



Decision and Reasons for Decision

Application Number: 310466

Applicant: Marshall

Respondent: Department of Police

Decision Date: 25 February 2011

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT– APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS – Grounds on which access may be refused – section 47(3)(b) of the *Right to Information Act 2009* (Qld) – whether document comprises information the disclosure of which would, on balance be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld) – whether access to information can be refused under section 67 of the *Information Privacy Act* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Police¹ (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to documents relating to a QPS investigation of an alleged incident involving the applicant and his neighbour in a strata title housing complex.
2. QPS identified five documents responding to the applicant's access application. QPS gave the applicant partial access to a two-page memorandum, and refused the applicant access to the balance of the memorandum and all of a three-page witness statement, on the basis disclosure of this information would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the QPS decision refusing access to this information. In support of his case for access, the applicant submits that he:
 - has been subjected to harassment by his neighbour and his complaints to the QPS about these matters have not been adequately addressed;
 - has been the subject of false and misleading statements and declarations made by his neighbour; and
 - is considering legal action against his neighbour, and accordingly requires access to all pertinent documentation.
4. Having considered the material before me, I am satisfied access to the relevant information can be refused under section 67 of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

Background

5. Significant procedural steps relating to the application and external review are set out in the Appendix.

Decision under review

6. The decision under review is the QPS decision dated 11 November 2010 to refuse the applicant access to parts of a two-page memorandum and all of a three-page witness statement, under section 67 of the IP Act and section 47(3)(b) of the RTI Act, on the basis disclosure of this information would, on balance, be contrary to the public interest under section 49 of the RTI Act.

Information in issue

7. The information in issue comprises parts of the memorandum and all of the witness statement, referred to in paragraph 6 above.

Evidence considered

8. In making this decision I have considered the following:
 - applicant's access application dated 11 October 2010;

¹ Known as the Queensland Police Service.

- QPS' decision dated 11 November 2010;
- applicant's external review application dated 22 November 2010 and written correspondence with OIC dated 15 December 2010;
- the information in issue;
- relevant provisions of the IP and RTI Act; and
- previous decisions of the Information Commissioner as referred to in these reasons for decision.

Relevant law

9. Access must be given to a document unless it contains exempt information or its disclosure would, on balance, be contrary to the public interest.²

Contrary to the public interest

10. To decide whether disclosure of the information in issue would, on balance, be contrary to the public interest, I must:³
- 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, on balance, would be contrary to the public interest.

Findings

11. No irrelevant factors arise in this case.
12. I will now consider which public interest factors favouring disclosure and nondisclosure of the information in issue arise in this case.

Factors in favour of disclosure

13. I accept that the information in issue includes some information that comprises the applicant's personal information, notably his name and references to events to which he was a party. This gives rise to a public interest factor favouring disclosure of this information.⁴
14. I also accept that it is arguable disclosure of the information in issue may:
- permit the applicant to better understand how the QPS dealt with his complaint by allowing him to compare the parts of the memorandum disclosed to him with the underlying evidence on which its investigation was based;⁵
 - reveal information upon which the QPS decision not to proceed with the investigation was based;⁶ and
 - serve to further the QPS' accountability for its investigation.⁷
15. The applicant's submissions as summarised in paragraph 3 also raise the following public interest considerations possibly favouring disclosure:

² Sections 64 (Pro disclosure bias) and 67 (Grounds on which access may be refused) of the IP Act and sections 47(3)(a) and (b) of the RTI Act.

³ In accordance with section 49 of the RTI Act.

⁴ Schedule 4 part 2 item 7 of the RTI Act.

⁵ Giving rise to the pro-disclosure factor at schedule 4 part 2 item 17 of the RTI Act.

⁶ Schedule 4 part 2 item 11 of the RTI Act.

⁷ Schedule 4 part 2 item 1 of the RTI Act.

- disclosure of the information in issue could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;⁸ and
 - disclosure of the information in issue would enable pursuit or evaluation of an appropriate legal remedy.⁹
16. I do not consider that either of the above arises for consideration in the circumstances of this case.
 17. The 'incorrect, out of date, misleading' pro-disclosure factor operates in relation to the specific information to which an applicant seeks access.¹⁰ In this case, that information comprises name information and personal details, summations of accounts given to the investigating officer (appearing in the memorandum) and the witness statement itself. There is nothing in the material before me to suggest the name information or personal details are incorrect, out of date etc.
 18. As to the summations and witness statement, information of this kind is by its very nature an individual's particular version of events, and will obviously be shaped by factors such as the individual's memory of relevant events and subjective impressions. This inherent subjectivity does not, however, mean that the resulting account or statement is necessarily incorrect or 'false and misleading'. It simply comprises a personal interpretation of relevant events, which an investigator must then balance against other (often competing) statements and other evidence in reaching a conclusion in a particular case.
 19. While there may be circumstances in which disclosure of information of this kind may advance this particular public interest – such as, for example, where there is a clear discrepancy between evidence given orally and subsequently recorded, or some other objective material suggesting that an individual's account has been incorrectly or inaccurately recorded, or is itself a manifest fabrication – there is nothing in the material before me to suggest this is such a case.
 20. In my view, all disclosure of this specific information would potentially reveal is that there exists a view of events differing from that the applicant holds. In the circumstances, I do not consider that disclosure of this information could reasonably be expected to reveal it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
 21. As to pursuit of a legal remedy, the Information Commissioner has previously recognised that in an appropriate case there may be a public interest in a person who has suffered, or may have suffered, an actionable wrong, being permitted to obtain access to information which would assist the person to pursue any remedy which the law affords in those circumstances.¹¹
 22. However, the mere assertion by an applicant that information is required to enable pursuit of a legal remedy is not sufficient to establish this pro-disclosure consideration.¹² An applicant must, at the least, demonstrate that he or she has suffered some kind of wrong in respect of which a remedy is, or may be, available

⁸ Schedule 4 part 2 item 12 RTI Act.

⁹ Schedule 4 part 2 item 17 of the RTI Act.

¹⁰ The applicant also claims that his neighbour has also lodged other 'false and misleading' information about him in separate regulatory processes. None of that documentation is in issue in this review.

¹¹ *Willsford and Brisbane City Council* (1996) 3 QAR 368.

¹² *Willsford*, at paragraph 17.

under the law, and that he has a reasonable basis for seeking to pursue any such remedy.¹³

23. Apart from the contention that he requires ‘full disclosure of the documentation’ in the event he decides to proceed with unspecified ‘legal action’, the applicant has provided nothing to support his claim in this regard. Accordingly, this public interest consideration is not relevant in this case, and I will not consider it further.

Factors favouring non-disclosure

24. In my view, three factors favour non-disclosure of the information in issue:

- disclosure of the information could reasonably be expected to prejudice the protection of an individual’s right to privacy;¹⁴
- disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person;¹⁵ and
- disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.¹⁶

Personal information and privacy

25. The RTI Act recognises that disclosure of personal information¹⁷ and potential prejudice to the right to privacy gives rise to factors favouring non-disclosure of information.¹⁸
26. As noted, the information in issue comprises name information and personal details, and an individual’s statement to police. I am satisfied that all of the information in issue comprises the personal information of someone other than the applicant, and, accordingly, disclosure of the information in issue could reasonably be expected to cause a public interest harm.
27. The concept of ‘privacy’ is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their personal sphere free from interference from others.¹⁹ I consider the provision of information to law enforcement authorities such as the QPS to be a private action falling within an individual’s ‘personal sphere’. I also consider that the substance of that information, such as a witness statement – consisting as it almost invariably will of an individual’s impressions, opinions and even emotional responses to relevant events – comprises information of a private nature.
28. I recognise that in appropriate cases information supplied to QPS will need to be further disseminated or published (so as, for example, to enable further investigation, or for prosecutorial purposes, often in open court) which may reduce the privacy interest attaching to relevant information. This is not such a case. I am satisfied that

¹³ *Willsford*, at paragraph 17. The third key requirement is to demonstrate disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.

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

¹⁵ Schedule 4 part 4 item 6 of the RTI Act.

¹⁶ Schedule 4 part 3 item 13 of the RTI Act.

¹⁷ Personal information is “... *information ... 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.*” – section 12 of the IP Act and section 10 and schedule 6 of the RTI Act.

¹⁸ Schedule 4, part 3, item 3 and part 4, item 6(1) of the RTI Act.

¹⁹ Paraphrasing the Australian Law Reform Commission’s definition of the concept in “For your information: Australian Privacy Law and Practice” *Australian Law Reform Commission Report No. 108* released 11 August 2008, at paragraph 1.56.

disclosure of the information in issue could reasonably be expected to prejudice an individual's right to privacy. In my view, members of the community assisting police with inquiries have a legitimate expectation that in doing so, their privacy will be maintained and respected as far as is possible.

Prejudice flow of information to police

29. I also consider that disclosure of the information in issue could reasonably be expected to have a detrimental impact²⁰ on the flow of information from the community to police. I acknowledge police possess certain coercive powers when investigating complaints. Nevertheless, efficient and effective use of policing resources is facilitated by police being able to seek and obtain information from various members of the community – complainants, bystanders, informers and even the subjects of complaint – consensually, ie with as much cooperation as possible. Routine disclosure of information provided by individuals assisting QPS investigations would in my view discourage persons from providing information to police or cooperating with future inquiries.

Balancing relevant public interest factors

30. Having identified and examined the public interest factors for and against disclosure, I consider that the public interest in:

- safeguarding personal information;
- protecting an individual's right to privacy and thus avoiding public interest harm; and
- preserving the free flow of information between the community and the QPS,

should each be afforded significant weight, and outweigh those factors favouring disclosure of the information in issue.

31. I accept the importance of ensuring agencies such as the QPS conduct investigations transparently and accountably, and of ensuring individuals have access to information allowing them to determine how complaints have been managed. I am satisfied, however, that these public interests have been adequately served through disclosure to the applicant of the bulk of the memorandum. In my view the QPS has given the applicant information sufficient to demonstrate the nature of its enquiries and the reasoning behind its ultimate response to his complaint.
32. While disclosure of a witness statement – part of the evidentiary base on which an investigatory decision is grounded – might be warranted in some circumstances,²¹ there is nothing in the material before me to suggest disclosure would be merited in this case. I do not consider that disclosure of the information in issue would materially advance any of the relevant pro-disclosure public interest factors identified in paragraph 14 above, and certainly not so as to justify disclosure of the personal information of which this information is comprised. I have therefore not accorded any of these three factors significant weight in making my decision.
33. As to the privacy non-disclosure factors, I note that the applicant may be aware of the identity of an individual which comprises part of the information in issue. While this may arguably diminish the privacy interest attaching to this limited amount of information as against the applicant, I am satisfied that that interest remains sufficiently

²⁰ Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (220020, 24 November 2010) at paragraph 17 for a succinct exposition of the meaning of 'prejudice' as used throughout the RTI Act.

²¹ Such as where, for example, objective material exists suggesting an investigatory outcome or conclusion may not have been justified on or supported by relevant evidence.

substantial so as to warrant continued general protection. This is particularly so given that there are, for reasons explained above, no public interest factors that would be materially advanced by disclosure of this information so as to warrant displacing the public interest in safeguarding personal information and avoiding public interest harm by protecting privacy.

34. I also recognise that the information in issue is comprised of some of the applicant's personal information. It is not possible, however, to separate this personal information from the personal information of others. Disclosing it would therefore require disclosure of the personal information of a person other than the applicant, and would prejudice an individual's right to privacy. In the circumstances of this case I prefer the public interest in safeguarding personal information and privacy over the public interest in disclosing to a person their own personal information.

DECISION

35. I affirm the decision under review by finding that the QPS is entitled to refuse access to the information in issue under section 67 of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
36. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Jenny Mead
Right to Information Commissioner

Date: 25 February 2011

APPENDIX**Significant procedural steps**

Date	Event
11 October 2010	The applicant applies to QPS for access to investigation documentation under the IP Act.
11 November 2010	QPS refuses access to various documents in part and full, on the basis disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
22 November 2010	The applicant applies to OIC for external review of the QPS decision.
25 November 2010	QPS provides OIC with copies of documents relating to the application and information in issue.
10 December 2010	OIC informs QPS and the applicant the external review application has been accepted for review. OIC conveys to the applicant the written preliminary view disclosure of information in issue would, on balance, be contrary to the public interest.
15 December 2010	The applicant advises OIC that he does not accept the preliminary view and provides submissions in support of his case for access.