



Decision and Reasons for Decision

Citation:	<i>Y71 and Crime and Corruption Commission [2025] QICmr 49</i> (28 July 2025)
Application Number:	317470
Applicant:	Y71
Respondent:	Crime and Corruption Commission
Decision Date:	28 July 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - request for information about complaints made by the applicant - prescribed crime body exemption - section 47(3)(a) and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - request for information about complaints made by the applicant - communications between agency and its lawyers - section 47(3)(a) and schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Background

1. The applicant applied under the *Information Privacy Act 2009* (Qld) (**IP Act**)¹ to the Crime and Corruption Commission (**CCC**) for access to 'all records / emails / chains / attachments' containing his name, in the possession of various CCC officers.²
2. The CCC granted the applicant access to 43 documents and decided to refuse access to 473 documents under section 47(3)(a) of the RTI Act on the basis they contained exempt information under schedule 3, section 10(4) of the RTI Act (**Prescribed Crime Body Exemption**).³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review⁴ of the CCC's internal review decision. On external review, the CCC identified a

¹ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). In accordance with the transitional provisions in the IP Act and RTI Act, references in this decision are to those Acts as in force prior to 1 July 2025.

² Access application dated 13 January 2023. The date range nominated in the application was from 22 August 2016 to the date of application and included a list of internal CCC reference numbers relevant to the request.

³ Decision dated 5 May 2023. This decision was affirmed by the CCC on internal review, by decision dated 30 June 2023.

⁴ Application dated 3 August 2023.

significant number of further documents falling within the scope of the application.⁵ OIC formed the view that dealing with the additional information would substantially and unreasonably divert the resources of the CCC from their use in the performance of its functions.⁶ The applicant accepted OIC's invitation to narrow the scope of his application to specific files (**Review Documents**)⁷ and the external review proceeded to be conducted on the basis of the narrowed scope.

4. On review, the CCC maintained its position that access to the information could be refused on the basis of the Prescribed Crime Body Exemption⁸ and also submitted certain information was exempt from disclosure as it was subject to legal professional privilege.⁹ The applicant contested the application of both exemptions and argued that in any event, the CCC should exercise its discretion to release exempt information.¹⁰ The applicant also confirmed he sought to obtain copies of his own correspondence which appeared within the Review Documents.¹¹
5. In making this decision, I have considered evidence, submissions, legislation and other material as set out in these reasons.¹² I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**) including the right to seek and receive information¹³ and in doing so, have acted in accordance with section 58(1) of the HR Act.¹⁴

Issues for determination

6. The information remaining the subject of the CCC's disclosure objections can generally be described as correspondence regarding a service complaint made by the applicant to the CCC and other corruption complaints made by the applicant to the CCC about another government agency/officers.¹⁵
7. The issue I must determine is whether access to the remaining information may be refused on the basis it is exempt information¹⁶ under the Prescribed Crime Body Exemption, or due to it being subject to legal professional privilege.
8. Based on the information available to me, and for the reasons set out below, I have decided to vary the CCC's internal review decision by finding that access to the remaining information may be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act on the basis that it constitutes exempt information under the Prescribed Crime Body Exemption, or because it is exempt information due to it being subject to legal professional privilege.

⁵ Over 5000 pages.

⁶ Conveyed to the applicant by letter dated 2 September 2024.

⁷ Described as 'Combined III 5, Combined III 6, Combined III 7, Combined III 8' and 5 additional emails (approximately 919 pages) as identified by the CCC through searches of the email accounts of seven CCC employees.

⁸ Submission to OIC dated 11 April 2025.

⁹ Submission to OIC dated 7 August 2024.

¹⁰ Submission to OIC dated 20 June 2025.

¹¹ The CCC did not object to disclosure of the applicant's own correspondence, and those documents will be released to him upon finalisation of this review. Access to those documents is therefore, not addressed in these reasons.

¹² Including footnotes.

¹³ Section 21 of the HR Act.

¹⁴ OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹⁵ I am limited in the extent to which I can describe the specific nature of the correspondence, due to the operation of section 121 of the IP Act. I have not included an itemised list of the pages which comprise the remaining documents. In adopting this approach, I have had regard to the reasoning in *Mokbel v Queensland Police Service* [2023] QCATA 158 at [8] to [12] where QCAT found that the Information Commissioner is not required, on external review, to provide the applicant with a list that describes the documents under review. QCAT emphasised that the focus of the legislation is on the protection of the right to access information by means of a merits review by an independent specialist Commissioner who can examine the relevant material and decide whether or not there is a right of access in accordance with the legislation.

¹⁶ Under section 67(1) of the IP Act 47(3)(a) of the RTI Act.

Prescribed Crime Body Exemption

Relevant law

9. A person has a right, under the RTI Act, to be given access to documents of an agency¹⁷ subject to certain limitations, including grounds for refusing access.¹⁸ It is Parliament's intention that the RTI Act is to be administered with a pro-disclosure bias¹⁹ and that the grounds for refusing access are to be interpreted narrowly.²⁰
10. Access may be refused to exempt information.²¹ Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is always contrary to the public interest.²² One category of exempt information is the Prescribed Crime Body Exemption set out in schedule 3, section 10(4) of the RTI Act. Information will be subject to this exemption if:
 - it was *obtained, used or prepared* for an investigation
 - the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; **and**
 - the exception in schedule 3, section 10(6) of the RTI Act does not apply.
11. The terms '*obtained, used or prepared*' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.²³ The term '*investigation*' as used in the Prescribed Crime Body Exemption has been defined expansively.²⁴
12. The ambit of the Prescribed Crime Body Exemption is well-settled.²⁵ The Information Commissioner has held that the CCC misconduct function is triggered by its receipt and consideration of a complaint, notification and/or relevant material, and not determined retrospectively by the outcome of an assessment or investigation²⁶ either by the CCC or other agency;²⁷ and 'dealing with' or 'assessing' a complaint, notification or other material falls within the broad meaning of 'investigation' by the CCC or other agency.²⁸
13. Relevantly in this case, the issue of whether the Prescribed Crime Body Exemption applies to information about a service delivery complaint has previously been considered

¹⁷ Section 23 of the RTI Act.

¹⁸ Section 47(3) of the RTI Act.

¹⁹ Section 44 of the RTI Act.

²⁰ Section 47(2)(a) of the RTI Act.

²¹ Section 47(3)(a) of the RTI Act.

²² Section 48(2) of the RTI Act.

²³ In *Springborg, MP and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**) the Information Commissioner noted at [27] that the term 'prepared' was defined as 'compose and write out, draw up (a text or document) ... produce or form ... manufacture, make'.

²⁴ *Springborg* at [55]-[59] contains a detailed analysis of the concept of an '*investigation*' as used in the equivalent exemption provision of the repealed *Freedom of Information Act 1992* (Qld); the Information Commissioner found the term can encompass the process of examining, considering, 'dealing with' and 'assessing' a complaint. Also, schedule 2 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**) provides a non-exhaustive definition of '*investigate*' as including 'examine and consider' – see *Frecklington MP and Premier and Minister for Trade* [2020] QICmr 15 (18 March 2020) at [47].

²⁵ *Springborg* analysed provisions that are the material equivalents of those contained in the CC Act and this reasoning has since been applied consistently by the Information Commissioner. See for example, *Cronin and Crime and Corruption Commission* [2017] QICmr (6 April 2013) 13 at [12]-[26], *P55 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development* [2024] QICmr 59 (12 November 2024) at [25]-[33], and *E92 and Crime and Corruption Commission* [2024] QICmr 73 (19 December 2024) at [32]-[39].

²⁶ *Springborg* at [44].

²⁷ Schedule 3, section 10(4) of the RTI Act.

²⁸ *Springborg* at [55]-[59].

by the Information Commissioner.²⁹ In that matter the Acting Right to Information Commissioner held:³⁰

I have considered whether these service delivery complaints can properly be regarded as information obtained, used or prepared for an investigation by the CCC in the course of it performing its corruption function.

I am of the view that the applicant's complaints about the CCC were incidental to, and inextricably linked with, his corruption complaint about the [agency]. That is, it was not possible for the CCC to consider the complaints made against it, without also giving further consideration to, or re-visiting, the applicant's complaints about the [agency].

14. The exception to the Prescribed Crime Body Exemption in schedule 3, section 10(6) of the RTI Act has consistently been found to apply to information 'about' the subject officer in the investigation, as distinguished from information pertaining to a complainant.³¹ The Information Commissioner has previously recognised that the purpose of the exception is to allow individuals who are the subject of an investigation to obtain access to information regarding the finalised investigation, to the extent that information is 'about' them³² including for example, '*allegations made against them ... and conclusions made about them in a report*'.³³
15. The exemptions in schedule 3 to the RTI Act—including the Prescribed Crime Body Exemption—do not require nor allow consideration of public interest factors. This is because Parliament has already determined that disclosure of these categories of information would be contrary to the public interest.³⁴ Accordingly, if information falls within one of the categories of exempt information prescribed in schedule 3, a conclusive presumption exists that its disclosure would be contrary to the public interest, and no further consideration of public interest factors is required.³⁵

Submissions

16. The applicant contested the application of the Prescribed Crime Body Exemption in his submissions³⁶ including based on the following:

The CCC Exemption is only applicable if the CCC has regard to the performance of its own corruption functions in a way that is appropriate, where the CCC has an overriding responsibility to promote public confidence in the way corruption within a unit of public administration is dealt with.

...

The CCC has made false and misleading submissions, and either the CCC Exemption does not apply, or the Exception to the CCC Exemption does apply.

17. The CCC provided OIC with submissions regarding its position on disclosure in respect of the remaining information including the following:³⁷

The [Review Documents] relate to a Complaint Service Review (CSR) made by the applicant. A CSR is a review of how the CCC assessed a complaint having regard to the material that was available at the time of the original assessment, any additional information the

²⁹ W52 and Crime and Corruption Commission [2021] QICmr 57 (28 October 2021) (**W52**).

³⁰ W52 at [38] to [39]. Footnotes omitted.

³¹ G8KPL2 and Department of Health (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [25]-[33]; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) at [18]-[22] and W52 at [44]-[48].

³² G8KPL2 at [28]-[30].

³³ Ibid at [28]-[33].

³⁴ Section 48(2) of the RTI Act.

³⁵ *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17].

³⁶ Submission to OIC dated 20 June 2025, paragraph numbers and footnotes omitted.

³⁷ Submission dated 7 August 2024.

complainant may provide, and other relevant information. In this instance, the applicant requested the CCC conduct a CSR into a complaint he made to the CCC about the [agency] and persons otherwise employed or involved with the [agency].

The [Review Documents] either reference or are investigation material which relate to the corruption allegations made by the applicant against the [agency] and others. Both the CSR and the underlying corruption allegations cannot reasonably be separated. Both matters concern the same information and the assessment of the CSR can only be made by reference to the corruption complaint.

The CCC's position is that both categories of documents are exempt information pursuant to schedule 3, section 10(4) of the Right to Information Act 2009 (RTI Act). Furthermore, the exception under schedule 3, section 10(6) of the RTI Act does not apply, as while the investigation has been finalised the information is not 'about' the applicant.

18. And further:³⁸

- The relevant investigation is that conducted by the corruption division in investigating the applicant's corruption complaint, and [the Review Documents] related to the applicant's CSR complaint and customer service complaints falls squarely within the CCC exemption.
- The CCC acts within its power when it does all things necessary or reasonably incidental to the performance of its corruption function. The [Review Documents] was obtained and/or prepared, in accordance with the ordinary meaning of those terms, by the CCC in the course of investigating – i.e. examining, considering and/or dealing with – the corruption complaint and the service delivery complaint...

Findings

19. The existence of a complaint made by the applicant, to the CCC, alleging corrupt conduct within another government agency, is evident from the submissions made by the parties, and the located documents. I am satisfied that the Review Documents comprise evidence of the CCC examining, considering and/or dealing with the applicant's complaint and undertaking the investigation of that complaint (**Corruption Complaints Information**). I am further satisfied that the CCC (the prescribed crime body) in investigating the applicant's complaint was performing its corruption function under the CC Act, and that the documents were obtained, used, or prepared by the CCC for the investigation. For these reasons, I find that the Corruption Complaints Information is captured by the Prescribed Crime Body Exemption.
20. I have also considered the information relating to the applicant's substantiated service complaint (**Service Complaint Information**). I am satisfied that the applicant's complaint about the CCC's service was incidental to, and inextricably linked with, his corruption complaint about another government agency. That is, it was not possible for the CCC to consider the service complaint made against it, without also giving further consideration to, or re-visiting, the applicant's complaint about the government agency. This was not a separate investigation, but a determination made incidental to the CCC's handling of the corruption complaint made against the subject agency. I see no basis upon which to depart from the reasoning in W52 given the analogous nature of the Service Complaint Information to what was considered by the Information Commissioner in W52. I am satisfied that the way the CCC has performed its corruption function was inextricably linked to the applicant's request for a service delivery review of the CCC's decision about his corruption complaint. I am therefore satisfied that the Service Complaint Information is also captured by the Prescribed Crime Body Exemption.

³⁸ Submission dated 11 April 2025.

21. With respect to the exception to the exemption, I am satisfied that it does not apply because the applicant was not the subject officer of the corruption complaint, and therefore, the information is not 'about' the applicant. This reasoning is consistent with the established interpretation of the provision and previous decisions of the Information Commissioner, and I see no reason in this case to depart from that well-settled position.³⁹
22. The applicant submits that '*... information in the possession of the CCC about the corruption complaint(s) and Complaint Services Reviews ... addresses me*'.⁴⁰ Inevitably, information about the applicant, as the complainant, appears throughout the Review Documents. However, the operation of the Prescribed Crime Body Exemption is such that it prevails over an applicant's entitlement to obtain access to their personal information held by a government agency.⁴¹
23. I note the applicant's concerns about the CCC providing false and misleading submissions to OIC.⁴² Having had the benefit of reviewing the Corruption Complaints Information and Service Complaint Information, and the actions taken by the CCC on the various matters as detailed in those documents, I do not consider there is any information available to me to substantiate those allegations, beyond the applicant's assertions.⁴³
24. In the circumstances of this case, I find that the Corruption Complaints Information and Service Complaint Information is covered by the Prescribed Crime Body Exemption⁴⁴, and is not subject to the exception, and accordingly, access to it may be refused.⁴⁵

Legal Professional Privilege

Relevant law

25. Information will also be exempt if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (**LPP**).⁴⁶ This exemption reflects the requirements for establishing LPP at common law.⁴⁷ LPP is integral to the administration of justice and exists to uphold the right of a client to obtain confidential and independent advice about their legal circumstances.
26. Establishing whether LPP applies to information at common law requires⁴⁸ that the information must comprise a communication made in the course of a lawyer-client relationship, that was and remains confidential; and that was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.⁴⁹

Submissions

27. The CCC submitted⁵⁰ that:

³⁹ See footnote 31 above.

⁴⁰ Submission to OIC dated 20 June 2025.

⁴¹ As noted above, the CCC has agreed to provide the applicant with copies of his own correspondence.

⁴² Submission to OIC dated 20 June 2025.

⁴³ It is an offence under section 186 of the IP Act to give false or misleading information to the Information Commissioner.

⁴⁴ For completeness, the information which I have found is subject to this exemption comprises the Review Documents, with the exception of those pages which are subject to the LPP Exemption (discussed below) and the applicant's own correspondence (which the CCC has agreed to release to him).

⁴⁵ Section 67(1) of the IP Act and sections 47(3)(a) and schedule 3, section 10(4) of the RTI Act.

⁴⁶ Schedule 3, section 7 of the RTI Act.

⁴⁷ *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commissioner* (2002) 213 CLR 543 (**Daniels**) at 552 and see also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (**Esso**).

⁴⁸ Subject to qualifications and exceptions to privilege (such as waiver and improper purpose).

⁴⁹ *Esso* and *Daniels*.

⁵⁰ Submission to OIC dated 7 August 2024.

... a large majority of the [Review Documents] are subject to legal professional privilege pursuant to schedule 3, section 7 of the RTI Act. The confidential communications within these documents were made in the course of a lawyer/client relationship for the dominant purpose of seeking or providing legal advice.

28. The applicant objected⁵¹ to the application of the LPP exemption as follows:

I disagree that the CCC has engaged in any meaningful communications in relation to the known corruption matters, that would be exempt from production in a legal proceeding: because the CCC has no interest in engaging in any legal proceeding in relation to these matters.

Otherwise, consistent with the public statements of Mr Barbour, I request that Mr Barbour waive the refusal and release these documents.

Findings

29. I am satisfied that the Review Documents include some communications between lawyers employed in the legal unit at the CCC, and CCC employees requesting or receiving legal advice (**LPP Communications**).⁵²
30. Having considered the content of the LPP Communications, I am satisfied the dominant purpose for their preparation was for the CCC to seek or receive legal advice on particular matters within the context of a lawyer-client relationship with its internal legal advisors. I am further satisfied that the lawyers in the CCC unit were acting independently when providing legal services to their client, the CCC, and that the communications were exchanged confidentially.
31. While the applicant does not consider there are grounds for ‘meaningful’ communications between the CCC and its lawyers, that is not, with respect, a requirement for establishing LPP. The requirements are set out in paragraphs 2526-26 above and I am satisfied those requirements are met based on my assessment of the LPP Communications which appear throughout the Review Documents.
32. There is no evidence available to me to suggest the CCC has waived privilege, nor have I identified any exceptions that apply to the communications, such as improper purpose or implied waiver. While the applicant suggests that the CCC should exercise its discretion to release exempt information, the CCC has not elected to do so, and the Information Commissioner (or delegate) does not have the same discretion conferred on them under the legislation.
33. Based on the information before me, I am satisfied the LPP Communications meet the requirements for establishing LPP⁵³ and accordingly, comprise exempt information to which access may be refused.⁵⁴

⁵¹ Submission to OIC dated 20 June 2025.

⁵² I am limited in the extent to which I can describe the LPP Communications due to the operation of section 121 of the IP Act but I have identified this type of information appearing at pages 1-26, 30-40, 125-128, 131-140, 155-165 and 209-211 of *Combined III 5*, pages 1-6, 94-97, 235-255, 260-367, 370-397, 404-405, 407-418 and 430-471 of *Combined III 6*, pages 23-130, 136-140 and 141-167 of *Combined III 7* and pages 40-45 of *Combined III 8*.

⁵³ See paragraphs 26 – 26 of these reasons.

⁵⁴ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 7 of the RTI Act.

DECISION

34. For the reasons set out above, I vary the CCC's internal review decision⁵⁵ and find that, under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act, access may be refused to:
- a. the Corruption Complaints Information and Service Complaint Information because those documents constitute exempt information under section 48 and schedule 3, section 10(4) of the RTI Act; and
 - b. the LPP Communications because those documents constitute exempt information under section 48 and schedule 3, section 7 of the RTI Act.
35. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.



Katie Shepherd
Assistant Information Commissioner

Date: 28 July 2025

⁵⁵ Under section 123(1)(b) of the IP Act.