



Decision and Reasons for Decision

Citation:	<i>Law Abiding Firearms Owners Inc and Queensland Police Service [2019] QICmr 30 (20 August 2019)</i>
Application Number:	314389
Applicant:	Law Abiding Firearms Owners Inc
Respondent:	Queensland Police Service
Decision Date:	20 August 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - information of non-Queensland government officers/agencies - personal information and privacy - prejudice intergovernmental relations - whether disclosure would on balance be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to communications between QPS' Weapons Licensing Branch and others, including counterpart agencies or units in other jurisdictions, concerning the '*the proper categorisation or classification of any specific rifle or pistol*'.
2. QPS located 99 pages. QPS decided² to disclose the bulk of these pages to the applicant, refusing access to some information on the grounds its disclosure would, on balance, be contrary to the public interest. QPS' decision was based, in part, on objections to disclosure fielded by it from agencies outside of Queensland with whom it consulted³ while processing the applicant's access application.
3. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision. The range of information in issue was significantly narrowed during the course of the review, to that specified in paragraph 9 below.
4. I affirm QPS' decision. Access to the information remaining in issue may be refused under section 47(3)(b) of the RTI Act. Disclosure of this information would, on balance, be contrary to the public interest.

¹ Application dated 9 July 2018.

² Internal review decision dated 3 January 2019.

³ Under section 37 of the RTI Act.

⁴ Application dated 13 January 2019.

Background

5. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

Reviewable decision

6. The decision under review is QPS' internal review decision dated 3 January 2019.

Evidence considered

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

Information in issue

8. The applicant did not seek to pursue access to various pages or parts of pages initially in issue (i.e. to which QPS had refused access).⁵ Additionally, QPS agreed to release a further segment of information late in the review.
9. The information therefore remaining in issue comprises:
 - a) **Category A** – names and contact/identifying particulars of various public officers from jurisdictions other than Queensland;⁶ and
 - b) **Category B** – several 'mailbox' email address identifiers used by an agency in one of those jurisdictions.⁷

Issue for determination

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

Relevant law

11. The RTI Act gives people a right to access documents of government agencies such as QPS.⁸ This right is subject to other provisions of the RTI Act, including grounds on which access may be refused. Access may be refused to information the disclosure of which would, on balance, be contrary to the public interest.⁹

⁵ See applicant's email dated 16 May 2019, and my letters dated 30 May and 20 June 2019, the latter particularly confirming the information remaining in issue in this review.

⁶ Page 7 (second, third, fifth and sixth segments redacted from this page, the first being a mobile telephone number to which the applicant does not seek access (see further note 5)), 8 (second, third, fourth, fifth, sixth, eighth, ninth, 10th, 12th and 13th segments), 9 (both segments), 11 (third and fourth segments), 12 (first, third, fourth, fifth and sixth segments), 26 (both segments), 27 (first, second, third and fifth segments), 33 (first segment), 34 (first, second, third and fifth segments), 35 (second, third, fourth and fifth segments), 37 (sole segment) and 38 (sole segment).

⁷ Page 7 (fourth segment), 8 (first, seventh and eleventh segments), 11 (first segment), 12 (second segment), 33 (second segment) and 35 (first, sixth and seventh segments). As alluded to above, mobile telephone numbers appearing on any of these or the pages listed in note 6 are not in issue, the applicant having expressly advised it did not seek access to same: email dated 16 May 2019.

⁸ Section 23 of the RTI Act.

⁹ Section 47(3)(b) 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.

12. The RTI Act lists factors which may be relevant to deciding the balance of the public interest¹⁰ and sets out the following steps for deciding the balance of the public interest:¹¹
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
13. I am satisfied that disclosure of the information in issue would, on balance, be contrary to the public interest. In reaching this decision, I have followed the above steps, and, in doing so, have taken no irrelevant factors into account. I have also kept in mind the RTI Act's pro-disclosure bias¹² and Parliament's requirement that grounds for refusing access to information be interpreted narrowly,¹³ and have carefully considered the factors for deciding the public interest set out in schedule 4 to the RTI Act, and the applicant's submissions in this review.

Findings

Category A *Names, etc of officers from jurisdictions other than Queensland*

Factors favouring disclosure

14. Having reviewed the list of factors favouring disclosure of information set out in schedule 4, part 2 of the RTI Act, the applicant's submissions, QPS' decision and information relied on by QPS in making that decision, and the actual information itself, the key consideration that I can identify favouring disclosure of the Category A information is the general public interest in furthering access to government-held information.¹⁴
15. Disclosure of a handful of names of and particulars concerning officers from other jurisdictions could not, for example, reasonably be expected to:¹⁵
- promote 'the [Queensland] Government's' accountability¹⁶
 - contribute to positive and informed debate¹⁷
 - inform the community of 'the [Queensland] Government's' operations; or¹⁸
 - reveal the reason for, or background or contextual information informing, any government decision.¹⁹
16. In reaching the conclusions stated in the preceding paragraph, I am mindful of the Information Commissioner's findings in *Richardson and Department of Police; Whittaker (Third Party)*²⁰ – a decision made under the former *Freedom of Information Act 1992*

¹⁰ Schedule 4, these lists being non-exhaustive.

¹¹ Section 49(3) of the RTI Act.

¹² Section 44 of the RTI Act.

¹³ Section 47(2)(a) of the RTI Act.

¹⁴ Implicit, for example, in the preamble to the RTI Act.

¹⁵ The words 'could reasonably be expected to' call for a decision-maker to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (eg merely speculative/conjectural 'expectations') and expectations which are reasonably based, ie, expectations for the occurrence of which real and substantial grounds exist: *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [155] to [160].

¹⁶ Schedule 4, part 2, item 1 of the RTI Act. As explained further at paragraph 17, section 35(1) of the *Acts Interpretation Act 1954* (Qld) (**AI Act**) mandates that the reference to 'the Government' in this and other provisions of the RTI Act be read as a reference to the Queensland Government, hence my interpolating the word 'Queensland' into excerpts from this item and item 3 (cited below).

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

¹⁸ Schedule 4, part 2, item 3 of the RTI Act.

¹⁹ Schedule 4, part 2, item 11 of the RTI Act.

²⁰ (2001) 6 QAR 125 (*Richardson*).

(Qld) (**FOI Act**) – that the general concept of the ‘public interest’ as employed in the FOI Act was not limited to considerations concerning State or local government operations, but broad enough to extend to operations of government at a Commonwealth level.²¹

17. The RTI Act is, however, somewhat more prescriptive in its delineation of public interest considerations than was the FOI Act, and in view of the requirement in section 35(1) of the *Acts Interpretation Act 1954* (Qld) that a reference in an Act ‘to an officer, office or entity is a reference to such an officer, office or entity in and for Queensland’, the references in schedule 4, part 2, items 1 and 3 of the RTI Act to ‘the Government’ must be read as referring to the Queensland Government.²²
18. In any event, to the extent public interest considerations favouring disclosure may stand to be served – whether in respect of the Queensland, or any other government’s, operations – they have been largely if not wholly satisfied by disclosure to the applicant of the substantive text of the documents in which Category A particulars appear.
19. Turning then to weight to be attributed to considerations favouring disclosure, in view of the relatively peripheral nature of the Category A information, I would afford the general public interest consideration identified in paragraph 14 only limited weight.
20. Additionally, and in the interests of completeness, to the extent the RTI Act may embrace broader conceptions of the public interest in the manner stated in *Richardson*²³ (such that release of relevant names and particulars could be said to enhance the transparency and accountability of governments other than Queensland), I would afford these considerations marginal weight. This weighting is commensurate with the marginal nature of the Category A information itself, and its limited value in terms of fostering understanding of inter-agency dealings and public regulatory processes, contributing to informed debate, or otherwise promoting the public interest.

Factors favouring nondisclosure

21. As information about persons whose identities are apparent or reasonably ascertainable, the Category A information comprises personal information.²⁴ The RTI Act deems that disclosure of personal information would give rise to a public interest harm, a consideration weighing against disclosure.²⁵ The relevant agencies were, as noted above, consulted by QPS during processing by QPS of the applicant’s access application, and objected to the disclosure of this personal information.²⁶ This is personal information that identifies individuals as working²⁷ for certain agencies in a somewhat sensitive field. Disclosing this information, in the face of those agencies’ objections, would in my view give rise to a public interest harm of some significance, sufficient to warrant nondisclosure.

²¹ At [27].

²² Hence the interpolations at paragraph 15. Similarly, references to an ‘agency’ or ‘officer’ in the RTI Act must, given section 35(1) of the AI Act, be read as references to Queensland agencies and officers, such that it is difficult if not impossible to see how disclosure of non-Queensland officer names could, for example, reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of a Queensland agency or official (schedule 4, part 2, item 5 of the RTI Act – noting that I have cited this item for illustrative purposes only: there is nothing in the information before me suggesting deficiency in the conduct of any officer or agency, whether Queensland or otherwise, that might stand to be the subject of inquiry, let alone inquiry assisted by disclosure of any of the information in issue).

²³ Noting, again, that the lists of factors for deciding the public interest set out in Schedule 4 of the RTI Act are not exhaustive.

²⁴ ‘Personal information’ is ‘information ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information ...’: section 12 of the *Information Privacy Act 2009* (Qld).

²⁵ Schedule 4, part 4, section 6 of the RTI Act.

²⁶ Emails from relevant agencies to QPS dated 19 November 2018, 20 November 2018, 21 November 2018 and 26 November 2018.

²⁷ Or having worked, the officer whose name appears on pages 37 and 38 no longer employed by the objecting agency: relevant agency’s email to QPS dated 26 November 2018.

22. I also consider that disclosure of this information, in the face of objections from government entities in other jurisdictions, could reasonably be expected to prejudice intergovernmental relations,²⁸ by undermining those entities' confidence in the capacity of Queensland agencies to safeguard personal and operational information they may not, apparently, themselves ordinarily disclose pursuant to access requests made under their own information access regimes. In view of the importance of maintaining co-operative inter-jurisdictional relationships, particularly in the area of law enforcement, I afford this factor favouring nondisclosure significant weight.
23. In reaching this conclusion, I have taken into account the submission made by the applicant during the course of the review²⁹ questioning the application of the nondisclosure factor discussed above:

intergovernmental relations (being the totality of all relations between two governments - not the micro-relationships between officers in agencies) are rarely, if ever, prejudiced by the release of one government's information in circumstances in which knew they were giving control of that information to another government with very different FOI or RTI legislation. We respectfully submit that absolutely no material prejudice to intergovernmental relations would arise from releasing any of the information in issue.

24. I do not see any justification for reading schedule 4, part 3, item 14 in the manner advanced by the applicant: a large proportion of communications or relations between governments ultimately occur or are conducted at an agency-agency/officer-officer level. Disclosure of information that could reasonably be expected to prejudice such relations ('micro' or otherwise) is sufficient, in my view, to enliven this nondisclosure factor.³⁰
25. Agencies and officers from other jurisdictions should ordinarily be entitled to control dissemination of their own information,³¹ in accordance with their local practices, policies, and information access regimes. Weighing competing considerations against one another, I am satisfied that disclosure of Category A information would, on balance, be contrary to the public interest.

Category B 'Mailbox' email address information

26. QPS also refused access to parts of 'mailbox'-style email addresses, used by non-Queensland agencies for facilitating communications on certain topics.
27. QPS' refusal was premised on objections by these agencies to the release of the email addresses, which in turn is based on the fact that the addresses are not generally known and that making them public could result in unsolicited email traffic.³² This would diminish their usefulness and dissipate agency resources, by requiring officers to 'comb through' such unsolicited email in order to identify relevant communications.

²⁸ Schedule 4, part 3, item 14 of the RTI Act.

²⁹ Via email dated 16 April 2019.

³⁰ Noting, again, that the list of nondisclosure factors in schedule 4, part 3 of the RTI Act is not exhaustive: even assuming that the applicant's preferred interpretation of item 14 is correct, disclosure of information that could reasonably be expected to prejudice cross-jurisdictional agency-to-agency or officer-to-officer relations gives rise, in my view, to a consideration telling in favour of nondisclosure. I can also see no basis for the assertion that prejudice to intergovernmental relationships can 'rarely, if ever' arise from disclosure of information where that information has been knowingly communicated between governments with differing information access regimes – the very existence of item 14 suggests otherwise, particularly given the seeming unlikelihood of one government 'giving' another its information 'unknowingly'.

³¹ Including personal work history, in the case of individuals no longer employed.

³² In its 26 November 2018 submissions to QPS, the objecting agency gave an example where this situation had previously occurred.

Factors favouring disclosure

28. As with the officer names discussed above, I can identify no public interest considerations of any appreciable weight telling in favour of this information, and I adopt the reasoning stated at paragraphs 14-20 pertaining to the Category A information.
29. In other words, I acknowledge the general public interest in promoting access to government-held information, which, as with the Category A information, I afford limited weight, in view of the information's peripheral nature.
30. I cannot, however, identify how disclosure of what is essentially technical operational information relating to the affairs of non-Queensland agencies could reasonably be expected to promote open discussion of public affairs and enhance the Queensland Government's accountability,³³ contribute to positive and informed debate on important issues or matters of serious interest,³⁴ reveal background or contextual information, ensure effective oversight of expenditure of public funds,³⁵ nor advance any of the other considerations favouring disclosure itemised in schedule 4, part 2 of the RTI Act.

Factors favouring nondisclosure

31. On the other hand, my view is that the concerns of the non-Queensland agency outlined in paragraph 27 are reasonably-based, and that they give rise to strong public interest considerations weighing against disclosure of relevant information.³⁶ As with the Category A information, I also consider the agency to whom the Category B information relates is entitled to control the dissemination of its operational information, and I do not think it unreasonable to expect that unconditional disclosure by QPS, contrary to this entitlement and the agency's own information disclosure practices, could impair the working relationship between QPS and this agency of another government, thereby prejudicing intergovernmental relationships.³⁷
32. I afford the above considerations substantial weight, and am satisfied they outweigh the general consideration favouring disclosure identified in paragraph 29.
33. Additionally, and to avoid any doubt, in the event a broader 'trans-jurisdictional' conception of the public interest of the kind recognised by the Information Commissioner in *Richardson* might tell in favour of this Category B information, I would give such consideration only marginal weight, for reasons equivalent to those stated in paragraph 20 as regards the Category A information. I do not consider this consideration would materially alter the balance of the public interest stated in the preceding paragraph – balancing competing considerations against one another, I am satisfied that those favouring nondisclosure as discussed above outweigh those in favour.
34. Access to the Category B information may also be refused, on the grounds disclosure would, on balance, be contrary to the public interest.

³³ See note 16.

³⁴ Note 17.

³⁵ Schedule 4, part 2, item 4 of the RTI Act.

³⁶ QPS decided that disclosure of this Category B information could reasonably be expected to prejudice the 'private, business, professional, commercial or financial affairs of entities' (schedule 4, part 3, item 2 of the RTI Act). It is not clear that this nondisclosure factor accommodates the operational affairs of a public regulatory agency. For the reasons set out in paragraph 27 I am, however, satisfied that disclosure would prejudice these operational affairs, and that this is a legitimate public interest consideration telling against disclosure.

³⁷ Schedule 4, part 3, item 14.

Applicant's submissions

35. I conveyed the general substance of the reasoning at paragraphs 14-34 to the applicant in the course of the review.³⁸ Certain of the applicant's submissions in reply have been directly addressed above; more generally, the applicant argued that:³⁹

LAF0 seeks little more than the release of routine work information (such as email addresses) of public servants of other Australian jurisdictions. The idea that the release of public servants' names would prejudice intergovernmental relations where those public servants are already giving media interviews about their roles and are named in their agencies' annual reports ...is, contrary to your assessment, laughable.

Moreover, the information in issue concerns administrative decision-making about the issue of licenses and permits under various State Firearms or Weapons Acts. To say there is no public interest in the release of the information in issue suggests Queensland's licensed firearms owners should be prevented from understanding the opaque processes by which public power is exercised to grant or refuse licenses and permits under State law.

36. I have explained above my satisfaction that, contrary to the applicant's contentions, disclosure of the information in issue could reasonably be expected to prejudice intergovernmental relations. As I have also made clear, some of this information comprises personal information, disclosure of which the RTI Act presumes will give rise to a public interest harm. That senior officers from a given agency⁴⁰ might have made public comment to the press or in an annual report appears to me be neither here nor there in evaluating the balance of the public interest in this case.
37. As for the remainder of these submissions, what '*concerns*' relevant decision-making in this case, or the '*processes*' by which particular instances of '*public power*' are '*exercised*', is the substance of the pages in issue, setting out officer and agency queries, responses and positions: information which has been released to the applicant. I cannot see how disclosure of a small number of names/particulars of public officers from other jurisdictions, nor parts of email addresses used by a non-Queensland agency, could reasonably be expected to assist the community to '*understand*' weapons regulation decision-making under Queensland, or indeed any Australian, law.

DECISION

38. I affirm the decision under review, insofar as it relates to the Category A and Category B information. Access to this information may be refused under section 47(3)(b) of the RTI Act, on the grounds its disclosure would, on balance, be contrary to the public interest.
39. I have made this decision under section 110(a) of the RTI Act, as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Louisa Lynch
Right to Information Commissioner

Date: 20 August 2019

³⁸ Letters dated 9 April and, particularly, 30 May 2019.

³⁹ Hyperlink omitted. Certain other submissions made by the applicant questioned OIC's impartiality – I do not propose to deal with those submissions, beyond stating that I reject them.

⁴⁰ And not one whose information is in issue in this review.

APPENDIX

Significant procedural steps

Date	Event
13 January 2019	OIC received the applicant's external review application.
14 January 2019	OIC notified QPS and the applicant that the review application had been received and requested procedural documents from QPS.
4 February 2019	OIC received the requested documents from QPS.
15 February 2019	OIC notified QPS and the applicant that the application for external review had been accepted.
5 March 2019	OIC received the information in issue from QPS.
9 April 2019	OIC requested submissions on the clarification of the scope from the applicant.
16 April 2019	OIC received submissions clarifying the scope from the applicant.
16 May 2019	OIC received further clarification from the applicant.
30 May 2019	OIC wrote to the applicant, conveying a preliminary view that QPS may refuse access to the information in issue on the basis that its disclosure would be contrary to the public interest.
13 June 2019	OIC received the applicant's response rejecting OIC's preliminary view.
20 June 2019	OIC wrote to the applicant, confirming that the applicant rejected OIC's view on the matter, and clarifying the information remaining in issue in this review.
25 July 2019	OIC advised the applicant by letter that OIC would progress to issuing a formal decision.