



Decision and Reasons for Decision

Citation: *Cutts and Queensland Police Service* [2017] QICmr 39 (31 August 2017)

Application Number: 313014

Applicant: Cutts

Respondent: Queensland Police Service

Decision Date: 31 August 2017

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL TO DEAL – applicant seeks information about searches for his personal information in police database – whether application is expressed to relate to all information of a stated kind – whether all of the documents to which the application relates would comprise exempt information – whether section 59 of the *Information Privacy Act 2009* (Qld) applies

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – EXEMPT INFORMATION – LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION – whether disclosure of information about searches for applicant's personal information in police database could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law – applicant concerned that his personal information in police database may have been unlawfully accessed – whether information in police database reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law – schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) – exception in schedule 3, section 10(2)(a) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant, a former police officer of the Queensland Police Service (**QPS**), applied to QPS under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents containing information of all officers who accessed his name in the QPRIME database (**QPRIME**)¹ over a ten year period.
2. QPS decided to neither confirm nor deny the existence of the requested information under section 69 of the IP Act.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.³
4. On external review, QPS accepted OIC's preliminary view⁴ that the neither confirm nor deny provision could not be relied on in this case⁵ and made alternative submissions.⁶
5. For the reasons set out below, I vary QPS's decision and find that all documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**), as their disclosure could reasonably be expected to prejudice QPS's lawful methods and procedures and, therefore, section 59 of the IP Act can be relied on to refuse to deal with the application.⁷

Background

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

Reviewable decision

7. The decision under review is QPS's decision dated 15 September 2016 to neither confirm nor deny the existence of documents requested by the applicant in his access application dated 10 August 2016.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and Appendix).

Issues to be determined

9. As noted at paragraph 4 above, QPS no longer contends that section 69 of the IP Act can be relied on to neither confirm nor deny the existence of the documents requested in the access application. Therefore, that provision is not considered in this decision.⁸

¹ Access application dated 10 August 2016. QPRIME is the Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records for all police incidents in Queensland.

² By decision dated 15 September 2016.

³ External review application dated 13 October 2016.

⁴ Letter to QPS dated 27 October 2016.

⁵ Given it is commonly known that QPS maintains a computer database to capture and maintain records about police incidents.

⁶ Submission dated 31 October 2016.

⁷ Section 59 of the IP Act.

⁸ The applicant's submissions in respect of QPS's decision to neither confirm nor deny the existence of documents requested in the access application have also not been addressed in these reasons for decision.

10. The Information Commissioner⁹ can decide any matter in relation to an application that could, under the IP Act, have been decided by the agency dealing with the application.¹⁰ Accordingly, I will now consider whether the application may be the subject of a refusal to deal decision under section 59 of the IP Act.¹¹ To determine this issue, I must consider whether:

- the application is expressed to relate to all documents, or all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
- all of the documents to which the application relates comprise exempt information.

11. In support of his position that the requested information should be released, the applicant generally relies on:¹²

- his knowledge of previous releases of QPRIME information to other individuals
- his belief that there is a culture within QPS of unlawfully accessing QPRIME; and
- his concern that, due to media reporting around officers accessing QPRIME unlawfully, his profile on QPRIME has been accessed unlawfully.

Relevant law

12. If an access application is made to an agency under the IP Act, the agency should deal with the application unless this would not be in the public interest.¹³ One of the few circumstances where it is not in the public interest to deal with an access application is set out section 59 of the IP Act as follows:

59 Exempt Information

(1) *This section applies if—*

(a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*

(b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*

(2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

13. Exempt information is information, the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.¹⁴ Schedule 3 of the RTI Act lists the various types of information that constitute exempt information, including:

10 Law enforcement or public safety information

(1) *Information is exempt information if its disclosure could reasonably be expected to—*

...

⁹ Or delegate.

¹⁰ Section 118(1)(b) of the IP Act.

¹¹ QPS does not contest the application of section 59 of the IP Act.

¹² While I have carefully considered all of the submissions received, the applicant's submissions are only addressed below to the extent they are relevant to the issues for determination.

¹³ Section 58(1) of the IP Act.

¹⁴ See sections 47(3)(a) and 48 and schedule 3 of the RTI Act.

(f) *prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;*

...

(2) *However, information is not exempt under subsection (1) if it consists of—*

(a) *matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; ...*

Findings

Class of documents

14. For section 59 of the IP Act to be enlivened, I must firstly consider whether the application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind, or relate to a stated subject matter. To determine this, it is necessary to examine the terms of the access application.

15. OIC has recently considered the application of section 59 of the IP Act in relation to applications for information substantially the same as that requested by the applicant in the application which is the subject of this review.¹⁵ The applicant's application seeks access to specific information (**QPRIME officer information**), namely:

Subject matter of the documents: *Documents containing information of all officers who have accessed my name using QPRIME*

Time period / date range: *January 2006 – August 2016.*

16. The applicant's submissions on external review¹⁶ confirm that he is wishing to identify all officers who have accessed his name on QPRIME within the specified period. I am satisfied that the application is framed as a request to access all documents of a stated kind, specifically, information revealing all officers who have accessed the applicant's name using QPRIME during this period. Accordingly, I find that the first limb of section 59 of the IP Act is satisfied.

Exempt information

17. I must also be satisfied that the documents to which the application relates are comprised of exempt information. Of relevance to this review, information will be exempt information if the following are established:

- there exists a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
- disclosure could reasonably be expected to prejudice that method or procedure.¹⁷

18. QPS's submitted¹⁸ that the process of QPS officers accessing information in QPRIME forms an integral part of the methods and procedures used by QPS for preventing,

¹⁵ See *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017) (**Isles**), *Flori and Queensland Police Service* [2017] QICmr 5 (16 February 2017) (**Flori**), *Shelton and Queensland Police Service* [2017] QICmr 18 (29 May 2017) (**Shelton**), *Eaves and Queensland Police Service* [2017] QICmr 23 (30 June 2017) (**Eaves**), *Kyriakou and Queensland Police Service* [2017] QICmr 29 (9 August 2017) (**Kyriakou (1)**), *Kyriakou and Queensland Police Service* [2017] QICmr 30 (9 August 2017) (**Kyriakou (2)**), *Kyriakou and Queensland Police Service* [2017] QICmr 31 (9 August 2017) (**Kyriakou (3)**).

¹⁶ Submissions dated 13 October 2016 and 8 December 2016.

¹⁷ Schedule 3, section 10(1)(f) of the RTI Act.

¹⁸ Submission dated 16 June 2017.

detecting or investigating contraventions, or possible contraventions of the law, specifically regarding intelligence and surveillance operations.

19. Further, QPS submitted¹⁹ that disclosing information which would reveal who accessed an individual's record on QPRIME would enable an individual to deduce whether particular QPS units were monitoring the individual's behaviour or involvement in activities.²⁰ On this basis, QPS submitted that disclosure of the QPRIME officer information could reasonably be expected to prejudice the effectiveness of its lawful methods or procedures for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
20. The applicant submitted²¹ that disclosure of the use of QPRIME as a method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law could not be said to prejudice the effectiveness of QPRIME as a method or procedure. In support of this position, the applicant submitted as follows:
 - *'to disclose either that the police keep information in a computerised database or that police officers access the information held in that database reveals nothing which is novel, covert or clandestine'*²²
 - *'disclosure of methods or procedures which are "obvious and well known to the community" is not likely to prejudice their effectiveness'*²³
 - some, but not all of, QPRIME officer information might be exempt under other specific provisions in schedule 3, section 10 of the RTI Act²⁴ which would *'otherwise have no work to do'*²⁵
 - *'if Parliament had intended that keeping documents in the QPRIME database be regarded as an integral part of QPS methods and procedures ... then it would have been unnecessary for the Parliament to have enacted the[se] specific provisions'*²⁶
 - the logical result of finding that the QPRIME officer information may be refused under schedule 3, section 10(1)(f) of the RTI Act is that QPS may circumvent the disclosure regimes in the RTI and IP Acts by claiming that *'information held by it in computer databases which may be searched and accessed by police officers form an integral part of its lawful methods or procedures'*, and *'that effectively would operate to exempt the QPS from the disclosure regimes'*²⁷; and
 - *'the characterisation of QPRIME as "an integral part of QPS's lawful methods and procedures, etc." ... may have the absurd result of some information in QPRIME being deemed not to be exempt information by virtue of schedule 3, [section] 10(6) because it had been used by a specialist intelligence or security unit of the QPS,*

¹⁹ Submission dated 16 June 2017.

²⁰ In its submission, QPS provided generic examples of how disclosure of QPRIME officer information may prejudice policing activities. As an example, QPS submitted that:

- the Child Protection Investigation Unit is well known for investigating child sexual offences
- Task Force Argos well known for targeting perpetrators of organised paedophilia and child exploitation
- Officers attached to Task Force Maxima are well known to be involved with organised crime associated with outlaw motorcycle groups; and
- Homicide Group investigators dealing with suspected unlawful killings

and that disclosure of information which identifies these officers as accessing a person's records may disclose the fact that the person was a suspect or person of interest by the officers investigating specific types of crimes.

These examples, being generic, should **not** be construed as relating to the circumstances of this external review.

²¹ External review application and submission dated 8 December 2016.

²² Paragraph 16 of submission dated 8 December 2016.

²³ Paragraph 17 of submission dated 8 December 2016, citing *T and Queensland Health* (1994) 1 QAR 386 at [32].

²⁴ That is, schedule 3, section 10(1)(a), 10(3), 10(4), 10(5)(a), 10(5)(b) and 10(5)(c) of the RTI Act.

²⁵ Paragraph 18 of submission dated 8 December 2016.

²⁶ Paragraph 19 of submission dated 8 December 2016.

²⁷ Paragraph 20 of submission dated 8 December 2016.

*but other information continuing to be exempt as it was used by ordinary members of the QPS*²⁸.

21. Having considered the submissions provided by QPS on review,²⁹ I am satisfied that, when dealing with contraventions, or possible contraventions, of the law, QPS officers record information about certain individuals on QPRIME, and such information may relate to intelligence or surveillance operations, or other investigations. Further, I am satisfied that QPS officers also access information recorded in QPRIME both during and after such activities—for example, to obtain background information and inform their decisions. Given this position, I accept that accessing information in QPRIME forms an integral part of the methods and procedures used by QPS when dealing with contraventions, or possible contraventions, of the law.
22. The existence of QPRIME as a database used by QPS, and the manner in which QPS officers use QPRIME—namely, recording information obtained by them and accessing previously recorded information—are commonly known. Consequently, I accept the applicant's submission that *'to disclose either that the police keep information in a computerised database or that police officers access the information held in that database reveals nothing which is novel, covert or clandestine'*.
23. The applicant further submits that *'disclosure of methods or procedures which are "obvious and well known to the community" is not likely to prejudice their effectiveness'*. In my view, this submission conflates information confirming the existence of QPRIME with the QPRIME officer information. It suggests that, because QPS's use of QPRIME is obvious or known to the community, it follows that disclosure of particular information from that database—that is, the QPRIME officer information—is not likely to prejudice the *effectiveness* of QPS's use of QPRIME.
24. However, the prejudice does not, in my view, arise insofar as the QPRIME officer information reveals the existence of QPRIME, how it works or its use by QPS officers. Rather, the prejudice arises in terms of the QPRIME officer information revealing information (or an absence of information) which enables or assists an individual to deduce the level of surveillance they may (or may not) be under. This, in my opinion, reduces the effectiveness of QPRIME as a system for recording and exchanging information within QPS as part of conducting intelligence or surveillance operations, or otherwise dealing with contraventions, or possible contraventions, of the law. I am satisfied that disclosure of QPRIME officer information, for any individual, whether that individual is subject to intelligence or surveillance operations or not, could reasonably be expected to prejudice these lawful methods and procedures as a whole.
25. In reaching this conclusion, I have considered whether specific types of QPRIME officer information may, if released with surrounding information redacted, not qualify as exempt information. In this regard, I have noted that the applicant does not seek access to information which would identify particular QPS units, the number of occasions on which QPS officers have accessed QPRIME in relation to the applicant, or the reasons for searches on QPRIME. However, I am of the view that releasing names or other information specific to particular QPS officers may still enable their relevant unit and therefore the nature of surveillance or intelligence (if any), to be ascertained.

²⁸ Paragraph 20 of submission dated 8 December 2016.

²⁹ Submission dated 16 June 2017.

26. As to the question of whether this expectation of prejudice is reasonable,³⁰ I am satisfied that QPS has demonstrated that there are particular circumstances³¹ in which disclosing QPRIME officer information could reasonably be expected to prejudice the lawful methods and procedures used by QPS, of which QPRIME is an integral part, even though the information may otherwise appear innocuous on its face or when read in isolation.³²
27. The applicant submits that disclosure of QPRIME officer information might be exempt under other provisions in schedule 3, section 10,³³ that these provisions would '*otherwise have no work to do*', and that it would have been unnecessary for Parliament to enact them '*if Parliament had intended that keeping documents in the QPRIME database be regarded as an integral part of QPS methods and procedures*'. It is my understanding that, in making these submissions, the applicant's position is that I cannot find that the QPRIME officer information may be refused under schedule 3, section 10(1)(f) of the RTI Act, as to do so would render the other provisions raised by him redundant. In respect of these submissions, I note that the provisions raised by the applicant³⁴ require that an investigation be on foot,³⁵ and that the information in issue be given in the course of the investigation, or obtained, used or prepared for it.³⁶ However, the nature of the information that would be subject to these provisions can be distinguished from the information in issue in this review. Here, the applicant is seeking information about who accessed his records within QPRIME (whether or not such access related to any investigation). He is not seeking his records viewed during any such access, nor is he seeking any documents received or generated during any investigation. Depending on the particular information and circumstances, I consider it feasible that the other exemption provisions in schedule 3, section 10 of the RTI Act raised by the applicant—or indeed schedule 3, section 10(1)(f)—may possibly apply to information of this nature. Accordingly, I cannot accept the applicant's submissions that, to find that the QPRIME officer information is exempt information under schedule 3, section 10(1)(f) is to, in effect, find that the other provisions raised by him are superfluous.
28. I also do not accept the applicant's submission that the logical effect of refusing access to the QPRIME officer information is that QPS may circumvent the disclosure regimes in the RTI and IP Acts entirely by claiming that '*information held by it in computer databases which may be searched and accessed by police officers form an integral part of its lawful methods or procedures*'. This decision relates only to the QPRIME officer information, not all information and documents stored on QPRIME. Each decision on an access application must be considered on its own particular merits, on a case by case basis.
29. Finally, I do not accept the applicant's submission that finding that the QPRIME officer information may be refused under schedule 3, section 10(1)(f) of the RTI Act '*may have the absurd result of some information in QPRIME being deemed not to be exempt information by virtue of schedule 3, [section] 10(6) because it had been used by a specialist intelligence or security unit of the QPS, but other information continuing to be exempt as it was used by ordinary members of the QPS*'. In this regard, I note that the relevance of one exemption provision does not necessarily preclude the applicability of others. If there were circumstances where the exemption provisions in schedule 3,

³⁰ The requirements of the phrase '*could reasonably be expected to*' in the particular context of this exemption were discussed by the Right to Information Commissioner in *Gold Coast Bulletin and Queensland Police Service* (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

³¹ Including those noted in the generic examples at footnote 20 above.

³² Under section 121(3) of the IP Act, I must not disclose information claimed to be exempt or contrary to the public interest in reasons for decision. I am therefore constrained in the extent to which I can explain the particular circumstances put forward by QPS in support of the application of this exemption.

³³ That is, schedule 3, section 10(1)(a), 10(3), 10(4), 10(5)(a), 10(5)(b) and 10(5)(c) of the RTI Act.

³⁴ Except schedule 3, section 105(c) of the RTI Act which relates to information received by Crime Stoppers Queensland Ltd.

³⁵ Schedule 3, section 10(1)(a) of the RTI Act.

³⁶ By the relevant law enforcement body for the purposes of schedule 3, sections 10(3), 10(4) and 10(5)(a) and (b) of the RTI Act.

section 10(4) or (5) could apply, but for the operation of the exception raised by the applicant, the exemption provision in schedule 3, section 10(1)(f) of the RTI Act may still apply, depending on the particular information and circumstances.

30. Given these considerations, I am satisfied that the QPRIME officer information comprises exempt information under schedule 3, section 10(1)(f) of the RTI Act.

Exception to the exemption

31. The applicant also made an alternative submission³⁷ that, if the QPRIME officer information does qualify as exempt information, it cannot be said on a *'blanket basis'* that all documents must be exempt, because of the exception to the exemption in schedule 3, section 10(2)(a) of the RTI Act. This exception provides that information is not exempt information where it reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law.

32. In his submissions,³⁸ the applicant refers to previous cases of unauthorised QPRIME access and a *'culture within the QPS of officers accessing the QPRIME database unlawfully'*. In this regard, he refers to media articles discussing this issue,³⁹ and expresses concern that his personal information within QPRIME has been accessed unlawfully.⁴⁰ However, for the exception in schedule 3, section 10(2)(a) of the RTI Act to apply,⁴¹ the information itself, that is, the QPRIME officer information, must consist of material that objectively reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law.⁴²

33. In the application that is the subject of this review, the applicant sought access to QPRIME officer information. As noted at paragraph 27 above, the applicant is seeking to access information to identify all officers who have accessed his name on QPRIME, rather than seeking to access records relating to an investigation. I am satisfied that the QPRIME officer information alone, cannot, of itself, reveal that any particular access to QPRIME was unauthorised, or that the scope of any law enforcement investigation had exceeded the limits imposed by law. I also consider that this is the case when considering the QPRIME officer information within the context of all information before me in this review. Accordingly, I am satisfied that the QPRIME officer information may, at best, amount to untested evidence concerning an officer's authority to access QPRIME in a particular instance.

34. Given this position, I cannot conclude that QPRIME officer information reveals evidence of an investigation having exceeded its limits. Accordingly, I am satisfied that on the available information in this review, the exception to the exemption in schedule 3, section 10(2) of the RTI Act does not apply.⁴³

³⁷ Paragraphs 25-29 of submission dated 8 December 2016.

³⁸ External review application and submission dated 8 December 2016.

³⁹ The media articles referred to in the applicant's submission include, among others:

- AAP, 'Qld cop stood down over 'database breach' (17 May 2016) <http://www.news.com.au/national/breaking-news/qld-cop-stood-down-over-database-breach/news-story/a62186679a17dd70ca4eea4c589c83e2>; and
- CCC Media Release, 'Police officer charged for unauthorised access and disclosure of confidential information' (22 June 2016) <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/police-officer-charged-for-unauthorised-access-and-disclosure-of-confidential-information-22-june-2016>.

⁴⁰ I note that such concerns are able to be considered by other bodies such as the Crime and Corruption Commission, who are able to obtain access to such records.

⁴¹ As noted in *Isles* at [21], *Flori* at [25], *Shelton* at [28], *Eaves* at [24], and *Kyriakou (1)*, *Kyriakou (2)* and *Kyriakou (3)* at [29].

⁴² Previous decisions of the Information Commissioner have not considered, in any detail, the nature or extent of evidence required for this exception to apply.

⁴³ There is no evidence available to OIC to indicate that any other exceptions in schedule 3 of the RTI Act apply.

Other submissions

35. In his submissions, the applicant also referred to other individuals who have successfully obtained access to QPRIME information from QPS which revealed, in one case, that an individual's record had been accessed in excess of 1,400 times.⁴⁴ It is unclear how this submission is relevant to the present application, where the applicant is only seeking access to information which identifies all officers who have accessed his name on QPRIME, and has not requested information regarding the frequency of such access.
36. The applicant also submitted that there is a significant public interest in disclosure of the QPRIME officer information. I acknowledge that the IP Act is to be administered with a pro-disclosure bias⁴⁵ and that it is Parliament's intention that the grounds for refusing to deal with applications be interpreted narrowly.⁴⁶ However, the exemptions in schedule 3 of the RTI Act set out the types of information which Parliament has decided would, on balance, be contrary to the public interest to disclose. While an agency has discretion in these circumstances,⁴⁷ the Information Commissioner does not.⁴⁸ Once a class of documents satisfies the requirements of an exemption, as I have found in this case, I am precluded from considering any public interest factors, no matter how compelling.⁴⁹

DECISION

37. I vary the decision of QPS and find that section 59 of the IP Act can be applied to refuse to deal with the applicant's access application, on the basis that the application is expressed to relate to all documents containing information of a stated kind, and all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act.
38. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 31 August 2017

⁴⁴ External review application.

⁴⁵ Section 58(4) of the IP Act.

⁴⁶ Section 67(2) of the IP Act.

⁴⁷ Section 58(4) of the IP Act.

⁴⁸ Section 118(2) of the IP Act.

⁴⁹ Section 118(2) of the IP Act provides that the Information Commissioner does not have the power to direct that access to an exempt document be granted.

APPENDIX

Significant procedural steps

Date	Event
13 October 2016	OIC received the applicant's external review application.
14 October 2016	OIC notified the applicant and QPS that the external review had been accepted.
27 October 2016	OIC conveyed a preliminary view to QPS and invited QPS to provide submissions in response.
31 October 2016	QPS accepted OIC's preliminary view.
22 November 2016	OIC conveyed a preliminary view to the applicant and requested submissions in response.
2 December 2016	The applicant requested, and was granted, an extension of time to provide submissions.
8 December 2016	The applicant provided written submissions to OIC. ⁵⁰
2 June 2017	OIC provided QPS with a copy of the applicant's submissions on external review and requested further submissions from QPS.
16 June 2017	QPS provided written submissions to OIC. ⁵¹

⁵⁰ The applicant's solicitor made the same submissions in this external review and another external review which has also been finalised by decision—see *Morse and Queensland Police Service* [2017] QICmr 38 (31 August 2017) (*Morse*).

⁵¹ QPS made the same submissions in this external review and the external review finalised in *Morse*.