



## Decision and Reasons for Decision

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**Citation:** *Van Veenendaal and Queensland Police Service* [2018] QICmr 28 (12 June 2018)

**Application Number:** 313429

**Applicant:** Van Veenendaal

**Respondent:** Queensland Police Service

**Decision Date:** 12 June 2018

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - request for police complaint documents - prejudice to investigation method or procedure - whether information is exempt - schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for police complaint documents - information identifying informants, witnesses and other individuals - prejudice flow of information to law enforcement agency - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - request for complaint documents about a named individual - whether section 55 of the *Right to Information Act 2009* (Qld) applies to neither confirm nor deny the existence of the requested documents

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - NONEXISTENT AND UNLOCATABLE DOCUMENTS - applicant submits that further documents should exist - whether agency has conducted all reasonable searches - whether access to further documents may be refused on the basis they do not exist - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - information pertaining to matters unrelated to the terms of the access application - whether information may be deleted under section 73 of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for a range of documents including photographs, in connection with complaints involving himself, his brother and a privately operated medical centre.<sup>1</sup>
2. QPS located 77 pages in response to the application, including officer notebooks and documents held in QPRIME.<sup>2</sup> QPS granted full access to some pages and decided to refuse access to other pages in part<sup>3</sup> on the basis that information was exempt or contrary to the public interest to disclose.<sup>4</sup> QPS also decided to remove some information from the documents released to the applicant on the basis it was irrelevant to the terms of the access application.<sup>5</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review, contesting all aspects of QPS' decision, and questioning the sufficiency of its searches, particularly in relation to complaint documents regarding a named individual.
4. For the reasons set out below, I vary QPS' decision, and in summary, find that:
  - access to information concerning QPS investigation methods and procedures may be refused under section 47(3)(a) of the RTI Act on the basis that it is exempt under schedule 3, section 10(1)(f) of the RTI Act
  - access to information identifying informants, witnesses and other individuals may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest
  - section 55 of the RTI Act applies to neither confirm nor deny the existence of complaint documents regarding a named individual
  - access to any further documents responding to the application may be refused under section 47(3)(e) of the RTI Act on the basis that they do not exist; and
  - information pertaining to subject matter unrelated to the terms of the access application may be deleted under section 73 of the RTI Act on the basis of irrelevance.

### Background

5. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix.
6. In 2016, the applicant and his brother were questioned by police in relation to complaints made against them by a private medical practice. The applicant submits that following this incident his wife then attended the Coolool Police Station to discuss, what he considers were, unwarranted complaints. The applicant believes that certain police

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<sup>1</sup> Access application dated 22 May 2017. The application specifically referred to an incident on 28 October 2016, but sought complaint documents for a broader date range, from September 2015 to the date of the access application.

<sup>2</sup> QPRIME, the Queensland Police Records and Information Management Exchange, is the database used by QPS to capture and maintain records for all police incidents, intelligence and activities in Queensland.

<sup>3</sup> QPS' decision identified 41 pages for full release, whereas only 37 pages were provided to the applicant. The decision also stated parts of 36 pages were to be disclosed, although 40 pages were disclosed to the applicant in part. OIC clarified with QPS that these numbering inconsistencies were administrative errors and did not disadvantage the applicant in terms of access to information.

<sup>4</sup> Sections 47(3)(a) and (b) of the RTI Act.

<sup>5</sup> Section 73 of the RTI Act.

officers have acted unlawfully and argues that this has been concealed by the *'failure of the QPS to disclose'* all of the information in response to his application.<sup>6</sup>

### Reviewable decision

7. The decision under review is the QPS decision dated 12 July 2017.

### Evidence considered

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

9. The applicant provided extensive written submissions to OIC with his external review application.<sup>7</sup> I have carefully reviewed all of the applicant's submissions and to the extent they are relevant to the issues in this review, I have taken them into account in reaching my decision. Parts of the applicant's submissions relate to issues in respect of which the Information Commissioner has no jurisdiction, e.g. complaints about actions of QPS officers outside the RTI Act process. The applicant also raised concerns that QPS deleted irrelevant information without first consulting him.<sup>8</sup> Where the applicant's submissions concern issues beyond the Information Commissioner's external review jurisdiction, I have not taken them into account in making this decision.

### Information in issue

10. During the review, QPS agreed to release some further information to the applicant. As a result, the information remaining in issue in this review concerns:

- QPS investigation methods and procedures (**Investigation Information**)<sup>9</sup>
- informants, witnesses and other parties (**Third Party Information**)<sup>10</sup>; and
- unrelated QPS matters (**Irrelevant Information**).<sup>11</sup>

11. Documents released to the applicant in their entirety during the review do not form part of the information remaining in issue in this review and therefore, such documents are not considered any further in these reasons.

### Issues for determination

12. The following five issues require determination in this review:

- (i) Is the Investigation Information exempt under schedule 3, section 10(1)(f) of the RTI Act?
- (ii) Would disclosure of the Third Party Information, on balance, be contrary to the public interest under section 49 of the RTI Act?
- (iii) Does section 55 of the RTI Act apply to the part of the application which seeks complaint documents pertaining to a named individual?

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<sup>6</sup> Submissions attached to external review application, page 3.

<sup>7</sup> The applicant also responded to OIC's preliminary view letter dated 13 March 2018 by email received by OIC on 14 March 2018. However, that email concerned issues involved in a separate application and did not respond to any issues addressed in OIC's preliminary view letter.

<sup>8</sup> OIC wrote to the applicant on 22 August 2017 to confirm the issues on review advising that there is no longer a requirement under the RTI Act for an agency to first consult with an applicant in relation to irrelevant information, and this issue would therefore, not be considered by OIC in the review.

<sup>9</sup> Parts of pages 18, 21, 22, 23, 31, 42, 73 and 74.

<sup>10</sup> Parts of pages 11, 12, 15, 17-22, 24, 27, 28, 35, 36, 38, 39, 41-51, 75 and 77.

<sup>11</sup> Parts of pages 2, 4, 5, 7 and 13.

- (iv) Has QPS has taken all reasonable steps to locate documents responding to the access application?; and
- (v) Can certain information be deleted under section 73 of the RTI Act on the basis of irrelevance?

## Findings

### (i) Exempt information

#### Relevant law

13. The RTI Act gives a person a right of access to documents in the possession or under the control of Queensland government agencies.<sup>12</sup> This right is however, subject to other provisions of the RTI Act including grounds on which access may be refused. Relevantly, access may be refused to exempt information under sections 47(3)(a) and 48 of the RTI Act.
14. Schedule 3 of the RTI Act sets out categories of information, the disclosure of which Parliament has deemed to be contrary to the public interest, and therefore, exempt from disclosure.<sup>13</sup> The RTI Act<sup>14</sup> provides that certain law enforcement information is exempt, if it 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'*. There is an exception to this exemption for *'matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law'*.<sup>15</sup>

#### Analysis

15. The Investigation Information appears in several pages of QPRIME Reports created by QPS in relation to complaints involving the applicant.<sup>16</sup> Broadly, it describes and discusses methods/approaches adopted by QPS in conducting inquiries in relation to, and investigating, the complaints.
16. I have previously found that QPRIME information is exempt under schedule 3, section 10(1)(f) of the RTI Act<sup>17</sup> and in doing so, observed that the QPRIME database forms an integral part of QPS' lawful methods and procedures for preventing, detecting or investigation contraventions or possible contraventions of the law.<sup>18</sup>
17. In this case, I am satisfied that the Investigation Information is sufficiently sensitive in nature that its disclosure could reasonably be expected to prejudice the way QPS conducts its investigations. I consider QPS needs to maintain some level of confidentiality around its investigation techniques and methods to ensure its ability to prevent, detect and deal with suspected, or actual, criminal activity is not compromised.
18. I have also considered whether the exception to the exemption<sup>19</sup> applies in the circumstances of this case.

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<sup>12</sup> Section 23 of the RTI Act.

<sup>13</sup> Section 48(2) of the RTI Act.

<sup>14</sup> Schedule 3, section 10(1)(f) of the RTI Act.

<sup>15</sup> Schedule 3, section 10(2)(a) of the RTI Act.

<sup>16</sup> I am prohibited from describing the content of the Investigation Information in any further detail. Under section 108(3) of the RTI Act the Information Commissioner must not disclose information that is claimed to be exempt.

<sup>17</sup> *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017) (*Isles*) at [19].

<sup>18</sup> *Isles* at [17].

<sup>19</sup> Schedule 3, section 10(2)(a) of the RTI Act.

19. I have previously found<sup>20</sup> that, for the exception to apply, the information in issue must consist of material that objectively and authoritatively reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law. I have closely examined the Investigation Information and am satisfied that while it concerns the methods and procedures adopted by QPS in dealing with the complaints involving the applicant, it does not (or together with any other information available to OIC in this review) reveal in any authoritative manner that the scope of a law enforcement investigation has exceeded the limits imposed by law.
20. I acknowledge that the applicant generally has concerns about the conduct of QPS officers and I have considered the applicant's submissions on this point. However, it is the *requested material* itself which must reveal that the scope of a law enforcement investigation has exceeded the limits imposed by law, for the exception to apply. In this case, I do not consider the Investigation Information reveals evidence of an investigation exceeding its limits. Accordingly, I am satisfied that on the evidence available to OIC, including the Investigation Information, the exception to the exemption is not made out.<sup>21</sup>

### **Conclusion**

21. I find that the Investigation Information falls within the exemption in schedule 3, section 10(1)(f) of the RTI Act, is not subject to the exception to the exemption in schedule 3, section 10(2)(a) of the RTI Act, and that access to it may therefore, be refused under section 47(3)(a) of the RTI Act.

### **(ii) Contrary to public interest**

#### **Relevant law**

22. The RTI Act operates with a 'pro-disclosure bias'<sup>22</sup> meaning that it is Parliament's intention for an agency to give access to information, unless the public interest favours nondisclosure.<sup>23</sup> Various factors may be relevant to deciding where the balance of the public interest lies<sup>24</sup> and a decision-maker is required to take specific steps in reaching a decision.<sup>25</sup>

#### **Analysis**

23. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.
24. The applicant submits that refusing him access to information is a '*gross impingement on justice*'.<sup>26</sup> He submits that full disclosure would provide '*justice by the disclosure of illegal conduct by certain police*' and would '*serve the public interest rather than harming*' it.<sup>27</sup>

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<sup>20</sup> See *Eaves and Queensland Police Service* [2017] QICmr 23 (30 June 2017) at [24] to [25].

<sup>21</sup> There is no evidence available to OIC to indicate that any other exceptions in schedule 3, section 10(2) of the RTI Act apply.

<sup>22</sup> Section 44 of the RTI Act.

<sup>23</sup> Under section 47(3)(b) of the RTI Act, access to information may be refused where disclosure would, on balance, be contrary to the public interest.

<sup>24</sup> See schedule 4 of the RTI Act. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.

<sup>25</sup> Section 49 of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

<sup>26</sup> Submissions attached to external review application, page 9.

<sup>27</sup> Submissions attached to external review application, page 3.

## Factors favouring disclosure

25. I am satisfied that disclosure of the Third Party Information would provide the applicant with a more comprehensive understanding of the information that was available to QPS in dealing with the complaints involving himself and his brother. I find that disclosure could reasonably be expected to enhance QPS' accountability in conducting investigations<sup>28</sup> and reveal background or contextual information that informed decisions made by QPS in connection with the relevant complaints.<sup>29</sup> However, to the extent that the Third Party Information consists of names, addresses, dates of birth, personal pronouns of informants, witnesses and other third parties involved in the QPS investigation process, I consider the weight carried by those disclosure factors is low.<sup>30</sup>
26. There is some information that is akin to short statements provided by the third parties to QPS, outlining their version of events and with respect to that information, I consider the public interest factors outlined in paragraph 25 carry moderate weight in favour of disclosure.
27. The applicant has also made allegations of '*corruption and illegal behaviour*' by QPS officers.<sup>31</sup> Given these submissions, I have considered whether disclosing the Third Party Information could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;<sup>32</sup> and/or
  - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.<sup>33</sup>
28. The Third Party Information does not record anything about QPS' actions or processes in relation to complaints involving the applicant—it is limited to the personal information of other individuals. I am unable to see how disclosure of such information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of QPS. In the circumstances, I consider there is even less likelihood that disclosure would reveal evidence of misconduct. Accordingly, I find that the factors at paragraph 27 do not apply to the Third Party Information.
29. Given the applicant's concerns about unfairness and the way he and his family members have been treated by QPS, I have also considered whether the public interest disclosure factors regarding procedural fairness and the administration of justice may apply.<sup>34</sup> In *Willsford and Brisbane City Council*<sup>35</sup> the Information Commissioner found that disclosure will contribute to the administration of justice if an applicant can demonstrate that:
- they have suffered loss or damage of some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - they have a reasonable basis for seeking to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>36</sup>

<sup>28</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>29</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>30</sup> See *CSX and Department of Child Safety* (Unreported, Queensland Information Commissioner, 21 December 2007) at [44] where the Information Commissioner explained that the public interest in disclosure will be reduced where information pertains to a private individual rather than being information held by government about government.

<sup>31</sup> Submissions attached to external review application, for example pages 3 and 9.

<sup>32</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>33</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>34</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

<sup>35</sup> (1996) 3 QAR 368 (*Willsford*).

<sup>36</sup> *Willsford* at [17]. This approach was affirmed by the *Information Commissioner in 10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

30. On the evidence available to OIC, I am not satisfied that the applicant has established the requisite elements for the administration of justice factor(s) to apply. Whilst the applicant was questioned by QPS, the evidence does not indicate he has been formally charged with any offences. I am unable to identify any adverse consequences arising from the complaints involving the applicant, in respect of which the applicant may have a remedy available to him. Accordingly, I am satisfied that the administration of justice factors do not apply to the Third Party Information.<sup>37</sup>

### Factors favouring nondisclosure

31. The RTI Act recognises that disclosure of another individual's personal information is a factor favouring nondisclosure which could reasonably be expected to lead to a public interest harm (**Harm Factor**).<sup>38</sup> Given the nature of the Third Party Information as described above, I am satisfied it comprises the personal information of other individuals as it either identifies them by name, or is of a nature from which their identities could be reasonably ascertained.
32. The concept of 'disclosure' as used in the Harm Factor apprehends the giving of information to a person or entity not otherwise possessed of knowledge of that information.<sup>39</sup> Where releasing personal information would involve conveying to any person or entity information that they already know, it cannot be said such release would 'disclose' personal information within the meaning of the Harm Factor, and therefore that factor will not apply.<sup>40</sup> In this case, there is no evidence to indicate that the applicant is aware of the other individuals' personal information, in the particular manner in which it is dealt with in the subject QPS documents. Accordingly, I consider releasing the Third Party Information would constitute a 'disclosure' and therefore, the Harm Factor applies.
33. The Third Party Information appears in a relatively sensitive context in that it connects the other individuals to a QPS investigation, in various ways. Accordingly, I consider that the level of harm which would result from disclosure is significant and I also find that this level of sensitivity raises a further factor favouring nondisclosure with respect to the protection of the other individuals' right to privacy.<sup>41</sup>
34. The concept of 'privacy' is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others.<sup>42</sup> Given the type of information under consideration, I am satisfied that disclosure would intrude into the third parties' personal spheres. While I accept that the applicant's involvement means that some of the information *may* be known to him, I consider this reduces the weight of these factors to only a very slight degree.
35. I have also considered whether disclosure of the Third Party Information could reasonably be expected to prejudice the flow of information to QPS as it is generally recognised that there is a strong public interest in protecting the free flow of information

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<sup>37</sup> I have had regard to all of the factors listed in schedule 4, part 2 of the RTI Act, and in the circumstances of this review, I find that no other public interest factors apply to favour disclosure of the Third Party Information.

<sup>38</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>39</sup> While 'disclose' as used in the Harm Factor is not defined in the RTI Act, the word is defined in section 23 of the IP Act as it relates to the application of the Information Privacy Principles – to 'disclose personal information' relevantly means to give that information to an entity who does not otherwise know the information and is not in a position to find it out. This accords with the ordinary dictionary definition of 'disclose': relevantly, to 'make known; reveal': Macquarie Dictionary Online [www.macquariedictionary.com.au/](http://www.macquariedictionary.com.au/) (accessed 11 June 2018).

<sup>40</sup> *I7YL5P and Queensland Building and Construction Commission* [2018] QICmr 17 (19 April 2018) at [34].

<sup>41</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>42</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

from members of the public to law enforcement agencies.<sup>43</sup> Efficient and effective use of policing resources is facilitated by police being able to freely seek and obtain information from members of the community including complainants, witnesses, informants and even the subjects of a complaint.<sup>44</sup> I consider disclosure of the Third Party Information could reasonably be expected to discourage individuals from cooperating with QPS in the future. This would, in turn, prejudice QPS' ability to effectively discharge its functions in enforcing the law. I am therefore satisfied this factor also carries significant weight in favour of nondisclosure.

## **Conclusion**

36. I am satisfied that in this case, the weight of the public interest in enhancing QPS' accountability and transparency in terms of how it deals with complaints about members of the public, is outweighed by the need to protect the privacy and personal information of other individuals involved, and ensure the free flow of information to QPS is not prejudiced in the future. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and therefore access to it may be refused under section 47(3)(b) of the RTI Act.

### **(iii) Neither confirm nor deny**

#### **Relevant law**

37. Section 55 of the RTI Act allows a decision-maker to neither confirm nor deny the existence of a document, which if it exists, would contain prescribed information.<sup>45</sup> This provision is intended to apply in situations where revealing that the agency does or does not have documents in response to an application, due to the specific wording of the request, would reveal information which an agency would normally be entitled to refuse access.<sup>46</sup>

#### **Analysis**

38. The applicant requested documents relating to complaints involving an individual named in the access application. The applicant seeks information regarding any complaints made against himself and his family by the named individual, as well as any complaints made against, or by, the individual, in connection with the private medical centre.<sup>47</sup>
39. Generally speaking, a person's involvement in a QPS complaint matter comprises that individual's personal information which attracts a high privacy interest in favour of nondisclosure.<sup>48</sup>
40. I am satisfied that the information sought by the applicant falls at the higher end of the spectrum in terms of sensitivity as it would, *if it exists*, concern the relevant individual's personal and private sphere that should be free from intrusion. As such, I also consider

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<sup>43</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>44</sup> *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [29].

<sup>45</sup> 'Prescribed information' is defined as including personal information the disclosure of which would, on balance, be contrary to the public interest. Schedule 5 of the RTI Act adopts the definition of 'personal information' in section 12 of the IP Act: '*...information or an opinion, including information or an opinion forming part of a database whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion*'.

<sup>46</sup> *Australian Broadcasting Corporation and Psychologists Board of Australia* (Unreported, Queensland Information Commissioner, 3 January 2012) at [14].

<sup>47</sup> I have elected not to directly quote the terms of the access application in these reasons, primarily to protect the privacy of the named individual.

<sup>48</sup> *Tolone and Department of Police* (Unreported, Queensland Information Commissioner, 9 October 2009) at [47]-[50] and *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [30].



the harm that would flow from disclosure of any such documents, *if they exist*, would be very high. In the circumstances of this case, I am unable to identify any public interest factors that would favour disclosure of the requested information, other than the RTI Act's pro-disclosure bias.

41. Whilst the applicant submits he is already aware that the individual was the complainant<sup>49</sup> this does not entitle the applicant to have his beliefs confirmed or denied.
42. 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 under section 55 of the RTI Act.

### **Conclusion**

43. I find that section 55 of the RTI Act applies to neither confirm nor deny the existence of the information requested in the access application in relation to complaints involving a named individual.

### **(iv) Nonexistent documents**

44. The applicant believes that more documents should have been located by QPS in response to his application and submits that:

*The failure by the QPS Unit to properly investigate the availability of documents as nominated by the Applicant, apparently now mysteriously no longer in existence or available, should be determined as 'inadequate processing of the application'...<sup>50</sup>*

### **Relevant law**

45. Access may be refused to documents that are nonexistent or unlocatable.<sup>51</sup> A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>52</sup>
46. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:
  - the administrative arrangements of government
  - the agency's structure, functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
  - the agency's practices and procedures (including, but not limited to, its information management approaches); and
  - other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.<sup>53</sup>
47. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating

<sup>49</sup> Submissions attached to external review application, page 5.

<sup>50</sup> Submissions attached to external review application, page 4.

<sup>51</sup> Section 47(3)(e) of the RTI Act.

<sup>52</sup> Section 52(1)(a) of the RTI Act.

<sup>53</sup> *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

that specific document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.

48. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.<sup>54</sup> Such steps may include inquiries and searches of all relevant locations identified after consideration of the key factors listed at paragraph 46 above.
49. Where an applicant contends that an agency has failed to locate documents, there is a practical onus on the applicant to provide reasonable grounds to believe that the document exists and to warrant further searches within the agency.<sup>55</sup>

### **Analysis**

50. QPS provided OIC with a record of the searches it conducted in response to the access application. In summary, QPS undertook physical searches of desk drawers, cabinets and pigeonholes of relevant QPS officers and the office of the Officer-in-Charge. Electronic searches were also conducted of QPRIME and the Activity Log using keywords reasonably associated with the terms of the access application.
51. The applicant submits that QPS sought '*to minimise their work load foremost with no proper enquiry / investigation*'.<sup>56</sup> However, I am not satisfied that the applicant has provided any evidence, other than his own assertions, to establish a reasonable belief that further documents exist, nor to warrant additional searches. Having considered the terms of the access application, QPS search records and the nature of the documents located, I consider QPS has conducted comprehensive searches in the appropriate locations, including relevant electronic databases.

### **Conclusion**

52. On the basis of the above, I find that QPS has taken all reasonable steps to locate documents in response to the terms of the access application and that access to any further documents may be refused under section 47(3)(e) of the RTI Act, on the basis that they do not exist, pursuant to section 52(1)(a) of the RTI Act.

### **(v) Irrelevant Information**

#### **Relevant law**

53. Section 73 of the RTI Act provides that an agency may give access to a document subject to the deletion of information it reasonably considers is not relevant to the access application. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the access application.<sup>57</sup>

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<sup>54</sup> As set out in *PDE* at [49].

<sup>55</sup> *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

<sup>56</sup> Submissions attached to external review application, page 20.

<sup>57</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

## **Analysis**

54. Part of one page of a seven page Activity Log was deleted by QPS on the basis it is irrelevant to the scope of the application. Whilst the seven page entry is connected to a complaint against the applicant and his brother, I am satisfied the deleted information relates to QPS activities which took place at Coolum Station on 18 January 2017 in relation to separate QPS matters which are have no apparent connection to the terms of the access application.
55. QPS also redacted information from police notebooks on the basis of irrelevance. Having examined the removed information I am satisfied that it pertains to other QPS investigations, or dealings with other members of the public on unrelated QPS matters.

## **Conclusion**

56. Having considered the nature of the deleted information, I am satisfied that it relates to other QPS matters or unrelated dealings with other members of the public, and has no bearing on the terms of the access application.<sup>58</sup> I therefore find that this information is not relevant to the terms of the access application and may, therefore, be deleted under section 73 of the RTI Act.

## **DECISION**

57. For the reasons set out above, I vary the decision under review, and find that:
- (i) access to the Investigation Information may be refused under section 47(3)(a) of the RTI Act as it comprises exempt information under schedule 3, section 10(1)(f), and section 48 of the RTI Act
  - (ii) access to the Third Party Information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act
  - (iii) section 55 of the RTI Act applies to neither confirm nor deny the existence of complaint documents pertaining to a named individual
  - (iv) QPS has taken all reasonable steps to locate documents responding to the access application and access to any further documents may be refused under section 47(3)(e) of the RTI Act on the basis that they are nonexistent under section 52(1)(a) of the RTI Act; and
  - (v) certain information may be deleted under section 73 of the RTI Act on the basis of irrelevance.
58. I have made this decision under section 110 of the RTI Act, as a delegate of the Information Commissioner under section 145 of the RTI Act.

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K Shepherd  
**Assistant Information Commissioner**

**Date: 12 June 2018**

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<sup>58</sup> *James and Queensland Police Service* [2018] QICmr 8 (22 February 2018) at [28]-[29].

## APPENDIX

### Significant procedural steps

Date	Event
30 July 2017	OIC received the external review application and supporting submissions from the applicant.
1 August 2017	OIC asked QPS to provide the relevant procedural documents.
14 August 2017	OIC received the request procedural documents from QPS.
22 August 2017	OIC notified QPS and the applicant that the external review application had been accepted and confirmed the issues under review. OIC asked QPS to provide copies of the documents located in response to the application and records of searches conducted by QPS.
24 August 2017	OIC received a copy of the requested documents from QPS.
12 September 2017	OIC received further submissions from QPS regarding its decision.
6 March 2018	OIC conveyed a written preliminary view to QPS that a small amount of additional information could be released to the applicant and invited QPS to provide submissions in response.
13 March 2018	OIC conveyed a written preliminary view to the applicant and invited him to provide submissions supporting his case.
14 March 2018	OIC received submissions from the applicant.
16 March 2018	QPS agreed to disclose the additional information to the applicant in accordance with OIC's preliminary view, and OIC asked QPS to send it to the applicant.
1 May 2018	OIC asked QPS to release the additional information to the applicant.
8 May 2018	QPS agreed to OIC sending the additional information directly to the applicant to progress the review. OIC provided the additional information to the applicant and invited him to provide final submissions supporting his case.