



Decision and Reasons for Decision

Citation:	<i>Z59 and Queensland Police Service [2023] QICmr 15 (28 March 2023)</i>
Application Number:	316929
Applicant:	Z59
Respondent:	Queensland Police Service
Decision Date:	28 March 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - documents relating to a third party's criminal record - personal information and privacy - 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</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to all documents since January 2020 relating to three named individuals and one named corporation.
2. QPS decided² to neither confirm nor deny the existence of the requested documents under section 55 of the RTI Act on the grounds that, if the requested documents did exist, they would contain '*prescribed information*' as defined in schedule 5 of the RTI Act: that is, personal information the disclosure of which would, on balance, be contrary to the public interest.
3. The applicant applied³ for internal review of QPS's decision. He disputed that QPS was entitled to neither confirm nor deny the existence of the requested information because he stated that he had evidence that one of the individuals named in his application had an extensive criminal history.⁴
4. In its internal review decision,⁵ QPS affirmed its initial decision to neither confirm nor deny the existence of the requested information under section 55 of the RTI Act.

¹ By application dated 12 July 2022.

² Decision dated 12 August 2022.

³ On 14 August 2022; received by QPS on 15 August 2022.

⁴ The applicant did not supply that evidence because he stated that the electronic internal review application form did not make provision for uploading attachments.

⁵ Dated 12 September 2022.

5. The applicant then applied⁶ to the Office of the Information Commissioner (**OIC**) for review of QPS's decision.
6. During the course of the review, QPS withdrew its reliance upon section 55 of the RTI Act as it applies to the information that remains in issue (see paragraphs 17 and 18 below). Section 109 of the RTI Act therefore has no application in these circumstances. For the reasons explained below, I set aside the decision under review. In substitution for it, I find that access to the requested information may be refused under the RTI Act on the grounds that its disclosure would, on balance, be contrary to the public interest.

Background

7. It appears from the material provided by the applicant during the course of the review that he engaged the company named in his application (a director of which was one of the individuals named in his application) to carry out certain work at the applicant's home in Canberra. This work involved roof restoration, the supply and installation of guttering, and the supply and installation of an irrigation system.
8. The applicant paid the company a deposit. However, it appears that the work was not performed. The applicant was successful in obtaining a default judgement against the company in the ACT Civil and Administrative Tribunal for an amount in damages for breach of contract. When that amount was not paid to the applicant, he was successful in his application to wind up the company in the Federal Court.
9. During the course of the review, the applicant provided OIC with a copy of a Public Warning Notice issued by the ACT Commissioner for Fair Trading in relation to the company. The Notice was issued following consumer complaints made about the conduct of the company in accepting deposits for roof repair and maintenance work, and failing to supply those services.
10. It appears that the applicant became aware at some stage that the individual named in his application who was a director of the company (hereinafter referred to as '**Mr T**') had a criminal record in Queensland. The applicant purchased, from the Queensland Magistrates Court, a copy of a Verdict and Judgment Record (**VJR**) in relation to Mr T which lists '*details of trial, sentence or other dealing by the court*'.

Reviewable decision

11. The decision under review is the internal review decision of QPS dated 12 September 2022.
12. Under section 105(1)(b) of the RTI Act, OIC has the power to decide any matter in relation to an access application that could have been decided by an agency. When conducting a merits review of an agency's decision, OIC '*stands in the shoes*' of the agency and makes the correct and preferable decision.
13. The issue for determination is whether access to the information in issue may be refused under the RTI Act on the grounds that its disclosure would, on balance, be contrary to the public interest.

⁶ On 2 October 2022.

Evidence considered

14. Significant procedural steps relating to the external review are set out in the Appendix.
15. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.
16. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**).⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁹ '*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.*'¹⁰

External review process

17. As noted above, as part of his external review application, the applicant provided a copy of the VJR that he had purchased in relation to Mr T. On the basis that this demonstrated that Mr T had a criminal record in Queensland, QPS accepted OIC's view that it was not entitled to neither confirm nor deny that it held documents relating to Mr T, and withdrew its reliance upon section 55 of the RTI Act in that regard. QPS was also agreeable to OIC informing the applicant that QPS held no documents in relation to the company named in the access application.¹¹ However, QPS maintained that it was entitled to neither confirm nor deny the existence of documents relating to the other individuals named in the application.
18. The applicant accepted OIC's preliminary view that QPS was entitled to neither confirm nor deny the existence of documents relating to the other three individuals named in his application and he no longer pursued that issue. However, he continued to pursue access to documents relating to Mr T. During the review, the applicant accepted that disclosure of the documents in issue would, on balance, be contrary to the public interest, except for any court documents held by QPS.¹² He continued to pursue access to court documents, arguing that these documents were publicly available and therefore should be released.

Information in issue

19. The information in issue comprises court documents held by QPS in relation to Mr T since January 2020. In his submissions, the applicant stated that he regarded 'court documents' as including any document produced in court:

⁷ Section 21(2) of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ *XYZ* at [573].

¹¹ Confirmed by QPS in an email of 7 February 2023 and communicated to the applicant on 14 February 2023.

¹² Email of 15 February 2023.

*In order for [Mr T] to have the VJR that he does, QPS are necessarily in possession of documents that have been produced in court and are therefore publicly available. If [Mr T] plead [sic] not guilty and had a trial, this will be many documents - affidavits, witness statements, expert evidence, evidence that constitutes a document (e.g., CCTV, bank records...). Even if [Mr T] plead [sic] guilty to every charge, there will still be publicly available documents in QPS' possession. For example, summaries of agreed facts, police statements produced in support of sentencing submissions, victim impact statements, statements and similar from other relevant agencies... .¹³ (hereinafter referred to as **Information in Issue**).*

Issue for determination

20. The issue for determination is whether access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

Relevant law

21. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.¹⁴ The Act must be applied and interpreted to further this primary object,¹⁵ and is to be administered with a pro-disclosure bias.¹⁶
22. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,¹⁷ including grounds on which access may be refused.¹⁸ One of these grounds (which are to be interpreted narrowly)¹⁹ permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.²⁰
23. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest,²¹ are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
- 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 in issue would, on balance, be contrary to the public interest.

¹³ Email of 15 February 2023.

¹⁴ Section 3(1) of the RTI Act.

¹⁵ Section 3(2) of the RTI Act.

¹⁶ Section 44 of the RTI Act.

¹⁷ Section 23(1) of the RTI Act.

¹⁸ Section 47 of the RTI Act.

¹⁹ Section 47(2)(a) of the RTI Act.

²⁰ Sections 47(3)(b) and 49 of the RTI Act.

²¹ The 'public interest' '...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept 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.

24. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have had regard to these factors,²² and to the applicant's submissions,²³ in reaching my decision.

Applicant's submissions

25. As noted, during the course of the review, the applicant narrowed his access request to the Information in Issue. Some of the submissions he made earlier in the review are not relevant to disclosure of the Information in Issue. The relevant submissions about disclosure of the Information in Issue can be summarised as follows:

- Mr T has no residual right to privacy over documents produced in open court
- even if Mr T did retain a residual right to privacy, he has behaved in a way that waives such residual right: *'his fraudulent behaviour in the ACT waives his residual right to privacy about his previous fraudulent behaviour'*²⁴
- alternatively, any impact on the right to privacy of Mr T and the other individuals referred to in the Information in Issue would be *'negligible or fair'*
- if the applicant had been in the court room for the hearing of any/all of the proceedings listed on Mr Brown's VJR, anything the applicant would have seen or heard in court exists in documentary form, is in QPS's possession, and must be released
- given that 'publication' of the Information in Issue in open court has already occurred, QPS must show that further publication under the RTI Act would cause Mr T some inappropriate further detriment
- there are no restrictions upon what a person may do with court documents
- disclosure is in the public interest because it will contribute to the administration of justice for victims of Mr T in the ACT; and
- OIC's decision in *Queensland Newspapers Pty Ltd and Department of Justice and Attorney General*²⁵ can be distinguished because disclosure of the Information in Issue in this case would be of public benefit given that Mr T's offending is not in the past but is continuing.

26. The applicant stated that if OIC required further evidence to support a decision to release the Information in Issue, the applicant could *'produce [Mr T's] ACT court records, or perhaps a letter from ACT policing, or a letter from [the company's] liquidator (which will include findings against [Mr T], such as criminal breaches of director duties).'*²⁶

Discussion

Public interest factors favouring nondisclosure

27. It is clear that the Information in Issue, comprising court documents relating to criminal charges against Mr T, contain Mr T's personal information,²⁷ as well as the personal information of other individuals involved in the relevant proceedings, including victims,

²² Taking care to disregard irrelevant factors.

²³ Contained in his internal and external review applications and in correspondence of 7 January 2023, 15 February 2023, and 18 February 2023.

²⁴ See the applicant's email of 18 February 2023.

²⁵ [2018] QICmr 52 (18 December 2018) (*QN v DJAG*).

²⁶ Email of 18 February 2023.

²⁷ 'Personal information' is defined in section 12 of the IP Act: *'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.'*

witnesses, etc. The RTI Act recognises the application to such information of two public interest factors favouring nondisclosure:

- disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;²⁸ and
- disclosure could reasonably be expected to cause a public interest harm by disclosing personal information of a person.²⁹

28. As regards the factor concerned with protecting the right to privacy of Mr T and any other individuals referred to in the Information in Issue, the decision in *QN v DJAG*³⁰ recognised that this right may be diminished in respect of information that is in the public domain, but not destroyed. That is, a residual right to privacy remains:

*There exists a residual privacy interest that must be recognised. In this case, it is necessary to take account of the highly personal and extremely sensitive nature of the information in question and the significant detrimental impact that republication of this information could reasonably be expected to have on the residual privacy interests of the many persons involved in the investigation, including Mr and Mrs Baden-Clay's children, parents and siblings. Given that the court processes concluded nearly two and a half years ago, with the matter now largely out of the public eye, my view [is] that the public interest in protecting the right to privacy of the persons involved, and referred to, in the recordings, even in respect of information that was disclosed at trial, remains significant.*³¹

29. The applicant argues that Mr T is not entitled to any residual right to privacy because of his criminal behaviour. He contends that what he describes as Mr T's 'fraudulent behaviour'³² in the ACT has the effect of Mr T impliedly waiving any right to privacy he may have in respect of information concerning his fraudulent behaviour in Queensland. Quite apart from the fact that the VJR provided by the applicant does not indicate that Mr T was convicted of fraud in Queensland, I reject this argument. The mere fact that, on the applicant's assertion, Mr T has committed criminal acts in the ACT, does not amount to a waiver of the residual right to privacy he possesses over information concerning prior, unrelated, criminal acts he committed in Queensland and for which he has been sentenced. In *QN v DJAG*, there was intense public interest in the trial of Mr Baden-Clay, with wide coverage by the media of the proceedings and the evidence presented, including the audio recordings of interviews with witnesses that were the subject of the access request. Despite the public ventilation of this information, the Right to Information Commissioner was nonetheless satisfied that the individuals in question retained a residual right to privacy that would be prejudiced through disclosure of the requested information. The Right to Information Commissioner took account of the sensitivity of the information and the fact that the matter had been finalised and was largely out of the public eye. In the present case, the legal proceedings involving Mr T in the Magistrates Court in Queensland were presumably heard in open court, but beyond that, they did not, as far as I am aware, receive public ventilation, and could not be considered to be widely known of in the community. But even if they were, for the reasons explained in *QN v DJAG*, I consider that the persons involved in the

²⁸ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in either the IP Act or RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (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 12 August 2008, at paragraph 1.56).

²⁹ Schedule 4, part 4, section 6 of the RTI Act.

³⁰ This decision dealt with an application by the media to access police investigative material associated with the high-profile prosecution and conviction of Gerard Baden-Clay for the murder of his wife, including police audio recordings of interviews with witnesses. Some of these recordings had been tendered in evidence during the trial and were the subject of intense media scrutiny during the trial.

³¹ At [31].

³² I acknowledge the applicant's description based upon his experience with Mr T. I would simply note that there is no material before me to establish that Mr T has been convicted of fraud in the ACT.

proceedings, including Mr T, retain a residual right to privacy. Similarly to *QN v DJAG*, they involve concluded matters where Mr T was found guilty and sentenced. They also involve personal information of a sensitive nature, not only of Mr T, but of the other individuals involved in the prosecution of the crimes committed by Mr T, including witnesses, informants, etc. Accordingly, despite the applicant's contentions to the contrary, I am unable to identify a basis for distinguishing *QN V DJAG* as regards the finding that a person may retain a residual right of privacy in respect of sensitive, personal information that is in the public domain.

30. I do not accept the applicant's contention that he has a legal right to access the Information in Issue under the RTI Act because, if he had been present in court during the hearing of matters involving Mr T, he would have seen or heard the relevant information and it must therefore be regarded as publicly available information.³³ The opportunity for members of the public to attend court on a particular day and hear evidence presented in legal proceedings is an opportunity that exists at a particular time and place. The fact that such an opportunity existed at the relevant time (whether or not it was taken up) does not give rise to an automatic and unfettered right of access under the RTI Act to documents that were produced during the proceedings. I do not accept the applicant's argument that, because a matter is heard in open court at a particular time, a member of the public has an automatic entitlement to possession of relevant documents under the RTI Act.
31. This is supported by the fact that, if a member of the public who is not a party to a matter were to make an application direct to the relevant court to view the court file and obtain copies of documents, the right of access is not automatic, regardless of whether or not that person was present in court when the matter was being heard. Online applications to access court documents may be made via the Queensland Courts website.³⁴ Access to criminal documents held by the Magistrates Court in Queensland is governed by the relevant provisions of the *Justices Act 1886* (Qld)³⁵ and the *Criminal Practice Rules 1999* (Qld).³⁶ The clerk of the court considers the application and makes a decision about what documents can be searched or viewed, taking into account the relevant legislative provisions, the nature of the material, and any relevant court orders. Persons who are not a party to the proceedings are ordinarily required to give a reason as to why they are applying to search or copy certain court documents. The *Justices Act*, for example, provides for certain discretions to be exercised by the court in certain circumstances when deciding whether a particular document may be released to a non-party. For example, the Chief Justice of the Supreme Court said as follows in a 2008 media statement:³⁷

³³ I would simply note that I do not necessarily accept that a member of the public who is in court when a matter is being heard is aware of all evidence that is presented. For example, a statement of agreed facts may simply be read into evidence, without being discussed any further.

³⁴ It was noted to the applicant during the course of the review that, if it could be established which documents in QPS's possession would be made available to a member of the public by a decision of the court made pursuant to the *Justices Act* and *Criminal Practice Rules*, QPS would then be entitled to refuse access to such documents under section 53 of the RTI Act – other access available. Section 53 (together with section 47(3)(f)) of the RTI Act provides that an agency may refuse access to a document if the applicant can reasonably access the document under another Act, or under arrangements made by an agency, whether or not the access is subject to a fee or charge. The applicant was advised that, as access to court files is made available under arrangements established by the Department of Justice and Attorney-General, section 53 of the RTI Act would apply to such documents. The applicant disputed that he could reasonably access court documents under these arrangements as he lived in Canberra. However, the Queensland Courts website indicates that online applications can be made, with the option of having documents that the court decides may be released, emailed or posted to the applicant, without requiring personal attendance at the court registry.

³⁵ See section 154.

³⁶ See Rules 3, 31, 56 and 56A.

³⁷ [Media Release Chief Justice 14 March 2008 \(courts.qld.gov.au\)](https://www.courts.qld.gov.au/media-releases/2008/03/14)

Judges and magistrates who receive applications to copy and publish exhibits will consider factors such as the public interest, the nature of the proposed publication, the nature of the exhibit and the likely effect of publication on victims and their families.

32. Similarly, as noted at paragraph 22 above, the right of access to personal information of other individuals under the RTI Act is not unfettered, regardless of whether or not the information can be considered to be in the public domain, but is subject to other provisions of the RTI Act, including grounds upon which access may be refused. One such ground is where disclosure of the requested information would, on balance, be contrary to the public interest.
33. In terms of giving weight to the public interest in protecting the residual right to privacy of Mr T and other individuals referred to in the Information in Issue, the applicant submitted that any impact through disclosure of the Information in Issue would be '*negligible and/or fair*'.³⁸ As noted above, the applicant appears to take the view that, because he asserts that Mr T has engaged in criminal conduct in the ACT, it is fair that he forfeit any right to privacy over documents concerning his past criminal conduct in Queensland. I do not agree. Whether or not Mr T has committed fraud in the ACT does not impact upon the public interest in the protection of the residual right to privacy he has in respect of the Information in Issue. Nor does this argument by the applicant take account of the impact of disclosure under the RTI Act on the residual privacy rights of those other individuals referred to in the Information in Issue. The information is clearly of a personal and sensitive nature. I am not satisfied that the impact on privacy could reasonably be considered to be negligible or fair.
34. There are no restrictions upon what a person may do with information that has been released to them under the RTI Act. It is to be regarded as disclosure to the world at large.³⁹ The applicant submits that the same is true of documents obtained directly from the courts. That may be so, but I am applying the access scheme established by the RTI Act, which requires me to balance competing public interest factors and, in this case, to take into account the effect of disclosure on the protection of a person's right to privacy. In his access application, the applicant stated that he was making the application on behalf of '*A group of victims of the same fraudster*'. During the course of the review, the applicant stated that the Information in Issue would assist other victims of Mr T in the ACT in the various civil and criminal actions that the applicant asserts have been, or may be, brought against Mr T. The applicant also stated that the information would be relevant to various government agencies in the ACT, including ACT police, in order to alert them to Mr T's past criminal conduct, and to press for investigations into his conduct in the ACT. The applicant considered that the information would also be relevant in seeking an investigation by the Australian Securities and Investments Commission into how Mr T was assessed as suitable to be a company director.⁴⁰
35. I acknowledge the applicant's apparent anger and frustration at the fact that, as he describes it, Mr T was able to move from Queensland to the ACT and '*continue his drug-fuelled crime spree*'.⁴¹ However, the applicant's intended wide publication in the ACT of the Information in Issue, no matter how justified the applicant and no doubt other law-abiding members of the ACT community might consider it to be, is relevant when considering the impact of release under the RTI Act on the residual right to

³⁸ Submission of 7 January 2023.

³⁹ Noting that '*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*' – see *FLK v Information Commissioner* [2021] QCATA 46 at [17] per McGill J.

⁴⁰ See the applicant's submission of 7 January 2023.

⁴¹ Internal review application dated 14 August 2022.

privacy of Mr T and the other individuals whose personal information is contained in the information. As noted, the Information in Issue concerns past offences committed by Mr T for which he has been sentenced. I am satisfied that ventilation of this information in the ACT, as proposed by the applicant, for the purpose of an attempt to hold Mr T accountable for what the applicant contends are fraud offences committed by Mr T in the ACT, could reasonably be expected to have a detrimental effect on the residual privacy interests of Mr T and the other individuals referred to in the Information in Issue.

36. After giving careful consideration to the applicant's submissions and all the relevant circumstances described above, as well as taking account of the fact that personal information of individuals other than Mr T is in issue, I afford moderate to significant weight to the personal information and privacy nondisclosure/harm factors.

Public interest factors favouring disclosure

37. The applicant made detailed submissions throughout the review regarding the public interest in disclosure. In his submission of 7 January 2023, the applicant relied upon the following factors contained in schedule 4, part 2 of the RTI Act:⁴²

- a) item 1: disclosure could reasonably be expected to promote open discussion of public affairs and enhance Government's accountability

There has been a total failure of any government entity in any jurisdiction to take action against [Mr T] for his ongoing acts of criminal fraud. The documents sought could reasonably be expected to promote open discussion of why that is.

- b) item 2: disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest

... the criminal use or liability of corporations is a matter of serious interest. ... In addition, how a director (such as [Mr T]) uses a company, what information was available to ASIC when approving his directorship, and other such information about suitability to be a company director, is relevant to this discussion. Moreover, this discussion inherently requires facts and detail to be effective - the debate will not be positive and informed if there are no case studies to discuss.

- c) item 5: disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official

...what about QPS's policies and procedures contributed to their total inaction with regard to [Mr T's] continual criminal frauds?

- d) item 10: disclosure could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies

⁴² The submission was prepared prior the applicant being advised that QPS held no documents relating to the company named in the access application. To the extent that the submission discusses why information about the company should be disclosed, it is no longer relevant to the issues for determination in this review.

... a failure to release the information will result in unfair treatment of [Mr T's] victims in the ACT in their dealings with agencies, because those agencies will continue to ignore the victims unless those victims can provide the relevant information contained in QPS' records. It is unfair for [Mr T's] victims to be denied access to justice. Moreover, access to justice for [Mr T's] victims ('positive' fairness) is of greater public interest than preventing [Mr. T] being held accountable for his actions ('negative' fairness).

- e) item 11: disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision

The information can reasonably be expected to reveal why QPS continually refused to investigate or prosecute [Mr T's] ongoing fraud. Further, it may reveal what action or lack thereof ASIC took if/when QPS referred [Mr T] to ASIC. And/or, the information can reasonably be expected to reveal why QPS did not refer [Mr T] to ASIC. The information will also reveal contextual and background information for those 2 decisions.

- f) item 15: disclosure could reasonably be expected to contribute to the maintenance of peace and order

The information can reasonably be expected to contribute to the maintenance of peace and order, by assisting [Mr. T] to receive the appropriate number and type of criminal convictions, the appropriate sentences for those convictions (as they are repeat offences), and the appropriate civil remedies. ...

...

... it is the fact and detail of the crimes [Mr. T] committed in Qld that will assist in various civil and criminal court actions in the ACT, because the fact and detail is what establishes a pattern of behaviour on the part of [Mr.T]. A VJR for 'theft' is of little use; statement of facts in the 'theft' matter that shows fraud as part of the theft, for example, is of use. In turn, this materially advances the public interest by government agencies undertaking investigations and [Mr. T] consequently being (1) prevented from committing further crimes, (2) being held accountable for further crimes already committed, and (3) required to abide by the conditions of his existing court orders in Qld....

- g) item 16: disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness

item 17: disclosure could reasonably be expected to contribute to the administration of justice for a person

item 18: disclosure could reasonably be expected to contribute to the enforcement of the criminal law

In respect of these nondisclosure factors, the applicant relied upon the submissions he had made above in relation to items 10 and 15 above.

38. Some of these arguments are no longer relevant, given the narrowing of the requested information that occurred after this submission was made. Furthermore, many of them are predicated on the assumption that Mr T was convicted of fraud in Queensland. As already noted, the VJR provided by the applicant does not support this. Taking this, and the nature of the requested information into account, I am not satisfied that disclosure could reasonably be expected to:

- promote open discussion of why any government entity in any jurisdiction has failed to take action against Mr T for his ongoing acts of criminal fraud

- give insight into ASIC's decision to permit Mr T to become the director of a company
- give insight into what about QPS's policies and procedures contributed to their total inaction with regard to Mr T's continual criminal frauds
- contribute to the fair treatment by government agencies of Mr T's victims in the ACT
- reveal why QPS continually refused to investigate or prosecute Mr T's ongoing fraud, or reveal what action or lack thereof ASIC took if/when QPS referred Mr T to ASIC, or reveal why QPS did not refer Mr T to ASIC
- contribute to the maintenance of peace and order, by assisting Mr T to receive the appropriate number and type of criminal convictions in the ACT; the appropriate sentences for those convictions; and the appropriate civil remedies; or
- contribute to the enforcement of the criminal law in the ACT.

39. In terms of the applicant's contentions above that disclosure will:

- assist in achieving justice for victims of Mr T in the ACT
- contribute to the fair treatment of victims by ACT government agencies
- contribute to the maintenance of peace and order in the ACT; and
- contribute to the enforcement of the criminal law in the ACT,

I note that the RTI Act is Queensland legislation that applies to Queensland government agencies and public authorities. Nevertheless, I accept that the concept of 'public interest' as referred to the RTI Act is a broad one and is not limited to considerations operating at the level of State or local government. The applicant argues that information about Mr T's past criminal activity in Queensland is relevant to events occurring in the ACT, and that there is a strong public interest in disclosure not least because, unlike the case of Mr Baden-Clay in *QN v DJAG*, Mr T's criminal conduct is not in the past, but is continuing in the ACT. However, I am not persuaded that disclosing information concerning unrelated criminal offences previously committed by Mr T in Queensland, and for which he has been sentenced, would be of relevance to, or materially advance, the public interest factors favouring disclosure identified above. It appears from the information provided by the applicant that ACT agencies, including the police, are already aware of Mr T's activities in the ACT. The applicant also contends that various legal proceedings have already been instituted against Mr T in the ACT. I am not persuaded by the applicant's submissions that the Information in Issue would be of particular relevance to ACT agencies in terms of their treatment of victims, or their decisions about what action may be available to take against Mr T. Nor am I satisfied that such information would be admissible in unrelated legal proceedings in the ACT. Ordinarily, evidence about a person's criminal history is inadmissible due to its prejudicial nature.

40. Furthermore, to the extent that the applicant seeks to bring Mr T's criminal past to the attention of relevant authorities, so as to alert them to Mr T's behaviour and press for some kind of action to be taken against him, I am satisfied that the VJR that he already possesses contains sufficient information for such purposes. I do not accept that the applicant requires the '*facts and details*' behind Mr T's convictions in order to try to establish a pattern of fraudulent conduct that he considers will add greater weight to the submissions he apparently wishes to make to ACT authorities about Mr T. Again, as noted, the VJR does not indicate a pattern of fraudulent behaviour in terms of Mr T's offending in Queensland.

41. Nevertheless, I do recognise a general public interest in the administration of justice in terms of enhancing open justice. Open justice is advanced by open trials and by the availability of court transcripts for purchase. But I accept that disclosure of other court documents, of the nature that the applicant seeks, could also reasonably be expected to contribute to the administration of justice to the extent of contributing to scrutiny of open justice. However, giving consideration not only to the type of offences committed by Mr T (as indicated by his VJR), as well as the fact that the VJR indicates that he pleaded guilty to all charges, I would place low weight on the value of enabling such scrutiny. I am not satisfied that disclosure of the Information in Issue would, for example, contribute significantly to scrutinising police or judicial conduct, or the application of the criminal law more generally.

Balancing the public interest

42. For the reasons explained above, I afford moderate to significant weight to the public interest factors favouring nondisclosure that are concerned with protection of personal information and privacy, and low weight to the public interest factor favouring disclosure that is concerned with contributing to the administration of justice by enhancing open justice.
43. After weighing the public interest factors both for and against disclosure, I am satisfied that disclosure of the Information in Issue would, on balance, be contrary to the public interest. Access under the RTI Act may therefore be refused on that basis.

DECISION

44. I set aside the decision under review. In substitution for it, I find that access to the Information in Issue may be refused under the RTI Act on the grounds that its disclosure would, on balance, be contrary to the public interest.
45. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

V Corby
Assistant Information Commissioner

Date: 28 March 2023

APPENDIX**Significant procedural steps**

Date	Event
2 October 2022	OIC received the applicant for external review
4 October 2022	OIC requested that QPS provide preliminary documents
11 October 2022	OIC received preliminary documents from QPS
25 October 2022	OIC advised the parties that the application for review had been accepted OIC requested submissions from QPS regarding its NCND decision
10 & 16 November 2022	QPS provided submissions to OIC
1 December 2022	OIC conveyed a preliminary view to the applicant
7 January 2023	OIC received submissions from the applicant, contesting OIC's preliminary view
12 January 2023	OIC requested further information from QPS
7 February 2023	OIC received an email from QPS advising that it held no documents about the company named in the access application
14 February 2023	OIC conveyed a further preliminary view to the applicant
15 February 2023	OIC received submissions from the applicant, contesting OIC's preliminary view
16 February 2023	OIC expressed a final preliminary view to the applicant
18 February 2023	OIC received submissions from the applicant, contesting OIC's preliminary view