



Decision and Reasons for Decision

Application Number: 311149

Applicant: Young

Respondent: Queensland Police Service

Decision Date: 25 June 2013

Catchwords: **ADMINISTRATIVE LAW - RIGHT TO INFORMATION – REFUSAL OF ACCESS** – applicant sought information about the offenders and witnesses involved in an altercation at a licensed venue and the CCTV footage of the incident – whether disclosure of the information would, on balance be contrary to the public interest – section 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant was the victim of an assault at a licensed premises. He applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a copy of the police file of the assault investigation.¹
2. QPS located 70 documents and one CCTV DVD² and released 8 documents in full. QPS refused a number of documents on the grounds that disclosure would, on balance, be contrary to the public interest to disclose. QPS allowed the applicant to view the DVD.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision.³ During the course of the external review, the applicant agreed to narrow the scope of his application to the names and addresses of the offenders and witnesses to the assault as they appear on the police file and a copy of the CCTV footage.⁴
4. In the circumstances:
 - As it is not possible to separate the personal information in the CCTV footage, the factors favouring nondisclosure of the CCTV footage (personal information and privacy of other individuals) outweigh the factor favouring disclosure

¹ Application dated 31 October 2011.

² Decision dated 30 July 2012.

³ Application dated 16 August 2012.

⁴ There were two witnesses and three offenders. The offenders were convicted of the assault.

(personal information of the applicant)—therefore QPS are entitled to refuse access to the CCTV footage; and

- QPS are not entitled to refuse access to the names and addresses of the offenders and witnesses as the public interest in the administration of justice outweighs the public interest in nondisclosure of personal information.

Background

5. Significant procedural steps are set out in the Appendix.

Reviewable decision

6. The decision under review is QPS' decision dated 30 July 2012.

Evidence considered

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

Information in issue

8. The information in issue is:

- names and addresses of the offenders and witnesses to the assault (**names and addresses**); and
- CCTV footage of the assault (**CCTV footage**).

Relevant law

9. The RTI Act provides that an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁵

10. 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.

11. 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:

- 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

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.

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

CCTV footage

12. QPS refused access to a copy of the CCTV footage on the grounds that disclosure would, on balance be contrary to the public interest. QPS allowed the applicant to view the CCTV footage under section 68(1) of the RTI Act.
13. As the applicant requested a copy of the CCTV footage in his access application, the question is, would disclosure of a copy of the CCTV footage be, on balance, contrary to the public interest?

Findings

Irrelevant factors

14. No irrelevant factors arise on the information before me.

Factors favouring disclosure

15. In the circumstances of this case, the following factors favouring disclosure are relevant:
 - some of the information is the applicant's personal information;⁹ and
 - disclosure could reasonably be expected to contribute to the administration of justice.¹⁰
16. The applicant appears in the CCTV footage—this is the applicant's personal information and this creates a factor favouring disclosure to which I give moderate weight.
17. Where disclosure of information could reasonably be expected to contribute to the administration of justice, a factor favouring disclosure will arise. The applicant is seeking to institute civil proceedings in relation to the altercation the subject of the CCTV footage. In cases where disclosure of the information would assist the applicant to pursue civil proceedings, this factor will be relevant.¹¹ In this case, I do not consider that the applicant is precluded from commencing his claim in the absence of the CCTV footage. I therefore do not consider this factor is relevant and I give it no weight.

Factors favouring nondisclosure

18. The footage contains images of other individuals. This is the personal information of those individuals.¹²
19. Disclosing personal information of other people could reasonably be expected to cause public interest harm. The CCTV footage contains personal information of other people, therefore this is a factor favouring nondisclosure of the CCTV footage.¹³ Disclosing personal information of other people may also reasonably be expected to prejudice the

⁹ Schedule 4, part 3, item 3 of the RTI Act.

¹⁰ Schedule 4, part 2, item 17 of the RTI Act.

¹¹ 1OS3KF and Department of Community Safety (Unreported, Queensland Information Commissioner, 16 December 2011).

¹² Personal information is defined in section 12 of the *Information Privacy Act 2009* (Qld) as information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

¹³ Schedule 4, part 4, item 6 of the RTI Act.

protection of the right of the people in the CCTV footage to privacy.¹⁴ Therefore this factor also arises for consideration.

20. In my view, individuals can expect that their image will be recorded on CCTV cameras in many public locations and particularly in and around licensed venues. However, it is also reasonable to expect that this footage would be used for limited purposes and not released without restriction. I acknowledge that in this case, the CCTV records an assault in which the applicant was the victim and that the applicant wishes to access the footage for the purpose of litigation. However, I note my earlier observation that the footage is not crucial to the commencement of litigation. In my view, the privacy interest of the individuals who appear in the footage remains relatively high, therefore I give this factor moderate weight. I also give the public interest in nondisclosure of other people's personal information moderate weight.

Balancing the public interest

21. Some of the information in the CCTV footage is the applicant's personal information, which, as discussed above gives rise to a factor favouring disclosure. I have considered whether it is possible for QPS to give the applicant a copy of the CCTV footage subject to the deletion of the personal information of the other individuals i.e. by de-identifying the other people who appear in the footage. QPS submits that it does not have the equipment to allow it to blur the images of other individuals and it is not possible for them to edit the footage in this way. Therefore it is not possible to give the applicant access to his personal information without also disclosing the personal information of other people.
22. As it is not possible to separate the personal information in the CCTV footage, I find that the factors favouring nondisclosure of the CCTV footage (personal information and privacy of other individuals) outweigh the factor favouring disclosure (personal information of the applicant). Therefore, disclosure of the CCTV footage would, on balance, be contrary to public interest.

Names and addresses

Irrelevant factors

23. I do not consider that any irrelevant factors arise in relation to this information.

Factors favouring disclosure and nondisclosure of the Information in Issue

Personal information and privacy

24. The information being considered here is the name and contact details of offenders and witnesses as they appear in the police report of the assault. This is clearly the personal information of the witnesses and the offenders.
25. Disclosing the personal information of the witnesses and offenders could reasonably be expected to cause a public interest harm and this is a factor favouring nondisclosure of the witness information. This disclosure could also reasonably be expected to prejudice an individual's right to privacy.
26. The OIC has consulted the three offenders and the two witnesses about their views on release of their personal information. Letters were sent to the three offenders by

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

registered post which stated that if this Office did not hear from them, it would be assumed they did not object to disclosure of their information. Two of the offenders did not respond and so were taken not to have objected. The third responded via their solicitor stating that they were agreeable to releasing their name and being contacted through their solicitors. They objected to disclosure of their address. The RTI Act does not allow me to consider information that does not form part of the information in issue, therefore I am not able to direct QPS to disclose the third offender's solicitors address, as it does not form part of the information in issue. I therefore can only take into account the fact that the third offender objected to disclosure of their address. Both of the witnesses consented to disclosure of their personal information.

27. Given the above, I afford low weight to these two factors favouring nondisclosure.

Contribute to the administration of justice

28. A factor favouring disclosure will arise in circumstances where disclosing information could reasonably be expected to contribute to the administration of justice for a person.¹⁵

29. In this case, as explained earlier in this decision, the person seeking access to the names and addresses under the RTI Act is the victim of an assault that occurred at a licensed venue.

30. The applicant seeks access to the information because they intend to bring civil proceedings in relation to the assault.

31. On the information available to me, I am satisfied that:

- the applicant has not been able to access the names and addresses as a result of the criminal proceedings (which are now finalised)
- without this information the applicant is prevented from identifying the appropriate parties to the civil claim; and
- disclosing the names and addresses to the applicant under the RTI Act would assist the applicant in pursuing their civil claim as the names and addresses of the offenders are necessary to commence an action.

32. In light of the above, I consider this public interest factor is relevant and I afford it significant weight.

Balancing the relevant factors

33. For the reasons set out above, I afford only low weight to the factors favouring nondisclosure of the Information in Issue (that is, personal information and privacy) and significant weight to the public interest factor favouring disclosure (that is, disclosure could reasonably be expected to contribute to the administration of justice for a person). I find that disclosure of the names and addresses would not, on balance, be contrary to the public interest.

DECISION

34. I vary the decision under review and find, for the reasons set out above, that:

¹⁵ Schedule 4, part 2, item 17 of the RTI Act.

- the CCTV information should not be disclosed as disclosure would, on balance be contrary to the public interest; and
- the names and addresses should be disclosed as disclosure would not, on balance, be contrary to the public interest.

35. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 25 June 2013

APPENDIX**Significant procedural steps**

Date	Event
1 November 2011	QPS received the applicant's RTI Act application.
30 July 2012	QPS issued its decision to the applicant limiting access.
28 July 2012	OIC received the applicant's external review application.
3 December 2012	Applicant agreed to exclude some information from the scope of the application.
10 January 2013	OIC conveyed a view to QPS that access to the relevant information could be disclosed under the RTI Act and that this disclosure would not, on balance, be contrary to the public interest. OIC invited QPS to provide submissions to OIC by 25 January 2013.
10 January 2013	OIC conveyed a view to the three offenders and one witness notifying them of the likely disclosure of information under the RTI Act of concern to them. OIC invited third parties to provide submissions to OIC by 25 January 2013.
21 January 2013	One of the offenders responded to our view, agreeing to release of their name, but not their address.
12 February 2013	OIC conveyed a view to the remaining witness notifying them of the likely disclosure of their information under the RTI Act.
13 February 2013	The final witness agreed to disclosure of their information.
18 February 2013	OIC provided an update to QPS, seeking their views on release of the information in issue.
20 February 2013	QPS responded to OIC, continuing to object to disclosure of the information in issue.
15 March 2013	Applicant's solicitor confirmed that the applicant was still seeking access to both the CCTV footage and the names and addresses.