



Decision and Reasons for Decision

Application Number: 311307

Applicant: Locker Valley Regional Council

Respondent: Queensland Police Service

Decision Date: 15 May 2013

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – application for information concerning an investigation about the uploading of offensive material to Facebook – whether disclosure of information would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant, Lockyer Valley Regional Council (**Council**), applied¹ to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for all documents relating to an investigation that was undertaken by QPS about the creating of a false Facebook page about the Mayor of Council.
2. QPS identified 296 documents and decided² to release 163 documents in full and refuse access to parts of 133 documents on the basis that the information was either irrelevant to the access application or its disclosure would, on balance, be contrary to the public interest.
3. Council applied for internal review on three specific issues: the sufficiency of QPS' searches, QPS' decision that some information was irrelevant to the application and QPS' decision that Internet Protocol (**IP**) addresses located on specified pages would be contrary to the public interest to release. QPS affirmed the relevant parts of the original decision on internal review.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' internal review decision.³
5. During the external review, several issues were informally resolved.⁴ As a result, the information remaining in issue was narrowed to information which QPS claimed was contrary to the public interest to disclose—that is, the IP addresses.

¹ By access application dated 4 September 2012 and received by the Queensland Police Service (**QPS**) on 5 September 2012.

² Decision dated 8 October 2012.

³ Internal review decision dated 26 November 2012.

⁴ On 14 March 2013, OIC conveyed to the applicant the view that QPS was entitled to refuse access to information claimed to be irrelevant as it did not relate to the terms of the access application and that QPS had conducted sufficient searches for documents which respond to the access application. The applicant accepted the view by correspondence dated 21 March 2013. Accordingly, I have not considered this information in this decision.

6. Given the particular circumstances of this review, I am satisfied that the IP addresses under consideration are not personal information. Accordingly, I do not consider that their disclosure would prejudice an individual's right to privacy or cause a public interest harm by disclosing personal information of another individual. Therefore, QPS is not entitled to refuse access to the IP addresses as their disclosure would not, on balance, be contrary to the public interest.

Background

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

Reviewable decision

8. The decision under review is the internal review decision of QPS dated 26 November 2012.

Evidence considered

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

Information in issue

10. The information in issue in this review is located in pages 64-71, 86-89 and 215 of the documents located by QPS and is IP addresses (**IP addresses**).

Issue in this Review

11. In light of QPS's submission that it is, on balance, contrary to the public interest to disclose the information in issue as it is personal information, the issue that arises for determination in this review is whether the IP addresses are, in the particular circumstances of this case, personal information.

Relevant law

12. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁵
13. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
14. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁶ and explains the steps that a decision-maker must take⁷ in deciding the public interest as follows:

⁵ Sections 47(3) (b) and 49 of the RTI Act.

⁶ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

⁷ Section 49(3) of the RTI Act.

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.⁸
- Under the RTI Act, an individual has a right to be given access to documents of an agency. Access should be given to a document unless disclosure would, on balance, be contrary to the public interest.⁹

Findings

Irrelevant factors

15. I do not consider that any irrelevant factors arise in this case.

Factors favouring disclosure and nondisclosure of the IP addresses

16. As previously noted, QPS has refused access to the IP addresses on the basis that they are personal information, disclosure of which would, on balance, be contrary to the public interest.
17. If the IP addresses are personal information, their disclosure may:
- prejudice an individual's right to privacy; and
 - cause a public interest harm by disclosing personal information of another individual.
18. It is necessary therefore to make a finding on whether the IP addresses are personal information for the purposes of the RTI Act.
19. Personal information is '*information or an opinion... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.¹⁰
20. Council submits:

...personal information is information which, in broad terms, has the capacity to identify a person. An IP server address alone consists of a sequence of numbers and data from which, in the absence of any other information, the identity of a person is unable to be obtained.

21. QPS submits:¹¹

It is widely accepted that if information (including an IP address) is "linked to other information which would allow an individual to be reasonably identified then it will become personal information..."

The applicant in this matter has openly stated that they intend to appoint their own independent expert to undertake further investigations in an attempt to identify the original source and obtain any further information which would lead to identifying those persons responsible. The means by which they intend to do this are not clear.

⁸ As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

⁹ Section 44(1) of the RTI Act. This is referred to as the *pro-disclosure bias* in deciding access to documents.

¹⁰ See section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**).

¹¹ Submission dated 11 March 2013.

22. It is clear that the IP addresses do not immediately identify a person—they do not contain a name or a description of an individual. Section 12 of the IP Act states where an individual's identity is not readily apparent, information can still be personal information if a person's identity can be reasonably ascertained. However, even where a person's identity is not readily apparent, it may be possible with the assistance of additional information to identify a person.¹²
23. In *Mahoney*,¹³ the Right to Information Commissioner found that whether additional information will mean that an individual's identity can be reasonably ascertained will depend on a number of factors, such as:
- how available the additional information is
 - how difficult it is to obtain
 - how many steps are required to identify the individual
 - how certain the identification will be
 - whether it will identify one specific individual or a group of people; and
 - whether the individual receiving the information can use it to identify the individual.
24. The information located and released to the applicant reveals that QPS finalised the investigation without being able to identify the owner of the IP addresses, on the basis of advice received from the service providers that the IP addresses were not able to be traced further.¹⁴ Specifically, in an email sent from a QPS officer to an officer of Council, QPS stated:¹⁵
- Advice has been received from providers, ie Telstra, that there are no further lines of enquiry to be conducted with the IP details which would provide police with the originating source.*
25. When OIC raised this with QPS on external review, it submitted:¹⁶
- Despite an individual not being charged with an offence in this matter, that does not of itself mean that an IP address cannot identify other persons, including innocent parties, involved in the investigation.*
26. I do not consider that this submission is reasonable, given that one of the purposes of the investigation was to identify the individuals associated with the IP addresses and Telstra advised QPS that the IP addresses were not able to be traced further in order to identify an individual. Given that QPS, with its law enforcement powers and investigative expertise, were unable to identify any individuals from the IP addresses, I do not consider that it can be said that additional information is readily available to Council; or easily obtainable, such that it could be used together with the IP addresses to identify an individual. In short, I find it unreasonable to believe that Council will be able to identify someone from the IP addresses.
27. For these reasons, I am satisfied that the IP addresses are not personal information. Accordingly, I do not consider that their disclosure would prejudice an individual's right

¹² *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (*Mahoney*) at 21.

¹³ *Mahoney* at 21.

¹⁴ As disclosed at page 195 of the information located by QPS and released to the applicant.

¹⁵ Email dated 17 July 2012 at page 195 of the information released to the applicant.

¹⁶ In a letter dated 7 March 2013.

to privacy or cause a public interest harm by disclosing personal information of another individual. I therefore have not identified any factors favouring nondisclosure of the information.

28. I have also not identified any factors favouring disclosure of the IP addresses.

Balancing the factors

29. As stated above, I have not identified any factors favouring disclosure or nondisclosure.
30. Taking into account the pro-disclosure bias in the RTI Act—that access should be given to a document unless giving access would, on balance, be contrary to the public interest—I consider that disclosure of the IP addresses would not, on balance, be contrary to the public interest.

DECISION

31. I set aside the internal review decision of QPS dated 26 November 2012 and substitute a decision to grant access to the IP addresses on the basis that disclosure is not, on balance, contrary to the public interest.
32. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

J S Mead
Right to Information Commissioner

Date: 15 May 2013

APPENDIX

Significant procedural steps

Date	Event
5 September 2012	QPS receives the access application dated 4 September 2012.
8 October 2012	QPS decides to refuse the applicant access to parts of 133 documents.
2 November 2012	The applicant seeks internal review of QPS' decision dated 8 October 2012.
26 November 2012	QPS affirms its original decision to refuse access.
11 December 2012	OIC receives the applicant's request for external review of the internal review decision.
20 December 2012	OIC informs the applicant and QPS that the application for external review has been accepted. OIC asks QPS to provide a submission about the sufficiency of searches conducted to locate documents within the scope of the access application.
8 January 2013	QPS provides a submission and a copy of all documents located.
5 March 2013	OIC conveys a view to QPS that QPS: <ul style="list-style-type: none"> • is not entitled to refuse access to the IP addresses as its disclosure would not, on balance, be contrary to the public interest • has correctly identified irrelevant information; and • has conducted sufficient searches for documents which respond to the access application.
7 March 2013	QPS provides a submission maintaining its claim that disclosure of the IP addresses is, on balance, contrary to the public interest.
11 March 2013	OIC conveys a view to the applicant that QPS: <ul style="list-style-type: none"> • has correctly identified irrelevant information; and • has conducted sufficient searches for documents which respond to the access application.
14 March 2013	OIC writes to the applicant confirming the view conveyed on 11 March 2013, providing a copy of the written view to QPS and QPS' response.
21 March 2013	The applicant accepts OIC's view about irrelevant information and the sufficiency of searches conducted by QPS.
5 April 2013	QPS confirms that it maintains its objection to disclosure of the IP addresses on the basis that disclosure would, on balance, be contrary to the public interest.