



Decision and Reasons for Decision

Citation: *O19 and Queensland Health* [2022] QICmr 21 (12 April 2022)

Application Number: 316239

Applicant: O19

Respondent: Queensland Health

Decision Date: 12 April 2022

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - SYSTEM FOR PROTECTION OF PERSONS, PROPERTY, ENVIRONMENT - information relating to calls made to Queensland Ambulance Service concerning applicant - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3 section 10(1)(i) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to calls made to Queensland Ambulance Service concerning applicant - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Health (**QH**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to:

All transcripts of emergency 000 calls and any subsequent calls relating to myself being [the applicant] made on Saturday the second day of March 2019 (02/03/2019) whereby which emergency services were dispatched to [an address] including all and any communications between and within [the Queensland Ambulance Service – 'QAS'] ...and police.

¹ Application dated 26 May 2021.

2. QH located three audio recordings (**Recordings**). QH decided² to refuse access to this information, on the ground disclosure would, on balance, be contrary to the public interest.³
3. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of QH's decision. Early in the review, QH located a further relevant document, a seven-page 'Incident Detail Report' (**Report**). QH agreed to release parts of the Report to the applicant during OIC's review,⁵ leaving parts only of that Report⁶ and the three Recordings in issue.
4. For the reasons explained below, I am satisfied that QH may refuse access to the Recordings and those parts of the Report still in issue. I consider that disclosure of this information could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment, and thus it comprises exempt information, to which access may be refused under section 67(1) of the IP Act and section 47(3)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
5. Further, and in the alternative, I am satisfied that disclosure of any of this information would, on balance, be contrary to the public interest, and access to it may be refused under section 47(3)(b) of the RTI Act. I therefore vary the decision under review.

Background

6. The decision under review was that disclosure of the information in issue would, on balance, be contrary to the public interest, and a good proportion of this external review also proceeded on that basis.
7. Relatively late in the review, however – and consistently with an earlier decision of OIC⁷ – I formed the preliminary view that disclosure of the information in issue could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment, such that it comprised exempt information, to which access may be refused.⁸
8. The applicant was apprised of this preliminary view,⁹ and given fair opportunity to consider and respond to same (which opportunity he availed himself of).¹⁰ Where information is found to comprise exempt information, it is not strictly necessary to consider whether an alternative ground for refusal also applies, eg, whether disclosure of the information would, on balance, be contrary to the public interest.¹¹
9. For completeness, and in fairness to the applicant who for most of the review was asked to address public interest arguments, I have nevertheless considered both grounds for refusing access – ie, sections 47(3)(a) and (b) of the RTI Act.

² Decision dated 7 July 2021.

³ Section 47(3)(b) of the RTI Act.

⁴ Application dated 3 August 2021.

⁵ QH email dated 15 November 2021.

⁶ ie, those parts redacted from the copy of the Report otherwise released to the applicant by QH on 15 November 2021.

⁷ *94NNEZ and Department of Community Safety* (Unreported, Queensland Information Commissioner, 29 November 2010) (**94NNEZ**).

⁸ A discrete ground for refusing access to information: sections 47(3)(a) and 48 of the RTI Act, and schedule 3, section 10(1)(i) of the RTI Act.

⁹ By my letter dated 9 February 2022.

¹⁰ See the applicant's submissions dated 25 February 2022.

¹¹ *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149, [15]-[16].

Reviewable decision

10. The decision under review is QH's decision dated 7 July 2021.

Evidence considered

11. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
12. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹² I consider that in observing and applying the law prescribed in the IP and RTI Acts, a decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,¹³ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's IP and RTI Acts and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'¹⁴
13. Further, in making my decision on both exempt information and public interest grounds, I have kept in mind the IP Act's pro-disclosure bias and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.¹⁵

Applicant's submissions

14. The applicant has made detailed submissions through the course of this review.¹⁶ I have given each of these submissions careful consideration, and, where salient, touched on same in the body of these reasons. It is convenient, however, to briefly address certain contentions raised by the applicant during the review.¹⁷
15. The first of these is that it was somehow unfair of OIC to ventilate the decision in *94NNEZ* and the exempt information ground of refusal – as was done in my 9 February 2022 letter – when the decision under review was made on public interest grounds, and OIC's earlier correspondence to him had also focussed on such grounds.
16. On this point, there is little to be said other than that I assumed responsibility for this review following earlier case management by an Assistant Information Commissioner. I brought fresh eyes to the matter, and it occurred to me that *94NNEZ* and its application of schedule 3, section 10(i) of the RTI Act had relevance in this case. To ensure the applicant was treated fairly, I considered it only proper that I bring *94NNEZ* to his attention and given him the opportunity to comment. He has, as noted, availed himself of that opportunity, and I have addressed those submissions below.
17. External review under the IP and RTI Acts is a merits review, in which I 'stand in the shoes' of QH and can make any decision that the agency could have made.¹⁸ No unfairness arises simply because I have identified an alternative ground for refusing

¹² As embodied in section 21 of the HR Act.

¹³ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁴ *XYZ*, [573].

¹⁵ Section 67(2)(a) of the IP Act.

¹⁶ Submissions received under cover of letter dated 18 October 2021, submissions dated 1 December 2021 (received 2 December 2021) and submissions dated 25 February 2022.

¹⁷ Particularly in his submissions dated 25 February 2022.

¹⁸ Section 118(1)(b) of the IP Act.

access to the information in issue. In any event, I have, as noted above, considered both exempt information and public interest grounds in making this decision.

18. Relatedly, the applicant appears to consider that we have not given him sufficient assistance to make his case for access to the information in issue, including by not consulting with him via telephone.
19. OIC is an impartial arbiter, serving a role akin to a quasi-judicial tribunal.¹⁹ It would be both inappropriate and unfair for us to extend assistance to a participant in making their case for either access or refusal of access. We have endeavoured to explain to the applicant matters adverse to his position and given him opportunity to respond in kind.²⁰ Beyond that, there is little that we can properly offer by way of assistance.
20. As to how participant submissions are taken, the procedure to be adopted on external review is a matter within the discretion of the Information Commissioner – and, by extension, me as her delegate.²¹ As is the case in many external reviews, submissions in this matter were sought in writing, not orally.²² The applicant has lodged some 41 pages of cogent and considered submissions through the review,²³ tending to bely any suggestion that requiring him to frame his arguments in writing may have somehow disadvantaged him.
21. In a similar vein, the applicant appears to harbour concerns he was allowed insufficient time to prepare and lodge submissions, contrasting the time OIC afforded him to reply to correspondence, as against the time it may have taken us to take a step in the review. The applicant was given the same time ordinarily granted to a participant.²⁴ Again noting the length and general coherence of the applicant's submissions, it does not appear that the time allowed caused the applicant disadvantage.²⁵
22. As for the time taken by OIC in progressing the review, the applicant's matter is one of several hundred active reviews before OIC, many of which pre-date the applicant's application. The applicant's review has been finalised well within 12 months, and any suggestion unfairness may have arisen via procedural timelines, or delay, is rejected.
23. Finally, his 25 February 2022 submissions request that '*OIC use its powers to conduct an investigation. If you conduct an investigation the truth will come out*'. Neither the IP nor RTI Acts confer on OIC any broader investigative or inquisitorial role on external review.²⁶ The merits review process, culminating in this decision, is the extent of OIC's jurisdiction.
24. I turn now to substantive issues.

¹⁹ *Cairns Port Authority v Albietz* [1995] 2 Qd R 470.

²⁰ Principally, by way of our preliminary view letters dated 1 October and 12 November 2021, and 9 February 2022. Letters of this kind are commonly used by OIC in external reviews '*to clarify issues and to test possible conclusions*,' and afford a participant the opportunity to make submissions in reply – and which thus '*do not not signify a mind closed to persuasion to a contrary view*...': *Community Care Inc v Taylor, Information Commissioner & Ors* [2007] QSC 148, [21] (Helman J).

²¹ Section 108(1)(a) of the IP Act. Section 110(2)(b) of the IP Act, meanwhile, simply requires that the Information Commissioner afford participants '*...an opportunity to present the participant's views to the commissioner by making written or oral submissions*' (my emphasis) – plainly, that has been done in this case.

²² Bearing in mind, too, that for considerable periods case management of this review has been undertaken by officers and delegates working remotely.

²³ The applicant's submissions received 18 October 2021 extend to 22 pages (including attachments). His submissions dated 1 December 2021 span six pages, and those dated 25 February 2022, 13.

²⁴ Generally, 10 business days.

²⁵ In his letter dated 25 February 2022, the applicant does conclude by stating that he has '*run out of time*' and has '*more submissions to make*'. I did not invite further submissions, there being more than enough information before me as at the date of this decision to both permit me to make that decision, and satisfy me that the applicant has been given sufficient and fair opportunity to put his case for access.

²⁶ Particularly as regards the conduct of private citizens, which, as discussed below, appears to be the applicant's primary concern.

Information in issue

25. The information in issue comprises that information described in paragraphs 2 and 3; three Recordings and parts of the seven-page Report.

Issue for determination

26. The issue for determination is whether access to the information in issue may be refused under section 67(1) of the IP Act and one or both of section 47(3)(a) and section 47(3)(b) of the RTI Act.

Exempt information

Relevant law

27. An individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁷ The right of access is subject to several exclusions and limitations, including grounds for refusal of access.
28. Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the RTI Act. Section 47(3)(a) of the RTI Act permits an agency to refuse access to documents to the extent they comprise '*exempt information*'.²⁸
29. Exempt information, as defined in section 48 of the RTI Act, includes information the disclosure of which could reasonably be expected²⁹ to prejudice³⁰ a system or procedure for the protection of persons, property or the environment.³¹

Findings

30. I am, firstly, satisfied that the emergency call network conducted via the triple zero number is a sufficiently coherent and organised scheme so as to comprise a '*system*' within the meaning of schedule 3, section 10(1)(i) of the RTI Act.³² Further, it is a system '*for the protection of property, persons or the environment*'.

²⁷ Under section 40(1)(a) of the IP Act. 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.*'

²⁸ As further defined in section 48 and schedule 3 of the RTI Act.

²⁹ A reasonable expectation is one that is reasonably based, and not irrational, absurd or ridiculous: *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009) at [189] – [193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97 ('*Cockcroft*'). This test requires a decision-maker to distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* [1994] QICmr 1, a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld), at [154]-[160]. Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*': *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri* (GD) [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Cockcroft* at [190].

³⁰ Using the ordinary meaning of this word, which includes to '*affect disadvantageously or detrimentally*': *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010), at [16].

³¹ Schedule 3, section 10(1)(i) of the RTI Act.

³² A '*system*' being an '*organised scheme or plan of action, esp. a complex or comprehensive one; an orderly or regular procedure or method...*'; a '*co-ordinated body of methods, or a complex scheme or plan of procedure*': dictionary definitions cited and applied in *Ferrier and Department of Police* (1996) 3 QAR 350, at [28], which were cited in 94NNEZ and which I adopt for the purpose of this decision.

31. I am also satisfied that unrestricted disclosure under the IP Act³³ of information collected from a caller using that system or procedure,³⁴ such as information of the kind in issue in this review, could reasonably be expected to prejudice the system.
32. I have listened to the Recordings, and carefully considered the information withheld from the Report. I consider that disclosure of any of this information would not only definitively identify the caller, but reveal information imparted by that caller in the sensitive context of a communication with emergency services.
33. Coupled with the preceding considerations is the crucial fact that the caller objects to disclosure of their calls.³⁵ Given this, and consistently with the findings in *94NNEZ*, I consider it reasonable – and not irrational, absurd or ridiculous³⁶ – to expect that unrestricted disclosure of these calls and associated information under the IP Act³⁷ could discourage other community members from placing emergency calls in the future. This would obviously impair the effectiveness of the triple zero system, with resultant ‘*serious negative consequences for people who genuinely need emergency assistance from QAS*’.³⁸
34. Disclosure of the information in issue could reasonably be expected to prejudice a system or procedure for the protection of property, persons or the environment. It therefore comprises exempt information, to which access may be refused under section 47(3)(a) of the RTI Act.
35. The reasoning in the preceding five paragraphs was explained to the applicant in my letter dated 9 February 2022. The applicant replied to the above by way of lengthy submissions dated 25 February 2022. The applicant contended that he was aware of the identity of the triple zero caller, and argued that *94NNEZ* should be distinguished from his case.
36. On the point of identity, the material on which he relies appears to me to allow inference as to, but does not definitively confirm, that identity. Disclosure of the information in issue, on the other hand, would permit identification.
37. In any event, schedule 3 section 10(1)(i) does not turn on secrecy of caller or any other individual’s identity,³⁹ but is concerned with avoiding prejudice ‘*to the system as a whole*’ over and above ‘*an individual case*’.⁴⁰ This requires me to consider not whether the identity of a particular caller is known to an applicant, but whether unrestricted disclosure of the calls made by that caller, and related information, could reasonably be expected to deter others in the future from using the emergency call system. In a case such as this, where such unconditional disclosure would occur contrary to the caller’s express objections, I am satisfied that is so.
38. The applicant also argues, as noted, that *94NNEZ* can be distinguished from his case; submitting, for example, that the procedure on review in that case apparently included telephone contact with relevant participants, whereas same has not occurred in this

³³ As Judicial Member McGill SC of the Queensland Civil and Administrative Tribunal (**QCAT**) recently observed ‘... the effect of the... [Information Privacy Act 2009 (Qld)] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.’: *FLK v Information Commissioner* [2021] QCATA 46 at [17].

³⁴ Or subsequently generated as a result of the caller’s use of the system.

³⁵ See email from QH to OIC dated 4 August 2021.

³⁶ See footnote 29.

³⁷ In whatever form, whether by way of recording or written transcript: see further footnote 42.

³⁸ *94NNEZ*, paragraph [15].

³⁹ As opposed, for example, to the confidential source exemption prescribed in schedule 3, section 10(1)(b) of the RTI Act.

⁴⁰ *E9IH9N and Metro South Hospital and Health Service* [2016] QICmr 18, [27].

case, and that he is pursuing access to a transcript, rather than the audio originals, of the Recordings.

39. Firstly, I should stress that I have decided this case on its merits. It is, of course, desirable, that like cases be decided alike,⁴¹ and *94NNEZ* is to my mind a matter very similar to the present. Nevertheless, I have had regard to both the actual information in issue before me, and the language of schedule 3, section 10(1)(i) of the RTI Act, and independently determined that disclosure of the former would give rise to the negative consequences against which the latter is intended to safeguard.
40. As for the other points summarised in paragraph 38, how submissions are gathered in a review has no bearing on an assessment as to whether a ground for refusing access to information in issue in that review is established. Similarly, I have stated above my satisfaction that disclosure of the Recordings – *whether in audio or written form*⁴² – could reasonably be expected to have the detrimental consequences schedule 3, section 10(1)(i) of the RTI Act is intended to prevent.
41. Finally, I note that a point repeated throughout the applicant's submissions is, essentially, that information conveyed by the caller was false. There is nothing before me to suggest that these assertions are possessed of substance; certainly, having listened to relevant Recordings, they appear to have been made with sincerity.
42. In any event, neither the motivations of a caller to emergency services, nor the ultimate veracity of information they may convey, are strictly relevant to the application of schedule 3, section 10(1)(i) of the RTI Act. All that is required is that there exists a reasonable basis to expect disclosure of relevant information could prejudice a given system or procedure for the protection of property, persons or the environment. As I have explained above, I am satisfied those requirements are, in this case, met.

Contrary to public interest

43. Additionally, and alternatively, I am satisfied that disclosure of the information in issue would, on balance, be contrary to the public interest: another ground on which access to information may be refused under the IP Act.⁴³

Relevant law

44. In deciding whether disclosure of information would, on balance, be contrary to the public interest,⁴⁴ the RTI Act requires a decision-maker to:⁴⁵
 - 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

⁴¹ *Searle v Commonwealth* (2019) 376 ALR 512, at [250], citing *Plaintiff M64/2015 v Minister for Immigration and Border Protection* (2015) [2015] HCA 50, at [54] per French CJ, Bell, Keane and Gordon JJ, at [68]–[69] per Gageler J; *Rendell v Release on Licence Board* (1987) 10 NSWLR 499, at [504A–B]; per Kirby P, Priestley and Clarke JJA.

⁴² The applicant seeks a written transcript of the Recordings. As has been pointed out to him during the review, the entitlement to have an audio document reduced to written form stated in section 83(1)(d)(i) of the IP Act is one concerning form of, not right to, access. That is, it is only enlivened where a decision has been made to grant access to the relevant document. The decision under review refused such access, as does this decision.

⁴³ Section 67(1) of the IP Act, and section 47(3)(b) of the RTI Act.

⁴⁴ 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

⁴⁵ Section 49 of the RTI Act.

- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

45. In reaching my decision, I have followed the steps listed above. I have disregarded irrelevant factors, and considered both the non-exhaustive lists of factors favouring disclosure and non-disclosure as set down in schedule 4 of the RTI Act and the applicant's extensive submissions.

Factors favouring disclosure

46. Favouring disclosure of the information in issue is the general public interest in promoting access to government-held information.⁴⁶ Additionally, I am satisfied that disclosure of this information could reasonably be expected to:

- disclose to the applicant his personal information⁴⁷
- enhance QAS accountability and transparency⁴⁸
- reveal information taken into account by that entity in making decisions concerning the applicant;⁴⁹ and
- reveal measures taken relating to public health and safety.⁵⁰

47. These are all important public interests, although given the nature of the information – predominantly records of a private individual's contact with QAS – disclosure of the information in issue would not substantially advance those summarised at the latter three points above. I thus afford relevant considerations only limited weight.

48. Affording individuals access to their own personal information as held by government is a key public interest, and one deserving significant weight.

49. Aside from the above factors, the applicant also submits⁵¹ that disclosure to him of the information in issue could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official⁵²
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct⁵³
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies⁵⁴
- reveal that the information in issue is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant⁵⁵
- contribute to the administration of justice generally,⁵⁶ and for a person;⁵⁷ and

⁴⁶ Implicit in the object of the IP Act.

⁴⁷ Schedule 4, part 2, item 7 of the RTI Act, the information in issue including information or opinion about the applicant, from which he may be identified.

⁴⁸ Encompassed generally by schedule 4, part 2, items 1 to 3 of the RTI Act.

⁴⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 14.

⁵¹ See particularly submissions dated 1 December 2021. These submissions also contain reference to the 'National Privacy Principles' (NPPs) stated in schedule 4 of the IP Act. 'Health agencies' are required to comply with the NPPs when collecting, storing, and using personal information: section 31 of the IP Act. However, NPPs are irrelevant when dealing with an application for access to personal information made under Chapter 3 of the IP Act. It is the provisions of Chapter 3 of the IP Act (and, per section 67 of the IP Act, relevant provisions of the RTI Act) that govern how such access applications are made, dealt with and decided.

⁵² Schedule 4, part 2, item 5 of the RTI Act.

⁵³ Schedule 4, part 2, item 6 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 10 of the RTI Act.

⁵⁵ Schedule 4, part 2, item 12 of the RTI Act.

⁵⁶ Schedule 4, part 2, item 16 of the RTI Act.

⁵⁷ Schedule 4, part 2, item 17 of the RTI Act.

- contribute to the enforcement of the criminal law.⁵⁸
50. I do not accept that any of the above factors are enlivened in this case.
51. The first three concern, in essence, agency or public officer conduct – in the context of this case, QAS and its officers. Each is expressly noted in the applicant's submissions, yet contradictorily he also emphasises⁵⁹ that he has '*not raised the issue regarding my treatment by the QAS or of the QAS' actions*', '*did not request access to documents relating to my treatment by the QAS*', and that the question of access to information '*relating to my treatment by the QAS or of the QAS' actions*' is '*irrelevant*'. In view of these comments, it is unclear to me as to why the applicant has cited any of these three factors.
52. In any event, assuming he does contend they apply, I should make it clear that there is nothing objective before me, either within the information in issue or otherwise, suggestive of misconduct, maladministration, or deficient conduct on the part of QAS or its officers (or any other public officer or agency), nor any unfair treatment of the applicant or any other person or entity. Indeed, much of the information in issue – recordings of a private individual's call to emergency services, and textual summaries of same – does not even concern or bear upon agency or official conduct.
53. Nor is there anything probative⁶⁰ before me indicative of any breaches of the criminal law, enforcement of which might be aided by disclosure to the applicant of the information in issue. Schedule 4, part 2, items 5, 6, 10 and 18 of the RTI Act do not apply to favour disclosure of the information in issue.
54. Further, I cannot see that disclosure of any of the information in issue would reveal incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant information. Some of this information is purely factual matter, which presents as accurate and correct. As records of a private individual's calls to emergency services, some of the information is, of course, inherently subjective – that does not, of course, mean that its *unfairly* so. Rather, it is the given individual's personal account and interpretation of underlying events. Schedule 4, part 2, item 12 does not arise for balancing.
55. Turning to fair treatment and administration of justice considerations, the applicant submits that he is '*seeking access to the Triple Zero calls, to determine what course of action is available to me within the law*'.⁶¹ OIC has previously determined that considerations of this kind may arise where disclosure of information would assist persons to pursue a remedy, or to evaluate whether a remedy is available, or worth pursuing, where, importantly, loss or damage or some kind of wrong has been suffered in respect of which a remedy is, or may be, available under the law.⁶² Apart from the applicant's assertions, there is nothing before me, least of all in the information in issue, indicating that a legally recognised wrong was perpetrated on the applicant, the evaluation or pursuit of a remedy for which might be facilitated by disclosure to him of the information in issue. Schedule 4, part 2 items 16 and 17 are not enlivened.

⁵⁸ Schedule 4, part 2, item 18 of the RTI Act.

⁵⁹ Submissions dated 1 December 2021.

⁶⁰ I.e., material beyond the applicant's assertions that he has, for example, been the subject of a '*travesty of justice due to blatantly false accusations. Crimes have been committed...*': submissions dated 25 February 2022; see also the applicant's 1 December 2021 submissions.

⁶¹ Submissions dated 1 December 2021.

⁶² *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

56. Having had regard to the totality of schedule 4, part 2, and the applicant's submissions, I can identify no other factors or considerations favouring disclosure of the information in issue.

Factors favouring nondisclosure

57. Telling against disclosure is the fact that the information in issue is substantially comprised of the personal information of someone other than the applicant: the triple zero caller.
58. The applicant contests such a broad characterisation, arguing that only the name of the third party caller ought be viewed as personal information,⁶³ which information might be redacted from relevant documents⁶⁴ (including transcripts of the Recordings, the applicant's preferred form of access to these latter documents, were it to have been decided that he was entitled to the disclosure of same).⁶⁵
59. I do not accept this. I am satisfied that the information conveyed by the caller in this case – including their opinions, turns of phrase, and expressions – also comprises information that is implicitly 'about' or concerning that caller (as it is, also, expressly about the applicant), and from which their identity might reasonably be ascertained: the caller's personal information, within the meaning of that concept as defined in the IP Act. So, too, is information recorded about that caller, as appearing in these documents.
60. The RTI Act presumes that disclosure of such information would give rise to a public interest harm.⁶⁶ The extent of that harm that could reasonably be expected to follow disclosure of sensitive personal information of the kind in issue, including the substance of calls made in the challenging circumstances of a perceived emergency, would be significant. This public interest harm factor warrants heavy weighting.
61. Additionally, it is also the case that the disclosure of this information could reasonably be expected to prejudice protection of the caller's right to privacy.⁶⁷ The concept of 'privacy' is not defined in the IP Act. OIC has adopted the Australian Law Reform Commission's definition of the concept, being the right of an individual to preserve their personal sphere free from interference from others.⁶⁸
62. I am satisfied that the placing of a triple zero call, and the contents of same, are matters within an individual's 'personal sphere'. Disclosure of the information in issue would infringe this personal sphere and prejudice the caller's right to privacy – a right the caller is clearly concerned to see protected.⁶⁹ This factor favouring nondisclosure also warrants substantial weight.
63. Finally, I am satisfied that routine disclosure of information of the kind in issue, contrary to the wishes of those imparting such information, would discourage other members of the public from providing similar information in future. This would, I think it reasonable to conclude, have profoundly negative impacts on QAS's ability to discharge its critical public safety role.⁷⁰ Again, this is a key public interest, warranting significant weight.

⁶³ Submissions dated 1 December 2021.

⁶⁴ As above.

⁶⁵ See footnote 42.

⁶⁶ Schedule 4, part 4, section 6 of the RTI Act.

⁶⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁸ "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

⁶⁹ See footnote 35.

⁷⁰ Schedule 4, part 3, item 16 of the RTI Act.

Balancing the public interest

64. As discussed above, I consider several factors operate to favour disclosure of the information in issue (together with the general public interest in promoting access to government-held information). The majority of these warrant only limited weight, for reasons explained above.
65. The public interest in allowing people access to their own personal information, as held by government, is certainly a strong one, and I have afforded it commensurately significant weight. However, moderating the impact of this pro-disclosure factor in this case is the fact that this information is inextricably interwoven with the caller's personal information. Accordingly, it is not possible to disclose to the applicant this information without causing the personal information public interest harm, and prejudicing protection of the caller's right to privacy.
66. Balanced against these pro-disclosure considerations are the significant public interests in safeguarding personal information and protecting individual privacy: considerations of themselves warranting substantial weight, more than sufficient, in my view, to tip the balance of the public interest in favour of nondisclosure. To these, however, may also be added the similarly weighty public interest in preserving the ability of agencies such as QH (via QAS) in obtaining confidential information from members of the public.
67. There is a clear public interest in ensuring that government protects privacy and treats with respect the personal information it collects from members of the community.⁷¹ This is particularly so in relation to information collected and generated in the course of and for the purposes of maintaining community safety; where community members might reasonably expect that such information will be used only for the purpose of mobilising emergency services, and not subject to unrestricted disclosure under the IP Act.
68. Relatedly, an important principle underpinning both the RTI Act and the IP Act is that individuals should have a measure of control over their own personal information. By extension, an access applicant should not be put in a position to control dissemination of the personal information of other individuals, unless the balance of the public interest requires otherwise in the circumstances of a particular case. Disclosure to the applicant of the personal information in issue in this case would prejudice that control, in circumstances where there are insufficient reasons to justify such prejudice.
69. In the circumstances, my view is that disclosure of the information in issue would, on balance, be contrary to the public interest. Access to that information may therefore be refused.⁷²

DECISION

70. The decision under review only dealt with the Recordings,⁷³ and decided that disclosure of these documents would, on balance, be contrary to the public interest. While I agree with that finding, I also consider that the Recordings – and those parts of the Report remaining in issue – comprise exempt information. Accordingly, I vary the decision under review, and find that:

⁷¹ An expectation recognised by Parliament in enacting the IP Act.

⁷² Under section 47(3)(b) of the RTI Act.

⁷³ As noted at the outset of these reasons, the Report was only located by QH on external review.

- the information in issue comprises exempt information, within the meaning of section 48 and schedule 3, section 10(1)(i) of the RTI Act; and, alternatively,
 - disclosure of the information in issue would, on balance, be contrary to the public interest.
71. Access to the information in issue may therefore be refused under section 67(1) of the IP Act and one or both of sections 47(3)(a) and 47(3)(b) of the RTI Act.
72. I have made this decision under section 123(1)(b) of the IP Act, as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Acting Right to Information Commissioner

Date: 12 April 2022

APPENDIX

Significant procedural steps

Date	Event
3 August 2021	OIC received the application for external review. OIC requested initial documents from QH.
4 August 2021	OIC received the initial documents from QH. OIC notified the applicant it had received the application.
10 August 2021	OIC notified the parties it had accepted the application for external review and requested information from QH.
11 August 2021	OIC received the requested information from QH.
12 August 2021	OIC requested further information from QH.
13 August 2021	OIC received the requested information from QH.
13 September 2021	OIC sent correspondence to QH explaining its view on disclosure.
14 September 2021	QH confirmed it agreed with OIC's view.
1 October 2021	OIC conveyed a preliminary view to the applicant.
5 October 2021	OIC issued an update to QH.
18 October 2021	OIC received submissions from the applicant contesting the preliminary view.
12 November 2021	OIC requested QH release certain information to the applicant and issued a further preliminary view to the applicant.
15 November 2021	QH released information to the applicant.
2 December 2021	OIC received submissions from the applicant contesting the preliminary view.
28 January 2022	OIC issued an update to the applicant.
9 February 2022	OIC conveyed a further preliminary view to the applicant and an update to QH.
25 February 2022	OIC received submissions from the applicant contesting the further preliminary view.