



## Decision and Reasons for Decision

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**Application Number:** 310012

**Applicant:** The Gold Coast Bulletin

**Respondent:** Department of Police

**Decision Date:** 23 December 2010

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION – EXEMPT INFORMATION – Grounds on which access may be refused – section 47(3)(a) of the *Right to Information Act 2009* (Qld) – to the extent the document comprises exempt information under section 48 of the *Right to Information Act 2009* (Qld) – Schedule 3 section 10(1)(f) – whether rostering comprises an identifiable method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law – whether there is a reasonable expectation that disclosure of rosters could prejudice the effectiveness of the method or procedure

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## REASONS FOR DECISION

### Summary

1. The applicant sought access to copies of police staffing rosters for a specified period and the current police staffing model for Surfers Paradise Police Station. QPS released the relevant police staffing model. The applicant seeks review of QPS's decision refusing access to the rosters.
2. Having considered the submissions and evidence before me, I am satisfied that access to the rosters can be refused under sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that the rosters comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act.

### Reviewable decision

3. The decision under review is QPS's decision refusing access to the rosters under sections 47(3)(a) and 48 of the RTI Act on the basis that they comprise exempt information under schedule 3, section 10(1)(c), (f), (g), (h), (l) and (j) of the RTI Act.

### Issue in this review

4. In the course of this review, consideration was given to the exemptions raised by QPS and whether disclosure of the information would, on balance, be contrary to public interest under sections 47(3)(b) and 49 of the RTI Act.<sup>1</sup>
5. However, in this decision it is only necessary to address whether access to the rosters may be refused under section 47(3)(a) of the RTI Act on the basis that they comprise exempt information under section 48 and schedule 3 of the RTI Act.

### Evidence relied upon

6. In making this decision, I have taken the following into account:
  - the access application<sup>2</sup> and application for external review<sup>3</sup>
  - QPS's decision<sup>4</sup>
  - submissions provided by QPS and the applicant
  - file notes of telephone conversations between OIC staff and the parties
  - the information contained in the rosters
  - the information contained in the staffing model
  - relevant provisions of the RTI Act
  - previous decisions of the Information Commissioner and relevant case law identified in this decision.

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<sup>1</sup> Detailed submissions were received from both parties regarding whether disclosure of the information would, on balance, be contrary to public interest. Those submissions were also relevant to my assessment of whether access may be refused to the rosters under section 47(3)(a) of the RTI Act on the basis that they comprise exempt information.

<sup>2</sup> Dated 27 October 2009.

<sup>3</sup> Received by OIC on 10 December 2009.

<sup>4</sup> Dated 4 December 2009.

## The law

7. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.
8. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises '*exempt information*'. Schedule 3 sets out the types of information which the Parliament has considered is '*exempt information*' as its disclosure would, on balance, be contrary to public interest.
9. Schedule 3, section 10(1)(f) of the RTI Act provides that information is exempt if its disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
10. To determine whether information is exempt under schedule 3, section 10(1)(f) of the RTI Act, I must consider whether:
  - there is an identifiable method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law
  - there is a reasonable expectation of prejudice to that method or procedure, that arises as a consequence of disclosure of the information.

## Applicant's submissions

11. The applicant submits that the rosters sought are not indicative of present or future rosters at Surfers Paradise Police Station (or any other police stations) and therefore cannot reasonably be expected to have any prejudicial affect on rostering.
12. More specifically, the applicant's submissions include that:
  - the information in the rosters is innocuous and out of date
  - rostering is dynamic and the requested rosters are historical documents which only reflect the number of staff available at a particular time and place
  - the rosters would not be relevant to any other police station at any other time, nor are they reflective of rostering in Surfers Paradise at any other time because of changing circumstances in the area (including fluctuations in tourism and special events in the area)
  - the rosters would not include details of any backup arrangements with other stations or on-call staff, so it would not be possible to construe the full availability of police resources at a particular time or place on the face of the document
  - the public interest favours disclosure of the rosters.<sup>5</sup>

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<sup>5</sup> I have not set out the applicant's public interest submissions in any detail given that this decision concerns whether the rosters comprise exempt information in respect of which the Parliament has determined that disclosure would, on balance, be contrary to the public interest.

## QPS's Submissions

13. QPS submits that disclosure of the rosters would disclose information which could reasonably be expected to be used to further current or future criminal activity, thereby undermining the effectiveness of rostering.
14. More specifically, QPS's submissions include that:
  - the rosters take into account "specific crime, social and traffic enforcement challenges which apply to the particular policing division... the roster reflects the operational requirements of the station and methodologies employed to meet those requirements...".
  - while the requested rosters are historical, they may be indicative of future rostering or the rostering methodology as they reveal typical staffing arrangements including type of deployment and shift changes
  - the rosters provide specific and detailed knowledge of policing resources and tactical and operational activities, not readily available through other means
  - seemingly innocuous information may be used by criminals in furtherance of unlawful purposes
  - the information contained in the rosters may allow potential offenders to "risk manage" any planned unlawful activity
  - rosters contain information concerning the strategic deployment of police officers in various capacities and at particular times which is a method or procedure intended to prevent, detect or deal with offences
  - if the rosters were released, QPS would need to either ignore the substantial risk that the information will be used to facilitate criminal activity or change the method of rostering, which would result in a less than optimal system
  - if the information is not exempt under section 47(3)(a) and schedule 3 of the RTI Act, then disclosure of the information would be contrary to public interest under section 47(3)(b) of the RTI Act.<sup>6</sup>

## Findings

### ***Is there an identifiable method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law?***

15. The first issue for determination is whether the rosters comprise an identifiable method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
16. In *Chapman v Commissioner of Police*<sup>7</sup> the Administrative Decisions Tribunal of New South Wales considered an exemption in the New South Wales freedom of information legislation similar to that contained in schedule 3, section 10(1)(f) of the RTI Act. In considering whether police rostering could be considered a '*lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law*', Acting President Hennessy found that:<sup>8</sup>

<sup>6</sup> As noted above, because this decision concerns whether the rosters comprise exempt information, it is not relevant to consider the public interest factors raised by either party.

<sup>7</sup> [2004] NSWADT 35 (20 February 2004) (*Chapman*).

<sup>8</sup> at paragraph 79.

*... rostering is a method for allocating staff to particular duties but... the ultimate aim of rostering police to perform particular duties at particular times is the prevention, detection and investigation of contraventions of the law...*

17. I note QPS's submissions including that:

- rostering is undertaken by senior staff and takes into account "specific crime, social and traffic enforcement challenges which apply to the particular policing division... the roster reflects the operational requirements of the station and methodologies employed to meet those requirements"; and
- the rosters provide specific and detailed knowledge of policing resources and tactical and operational activities, not readily available through other means.

18. On the basis of these submissions and applying the reasoning in *Chapman*, I am satisfied in the circumstances of this review that the rosters comprise a method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.

19. The next issue for determination is whether the effectiveness of rosters and rostering could reasonably be expected to be prejudiced by their disclosure.

***Is there a reasonable expectation that disclosure of the information could prejudice the effectiveness of the method or procedure?***

20. In *Sheridan*,<sup>9</sup> the Information Commissioner considered the phrase 'could reasonably be expected to' in the context of section 42(1)(ca) of the *Freedom of Information Act 1992* (Qld) (repealed) and quoted the following interpretation of the phrase in *Attorney-General v Cockcroft*,<sup>10</sup> which I consider is also relevant here:

*In our opinion, in the present context, the words 'could reasonably be expected to prejudice the future supply of information' were intended to receive their ordinary meaning. That is to say, they require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous ... It is undesirable to attempt any paraphrase of these words. In particular, it is undesirable to consider the operation of the provision in terms of probabilities or possibilities or the like. To construe s43(1)(c)(ii) as depending in its application upon the occurrence of certain events in terms of any specific degree of likelihood or probability is, in our view, to place an unwarranted gloss upon the relatively plain words of the Act. It is preferable to confine the inquiry to whether the expectation claimed was reasonably based.*

21. Also in *Sheridan*, the Information Commissioner found that depending on the circumstances of the particular review, a range of factors may be relevant in determining whether an expectation is reasonable. These factors may include, but are not limited to:<sup>11</sup>

- past conduct or a pattern of previous conduct
- the nature of the relevant matter in issue
- the nature of the relationship between the parties and/or relevant third parties

<sup>9</sup> *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009).

<sup>10</sup> (1986) 64 ALR 97 (**Cockcroft**) at 189, Bowen CJ and Beaumont J which interpreted 'could reasonably be expected to' in the context of the section 43(1)(c)(ii) business affairs exemption of the Commonwealth FOI Act.

<sup>11</sup> At paragraph 193.

- relevant contextual and/or cultural factors.
22. The information contained in the rosters reflects police staff numbers, locations and duties and includes tactical and operational activities, not readily available through other means.
23. On the information available to me, I accept QPS's submissions that:
- the rosters in this review are indicative of its rostering methodology and may be reflective of current or future rosters
  - if the rosters are released, QPS would need to either ignore the substantial risk that the information will be used to facilitate criminal activity or change the method of rostering, which would result in its use of a less than optimal rostering system.
24. I am also satisfied on the evidence before me that the information contained in the rosters could be used by third parties to further criminal activity and subvert police attention, thereby prejudicing the effectiveness of the method or procedure of rostering.
25. As to whether the expectation of that prejudice is reasonable, QPS has provided examples of ways in which criminals have used seemingly innocuous information to avoid detection and thereby further criminal activity.<sup>12</sup>
26. On the basis of QPS's submissions and applying the reasoning in *Sheridan*, I am satisfied in the circumstances of this review that disclosure of the rosters could reasonably be expected to prejudice the effectiveness of that method or procedure.

## DECISION

27. I vary the decision under review and find that access to the rosters can be refused under sections 47(3)(a) and 48 of the RTI Act on the basis that the rosters comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act.
28. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Jenny Mead**  
**Right to Information Commissioner**

**Date: 23 December 2010**

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<sup>12</sup> I note that details of this information (set out in QPS's submissions) have been provided to the applicant during the course of this external review.