D Act, the applicant has submitted that he suffers from an impairment under schedule 1 to the A-D Act – anxiety – and accuses me of victimisation under section 129 of the A-D Act. This accusation appears to arise from my email to the applicant in which I advised him that I would prepare a written decision in order to finalise this review. As best as I am able to understand it (the applicant has not clearly explained the basis for his allegation), the applicant appears to regard the publication of a decision to finalise his application for external review as an act, or a threatened act, under section 130 of the A-D Act, that will be to his detriment because of his ongoing complaints about corruption and unfair treatment.²¹

¹⁸ Email to QHRC dated 29 April 2020 at 3.50pm and copied to OIC and others.

¹⁹ *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 [11].

²⁰ *XYZ* at [573].

²¹ See section 130(2)(a) of the A-D Act.

25. If that is, in fact, the basis for the applicant's allegation, I reject it. I do not accept that in finalising an external review that an applicant has requested, by following the procedures and requirements set out in the IP Act in order to make a decision under section 123 of the IP Act, and by affording the applicant procedural fairness in the review process, I am in any way carrying out an act of victimisation under the A-D Act that is to the detriment of the applicant. Furthermore, the applicant has a right of appeal in respect of my decision.

Information in issue

26. As noted, the bulk of the information sought by the applicant has been released to him. The applicant is aware from the released information that the complainant made a complaint to police about him regarding a series of emails that he sent to the complainant in January 2017. He has also been provided with copies of the emails in question.
27. The information remaining in issue consists of small segments of information contained on pages 1-4, 39-41, 44-45 and 77, and all of pages 5-7, the latter comprising the complainant's signed statement to police.
28. The information in issue can be categorised as follows:
- a) the personal information of the applicant
 - b) the personal information of the complainant (for example, the name, address, date of birth, signature, driver licence number, etc, as well as information about the complainant's emotions and reactions)
 - c) the personal information of other third parties (such as the signature of the police officer who witnessed the complainant's signature on their statement, and the names of other employees of the complainant's business); and
 - d) the shared personal information of the complainant and the applicant (as contained in the complainant's police statement).
29. The term '*personal information*' is defined as follows in the RTI Act:²²

[I]nformation 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.

Issue for determination

30. The issue for determination is whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Relevant law

31. There is a general public interest in advancing public access to government-held information, and the IP Act is administered with a '*pro-disclosure bias*', meaning that an agency should decide to give access to information, unless giving access would, on balance, be contrary to the public interest.²³

²² See schedule 5 of the RTI Act which refers to section 12 of the IP Act.

²³ Section 64 of the IP Act.

32. 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.²⁴
33. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁵
- 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.
34. No irrelevant factors arise in the circumstances of this review and I have not taken any into account in making my decision

Discussion

Category a) information

35. The category a) information comprises a segment of information contained in item 1 on page 1 of the information in issue.
36. This information is the applicant's personal information and is in connection with a referral about him to QFTAC.
37. During the course of the review, QPS was asked to provide submissions in support of its objection to disclosure of this information. QPS declined to provide submissions but advised that it continued to object to disclosure of the information on the basis that its disclosure was contrary to the public interest.
38. The information is the applicant's personal information. A public interest in its disclosure to the applicant therefore arises.²⁶ Given the context in which the information appears, I would afford significant weight to this factor as it is personal information of a sensitive nature. I also consider that disclosure could reasonably be expected to:
- assist in informing the applicant of QPS's operations;²⁷ and
 - reveal the reason for a government decision and any background information that informed the decision.²⁸
39. I would afford moderate weight to these factors in the circumstances.
40. Without the benefit of submissions from QPS in favour of nondisclosure of the information, I am unable to identify any particular sensitivity attaching to the information or any prejudice that could reasonably be expected to be caused by its disclosure. I have considered not only the public interest factors weighing both for and against disclosure contained in schedule 4 to the RTI Act, but also the application of any relevant

²⁴ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²⁵ Section 49(3) of the RTI Act.

²⁶ Schedule 4, part 2, item 7 of the RTI Act.

²⁷ Schedule 4, part 2, item 3 of the RTI Act.

²⁸ Schedule 4, part 2, item 11 of the RTI Act.

exemption provisions contained in schedule 3 of the RTI Act. In particular, I have considered whether disclosure could reasonably be expected to:

- prejudice the effectiveness of a lawful method or procedure for preventing or dealing with a possible contravention of the law
- prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; and/or
- prejudice a system or procedure for the protection of persons.²⁹

41. On the information before me, I am not satisfied that there are reasonably based expectations for any of those prejudicial effects. I do not understand the information in issue to reveal a secret or covert method for law enforcement. QPS has not made a submission to that effect. Nor am I satisfied that any public interest factors favouring nondisclosure that may apply³⁰ would be sufficient to outweigh the public interest factors favouring disclosure that I have identified above and to which I have given either significant or moderate weight. In addition, it would seem that the applicant is aware of at least the substance of the information.
42. For these reasons, I am not satisfied that grounds exist under the IP Act to refuse access to the category a) information contained in item 1 on page 1 of the information in issue. Access should therefore be granted to it.

Category b) and c) information

43. As noted, these categories of information comprise the personal information of persons other than the applicant.
44. In respect of such information, an automatic public harm arises through disclosure: schedule 4, part 4, section 6 of the RTI Act recognises that disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead
45. In addition, schedule 4, part 3, item 3 provides that a public interest factor favouring nondisclosure arises where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.
46. As regards firstly the category c) information, I am unable to identify any public interest factors weighing in favour of disclosure that would be sufficient to outweigh the strong public interest in protecting the personal information of the persons concerned and the associated protection of their right to privacy. The information in question is not directly relevant to the applicant's grievances with the complainant or with QPS. I do not consider its disclosure would advance his understanding of either the complaint made against him or the actions of QPS.
47. Turning now to the category b) information, the applicant is obviously aware of some of the complainant's personal information, including their name and address. It could be argued that the applicant's knowledge of this information reduces the public interest in protecting the complainant's identity and right to privacy in respect of such information.³¹ However, even if I accepted that, the interest is reduced rather than destroyed: there exists a residual privacy interest that must be recognised.³² In the circumstances of this

²⁹ Schedule 3, sections 10(1)(f), (g) and (i) of the RTI Act.

³⁰ For example, schedule 4, part 3, item 7 of the RTI Act – disclosure could reasonably be expected to prejudice law enforcement.

³¹ *Queensland Newspapers and Department of Justice and Attorney-General; Carmody (Third Party)* [2016] QICmr 23 (27 June 2016) wherein the then RTI Commissioner observed at [191]: 'If the public is already aware of information, by whatever means, the public interest in protecting a person's privacy regarding that information is necessarily lessened'.

³² *Queensland Newspapers Pty Ltd and Department of Justice and Attorney-General* [2018] QICmr 52 (18 December 2018) at [31].

review, I find that the public interest in protecting the complainant's right to privacy remains significant. This is in recognition of the fact that there are no restrictions on what a person may do with information accessed under the IP or RTI Acts, together with the fact that the applicant has pursued the complainant relentlessly for over three years regarding the complaint that the complainant made to police about him. The applicant has repeatedly made complaints against the complainant (and their lawyer) to numerous public officials and government agencies in which he refers to the complainant as evil, dishonest and a criminal, and demands for them to be prosecuted and jailed.³³ In those circumstances, where the applicant persistently disseminates the complainant's identity to a wide range of entities in connection with ventilating his many unsubstantiated accusations against the complainant, I find that the public interest in protecting the complainant's personal information and their associated right to privacy remains significant.

48. Other personal information of the complainant that is in issue is that person's emotional response to their interactions with the applicant and the impact of the applicant's actions on them and their business. This is sensitive personal information and I am unable to identify public interest considerations favouring its disclosure that would be sufficient to outweigh the public interest factors favouring nondisclosure that I have identified at paragraphs 44-45 above. Again, I do not consider that its disclosure would advance the applicant's understanding of either the complaint made against him by the complainant, or the actions of QPS.
49. In terms of balancing the public interest, I am unable to identify public interest considerations favouring disclosure of the category c) and d) information that would be sufficient to outweigh the factors concerning personal information and privacy that I have identified and discussed above, and to which I give significant weight.

Category d) information

50. The signed statement that the complainant provided to police (pages 5-7 of the information in issue) in support of their complaint against the applicant contains the shared personal information of the complainant and the applicant. There is also a brief reference to the contents of the statement on page 2 of the information in issue.
51. I acknowledge that there is a strong public interest in the applicant being given access to his own personal information.³⁴ However, I consider that the personal information of the applicant and the complainant as contained in the statement is inextricably intertwined, such that it is not possible to separate information that is the applicant's personal information alone.
52. I have noted above the public interest harm that automatically arises through disclosure of another person's personal information and the associated prejudice to the protection of that person's right to privacy. I have also explained why I consider that the public interest in protecting the complainant's right to privacy remains significant in the particular circumstances of this case.
53. The applicant submits that the statement:
- is '*false, malicious and wicked*' and contains incorrect information about the number of emails that he sent to the complainant

³³ See, for example, the applicant's email to the Office of the Premier and multiple other agencies dated 12 September 2019 which is an attachment to the applicant's email to OIC on Sunday 7 June 2020 at 10.11am.

³⁴ Schedule 4, part 2, item 7 of the RTI Act.

- is in breach of a wide range of Queensland legislative provisions, including provisions of the *Police Service Administration Act 1990*, the *Justices Act 1886*, the *Mental Health Act 2016*, and the *Crime and Corruption Act 2001*; and
 - was wrongfully used by QPS as the basis for submitting him to an unlawful Justices Examination Order (**JEO**) on 7 February 2017.³⁵
54. The applicant therefore submits that there is a strong public interest in disclosing the statement to him.
55. Based on the applicant's submissions, it appears that the public interest factors that he may be raising in support of his case for disclosure of the statement are that:
- disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official³⁶
 - disclosure could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper, or unlawful conduct³⁷
 - disclosure could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁸
 - disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision³⁹
 - disclosure could reasonably be expected to reveal that information was incorrect or misleading;⁴⁰ and
 - disclosure could reasonably be expected to contribute to the administration of justice for a person.⁴¹
56. In response to the applicant's allegation that the statement was relied upon to submit him to a JEO, there is no clear evidence before me that the statement formed the basis for the referral. Relevant information about what action QPS considered might be appropriate to take in relation to the complainant's complaint is contained in item 1 on page 1 of the information in issue, which I have decided above should be released to the applicant. I have also reviewed the medical notes made during the applicant's mental health examination that took place on 7 February 2017.⁴² In that examination, the applicant was asked generally about whether he was sending copious volumes of harassing emails, which he denied. It appears from the notes that no specific email interactions were put to the applicant for response, but that he himself identified a number of agencies and persons with whom he had been interacting by email (including the complainant) about a variety of issues, and that may have been of concern in terms of prompting the JEO.⁴³
57. In any event, to the extent that the complaint made to QPS by the complainant may have formed the reason, or part of the reason, for the JEO, as I have noted, the applicant has already had disclosed to him the basis for the complaint, and copies of the email exchanges upon which that complaint was based. I am not satisfied that disclosure of the statement would advance to any significant extent the public interest in the applicant

³⁵ A JEO was issued under the *Mental Health Act 2000* (Qld) (repealed) and allowed a doctor or an authorised mental health practitioner to examine a person who was thought to be suffering from a mental illness. The purpose of the examination was to decide whether or not to recommend that the person undergo a full psychiatric assessment. It allowed the examination to go ahead whether or not the person concerned agreed. This particular form of JEO ceased to exist from March 2017 following the enactment of the *Mental Health Act 2016* (Qld).

³⁶ Schedule 4, part 2, item 5 of the RTI Act.

³⁷ Schedule 4, part 2, item 6 of the RTI Act.

³⁸ Schedule 4, part 2, item 10 of the RTI Act.

³⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁴⁰ Schedule 4, part 2, item 12 of the RTI Act.

⁴¹ Schedule 4, part 2, item 17 of the RTI Act.

⁴² See the attachment to the applicant's email to OIC on 3 April 2020 at 6.41am: '*Illegal involuntary order of the 7 February 2017...*'.

⁴³ For example, Queensland Health, the Royal Brisbane and Women's Hospital, the Office of the Health Ombudsman, as well as private psychiatrists.

understanding the nature of the complaint made against him, his fair treatment, or the reason for any associated government decision about him. Nor am I satisfied that its disclosure could reasonably be expected to contribute to the administration of justice. I have noted that the complainant formally withdrew their complaint on 3 December 2017, following the conclusion of civil proceedings. To the extent that these public interest factors favouring disclosure apply to the statement, I would afford them only low weight when balancing the public interest, given the information already disclosed to the applicant, and the category a) information which I have decided above should be disclosed.

58. In terms of the applicant's allegations that the statement breaches various legislative provisions, there is no evidence before me to satisfy me of this. Nor am I satisfied that disclosure of the statement could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official, nor reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper, or unlawful conduct. There is nothing on the face of the statement that would establish the requisite reasonable expectation.
59. Finally, in relation to the application of the public interest factor that favours disclosure if it could reasonably be expected to reveal that information is incorrect or misleading, the applicant contends that the number of emails that the complainant alleged he sent to the complainant is incorrect. The number of emails sent, as estimated by the complainant at the time of contacting police, has already been disclosed to the applicant, as have the emails themselves. There have also been legal proceedings about this matter. In the circumstances, I would afford this public interest factor moderate weight.
60. After balancing the public interest factors weighing both for and against disclosure of the category d) information, I find that, taking into account the information already released to the applicant, together with the nature of the applicant's interactions with the complainant and the multiple and persistent complaints he has made about the complainant since early 2017, the significant public interest in protecting the complainant's personal information and associated right to privacy outweighs public interest factors identified above that weigh in favour of disclosure.

Findings

61. In respect of the category a) information, I find that there are no grounds under the IP Act to refuse access to it.
62. In respect of the category b), c) and d) information, I find that the balance of the public interest lies in favour of nondisclosure.

DECISION

63. I set aside the decision of QPS dated 27 December 2019 to refuse to deal with the access application. In substitution for it, I find that access to the category a) information should be granted under the IP Act, but that access to the category b), c) and d) information should be refused on the grounds that its disclosure would, on balance, be contrary to the public interest.

64. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Louisa Lynch
Right to Information Commissioner

Date: 18 June 2020

APPENDIX**Significant procedural steps**

Date	Event
13 January 2020	OIC emailed the applicant acknowledging receipt of his external review application. OIC emailed QPS requesting preliminary information.
15 January 2020	QPS provided preliminary information.
21 February 2020	OIC emailed the applicant to advise that the external review application had been accepted. OIC emailed QPS to request a submission in support of QPS's decision to refuse to deal with the access application.
30 March 2020	QPS emailed OIC advising it was prepared to give the applicant access to some information in issue.
1 April 2020	OIC emailed the applicant to express a preliminary view.
1 April – 21 April 2020	Multiple emails received from the applicant.
22 April 2020	OIC emailed the applicant to advise that the review would proceed to a decision.
22 April – 17 June 2020	Multiple emails received from the applicant.