



Decision and Reasons for Decision

Application Number: 310829

Applicant: Conde

Respondent: Queensland Police Service

Decision Date: 4 October 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - application for access to information about assault complaints involving applicant and third party - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - section 47(3)(a) of the *Right to Information Act 2009* (Qld) - section 48 of the *Right to Information Act 2009* (Qld) - schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for information regarding assault complaints involving the applicant and a third party.
2. The applicant has known the third party since 2008 and been involved in numerous court matters involving the third party since then.²
3. QPS identified 48 pages responsive to the access application and decided³ to:
 - grant full access to 4 pages⁴
 - refuse access to certain information on 40 pages⁵ on the basis that its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act; and
 - delete certain information from 5 pages⁶ on the basis that the information was irrelevant to the access application under section 73 of the RTI Act.

¹ By application dated 10 August 2011, validated on 18 August 2011.

² According to information provided by the applicant to QPS and released to the applicant in response to his access application.

³ By decision dated 9 September 2011.

⁴ Pages 39-41 and 44. I note that pages 39-41 were released under an administrative access arrangement separate to disclosure under the RTI Act.

⁵ Pages 1, 4-38, 42, 43, 45 and 47.

⁶ Pages 2, 3, 4, 46 and 48.

4. The applicant sought internal review⁷ of QPS's decision.
5. On internal review, QPS affirmed⁸ its original decision.
6. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's internal review decision.⁹
7. In the circumstances, QPS is entitled to refuse access to the information which remains relevant in this review on the basis that it is exempt under sections 47(3)(a) and 48 of the RTI Act, because its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation under schedule 3, section 10(1)(d) of the RTI Act.

Background

8. Significant procedural steps relating to the external review are set out in the appendix to this decision.

Reviewable decision

9. The decision under review is QPS's internal review decision dated 10 October 2011.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Information in Issue

11. During the course of the external review:
 - QPS identified an additional 9 pages of relevant information; and
 - the applicant confirmed he did not seek access to certain information on 13 pages.¹⁰
12. Accordingly, the information remaining in issue (**Information in Issue**) is located across 40 pages.¹¹

Issues in this review

13. QPS decided not to release the remaining Information in Issue on the grounds that disclosure would, on balance, be contrary to the public interest.
14. After careful consideration of the Information in Issue, the relevant law, QPS's decision and the applicant's submissions,¹² I am satisfied that it is more appropriate to consider

⁷ On 4 October 2011 by correspondence dated 3 October 2011.

⁸ By internal review decision dated 10 October 2011.

⁹ On 16 November 2011 by correspondence dated 1 November 2011.

¹⁰ Information on pages 1, 33-36 and 42-43 which was either provided to QPS by the applicant, or provided to the applicant by QPS and information on pages 2, 3, 4, 45, 46 and 48 which the applicant accepted was irrelevant to the access application under section 73 of the RTI Act.

¹¹ Pages 4-32, 37, 38, 47 and 9 pages located on external review.

¹² The applicant made submissions dated 30 July 2012 raising public interest factors, alleged corruption and the application of the 'Whistleblowers Protection Act 1994 Qld'. There is nothing before me to suggest the applicant is protected by the *Public Interest Disclosure Act 2010* (Qld) (this Act superceded the *Whistleblowers Protection Act 1994* (Qld)). I have taken into account the applicant's submissions in so far as they are relevant to the issues being considered in this external review.

the application of schedule 3, section 10(1)(d) of the RTI Act. I explain my reasons below.

Relevant law

15. 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 a number of exclusions and limitations, including grounds for refusal of access.¹³
16. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.¹⁴ Schedule 3 of the RTI Act specifies the types of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, information is exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.¹⁵

Could disclosing the Information in Issue reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation?

17. Yes, for the reasons set out below.¹⁶

The expected harassment and/or intimidation must be serious in nature

18. The RTI Act does not define '*a serious act of harassment or intimidation*' therefore the terms should be given their ordinary meanings. The Information Commissioner has previously accepted the following dictionary definitions:¹⁷
 - '*harass*' includes '*to trouble by repeated attacks, ... to disturb persistently; torment*'; and
 - '*intimidate*' includes '*to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear.*'
19. Further, the Information Commissioner has noted that some degree of harassment or intimidation is permissible before this exemption will apply.¹⁸ Therefore, the expected harassment or intimidation must be '*serious*' in nature for schedule 3, section 10(1)(d) to apply. Relevant dictionary definitions of '*serious*' include:
 - '*weighty or important*'¹⁹
 - '*giving cause for apprehension; critical*'²⁰
 - '*having (potentially) important, esp. undesired, consequences; giving cause for concern*'.²¹

¹³ As set out in section 47(3) of the RTI Act.

¹⁴ Section 47(3)(a) of the RTI Act.

¹⁵ Schedule 3, section 10(1)(d) of the RTI Act. This provision is subject to the exception contained in schedule 3, section 10(2). I am satisfied that none of the exceptions apply in this matter.

¹⁶ It is likely that 17 pages of the Information in Issue would also be exempt under schedule 3, section 10(4) of the RTI Act. I have not considered this in this decision as I am satisfied that all the information is exempt under schedule 3, section 10(1)(d) of the RTI Act.

¹⁷ *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) applying *Sheridan and South Burnett Regional Council (and others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*) at paragraphs 194-197 referring to the *Macquarie Dictionary Online* (Fourth Edition). The decision in *Sheridan* concerned section 42(1)(ca) of the now repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as the provision considered in *Sheridan*. Therefore, the Information Commissioner's findings in that matter are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

¹⁸ *Sheridan* at paragraph 187.

¹⁹ *Macquarie Dictionary Online* (Fifth Edition).

²⁰ *Macquarie Dictionary Online* (Fifth Edition).

²¹ New Shorter Oxford Dictionary (4Pth Edition), as quoted by the Information Commissioner in *Sheridan*.

20. The applicant refers to the *Criminal Code Act 1899* (Qld) and submits that this exemption does not apply in the current circumstance because:

*QPS has investigated numerous and frequent complaints for 'Stalking, 'Harassment', 'Assaults', etc., made by (the third party) and (another individual), after the investigations Police always (have) found such complaints totally unsubstantiated and unfounded, meaning that they are malicious, deliberate(ly) false, frivolous and vexatious.'*²²

21. As I explained above, the Information Commissioner has found that the ordinary meaning of the words '*serious act of harassment or intimidation*' should be adopted in applying the RTI Act.
22. Therefore the type of behaviour anticipated by schedule 3, section 10(1)(d) of the RTI Act need not involve behaviour that would be considered 'assault' or 'unlawful stalking' or would otherwise satisfy a criminal standard in order for the exemption to apply. I therefore do not accept the applicant's submission on this point.

What is the basis of the expectation in this case?

23. The Information in Issue and the information released to the applicant by QPS in its decision include details of an assault complaint in which the applicant and the third party were involved.
24. Documents provided to QPS by the applicant also provide information about previous court matters which involved the applicant and the third party.
25. The applicant hosts a website in which he targets individuals against whom he holds grievances, including the third party. On this site, the applicant:
- identifies the third party's full name and former name
 - gives information about the third party's family and employment history; and
 - makes unsubstantiated criminal allegations against the third party and states that '*Full details of (the third party's) corruption, criminal mind, acts, behaviour and actions... will be given later.*'
26. I have also had regard to a record of relevant court proceedings involving the applicant and the third party in which the applicant's claims against the third party (and other parties) were stayed under the *Vexatious Proceedings Act 2005* (Qld).
27. Further details of the Information in Issue cannot be set out in these reasons because to do so would reveal information which is claimed to be exempt.²³ I am also restrained in the extent to which I can describe the balance of the information before me, as to do so may reveal the identity of the third party.
28. I am satisfied that the described past behaviour of the applicant listed above constitutes harassment, as the applicant's actions consist of repeated attacks that trouble, torment and disturb the third party. I am also satisfied that the applicant's past actions are acts of intimidation, as the information before me outlines specific incidents which demonstrate that his behaviour has forced into or deterred the third party from action by inducing fear.

²² At page 2 of the applicant's submission dated 30 July 2012.

²³ Section 108(3) of the RTI Act.

29. Further, I am satisfied on the information before me that the applicant's conduct constitutes **serious** acts of harassment and intimidation because his actions give cause for concern or apprehension and have resulted in distressing and undesired consequences for the third party.
30. I am also mindful that the applicant's website, in addition to demonstrating past acts of harassment, constitutes an **ongoing** act of harassment.

Is the expectation reasonably based and does it arise from disclosing the Information in Issue?

31. Yes, for the reasons that follow.
32. In *Sheridan* the Information Commissioner considered the phrase '*could reasonably be expected to*' and found that depending on the circumstances of the particular review, a range of factors may be relevant in determining whether an expectation is reasonably based. These factors may include, but are not limited to:²⁴
- past conduct or a pattern of previous conduct
 - the nature of the relevant matter in issue
 - the nature of the relationship between the parties and/or relevant third parties; and
 - relevant contextual and/or cultural factors.
33. The applicant has submitted that he has been the subject of '*malicious, deliberate(ly) false, frivolous and vexatious*'²⁵ complaints made by the third party and another individual. I note that the evidence about the applicant's conduct which I rely upon in the reasons for this decision includes information authored by QPS, the applicant, the third party and other parties.
34. There is nothing before me to suggest the information I have relied upon is '*malicious, deliberate(ly) false, frivolous and vexatious*' as described by the applicant.
35. I consider that the past occurrences of serious acts of harassment and intimidation detailed in this decision alone provide a reasonable basis for the individual/s named in the Information in Issue to expect to be subjected to further serious acts of harassment or intimidation should disclosure of the Information in Issue occur.
36. The Information in Issue is directly related to the applicant's relationship and ongoing issues with the third party.
37. In order for this exemption to apply, the expectation of harassment or intimidation must arise as a result of disclosure of the Information in Issue, rather than independently or from any other circumstance.²⁶
38. The information before me demonstrates a propensity for the kind of behaviour this exemption guards against and reveals the existence of previous and ongoing acts of serious harassment.

²⁴ *Sheridan* at paragraph 193.

²⁵ At page 2 of the applicant's submission dated 30 July 2012.

²⁶ *Sheridan* at paragraph 307.

39. Given the nature and content of the Information in Issue, I am satisfied that it is reasonable to expect that disclosure of the Information in Issue could result in the third party being subjected to a **further** act of serious harassment or intimidation.
40. For the reasons set out above, I find that there is a reasonably based expectation that disclosing the Information in Issue to the applicant would result in a person being subjected to a serious act of harassment or intimidation.²⁷ I am therefore satisfied that QPS is entitled to refuse access to the Information in Issue because it comprises exempt information.

DECISION

41. I vary QPS's decision by finding that QPS is entitled to refuse access to the Information in Issue under sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the RTI Act.
42. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Lisa Meagher
Acting Assistant Information Commissioner

Date: 4 October 2012

²⁷ Sections 47(3)(a), 48 and schedule 3, section 10(1)(d) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
18 August 2011	<p>Access application dated 10 August 2011 was validated upon QPS's receipt of evidence of identity of the applicant.</p> <p>The access application sought access to information about complaints of assault involving the applicant and a third party.</p>
9 September 2011	<p>QPS advised the applicant that it had located 48 relevant pages and decided to:</p> <ul style="list-style-type: none"> • release 2 pages under an administrative access arrangement • grant full access to 1 page • refuse access in full to 2 pages and in part to 38 pages on the basis that they comprised information that would, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act; and • delete certain information from 5 pages on the basis that the information was irrelevant to the access application under section 73 of the RTI Act.
4 October 2011	By correspondence dated 3 October 2011, the applicant applied to QPS for internal review of its decision and specifically noted that certain affidavits had not been released.
10 October 2011	QPS affirmed its original decision on internal review.
16 November 2011	By correspondence dated 1 November 2011, the applicant applied to OIC for external review of QPS's internal review decision.
29 November 2011	Information Commissioner decided to exercise the discretion to extend the timeframe in which an applicant can apply for external review under section 88(1)(d) of the RTI Act.
December 2011	During telephone conversations between OIC and QPS officers, it was noted that some of the Information in Issue may have been obtained, used or prepared for an investigation of a complaint made by the applicant to the Crime and Misconduct Commission (CMC).
22 December 2011	By telephone conversation, a CMC officer advised OIC that the investigation of relevant complaints was handled by QPS's Ethical Standards Unit (ESU).
24 January 2012	By telephone conversation, the applicant confirmed he did not seek access to information provided to QPS by him, or provided to him by QPS.
14 February 2012	By correspondence to QPS, OIC requested a submission on whether the Information in Issue was exempt under schedule 3, section 10(4) of the RTI Act on the basis that it had been obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.
27 February 2012	By correspondence, QPS submitted that the Information in Issue was not exempt under schedule 3, section 10(4) of the RTI Act.
7 March 2012	By telephone conversation with OIC staff, the applicant raised a number of public interest factors favouring disclosure of the Information in Issue.
17 May 2012	An OIC officer attended QPS's ESU to inspect the relevant complaint file to determine whether the Information in Issue had been obtained, used or prepared for an investigation of a complaint made by the applicant to the Crime and Misconduct Commission.
18 May 2012	By correspondence, OIC requested QPS undertake further searches for affidavits identified by the applicant.

7 June 2012	By correspondence dated 6 June 2012, QPS provided OIC with copies of 9 additional pages located on external review.
15 June 2012	By correspondence to the applicant, OIC confirmed the scope of the external review and advised the applicant of the additional documents located by QPS on external review.
17 July 2012	<p>By correspondence, OIC conveyed its preliminary view to the applicant that QPS was entitled to refuse access to the Information in Issue on the basis that it comprised exempt information, the disclosure of which could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.</p> <p>OIC also advised the applicant of its view that QPS was entitled to refuse access to 17 pages of the Information in Issue on the basis that they comprised exempt information that was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.</p>
30 July 2012	By correspondence, the applicant provided a submission to OIC in which he advised that he did not accept OIC's preliminary view.
14 September 2012	<p>By correspondence, OIC conveyed its preliminary view to the applicant that QPS was entitled to delete certain information on pages 2-4, 45, 46 and 48 of the Information in Issue under section 73 of the RTI Act, on the basis that it is irrelevant to the access application.</p> <p>OIC also indicated that if the applicant did not accept the preliminary view in relation to irrelevant information, he should notify OIC by 28 September 2012 and that if no response was received by 28 September 2012, OIC would proceed on the basis that the applicant accepted the preliminary view on this issue.</p>
28 September 2012	The due date for the applicant to notify OIC that he did not accept the preliminary view in relation to irrelevant information passed and the applicant was taken to have accepted the preliminary view as set out in OIC's letter dated 14 September 2012.