



Decision and Reasons for Decision

Citation:	8A3BPQ and Queensland Police Service [2014] QICmr 42 (30 October 2014)
Application Number:	311912
Applicant:	8A3BPQ
Respondent:	Queensland Police Service
Decision Date:	30 October 2014
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY - SCOPE OF APPLICATION - applicant requested information relating to an investigation about him which was conducted by the agency's Ethical Standards Unit - whether information may be deleted as it is irrelevant to the terms of the access application - section 88(2) of the <i>Information Privacy Act 2009 (Qld)</i> ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to the handling of an investigation about the applicant including information provided by witnesses - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i> and section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to all information relating to an Ethical Standards Unit (**ESU**) investigation about him. The allegation related to the applicant's handling of evidence in a matter he investigated as a QPS officer.
2. QPS refused to deal with the access application under section 59 of the IP Act, without having identified any of the documents, on the basis that the access application was expressed to relate to a class of documents which comprised exempt information as their disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision. On external review, QPS agreed to identify the documents which were the subject of the access application and release some information to the applicant.

4. On external review, the applicant submitted that the allegation against him had been fabricated by the investigating officer and that, even though no adverse finding was made against him, the allegation was being used by QPS to prevent his return to his previous role. The applicant also submitted that he has been the subject of bullying and harassment in his employment and he had made a complaint about how the ESU officers handled the investigation.
5. For the reasons set out below, I vary QPS' decision and find that:
 - some of the remaining information which has not been disclosed to the applicant is information the disclosure of which would, on balance, be contrary to the public interest; and
 - the balance of this information is irrelevant to or outside the scope of the access application.

Background

6. QPS did not make a decision in relation to the access application within the prescribed timeframe and, as a result, was deemed to have made a decision refusing access to the requested documents.¹ However QPS purported to issue a decision to the applicant relying on section 59 of the IP Act to refuse to deal with the access application.² OIC treated the purported decision as QPS' submission on external review.
7. On external review, QPS notified OIC that the relevant investigation had been finalised and, as a result, it no longer relied on schedule 3, section 10(1)(a) of the RTI Act. QPS then provided submissions relying on a number of other provisions.³ OIC conveyed its preliminary view to QPS on each of these provisions and QPS accepted OIC's view that these provisions did not apply. QPS then agreed to locate the requested documents and part release them to the applicant subject to the deletion of information which, in OIC's view, was either irrelevant or outside the scope of the access application or its disclosure would, on balance, be contrary to the public interest.⁴
8. QPS located 449 pages and six audio recordings in response to the access application. On external review, QPS released 62 pages, 98 part pages and one audio recording to the applicant. This information generally comprised:
 - an audio recording of QPS officers executing a search warrant at the applicant's residence
 - search reports and indemnity receipts relating to items seized in relation to the investigation
 - the application for a search warrant and the issued search warrant
 - notebook entries from QPS officers investigating the allegation
 - investigation log
 - internal memorandums from ESU notifying the outcome of the investigation
 - letter to the applicant notifying the outcome of the investigation; and
 - the ESU report (which addressed the allegation, steps taken to investigate the allegation and findings in relation to the applicant).

¹ Section 66 of the IP Act.

² On the basis that the access application was expressed to relate to a class of documents which comprised exempt information under section 47(3)(a) and schedule 3, section 10(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**). No documents were therefore identified by QPS.

³ Specifically, section 69 of the IP Act and section 47(3)(a) and schedule 3, sections 10(3)(b), 10(4) and 12 of the RTI Act.

⁴ OIC did not invite the applicant to respond to the other provisions raised by QPS (identified at footnote 3 above) as OIC did not agree that access to the information could be refused on those grounds. OIC conveyed a preliminary view to the applicant on irrelevant information, outside scope information and contrary to public interest information and invited him to provide submissions supporting his case.

9. The applicant made submissions⁵ and provided voluminous supporting material⁶ to OIC to establish that access to all of the information should be granted. I have considered this information and, to the extent that it is relevant to the issues for determination, I address it below.
10. Significant procedural steps relating to the external review are set out in the appendix to these reasons.

Reviewable decision

11. The decision under review is the decision QPS was deemed to have made under section 66(1) of the IP Act refusing access to the requested information.

Evidence considered

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

Information in issue

13. The information which has not been released to the applicant and which is the subject of this decision comprises:
 - 16 full pages and five audio recordings the disclosure of which would, on balance, be contrary to the public interest
 - 273 full pages which are outside the scope of the access application; and
 - 98 part pages which contain irrelevant information or information which would, on balance, be contrary to the public interest to disclose.

Contrary to public interest information

Relevant law

14. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information. However, this right is subject to limitations, including grounds for refusal of access.⁷
15. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁸ 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.

⁵ By letters from the applicant or the applicant's lawyer on 12 September 2014, 25 September 2014, 13 October 2014 and 16 October 2014. As noted in the appendix, the applicant raised a number of procedural issues in response to OIC's preliminary view letter dated 19 August 2014. OIC addressed these issues in correspondence with the applicant and the applicant then provided final submissions supporting his case.

⁶ Including transcripts of a number of audio recordings (including the execution of a search warrant at the applicant's residence, interviews with the applicant and telephone calls between the applicant and QPS officers), a lengthy submission which the applicant appears to have submitted to WorkCover Queensland, correspondence to the Chief Magistrate, correspondence with the Queensland Police Union and QPS and a QPS publication titled *Corruption Prevention Plan 2009-2013 – Integrity is everyone's business*.

⁷ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it 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 the RTI Act.

⁸ Section 47(3)(b) and 49 of the RTI Act.

16. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁹ and explains the steps that a decision-maker must take¹⁰ 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 disclosing the information in issue would, on balance, be contrary to the public interest.

Findings

17. The contrary to public interest information can be categorised as follows:
- information provided by witnesses in the ESU investigation including transcripts and recordings of interviews, identifying information such as their names and dates of birth and information about another officer who was subject to the investigation (**Category A information**)
 - individuals' signatures and personal contact details including home and mobile phone numbers, residential addresses, email addresses and next of kin information (**Category B information**); and
 - information identifying individuals who were involved in the investigation into alleged criminal offences which the applicant dealt with as a QPS officer including their names and residential addresses (**Category C information**).
18. No irrelevant factors arise in relation to the Category A, B or C information. I will now consider the relevant factors favouring disclosure and nondisclosure of this information.

Category A information

19. As noted above, the Category A information comprises:
- information provided by witnesses in the ESU investigation including transcripts and recordings of interviews
 - identifying information such as their names and dates of birth; and
 - information about another officer who was subject to the investigation.
20. In relation to the Category A information, the applicant submitted that:¹¹
- ... there is no consideration given as to whether the information that is the subject of non-disclosure was the subject of the following:*
- *Investigative practices were adopted to minimise the personal information of other individuals being inextricably linked with other information that could, if compiled different, result in greater transparency;*
 - *Witnesses being informed that they were providing information that may ultimately be provided to [the applicant], or whether the information was such that a witness would not expect to be informed about such matters;*
 - *Witnesses were made aware, or likely to have been aware, that the type of information provided would ultimately be provided to [the applicant].*
21. The meaning of this submission is unclear. However, it appears to be a comment on QPS' investigatory and information gathering methods, rather than a submission

⁹ 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.

¹⁰ Section 49(3) of the RTI Act.

¹¹ Submission to OIC dated 12 September 2014.

relating to public interest considerations. In other words, this appears to comprise an argument that QPS should not have collected any information which it may then withhold from the applicant. QPS' investigative practices and the information it collects during the course of an investigation are not matters on which I have any jurisdiction to comment. However, it would be unreasonable to expect QPS to tailor its operational and investigative methods to ensure that any and all information gathered in the course of an investigation can be released under the IP Act to the person who is the subject of the investigation. This submission does not give rise to any identifiable public interest considerations.

QPS accountability and transparency

22. I have considered whether disclosing the Category A information could reasonably be expected to:¹²
- enhance QPS' accountability;¹³ and
 - reveal the reason for QPS' decision and any background or contextual information that informed the decision.¹⁴
23. QPS must be transparent and accountable in how it deals with serious allegations of misconduct and disciplinary investigations. I consider that disclosing the Category A information would provide the applicant with a more comprehensive understanding of how ESU handled the investigation and the reasoning behind its decision that *'there was insufficient evidence to support disciplinary charges in this instance'*.¹⁵ This would advance these factors to some degree and I consider that these factors are relevant. It is now necessary for me to determine the weight to be afforded to them in the circumstances of this external review.
24. The requirement for QPS to be accountable and transparent in the conduct of disciplinary investigations does not, in my view, oblige QPS to provide the applicant with access to its entire investigation file nor reveal all of the information it gathered in dealing with the investigation. QPS conveyed the substance of the allegation to the applicant and notified him of the outcome of the ESU investigation. On external review, QPS also agreed to provide the applicant with information relevant to the access application (identified at paragraph 8 above). This information is relevant to ESU's handling of the investigation and furthers the applicant's understanding, to some degree, of how the investigation was conducted. As this information about the investigation has been made available to the applicant, I consider this reduces the weight of these factors slightly and I afford them both moderate weight.

Advance fair treatment and procedural fairness

25. I have considered whether disclosing the Category A information could reasonably be expected to:

¹² The term *'could reasonably be expected to'* requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at paragraph 31.

¹³ Schedule 4, part 2, item 1 of the RTI Act.

¹⁴ Schedule 4, part 2, item 11 of the RTI Act.

¹⁵ Outcome advice letter from ESU to the applicant (pages 393 and 394 of the documents released to the applicant).

- advance the applicant's fair treatment in accordance with the law in his dealings with QPS;¹⁶ and
- contribute to the administration of justice and procedural fairness for the applicant.¹⁷

26. I have considered the application of these factors because of the applicant's particular interest in accessing the information and given that he was the subject of a serious allegation in the context of his employment.

27. The applicant submitted that:¹⁸

... It seems an uncontroversial proposition that where it is being alleged that a police investigation was commenced without adequate foundation or with surreptitious motives, all information leading to the decision to commence the investigation is relevant. Being informed merely "about the allegation" is insufficient to properly equip [the applicant] with all the relevant information that led to the decision. It was noted by Mason J in Kioa v West (1985) 159 CLR 550 that "the expression "procedural fairness" more aptly conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case".

Moreover, in circumstances where the release of the information is consistent with the transparency and accountability of the Queensland Police Service, it is respectfully submitted to be incorrect to give "no weight" to the fact that the release of further information would not "advance fair treatment and procedural fairness". The High Court has reiterated, in relevant circumstances, that "the observance of the principles of natural justice is a condition attached to such a statutory power and governs its exercise... A failure to fulfil that condition means that the exercise of the power is inefficacious. A decision arrived at without fulfilling the condition cannot be said to be authorised by the statute and for that reason is invalid" (Saeed v Minister for Immigration and Citizenship (2010) 267 ALR 204).

...

... In an ordinary workplace investigation in any private sector agency, witness statements taken are disclosed to the person who is the subject of the investigation, so that there is an opportunity to respond. Providing information regarding workplace activity is a routine part of any workplace...

...

A further difficulty with the reasoning is it allows the opinions, observations and experiences of colleagues of [the applicant] to remain on his police file within the Queensland Police Service. There is no information that suggests this information not be used as part of an assessment of [the applicant's] suitability for a particular work within the Queensland Police Service. It is personal information about [the applicant] that may reasonably be expected to affect [the applicant], without affording him the opportunity to know the precise detail to answer the opinions, observations and experiences of those colleagues as they relate to [the applicant]. Given the complaints were made either as part of a criminal complaint, where there is a presumption of open justice, as well as workplace complaints, which may affect his workplace assessments, significant weight ought to be given those matters being public interest factors that favour disclosure.

¹⁶ Schedule 4, part 2, item 10 of the RTI Act. The Information Commissioner considered this factor in *Pemberton and The University of Queensland* (1994) 2 QAR 293 at paragraph 190 and relevantly explained that: 'This [public interest factor] was based on the recognition by the courts that: "The public interest necessarily comprehends an element of justice to the individual" ... It is also self-evident from the development by the courts of common law of a set of principles for judicial review of the legality and procedural fairness of administrative action taken by governments, that compliance with the law by those acting under statutory powers is itself a matter of public interest... It is an interest common to all members of the community, and for their benefit. In an appropriate case, it means that a particular applicant's interest in obtaining access to particular documents is capable of being recognised as a facet of the public interest, which may justify giving a particular applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received and, if not, to pursue any available means of redress, including any available legal remedy'. The Information Commissioner's comments were made in the context of the repealed *Freedom of Information Act 1992* (Qld) but provide guidance on the interpretation of this factor under the RTI Act.

¹⁷ Schedule 4, part 2, items 16 and 17 of the RTI Act.

¹⁸ Submission to OIC dated 12 September 2014.

28. I do not consider that the notions of fair treatment and procedural fairness in this case entitle the applicant to *all* information about the investigation including the information provided by other individuals who participated in the investigation process. In this case it is relevant that:

- QPS informed the applicant about the allegation
- the applicant was afforded the opportunity to respond to the allegation
- the ESU investigation is complete
- the applicant was notified of the outcome of the investigation; and
- no disciplinary penalty was imposed as no adverse finding was made against the applicant.

29. I am satisfied that the relevant public interest factors have been served by the information which has been disclosed to the applicant to date. These factors do not arise for consideration in balancing the relevant public interest factors relating to the Category A information.¹⁹

Administration of QPS and conduct of its officers

30. Factors favouring disclosure will arise where disclosing information could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;²⁰ and
- reveal or substantiate that an agency or official has engaged in official misconduct or negligent, improper or unlawful conduct.²¹

31. The applicant made various allegations about the conduct of ESU officers in handling the investigation and asserted that:²²

- although the investigation about him has been finalised and the allegation was unsubstantiated, it is being used by QPS to prevent him from returning to his previous role
- the investigating ESU officer *'has in fact fabricated his suspicions and fabricated witness allegations'*
- he has been bullied and harassed in his employment
- the search warrant was issued without any evidence
- he was assaulted by a QPS officer when executing the search warrant; and
- QPS officers *have 'unlawfully suppressed'* the complaint that he made about the conduct of ESU officers and that his complaint was dealt with *'outside due process'*.

32. I have carefully considered the applicant's submissions and supporting material together with the Category A information. Based on my review of the available information, and despite the applicant's assertions, there is no evidence before me that these factors apply in relation to the Category A information.

33. The applicant also submitted that:²³

¹⁹ In any event, even if these factors did arise for consideration, I do not consider that they would carry sufficient weight to override the factors favouring nondisclosure of the Category A information discussed in these reasons.

²⁰ Schedule 4, part 2, item 5 of the RTI Act.

²¹ Schedule 4, part 2, item 6 of the RTI Act.

²² Submission to OIC dated 13 October 2014.

²³ Submission to OIC dated 13 October 2014.

- the reason he seeks access to this information is '*precisely because I know that witnesses (colleagues) have not made these false allegations [and it] is precisely the absence of their allegations in statements that is of interest to me*'; and
- '*there is no need to retain this information in order to protect witnesses or protect the disclosure mechanism... As evidenced by official records the witnesses have never stated the things that were claimed they have stated to begin with.*'

34. It appears that the applicant believes that releasing the information to him will prove the witnesses did not make the allegation which, in turn, will prove his case against the investigating ESU officer who the applicant speculates '*fabricated*' the allegation about him. I acknowledge that the applicant would like to know as much detail as possible about the ESU investigation and the information provided by witnesses and considers this information will prove the serious allegations he has made about the conduct of QPS officers. Section 121(3) of the IP Act prevents me from revealing the Category A information in any more detail. It is sufficient to note that based on my review of the Category A information, I am not satisfied there is any merit to the applicant's submission in this regard and I am not persuaded that disclosing the Category A information would advance these factors.

Personal information and privacy

35. The Category A information was created in the course of an investigation into an allegation about the applicant. The information is generally about the applicant and comprises his personal information.²⁴ This gives rise to a factor favouring disclosure²⁵ to which I afford significant weight.

36. The Category A information is also the personal information of other individuals including witnesses and another subject officer. Given the nature of this information, and the way in which it is presented, it is not possible to separate the applicant's personal information from the personal information of others. As a result, I have also considered whether disclosing the information could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;²⁶ and
- cause a public interest harm as it would disclose personal information of a person.²⁷

37. Generally, information relating to the day-to-day work duties and responsibilities of a public service officer may be disclosed under the IP Act, despite it falling within the definition of personal information. However, agency documents can also contain personal information of public servants which is not *routine* work information.²⁸ I am satisfied that the Category A information in this case is personal information of this kind.²⁹ Although the personal information appears in a workplace context, it comprises:

- the opinions, observations and experiences of other people in the form of witness statements and in the context of a workplace investigation; and
- a recommendation about another subject officer in the context of the investigation.

²⁴ 'Personal information' is defined in section 12 of the IP Act 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*'.

²⁵ Schedule 4, part 2, item 7 of the RTI Act.

²⁶ Schedule 4, part 3, item 3 of the RTI Act.

²⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

²⁸ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at paragraph 60.

²⁹ I acknowledge that police officers are not employed under the *Public Service Act 2008* (Qld) however they are employees of an agency which is subject to the IP Act and I consider the same principle applies to disclosure of their routine work information.

38. I consider such information is not related wholly to the routine day-to-day work activities of these individuals and is not their routine personal work information.
39. The applicant submitted that *'To regard reporting information about a colleague as not "routine work information" is likely to significantly impair the disclosure of information and defeat the pro-disclosure bias intended by the [IP Act].'*³⁰ To the extent this submission observes that access to personal information (and, in particular, personal information which is sensitive and not routine work information) is subject to restrictions under the IP Act, the submission is correct. The right of access to information under the IP Act and the RTI Act is not unqualified – it is subject to various limitations, some of which are intended to protect personal information and privacy. A finding that particular information meets the requirements of one of these prescribed limitations on access justifies a decision to refuse access to that information. However, such a decision does not *'defeat the pro-disclosure bias'* as the applicant submitted. Rather it reflects the intended operation of the access scheme under the IP Act, that is, balancing the public interest in furthering access to government held information against the public interest in, relevantly, ensuring that personal information and individual privacy are protected against unwarranted disclosure and intrusion.
40. As noted above, I am satisfied that the Category A information is not routine personal work information. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the IP Act. The information is sensitive and personal in nature. I consider its disclosure under the IP Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of these public interest factors favouring nondisclosure significant weight.

Prejudice management function and ability to obtain confidential information

41. The RTI Act gives rise to factors favouring nondisclosure where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information³¹ or to prejudice its management function.³²
42. Staff usually supply information to workplace investigators on the understanding that it will only be used for the investigation or any subsequent disciplinary action. It is reasonable to expect staff to cooperate with an investigative process, particularly as QPS officers are directed by the Police Commissioner to truthfully, completely and promptly answer questions in an investigation into a disciplinary complaint. However, in my view, disclosing this information outside of the investigation process and under the IP Act, where there can be no restriction on its use, dissemination or republication, could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of information to investigators. This, in turn, could reasonably be expected to adversely impact QPS' ability to conduct workplace investigations and manage staff. For these reasons, I afford these factors significant weight.³³

³⁰ Submission to OIC dated 12 September 2014.

³¹ Schedule 4, part 3, item 16 of the RTI Act.

³² Schedule 4, part 3, item 19 of the RTI Act.

³³ In submissions to OIC dated 12 September 2014, the applicant submitted that *'With respect to the consideration of any prejudice to management function and the ability to obtain confidential information, no particularity is given to the number of pages or parts of pages that are relevant to this issue.'* The information which is the subject of this decision has been clearly identified above and this submission does not go to the weighing up of the relevant public interest factors.

Balancing the relevant factors

43. I acknowledge the general public interest in furthering access to government held information. In relation to the factors favouring disclosure of the Category A information, I afford:
- moderate weight to the two factors relating to QPS accountability and transparency; and
 - significant weight to the factor relating to the applicant's personal information.
44. In relation to the factors favouring nondisclosure of the Category A information, I afford:
- significant weight to the two factors relating to the personal information and privacy of other individuals; and
 - significant weight to the two factors relating to prejudice to QPS' ability to obtain confidential information and manage its staff.
45. For these reasons, I am satisfied that access to the Category A information can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

Category B information

46. The Category B information comprises individuals' signatures and personal contact details including home and mobile phone numbers, residential addresses, email addresses and next of kin information.
47. This information comprises the personal information of other individuals and its disclosure under the IP Act could reasonably be expected to prejudice the protection of their privacy. This gives rise to two factors which favour nondisclosure of the Category B information. Given the nature of this information, I afford both factors significant weight.³⁴
48. Beyond the general public interest in furthering access to government held information, I can identify no factors which favour disclosure of this information and the applicant has raised none.³⁵ I am not satisfied that this general public interest is of its own sufficient to displace the public interest factors favouring nondisclosure.
49. I am satisfied that access to the Category B information can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

Category C information

50. The Category C information comprises information identifying individuals who were involved in the investigation into alleged criminal offences which the applicant dealt with as a QPS officer including their names and residential addresses. This information clearly comprises the personal information of other individuals.
51. Disclosing the names and residential addresses of these individuals under the IP Act could reasonably be expected to prejudice the protection of the individuals' right to

³⁴ Schedule 4, part 3, item 3 and schedule 4, part 4, item 6 of the RTI Act.

³⁵ The applicant did not make submissions on OIC's view that disclosing this information would be contrary to the public interest but, in submissions to OIC dated 12 September 2014, requested that OIC identify how many pages the Category B information comprised 'so that the overall impact of the non-disclosure is transparently recorded'. The information which is the subject of this decision has been clearly identified above and this submission does not go to the weighing up of the relevant public interest factors.

privacy. Additionally, given that the information appears in the context of a criminal investigation, and would identify alleged offenders, victims and witnesses, it is highly sensitive. I afford both of the relevant nondisclosure factors significant weight.³⁶

52. I acknowledge that some of this information may be known to the applicant as a result of his involvement in the investigation. However, I do not consider this warrants its disclosure to the applicant under the IP Act. This information was made available to the applicant subject to the confidentiality obligations which apply to him as a QPS officer. I note that it is not possible to place restrictions on the use, dissemination or republication of information released under the IP Act.
53. Beyond the general public interest in furthering access to government held information, I can identify no factors which favour disclosure of this information and the applicant has raised none.³⁷ I am not satisfied that this general public interest is of its own sufficient to displace the public interest factors favouring nondisclosure.
54. I am satisfied that access to the Category C information can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

Information irrelevant to or outside the scope of the access application

Relevant law

55. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
56. If a document does not contain *any* information that is relevant to the terms of the access application, it is outside the scope of the access application and that document will not be considered as part of the application under the IP Act.
57. In deciding whether information is irrelevant or outside scope, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.³⁸

Findings

58. As noted above, the applicant applied for access to information relating to an ESU investigation about him which concerned an allegation about the applicant's involvement in investigating alleged criminal offences as a QPS officer.
59. The information which I consider is irrelevant to or outside the scope of the access application comprises information about:
 - other police matters which in no way relate to the applicant or the terms of his access application (e.g. notebook entries and Occurrence Log entries relating to other matters); and

³⁶ Schedule 4, part 3, item 3 and schedule 4, part 4, item 6 of the RTI Act.

³⁷ The applicant did not make submissions on OIC's view that disclosing this information would be contrary to the public interest but stated, in submissions to OIC dated 12 September 2014, that *'it is difficult to determine why the names of witnesses in a matter are an irrelevant detail to ensure [the applicant] understands the nature and circumstances of the complaint and investigation'*. I have not made a finding that the Category C information is irrelevant. As explained above, I am satisfied that disclosing this information would, on balance, be contrary to the public interest. This submission does not go to the weighing up of the relevant public interest factors.

³⁸ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at paragraph 52.

- a 2011 investigation on which the applicant worked but is unrelated to the ESU investigation into the allegation about the applicant.

60. This information is not covered by the access application and is not about the applicant. Therefore, it is excluded from consideration on the basis that it is irrelevant to or outside the scope of the access application.³⁹

DECISION

61. As QPS was deemed to have made a decision refusing access to the information under section 66(1) of the IP Act, I vary QPS' decision and find that:

- access to the Category A, B and C information can be refused on the basis that its disclosure would, on balance, be contrary to the public interest;⁴⁰ and
- the remaining information is irrelevant to⁴¹ or outside the scope of the access application.

62. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Tara Mainwaring
A/Assistant Information Commissioner

Date: 30 October 2014

³⁹ The applicant did not make any relevant submissions on this issue.

⁴⁰ Section 67 of the IP Act and section 47(3)(b) of the RTI Act.

⁴¹ Section 88 of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
12 December 2013	QPS received the access application under the IP Act.
23 January 2014	QPS did not make a decision within the processing period and was therefore deemed to have made a decision refusing access to the requested documents. Despite this, QPS purported to issue a decision to the applicant under section 59 of the IP Act refusing to deal with the application on the basis that the application was expressed to relate to a class of documents which comprised exempt information under schedule 3, section 10(1)(a) of the RTI Act.
6 February 2014	OIC received the external review application. OIC asked QPS to provide a number of procedural documents.
17 February 2014	OIC received the requested documents from QPS. The applicant spoke with an OIC staff member about the review.
26 February 2014	OIC notified QPS and the applicant that the external review application had been accepted. OIC asked QPS to provide submissions by 12 March 2014.
4 March 2014	QPS requested an extension of time to provide the requested submissions. OIC granted QPS the requested extension of time.
24 March 2014	OIC received QPS' submissions. QPS advised that it no longer relied on schedule 3, section 10(1)(a) of the RTI Act as the relevant investigation had been finalised. QPS provided further submissions in support of its case identifying other grounds for refusing access to the information.
10 April 2014	OIC conveyed a preliminary view to QPS and requested it provide further submissions by 1 May 2014.
23 April 2014	A QPS officer spoke with an OIC staff member about the review. The applicant spoke with an OIC staff member about the review.
5 May 2014	OIC received submissions and a copy of the documents in issue from QPS. QPS requested an extension of time to provide OIC with a redacted version of these documents.
7 May 2014	OIC granted QPS the requested extension of time. The applicant spoke with an OIC staff member about the review.
21 May 2014	OIC received submissions and a copy of the documents in issue from QPS.
26 May 2014	The applicant spoke with an OIC staff member about the review.
28 May 2014	OIC requested QPS provide further submissions by 12 June 2014.
29 May 2014	A QPS officer spoke with an OIC staff member about the review.
30 May 2014	OIC clarified the request for further submissions with QPS.
2 June 2014	OIC received submissions from QPS. The applicant spoke with an OIC staff member about the review.
17 June 2014	A QPS officer spoke with an OIC staff member about the review. The applicant spoke with an OIC staff member about the review.
24 June 2014	OIC conveyed a preliminary view to QPS and requested it provide further submissions by 9 July 2014. OIC asked QPS to release the information to the applicant by 9 July 2014.
27 June 2014	A QPS officer spoke with an OIC staff member about the review.

Date	Event
30 June 2014	QPS notified OIC that it accepted OIC's preliminary view and had released the information to the applicant.
2 July 2014	The applicant spoke with an OIC staff member about the review.
19 August 2014	The applicant spoke with an OIC staff member about the review. OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 10 September 2014 if he did not accept the preliminary view.
8 September 2014	The applicant requested a short extension of time to respond to the preliminary view.
9 September 2014	OIC granted the applicant the requested extension of time.
12 September 2014	The applicant provided submissions and raised a number of procedural issues.
17 September 2014	OIC addressed the procedural issues with the applicant, confirmed the preliminary view and invited the applicant to provide any further and final submissions by 25 September 2014.
25 September 2014	The applicant raised a number of procedural issues and requested a further extension of time to respond to the preliminary view.
26 September 2014	OIC addressed the procedural issues with the applicant and invited the applicant to provide any further and final submissions by 13 October 2014.
13 October 2014	The applicant notified OIC that he did not accept the preliminary view and provided submissions and supporting material.
16 October 2014	The applicant spoke with an OIC staff member about the review. OIC received further submissions and supporting material from the applicant.