



Decision and Reasons for Decision

Citation:	<i>T27 and Queensland Police Service [2022] QICmr 14 (18 March 2022)</i>
Application Number:	316267
Applicant:	T27
Respondent:	Queensland Police Service
Decision Date:	18 March 2022
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - EXEMPT INFORMATION - applicant seeking information about access to his personal information within the QPRIME system - whether application is expressed to relate to all documents containing information of a stated kind - whether all documents to which the application relates comprise exempt information - whether section 59 of the <i>Information Privacy Act 2009</i> (Qld) applies</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - whether disclosure of information about access to applicant's personal information within the QPRIME system 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 - whether information consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law - whether information is exempt under schedule 3, section 10(1)(f) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**)¹ under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information that shows how many times his information within the Queensland Police Records and Information Management Exchange (**QPRIME**) had been accessed and the reasons for any access (**Access Application**).²

¹ On 28 April 2021, however, the application did not become compliant until 7 July 2021.

² The Access Application seeks this information for the period January 2009 to 28 April 2021.

2. QPS's purported decision, refusing to deal with the Access Application under section 59 of the IP Act, was made outside the prescribed timeframe. QPS was therefore taken to have made a deemed decision refusing access to the requested information.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of QPS's decision.⁴
4. For the reasons set out below, I vary QPS's decision and find that QPS may refuse to deal with the Access Application under section 59 of the IP Act.

Background

5. During the review, OIC conveyed a preliminary view⁵ to the applicant in an attempt to achieve the early resolution, and to promote settlement, of the external review.⁶
6. This procedural step, as well as other significant procedural steps relating to this review, are set out in the Appendix.

Reviewable decision

7. The decision under review is the deemed decision QPS is taken to have made under section 66 of the IP Act.

Evidence considered

8. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
9. I have taken QPS's purported decision, that it was entitled to refuse to deal with the Access Application, as its submission on external review.
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act.⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁹

Issue for determination

11. The issue for determination in this review is whether section 59 of the IP Act applies in the circumstances and therefore whether QPS may refuse to deal with the Access Application.

³ Under section 66(1) of the IP Act.

⁴ On 16 August 2021.

⁵ 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 participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

⁶ As required under section 103(1) of the IP Act.

⁷ Section 21 of the HR Act.

⁸ *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 [111].

⁹ I also note the following observations made by Bell J in XYZ at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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.*'

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.¹⁰ This is known as the pro-disclosure bias in deciding to deal with applications. One of the few circumstances where it is not in the public interest to deal with an access application is set out in 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. Schedule 3 to the *Right to Information Act 2009* (Qld) (**RTI Act**) identifies the types of information which will comprise exempt information for the purposes of the IP Act.¹¹ Relevantly, under schedule 3, section 10(1)(f) of the RTI Act, information will be exempt information if its disclosure 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 (**Method or Procedure Exemption**). However, schedule 3, section 10(2) sets out certain circumstances where the exemption will not apply. Relevantly, information will not be exempt if it consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law.¹²

Findings

14. To enliven section 59 of the IP Act, the following criteria must be met:
- the Access Application must be 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
 - all of the documents to which the Access Application relates comprise exempt information.

Documents containing information of a stated kind or subject matter

15. To determine whether the first criteria of section 59 of the IP Act is met, it is necessary to examine the terms of the Access Application.
16. The Access Application states:

I would like to see how many times my Queensland Police Records and Information Management Exchange (QPRIME) file has been accessed.

As well as a reason each time my personal file has been accessed.

¹⁰ Section 58(1) of the IP Act. Section 58(2) of the IP Act identifies the only circumstances in which Parliament considers it would not be in the public interest to deal with an access application.

¹¹ Refer to the definition of 'exempt information' in schedule 5 to the IP Act and section 48(4) of the RTI Act.

¹² Schedule 3, section 10(2)(a) of the RTI Act.

17. On an objective reading of the Access Application, I am satisfied that it is framed as a request which relates to all documents that contain information of a stated kind, that is, information about access to the applicant's personal information within the QPRIME database. Accordingly, I find that this limb of section 59 of the IP Act is satisfied.

Exempt information

18. In relation to the second criteria, I must be satisfied that all of the documents to which the Access Application relates comprise exempt information.
19. As noted above, the Access Application seeks QPRIME access information for a period of approximately 12 years. The document which responds to the Access Application is a QPRIME Activity Report and it is QPS's position that it is comprised of exempt information under the Method or Procedure Exemption.
20. The QPRIME database has previously been described as:¹³

...a database kept by [QPS] of the information obtained by the QPS in its law enforcement functions. It is a dynamic and constantly updated central record for the QPS. The QPS would describe it as an intelligence tool, which allows police to record information about criminal activity, the circumstances in which criminal activity is likely to occur or has occurred, the identity of those involved or suspected to be involved in criminal activities and the identities of their associates. But it also records information obtained by police officers in the course of their investigations and records criminal intelligence which has been obtained. The QPRIME system also maintains activity reports, whereby a record is kept of the access to particular QPRIME records by, amongst others, serving police officers.

21. I am constrained in describing the QPRIME Activity Report responding to the Access application in any detail,¹⁴ but as noted in the paragraph above, QPRIME activity reports generally reveal the amount of activity and the number of occasions on which QPS officers have accessed QPRIME in relation to an individual and the badge number of the inquiring officer.
22. I am satisfied that accessing the QPRIME database is an integral part of QPS's lawful methods and procedures for preventing, detecting or investigating contraventions, or possible contraventions, of the law. As QPS noted in its purported decision:¹⁵

When dealing with contraventions, or possible contraventions, of the law, QPS officers record information about individuals on QPRIME, and such information may relate to intelligence or surveillance operations, or other investigations. Further, QPS officers also access information recorded in QPRIME both during and after such activities, for example, to obtain background information and inform decisions.

23. In his application for external review, the applicant submitted that while he accepts the QPRIME database is an integral part of QPS's lawful methods and procedures for preventing, detecting or investigating contraventions, or possible contraventions, of the law, he does not consider that disclosure of the requested information would prejudice the effectiveness of those methods or procedures.
24. In support of this view, the applicant submitted:¹⁶

¹³ *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 at [1].

¹⁴ Section 121(3) of the IP Act.

¹⁵ Dated 12 August 2021 at 3.

¹⁶ External review application dated 16 August 2021.

- to disclose either that 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
- disclosure of methods or procedures which are “obvious and well known to the community” is not likely to prejudice their effectiveness
- some, but not all of, QPRIME officer information might be exempt under other specific provisions in schedule 3, section 10 of the RTI Act which would ‘otherwise have no work to do’
- 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
- the logical result of finding that the QPRIME Access 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 Act and IP Act by claiming that ‘information held by it in a computer database 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’; 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, but other information continuing to be exempt as it was used by ordinary members of the QPS.

25. I note that these submissions replicate the submissions extracted in the Information Commissioner’s decision in the matter of *Cutts and Queensland Police Service (Cutts)*.¹⁷ While the particular information sought in *Cutts* differs from the information I am considering in this matter, the following findings of the Assistant Information Commissioner in that decision are nonetheless relevant to the matters before me in this matter:

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.¹⁸ 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*

¹⁷ [2017] QICmr 39 (31 August 2017) at [20].

¹⁸ In *Cutts*, the access applicant sought access to ‘Documents containing information of all officers who have accessed my name using QPRIME’, which the Assistant Information Commissioner referred to as the ‘QPRIME officer information’. For the purposes of this decision, I consider that Assistant Information Commissioner’s discussion and findings in relation to the ‘QPRIME officer information’ applies equally to the information requested in the Access Application.

operations or not, could reasonably be expected to prejudice these lawful methods and procedures as a whole.

...

27. The applicant submits that disclosure of QPRIME officer information might be exempt under other provisions in schedule 3, section 10,¹⁹ 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 applicant²⁰ require that an investigation be on foot,²¹ and that the information in issue be given in the course of the investigation, or obtained, used or prepared for it.²² 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, 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. [footnotes removed]

26. I agree with the above reasoning in *Cutts* and consider that the same reasons apply equally to the submissions made by the applicant in this review as noted at paragraph 24.
27. I am satisfied that disclosing a QPRIME activity report (including the document responsive to the Access Application), which shows when and how often QPS officers have accessed the QPRIME database in relation to an individual, could reasonably be expected to prejudice these QPS methods and procedures because it would enable an

¹⁹ That is, schedule 3, sections 10(1)(a), 10(3), 10(4), 10(5)(a), 10(5)(b) and 10(5)(c) of the RTI Act.

²⁰ Except schedule 3, section 10(5)(c) of the RTI Act which relates to information received by Crime Stoppers Queensland Ltd.

²¹ Schedule 3, section 10(1)(a) of the RTI Act.

²² 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.

individual (in this case, the applicant) to deduce the level of surveillance or investigation they may, or may not, be under.

28. Turning then to the circumstances where the Method or Procedure Exemption will not apply, as listed in schedule 3, section 10(2) of the RTI Act. I confirm that I have considered a copy of the QPRIME Activity Report in issue in this review. This is necessary in the circumstances, as was observed by the Court of Appeal in *Commissioner of the Police Service v Shelton & Anor* (**Shelton**):²³

... although s 59(2) extends the discretion to refuse to deal with the application by enabling its exercise without any requirement to identify the relevant documents, the latter dispensation will have no practical content where a provision such as sch 3 s 10(2) makes the actual consideration of those documents a necessary earlier step, in deciding the exemption issue. However, that will not necessarily be the case for other categories of exempt information under sch 3, which may permit the forming of an opinion in relation to the documents subject to a particular application by reference to the kind of information sought, without more.

29. The applicant submitted that he has been the subject of improper surveillance and contended that the requested information ‘*when examined in context*’ could also reasonably be used to reveal the scope of a law enforcement investigation has exceeded the limits imposed by law.²⁴
30. On the other hand, QPS submitted that the responsive document does not consist of information that would reveal that the scope of a law enforcement investigation has exceeded the limits imposed by law.²⁵
31. Given these submissions, the provision requiring consideration is schedule 3, section 10(2)(a) of the RTI Act.²⁶ As noted in *Shelton*,²⁷ I must consider whether the actual content of the document in issue meets a particular description – that is, whether the material itself discloses that any law enforcement investigation had exceeded proper bounds.
32. The Access Application seeks access to how many times the applicant’s QPRIME file has been accessed and the reasons for such access. I have carefully reviewed the content of the QPRIME Activity Report in issue and it does not reveal that the scope of any law enforcement investigation has exceeded the limits imposed by law. While the applicant may consider that the requested information could provide him with untested evidence concerning a QPS officer’s authority to access QPRIME, the nature of the QPRIME Activity Report is such that it cannot, of itself, reveal that any lawful investigative limits have been exceeded. Accordingly, while I have considered the applicant’s submissions, I am satisfied that the document responding to the Access Application does not consist of matter which reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law, and therefore schedule 3, section 10(2) of the RTI Act does not operate in the circumstances of this matter to render this document non-exempt under the Method or Procedure Exemption.

²³ [2020] QCA 96 at [48].

²⁴ Applicant’s email to OIC dated 31 January 2022, which also lists examples of what he considers to be improper surveillance.

²⁵ Letter to OIC dated 15 December 2021.

²⁶ In his external review application, the applicant submitted that he considers that all five provisions set out in schedule 3, section 10(2) applied to the QPRIME Activity Report and rendered it non-exempt. In a letter to the applicant dated 19 January 2022, I conveyed to the applicant my view that the only provision that may have application in this matter is schedule 3, section 10(2)(a) of the RTI Act. The applicant did not object to this view, accordingly I only address the exception in schedule 3, section 10(2)(a) of the RTI Act in this decision.

²⁷ At [45] and [51].

Conclusion

33. In view of the above, I find that section 59 of the IP Act applies to the Access Application, as it is expressed to relate to all documents that contain information of a stated kind and all of the documents to which the Access Application relates are comprised of exempt information under the Method or Procedure Exemption.

DECISION

34. I vary the decision of QPS and find that QPS may refuse to deal with the Access Application under section 59 of the IP Act.
35. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 18 March 2022

APPENDIX

Significant procedural steps

Date	Event
16 August 2021	OIC received the external review application.
9 September 2021	OIC notified the applicant and QPS that the external review application had been accepted and asked QPS to provide further information.
28 September 2021	OIC received the requested information from QPS.
26 October 2021	OIC requested further information from QPS.
4 November 2021	OIC provided an update to the applicant.
3 December 2021	OIC contacted QPS requesting a response to OIC's letter dated 26 October 2021.
10 December 2021	QPS requested an extension to provide a response to OIC's letter dated 26 October 2021.
13 December 2021	OIC granted an extension to QPS.
14 December 2021	The applicant requested an update. OIC provided an update to the applicant.
15 December 2021	QPS provided a response to OIC's letter dated 26 October 2021.
19 January 2022	OIC conveyed a preliminary view to the applicant.
31 January 2022	The applicant provided OIC with submissions in response to the preliminary view.
9 February 2022	OIC informed the applicant that OIC would issue a formal decision to finalise the review.