



## Decision and Reasons for Decision

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**Citation:** *Shelton and Queensland Police Service* [2017] QICmr 18 (29 May 2017)

**Application Number:** 312965

**Applicant:** Shelton

**Respondent:** Queensland Police Service

**Decision Date:** 29 May 2017

**Catchwords:** ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL TO DEAL - application for access to information about access and amendment to police database - whether application is expressed to relate to all documents containing information of a stated kind - whether all of the documents to which the application relates would comprise exempt information - whether section 59 of the *Information Privacy Act 2009* (Qld) applies

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - whether disclosure of information about access to and amendment of police database 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 is exempt under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - applicant alleges unauthorised access to personal information in police database - whether information in police database consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law - whether the exception in schedule 3, section 10(2)(a) of the *Right to Information Act 2009* (Qld) applies

## REASONS FOR DECISION

### Summary

1. The applicant, a former police officer at the Queensland Police Service (**QPS**), applied<sup>1</sup> to QPS under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information about her in QPS' QPRIME<sup>2</sup> database, including the searches done on her name and registration number, any amendments made, the dates of when her QPRIME file was accessed, and the registration numbers and names of officers who accessed her file during a specified date range.<sup>3</sup>
2. QPS decided<sup>4</sup> to neither confirm nor deny the existence of the requested information under section 69 of the IP Act. The applicant applied<sup>5</sup> to OIC for external review of the QPS' decision. In support of her right to access her personal information about access and amendment to the QPRIME database, the applicant relied on:
  - prior release of the same information by QPS under the IP Act to other individuals
  - as a former police officer, her detailed knowledge of the QPRIME system; and
  - her belief that her details have been searched without authority.<sup>6</sup>
3. On external review, I have decided to vary QPS' decision, for the reasons set out below. In summary, I have found that all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**),<sup>7</sup> as their disclosure could reasonably be expected to prejudice QPS' lawful methods and procedures, and that therefore, section 59 of the IP Act applies to refuse to deal with the application.

### Background

4. Significant procedural steps relating to the application and external review process are set out in the Appendix.
5. On external review, QPS confirmed to OIC<sup>8</sup> that the information requested by the applicant would be contained in a document known as a QPRIME Activity Report. During the course of the external review, QPS provided the relevant QPRIME Activity Report to OIC.
6. The applicant is a former QPS officer. She is therefore, familiar with the purpose served by, and the way in which, the QPRIME system operates. The applicant has made extensive submissions to OIC, detailing her knowledge as a former Detective involved in surveillance, including the requirements for a surveillance application and how QPS officers access the QPRIME database. The applicant also referred to previous QPS decisions where QPS has released QPRIME Activity Reports to other individuals.<sup>9</sup>

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<sup>1</sup> Access application dated 1 August 2016.

<sup>2</sup> Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records of all police incidents in Queensland.

<sup>3</sup> 31 May 2012 to 1 August 2016.

<sup>4</sup> QPS decision dated 8 September 2016.

<sup>5</sup> External review application dated 15 September 2016.

<sup>6</sup> External review application dated 15 September 2016 and submission to OIC dated 23 January 2017.

<sup>7</sup> Section 67(1) of the IP Act states that an agency may refuse access to a document of an agency in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.

<sup>8</sup> Oral submissions made to OIC on 16 September 2016. OIC had received, around this time, a number of external review applications seeking review of QPS decisions where applicants had sought access to similar information.

<sup>9</sup> Submissions made to OIC on 23 January 2017.

7. In response to the current application, QPS decided to neither confirm nor deny the existence of documents. Generally, that provision will only apply where confirming the very existence of documents is likely to cause the harm that an agency would otherwise seek to avoid by refusing access to the relevant information.<sup>10</sup> As set out above, the applicant, as a former police officer, has an intimate knowledge of the QPRIME system and refers to other people that have had their QPRIME Activity Reports released to them. In the circumstances, OIC formed and conveyed to QPS, a view that the neither confirm nor deny provision was not applicable.<sup>11</sup> QPS accepted this view and made alternative submissions as set out below.

### Reviewable decision

8. The reviewable decision is the QPS decision dated 8 September 2016 to neither confirm nor deny the existence of the documents requested by the applicant in the access application dated 1 August 2016.

### Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and Appendix).

### Issue to be determined

10. One of the primary objects of the IP Act is to provide a right of access to, and amendment of, personal information in the government's possession or under the government's control. This right is subject to other provisions, including grounds on which access may be refused or the application may be refused to be dealt with, as on balance, it is contrary to the public interest to give access or to allow the information to be amended.
11. External review by the Information Commissioner is merits review, i.e., an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.<sup>12</sup> After conducting an external review of a decision, the Information Commissioner must make a decision affirming, varying, or setting aside and making a decision in substitution for, the decision under review.<sup>13</sup>
12. As set out in paragraph 7 above, QPS is no longer advancing the argument that section 69 of the IP Act applies to neither confirm nor deny the existence of documents requested in the access application. Therefore, that provision is not examined in these reasons for decision. OIC considers the issue for determination is:
  - a. whether the application is expressed to relate to all documents of a stated kind or relate to a stated subject matter; and
  - b. whether all of the documents to which the application relates comprise exempt information.

If this is the case, the application may be the subject of a refusal to deal decision under section 59 of the IP Act.

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<sup>10</sup> *EST and Department of Family Services and Aboriginal Affairs* (1995) 2 QAR 645 at [11] cited with approval in *Tolone v Department of Police* (Unreported Queensland Information Commissioner, 9 October 2009) at [25].

<sup>11</sup> Letter to QPS dated 29 September 2016.

<sup>12</sup> Section 118(1)(b) of the IP Act.

<sup>13</sup> Section 123(1) of the IP Act.

13. I have carefully considered the applicant's submissions to OIC in support of her right to access her personal information in the QPRIME database. However, some of the submissions concern issues that are beyond OIC's jurisdiction, or outside the scope of this review. Accordingly, I have addressed the applicant's submissions below to the extent they are relevant to the issues for determination.

## Relevant law

14. 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.<sup>14</sup> One of the only circumstances in which it would not be in the public interest to deal with an access application is set out in section 59 of the IP Act that is 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.*

15. Exempt information is information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.<sup>15</sup> Schedule 3, section 10 of the RTI Act provides that certain law enforcement information is exempt, as follows:

### **10 Law enforcement or public safety information**

- (1) *Information is exempt information if its disclosure could reasonably be expected to—*
- ...
  - (f) *prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;*
  - ...
- (2) *However, information is not exempt under subsection (1) if it consists of—*
- (a) *matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; ...*
  - ...

## Findings

16. OIC has recently considered the application of section 59 of the IP Act to access applications which were framed in very similar terms to, and sought access to the same type of information, as the application which is the subject of this review.<sup>16</sup> As set out in those decisions, for section 59 of the IP Act to apply I must be firstly satisfied that the access application is expressed to relate to all documents, or to all documents of a stated

<sup>14</sup> Section 58(1) of the IP Act.

<sup>15</sup> The Dictionary in schedule 5 of the IP Act provides that 'exempt information' means information that is exempt information under the RTI Act. See section 48 and schedule 3 of the RTI Act.

<sup>16</sup> See *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017) (*Isles*) and *Flori and Queensland Police Service* [2017] QICmr 5 (16 February 2017) (*Flori*).

class, that contain information of a stated kind, or relate to a stated subject matter. To determine this issue, it is necessary to examine the terms of the access application.

17. The applicant requested access to:

1. Searches done on my name, my former registration number<sup>17</sup>; and
2. Any amendments made to my file from 31 May 2012 to 1 August 2016; and
3. The dates my details were searched and accessed and the registration numbers and names of those who searched and accessed me.<sup>18</sup>

18. I am satisfied that the application is framed as a request to access *all documents or documents of a stated class*, that demonstrate instances of the applicant's name and/or registration number being searched and/or information being amended in the QPRIME database, including which officers accessed/amended the information. I am also satisfied that the application is expressed to relate to all documents that contain information of a *stated kind*, ie. search/amendment history relating to the applicant's personal information in the QPRIME database, within the specified timeframe. Accordingly, I find that the first limb of section 59 of the IP Act is satisfied.

19. Secondly, I must be satisfied that all of the documents to which the application relates are comprised of exempt information. Information will be exempt information if the following are established:

- there exists a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
- disclosure *could reasonably be expected* to prejudice that method or procedure.<sup>19</sup>

20. Having considered the evidence provided by QPS on external review,<sup>20</sup> I am satisfied that the process of QPS officers accessing the QPRIME database forms an integral part of QPS' lawful methods and procedures for preventing, detecting or investigating contraventions, or possible contraventions of the law, specifically in terms of intelligence and surveillance operations.

21. QPS has submitted that disclosure of QPRIME Activity Reports would generally reveal the number of occasions on which QPS officers have accessed the QPRIME database in relation to a particular individual, and would disclose the badge number of the inquiring officer and the reasons for access.<sup>21</sup> QPS has submitted that it has serious concerns that the disclosure of such information would enable an individual to deduce the level of QPS surveillance/investigation they are under, and/or identify any particular QPS units which may/may not be monitoring an individual's behaviour/involvement in activities.<sup>22</sup>

22. While the applicant in this case does not seek access to the units of the officers who allegedly searched for information about her or the reasons for these searches, I am of the view that release of the names and registration numbers of officers may enable their identity and relevant unit to be ascertained. I also consider that releasing the number of occasions on which QPS officers have accessed QPRIME and made amendments to the database in relation to a particular individual may in itself, reveal the level of QPS surveillance/investigation they are under (if any).

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<sup>17</sup> Registration number given in application but has been withheld from this decision.

<sup>18</sup> For the period 31 May 2012 to 1 August 2016 on the QPRIME database

<sup>19</sup> Schedule 3, section 10(1)(f) of the RTI Act.

<sup>20</sup> Particularly the oral submissions made by QPS to OIC on 16 September 2016.

<sup>21</sup> The QPRIME Activity Report also reveals any amendments to the database.

<sup>22</sup> Oral submissions made by QPS to OIC in a meeting on 16 September 2016. These submissions were confirmed in OIC's letter to the QPS on 29 September 2016.

23. I have considered the applicant's submissions in relation to her familiarity with the methodologies and investigative procedures of QPS, however I do not consider that this knowledge reduces or negates the prejudice to QPS' methods and procedures that could reasonably be expected to arise from disclosure. The prejudice to QPS' methods and procedures does not stem from revealing how the database or surveillance process works, but rather, from an individual's ability to deduce the level of surveillance they may or may not be under. The applicant is firmly of the view that she is not under any form of surveillance and I accept that there is nothing to suggest that the applicant is under surveillance. However, I consider this irrelevant. I am satisfied that revealing the extent of information in a QPRIME Activity Report, for *any individual*, whether that individual is subject to intelligence and surveillance operations or not, could reasonably be expected to prejudice these lawful methods and procedures as a whole.
24. QPRIME Activity Reports show when and how often QPS officers have accessed the QPRIME database in relation to an individual. I find that disclosure of such information could reasonably be expected to prejudice QPS' methods and procedures for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
25. As to whether this expectation of prejudice is reasonable,<sup>23</sup> I am satisfied that QPS has demonstrated to OIC that there are particular circumstances in which disclosing information could reasonably be expected to prejudice QPS' lawful methods and procedures, even though the information may appear innocuous, on its face, or when read in isolation.<sup>24</sup>
26. For the reasons set out above, I am satisfied that the QPRIME Activity Report comprises exempt information under schedule 3, section 10(1)(f) of the RTI Act.
27. The applicant's submissions on external review<sup>25</sup> state that QPS officers have entered and accessed information in QPRIME in relation to her without authority. The applicant submits that she is a law abiding citizen who has not committed any offences. The applicant also refers to '*an embedded course of conduct*' where there have been numerous disciplinary investigations into unauthorised QPRIME access over the past 12 months. I have accordingly considered the exception to the exemption which provides that information will not be exempt if it consists of a matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law.<sup>26</sup>
28. As noted in *Isles*<sup>27</sup> and *Flor*<sup>28</sup>, for this exception to apply, the information must consist of material that objectively and authoritatively reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law. 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, the badge number of the inquiring officer, and it includes a technical log of interactions within the database. This information alone (or together with any information currently before me) does not reveal in any authoritative manner that any particular access was unauthorised, or that the scope of a law enforcement investigation has exceeded the limits imposed by law in any

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<sup>23</sup> The requirements of the phrase '*could reasonably be expected to*' in the particular context of this exemption were discussed by the Right to Information Commissioner in *Gold Coast Bulletin and Queensland Police Service* (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

<sup>24</sup> Under section 121(3) of the IP Act, I must not disclose information claimed to be exempt or contrary to the public interest in reasons for decision. I am therefore constrained in the extent to which I can explain the particular circumstances put forward by QPS in support of the application of this exemption.

<sup>25</sup> Submissions made to OIC on 23 January 2017.

<sup>26</sup> Schedule 3, section 10(2)(a) of the RTI Act.

<sup>27</sup> At [21].

<sup>28</sup> At [25].

other way. At best, this type of information may amount to untested evidence concerning authority to access the QPRIME database in a particular instance.

29. Although the applicant may have suspicions, and asserts that there is an embedded course of conduct in relation to unauthorised access, it is the *material* itself which must reveal that the scope of a law enforcement investigation has exceeded the limits imposed by law
30. Given the above, I am satisfied that on the evidence available to me in this review, the exception to the exemption in schedule 3, section 10(2) does not apply.<sup>29</sup>
31. The applicant has also argued that she is aware of a number of individuals that have successfully sought access to their QPRIME Activity Report from QPS, in circumstances which reveal searches in excess of 1,000 times, and QPS have been discriminatory towards her in refusing access to the same information.<sup>30</sup>
32. QPS has, in the past, decided to disclose this type of information to an applicant under the IP Act.<sup>31</sup> However, QPS has since reconsidered its view on releasing QPRIME Activity Reports. In recent months, a series of access applications have been made to QPS under the IP Act, by various individuals seeking access to their personal information in QPRIME Activity Reports. In processing these applications, QPS has identified a number of issues associated with disclosure of QPRIME Activity Reports, which has led QPS to make submissions to OIC regarding the expectation of prejudice to its methods and procedures.<sup>32</sup>
33. As a decision-maker conducting merits review, I am required to determine each matter on its own facts and on the basis of available evidence at the time of making my decision—there is no requirement for me to follow the approach taken by an agency in a previous external review. Similarly, there is nothing in the IP Act which prevents an agency from, over time, reconsidering its approach to the disclosure of particular information. In any event, an agency retains the discretion to disclose exempt information, whereas the Information Commissioner does not.<sup>33</sup>
34. On the basis of the above, I am satisfied that the position previously taken by QPS in relation to disclosure of QPRIME Activity Reports under the IP Act does not have any impact on my finding that this information meets the requirements for exemption under schedule 3, section 10(1)(f) of the RTI Act.
35. The applicant has also put forward public interest arguments favouring disclosure, submitting that the RTI legislation is aimed at transparency and accountability and '*failing to disclose evidence of corrupt conduct is in itself, corrupt conduct*'.<sup>34</sup> I acknowledge that the IP Act is to be administered with a pro-disclosure bias.<sup>35</sup> However, the exemptions in schedule 3 of the RTI Act set out the types of information which Parliament has decided, would, on balance, be contrary to the public interest to disclose. Once the requirements of an exemption have been established, as I have found in this case, I am precluded from considering any public interest factors, no matter how compelling.<sup>36</sup>

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<sup>29</sup> There is no evidence available to OIC to indicate that any other exceptions in schedule 3, section 10(2) of the RTI Act apply.

<sup>30</sup> Submissions made to OIC on 23 January 2017.

<sup>31</sup> *Wolfe and Queensland Police Service* [2016] QICmr 27 (30 June 2016).

<sup>32</sup> Discussed previously in paragraph 21 in this decision.

<sup>33</sup> Sections 64(4) and 118(2) of the IP Act.

<sup>34</sup> Submissions made to OIC on 23 January 2017.

<sup>35</sup> Section 58 of the IP Act.

<sup>36</sup> Under section 118 of the IP Act, the Information Commissioner does not have the power to direct that access to an exempt document be granted. I also note that concerns about alleged unlawful access to QPRIME records are able to be considered by other bodies, such as the Crime and Corruption Commission, which would have access to such records.

## **DECISION**

36. For the reasons set out above, I vary the decision of QPS and find that section 59 of the IP Act applies on the basis that the access application is expressed to relate to all documents containing information of a stated kind, and all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act.
37. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Clare Smith**  
**Right to Information Commissioner**

**Date: 29 May 2017**

## APPENDIX

### Significant procedural steps

Date	Event
15 September 2016	OIC received the external review application.
16 September 2016	OIC received oral submissions from QPS.
16 September 2016	OIC asked QPS to provide relevant procedural documents.
20 September 2016	QPS provided OIC with the relevant procedural documents.
23 September 2016	OIC notified the applicant and QPS that the external review application had been accepted and asked QPS to provide further information.
29 September 2016	OIC conveyed a preliminary view to QPS and invited QPS to provide submissions in response.
5 October 2016	OIC received the information in issue from QPS.
7 October 2016	QPS notified OIC that it accepted the preliminary view.
12 January 2017	OIC conveyed a preliminary view to the applicant and invited her to provide submissions in response.
23 January 2017	The applicant provided written submissions to OIC.
1 March 2017	OIC provided the applicant with an update on the status of the review.