



Decision and Reasons for Decision

Citation:	3RS8NM and Queensland Health [2017] QICmr 2 (13 January 2017)
Application Number:	312767
Applicant:	3RS8NM
Respondent:	Queensland Health
Decision Date:	13 January 2017
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATION - EXEMPT INFORMATION - application for access to all documents relating to an investigation into allegations of suspected official misconduct - whether all of the documents to which the application relates comprise exempt information - refusal to deal with application - section 40 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to a finalised investigation into allegations of suspected official misconduct - whether information is exempt under schedule 3 section 10(4) of the <i>Right to Information Act 2009</i> (Qld) - whether information is 'about' the applicant - whether the exception in schedule 3, section 10(6) of the <i>Right to Information Act 2009</i> (Qld) applies</p>

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Health (**QH**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to all documents relating to an investigation, undertaken by the former Department of Community Safety (**DCS**), into allegations of suspected official misconduct within the Queensland Ambulance Service (**QAS**) which the applicant became aware of whilst working for the QAS.¹
2. QH refused to deal with the application under section 40 of the RTI Act on the basis that the requested documents relate to a public interest disclosure. The applicant then

¹ At the time of the investigation, QAS fell within the portfolio of the Minister then responsible for the Department of Community Safety. Due to intervening machinery of government changes, when the applicant made the RTI Act application, QAS had moved into the portfolio of the Minister for Health. Accordingly, the relevant respondent agency in this review is Queensland Health.

applied to the Office of the Information Commissioner (**OIC**) for external review of QH's decision.

3. For the reasons set out below, I affirm QH's decision to refuse to deal with the application under section 40 of the RTI Act. I have found that this section applies as all of the documents to which the application relates would be exempt under schedule 3, section 10(4) of the RTI Act.

Background

4. Significant procedural steps taken in processing the application and conducting the external review are set out in the Appendix to these reasons.

Reviewable decision

5. The decision under review is QH's decision made on 8 January 2016.

Evidence considered

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

Issue for determination

7. QH refused to deal with the application under section 40 of the RTI Act. QH's decision also referred to section 47(3)(a) and schedule 3, section 12(1) of the RTI Act.
8. The Information Commissioner (or their delegate) can decide any matter in relation to the access application that could, under the Act, have been decided by the agency dealing with the application.² In deciding this matter, I have considered the issues for determination to be firstly, whether section 40 of the RTI Act is enlivened in respect of the access application and secondly, whether all of the requested documents are exempt under schedule 3, section 10(4) of the RTI Act (**Prescribed Crime Body Exemption**).
9. The applicant made lengthy submissions to OIC during the external review and I have carefully considered this material. I acknowledge that the investigation, and associated workplace issues, involve matters of significant concern to the applicant. However, the majority of the applicant's submissions do not engage with the issues for determination in this review as identified in paragraph 8 above. On several occasions during the review, OIC attempted to explain to the applicant the limits of the Information Commissioner's jurisdiction. Despite these communications, the applicant proceeded to provide OIC with lengthy written submissions raising matters that were either irrelevant to the issues for determination, or beyond OIC's jurisdiction. Therefore, to the extent the applicant's submissions relate to issues beyond the scope of this review, they are not referred to in these reasons for decision.

Relevant law

10. Section 39 of the RTI Act provides that where an access application is made, an agency should deal with the application unless this would, on balance, be contrary to the public interest. Section 40 of the RTI Act provides one set of circumstances in which Parliament has considered it would, on balance, be contrary to the public interest to deal with an access application.

² Section 105(1)(b) of the RTI Act.

11. Section 40 of the RTI Act allows an agency to refuse to deal with an application if:
 - (i) the application requests all documents, or all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
 - (ii) it appears to the agency that all of the documents to which the application relates are comprised of exempt information.³
12. If an agency relies on section 40 of the RTI Act, it is not required to identify any or all of the documents that would be relevant to the access application.⁴ However, in the circumstances of a specific case, it may be appropriate and necessary to consider the relevant documents to be satisfied that every relevant document comprises exempt information.⁵
13. 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.⁶ Relevantly, the Prescribed Crime Body Exemption⁷ provides that information is exempt information if it was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body. However, schedule 3, section 10(6) of the RTI Act will exclude the operation of the Prescribed Crime Body Exemption if the investigation has been finalised and the relevant information is 'about' the applicant.
14. Accordingly, in this case, if it can be established that all documents relevant to the access application were obtained, used or prepared for an investigation of the type described in the Prescribed Crime Body Exemption and the documents are not 'about' the applicant (for the purposes of the exception), the refusal to deal provision in section 40 of the RTI Act will apply.

Findings

Is the access application expressed to relate to all documents that contain information of a stated kind or relate to a stated subject matter?

15. Yes, for the reasons that follow.
16. The access application was initially expressed as seeking 'a 100% reconciled copy of investigation [number]'. Following discussions between the applicant and QH, the scope was amended to 'capture any documents relevant to an investigation into the alleged incidents'.⁸
17. I am satisfied that the access application was, effectively, a request for all documents relevant to the specified investigation, i.e., a stated subject matter (**Requested Documents**)⁹ and that therefore, the first limb of section 40 of the RTI Act is satisfied.

³ Section 48(2) of the RTI Act defines 'exempt information' as the information described in schedule 3 of the RTI Act.

⁴ Section 40(2) of the RTI Act.

⁵ In this review, I have examined all of the documents located by QH in response to the application.

⁶ Section 48(2) of the RTI Act.

⁷ Schedule 3, section 10(4) of the RTI Act.

⁸ QH decision dated 8 January 2016.

⁹ A small number of the documents provided to OIC by QH do not appear to fall within the terms of the access application and therefore, I have excluded these as I consider the applicant did not intend to capture them as part of his application.

Does it appear that all of the Requested Documents comprise exempt information?

18. Yes, for the reasons set out below, it appears that all of the Requested Documents comprise exempt information under the Prescribed Crime Body Exemption and that therefore, the second limb of section 40 of the RTI Act is satisfied.

Was the investigation conducted by an agency performing the prescribed functions of a prescribed crime body?

19. Yes, for the reasons that follow.
20. Under the RTI Act, the Crime and Corruption Commission (**Commission**)¹⁰ is a prescribed crime body.¹¹ The prescribed functions of the Commission include corruption functions.¹² In discharging these functions the Commission must ensure that a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the CC Act principles for performing the corruption functions.¹³ These principles include the principle of devolution which specifies that action to deal with corruption in a unit of public administration should generally happen within the unit.¹⁴
21. The evidence available to OIC confirms that having received and assessed allegations which, if proven, would amount to *official misconduct*,¹⁵ the Commission referred the matter to the Ethical Standards Unit of DCS¹⁶ for investigation, subject to the Commission's monitoring role (**Investigation**).¹⁷ In undertaking the Investigation and notifying the Commission of its outcome, I am satisfied that DCS was performing a prescribed function of the Commission, specifically its corruption functions.¹⁸

Were the Requested Documents 'obtained, used or prepared' for the Investigation?

22. Yes, for the reasons that follow.
23. The terms *obtained*, *used* and *prepared* are not defined in the RTI Act or *Acts Interpretation Act 1954* (Qld) so they must be given their ordinary meaning.

¹⁰ The Commission was, at the time the relevant investigation was conducted, called the Crime and Misconduct Commission (**CMC**). The *Crime and Misconduct Act 2001* (Qld), which established the CMC, was amended by the *Crime and Misconduct and other Legislation Amendments Act 2014* (Qld) (**CMOLA Act**). Among other things, the CMOLA Act amendments changed the name of the Act to the *Crime and Corruption Act 2001* (Qld) (**CC Act**) and re-named the CMC the Crime and Corruption Commission. For ease of reference, these reasons refer to the CC Act and Commission.

¹¹ See definition of *prescribed crime body* in schedule 3, section 10(9) of the RTI Act.

¹² Schedule 3, section 10(9) of the RTI Act. See definition of *corruption functions* in schedule 3, section 10(9) of the RTI Act, which refers to the definition in section 33 of the CC Act.

¹³ See section 34 of the CC Act and also, the definition of *corrupt conduct* in section 15 of the CC Act. The amendments effected by the CMOLA Act also replaced what was, at the time the Investigation was conducted, referred to as 'official misconduct' with the concept of 'corrupt conduct' (see sections 15(1) and 400(c) of the CC Act).

¹⁴ Section 34(c) of the CC Act.

¹⁵ The relevant investigation pre-dates the 2014 CMOLA Act amendments to the CC Act. However, as the relevant investigation involved an allegation, which if proven, would meet the requirements of section 15 of the CC Act, schedule 3, section 10(4) of the RTI Act can apply.

¹⁶ The relevant agency at the time the investigation was conducted. See footnote 1 above.

¹⁷ See sections 34, 35 and 46 of the CC Act.

¹⁸ In an email to OIC dated 27 March 2016, the applicant asserts that his supporting material (attached to that email) show that an investigation was commenced under the guidance of the Commission. As such, the applicant does not appear to contest this finding.

24. I have carefully considered the Requested Documents and am satisfied that each document was obtained,¹⁹ used²⁰ and/or prepared²¹ for the Investigation, in accordance with the ordinary meaning of those terms. That is, the documents came into DCS's possession, were employed for the purpose of the Investigation and/or were prepared (composed) in the course of conducting the Investigation.

Conclusion

25. In view of my findings at paragraphs 20 to 24 above, I am satisfied that each of the requirements of the Prescribed Crime Body Exemption are met in the circumstances of this case. There is however, an exception to the Prescribed Crime Body Exemption in schedule 3, section 10(6) of the RTI Act which will apply if the Investigation has been finalised and the information is *about* the applicant.²²

Does the exception to the exemption apply?

26. No, for the reasons that follow.
27. I find that the Investigation has been finalised, thereby satisfying the first limb of schedule 3, section 10(6) of the RTI Act. However, for the exception to apply, the Requested Documents must also be *about* the applicant.
28. The word '*about*' in schedule 3, section 10(6) of the RTI Act, as a matter of law, is a '*non-technical term defined according to its natural and ordinary meaning*.'²³ Previous decisions of the Information Commissioner have found that while an applicant may have some involvement with, or knowledge of, an investigation—for example, as a witness or a complainant—this does not mean that the investigation information is *about* the applicant. Instead, these decisions have found that the relevant investigation information clearly concerned—that is, was *about*—the individual/s who were the subject of the complaint, and not the applicant.²⁴
29. I have carefully considered the Requested Documents to assess whether the information contained in those documents is *about* the applicant. I am satisfied that it is not—the applicant was not the subject of the Investigation, and the Requested Documents concern and are therefore, *about* the subject/s of the Investigation. Due to the particular circumstances of the Investigation and the relevant factual matrix, there are references to the applicant in some of the material. However, this information is intertwined with information about others in such a way that it cannot practicably be separated. Further, I am satisfied that the references to the applicant do not equate with the well-settled meaning of the term 'about' in schedule 3, section 10(6) of the RTI Act.

¹⁹ Relevantly – '*come into possession of*': Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

²⁰ Relevantly – '*to employ for some purpose, put into service*': Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

²¹ Relevantly – '*to compose*': Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

²² If the exception is found to apply, the Requested Documents cannot comprise exempt information under the Prescribed Crime Body Exemption, and therefore, section 40 of the RTI Act cannot apply.

²³ *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52]. Relevantly – '*of, concerning, in regard to*': Macquarie Dictionary Online: <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

²⁴ *G8KPL2 and the Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) at [32]) (an appeal against this decision was dismissed: see *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) (an appeal against this decision was also dismissed: see *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167). See also the decisions in *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012) and *Magin and Department of Environment and Heritage Protection* [2016] QICmr 26 (30 June 2016).

Conclusion

30. For the reasons set out above, I find that the Requested Documents:
- were obtained, used or prepared for an investigation by DCS in the performance of one of the prescribed functions of a prescribed crime body
 - are not subject to the exception in schedule 3, section 10(6) of the RTI Act; and
 - comprise exempt information under the Prescribed Crime Body Exemption.
31. I further find that, as the access application is expressed to relate to all documents of a stated subject matter and it appears that the Requested Documents comprise exempt information, section 40 of the RTI Act applies to the access application.

DECISION

32. I affirm the decision to refuse to deal with the access application under section 40 of the RTI Act.
33. 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.

K Shepherd
Assistant Information Commissioner

Date: 13 January 2017

APPENDIX

Significant procedural steps

Date	Event
22 October 2015	The access application to QH became valid. ²⁵
8 January 2016	QH issued its decision on the access application.
29 February 2016	OIC received the external review application. ²⁶
1 March 2016	OIC notified QH that the external review application had been received, and requested that QH provide procedural documents.
4 March 2016	OIC received the requested documents from QH.
21 March 2016	<p>OIC notified QH that the applicant had been allowed further time within which to apply for review and the external review application had therefore been accepted. OIC also asked QH to provide the documents located in response to the access application by 7 April 2016.</p> <p>OIC notified the applicant that his application had been accepted. OIC explained to the applicant that OIC does not have jurisdiction to consider some of his allegations and concerns and provided the applicant with general information about other review and complaint handling bodies.</p>
22 March 2016	OIC received the requested documents from QH.
24 March 2016	The applicant discussed his application with OIC and provided extensive documentation to OIC.
4 May, 23 June, 21 July and 23 August 2016	OIC provided updates to the applicant on the progress of the review.
6 September 2016	OIC conveyed to the applicant a preliminary view that QH was entitled to refuse to deal with the access application and invited the applicant to provide submissions by 20 September 2016 if he did not accept OIC's preliminary view.
8 September 2016	The applicant provided further written submissions to OIC, attaching a number of supporting documents.
9 September 2016	OIC contacted the applicant to discuss his submissions and attempt to clarify the issues which could be considered in the external review, given the limits of the Information Commissioner's jurisdiction.
20 October 2016	<p>OIC notified the applicant and QH that, as the review had not been resolved informally, a formal decision would be issued.</p> <p>The applicant sent an email to OIC setting out various concerns.</p>
13 December 2016	OIC provided an update to QH on the progress of the review.

²⁵ The applicant initially applied to the Minister for Health and Minister for Ambulance Services on 10 September 2015; however, once the scope of the access application was clarified and it was established that QH would hold any relevant documents, the access application was dealt with by QH.

²⁶ The application was received outside the statutory timeframe for external review.