



## Decision and Reasons for Decision

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Application Number:	310912
Applicant:	Independent Pub Group Pty Ltd
Respondent:	Department of Justice and Attorney-General
Decision Date:	29 October 2012
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION</b> - application for correspondence between the Office of Liquor and Gaming Regulation and Queensland Police Service in relation to licensed venues - objections to disclosure raised by owner of a venue on the basis that information is exempt under schedule 3, of the <i>Right to Information Act 2009</i> (Qld) - whether access to information may be refused under sections 47(3)(a) and 48 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST</b> - information concerning liquor-related incidents - issues of public safety, accountability and regulation of licensed venues - impact of disclosure on the business affairs of a licensed venue - whether disclosure of the information would, on balance, be contrary to the public interest - whether access to information may be refused under sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW</b> - whether objecting participant has established that a decision not to disclose information is justified or that the Information Commissioner should give a decision adverse to the access applicant - section 87(2) of the <i>Right to Information Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. An application was made to the Department of Justice and Attorney-General (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to correspondence between the Office of Liquor and Gaming Regulation (**OLGR**)<sup>1</sup> and the Liquor Enforcement and Proactive Strategy (**LEAPS**) coordinator at the Queensland Police Service (**QPS**) in relation to certain licensed venues.

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<sup>1</sup> OLGR is part of the portfolio of the Attorney-General and Minister for Justice. For the purpose of section 14 of the RTI Act, the agency which deals with requests for information held by OLGR is the Department of Justice and Attorney General.

2. The Department contacted the owners of the relevant venues, including the external review applicant (**Applicant**), to seek their views on disclosure of the information it had located in response to the application. The Applicant objected to information about its venue being disclosed. The Department decided to grant access to the information on the basis that it was not exempt or contrary to the public interest to disclose under the RTI Act.<sup>2</sup>
3. The Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to disclose information. The Applicant submitted that information relating to its venue is exempt and/or contrary to the public interest to disclose and therefore, should not be released under the RTI Act. On external review, the Applicant emphasised that disclosing information about '*alleged incidents*' at its venue would be unlikely to advance government accountability and would instead, significantly prejudice its business affairs by damaging the venue's reputation.
4. For the reasons set out below, the Department's decision to disclose information relating to the Applicant's venue is affirmed as the information is not exempt and nor would its disclosure, on balance, be contrary to the public interest under the RTI Act.

## Background

5. LEAPS is a program which involves QPS working with OLGR with a view to ensuring compliance with legislation and regulations concerning licensed venues. QPS officers who attend or become aware of liquor-related incidents involving licensed venues create a report and forward this to the QPS LEAPS Coordinator. The LEAPS Coordinator then sends the information to OLGR which assesses it as part of its regulatory activities.<sup>3</sup>
6. Significant procedural steps relating to the application and external review are set out in the Appendix to these reasons

## Reviewable decision

7. The decision under review is the Department's internal review decision dated 21 December 2011 granting access to information under the RTI Act.

## Material considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

## Information in Issue

9. The information in issue in this review (**Information in Issue**) consists of two spreadsheets, prepared by the QPS LEAPS Coordinator and sent to OLGR, in accordance with LEAPS processes.<sup>4</sup> The spreadsheets set out:
  - date, time and location of incidents recorded by QPS officers as having occurred at, or in the vicinity of, the Applicant's venue
  - a summary of the facts relating to the incidents, including nature of any offence(s), any resulting arrests and/or description of any injuries sustained; and
  - an indication as to any substance(s) the involved individuals were observed as having been affected by, and level of intoxication (where applicable).

<sup>2</sup> The Department also sought QPS' views on disclosure. The Department has confirmed to OIC that QPS initially objected to disclosure of information and sought internal review of the Department's decision to disclose information. QPS did not however, apply to OIC for external review and therefore, they were not involved in the review process.

<sup>3</sup> See *Commissioner's Circular 27/2010 – Drink Safe Precincts and Banning Orders*, 2 December 2010 at page 2 (available at <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf>).

<sup>4</sup> As described at paragraph 5 above.

10. The Information in Issue does not include the names of any individuals involved in the incidents.

### Issues for determination

11. In this review the Applicant has the onus of establishing that access to the Information in Issue should be refused.<sup>5</sup> The Applicant has raised the following grounds for refusal of access in its submissions:
- (i) the Information in Issue is exempt information;<sup>6</sup> or
  - (ii) disclosure of the Information in Issue would, on balance, be contrary to the public interest.<sup>7</sup>
12. The Applicant made extensive submissions to OIC in support of its view that the Information in Issue should not be disclosed<sup>8</sup> and in making my decision in this review, I have carefully considered all of the submissions. Some submissions did not relate directly to the issues for determination in this review, for example, they did not go to the requirements for establishing the exemptions claimed or were unrelated to the test for applying particular public interest factors. Accordingly, such submissions are not referred to in these reasons for decision as they do not relate to the issues for determination, as set out above.
13. To support a number of its exemption claims and public interest arguments, the Applicant contends that individuals involved in the incidents can be identified from the Information in Issue. As this issue arises for consideration throughout these reasons, I have made a preliminary finding on whether individuals are identifiable from the Information in Issue and have then referred to this finding, throughout the reasons, where applicable.

### Findings

14. The Applicant generally submitted that the RTI Act does not intend for all information which government possesses to be made publicly available and therefore, disclosure of the Information in Issue would be in conflict with the purpose and objects of the legislation.<sup>9</sup> The RTI Act provides a general right of access to information in the possession or under the control of Queensland government agencies.<sup>10</sup> While the legislation excludes certain documents and entities from the application of the RTI Act<sup>11</sup>, I am satisfied that the Information in Issue is not subject to any of these exclusions. Accordingly, I find that the Information in Issue is in the possession of the Department and is therefore, subject to the RTI Act access scheme.

### *Are individuals identifiable from the Information in Issue?*

15. No, for the reasons that follow.
16. As set out in paragraph 10 above, the Information in Issue does not name any individuals involved in the incidents. The Information in Issue only refers to individuals in generic terms, eg. 'victim' or 'suspect'. Having carefully reviewed the Information in Issue, I am also satisfied that any personal details of individuals which appear in the Information in Issue, eg. descriptions of injuries sustained, are not of such a unique

<sup>5</sup> Under section 87(2) of the RTI Act, the participant in an external review who opposes a **disclosure decision** (defined in section 87(3)(a) of the RTI Act) has the onus of establishing that a decision not to disclose the information is justified or that the Information Commissioner should give a decision adverse to the access applicant.

<sup>6</sup> Under sections 47(3)(a) and 48 and schedule 3 of the RTI Act.

<sup>7</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>8</sup> Submissions to OIC dated 24 February 2012 and 20 July 2012. I have also considered the Applicant's RTI Objection Form, and accompanying letter dated 12 October 2011, submitted to the Department in response to the consultation process.

<sup>9</sup> Submissions to OIC dated 24 February 2012 and 20 July 2012.

<sup>10</sup> Section 23 of the RTI Act. See also sections 12 and 14 of the RTI Act.

<sup>11</sup> See sections 11 and 17 and schedules 1 and 2 of the RTI Act.

nature that they could reasonably be expected to be used to ascertain the identity of any individuals involved in the incidents.

17. The Applicant contends that media articles could be used in conjunction with the Information in Issue to identify individuals. The Applicant points to a particular incident referred to in the Information in Issue which it considers would identify the victim and suspect.<sup>12</sup> I acknowledge that incidents occurring at the Applicant's venue may have been the subject of media reports and that some reported incidents may have similarities to those referred to in the Information in Issue. However, given the absence of individual names and/or other uniquely personal details from the Information in Issue, I do not consider the identity of individuals could reasonably be ascertained using media reports.
18. For the above reasons, I am satisfied that any individuals involved in the incidents cannot be identified from the Information in Issue and also, that it is not reasonable to expect that individuals' identities could be ascertained using the Information in Issue and/or other publicly available material.

***Is the Information in Issue exempt information?***

19. No, for the reasons that follow.

**Relevant law**

20. Access should be given to a document unless disclosure would, on balance, be contrary to the public interest.<sup>13</sup> The right of access is subject to some limitations, including grounds on which access may be refused.<sup>14</sup> One ground for refusing access is where a document comprises exempt information.<sup>15</sup> Schedule 3 of the RTI Act sets out the type of information which Parliament has considered to be exempt as its disclosure would, on balance, be contrary to the public interest.

**Analysis**

21. The exemptions raised by the Applicant in this review are set out in the Appendix to these reasons.

***Schedule 3, section 6(a) - contempt of court***

22. The Information Commissioner has previously explained<sup>16</sup> that the:
  - concept of contempt of court is based on the protection and maintenance of public confidence in the effective administration of justice; and
  - public disclosure of matter that has the tendency to interfere, or is intended to interfere, with the pending fair trial of a criminal or civil proceeding will amount to a contempt of court.
23. The Applicant submits that the Information in Issue:
  - easily identifies suspected offenders and victims and would therefore, jeopardise a fair trial for potential suspects

<sup>12</sup> Submissions to the Department dated 12 October 2011. I am unable to set out the details of the Applicant's submission on this issue as it refers to information claimed to be exempt and/or contrary to public interest – see section 108 of the RTI Act.

<sup>13</sup> Section 44(1) of the RTI Act. This is referred to as the *pro-disclosure bias* in deciding access to documents.

<sup>14</sup> Section 47(2) of the RTI Act provides that these grounds are to be interpreted narrowly and an agency may give access to a document even if a ground on which access may be refused applies.

<sup>15</sup> The grounds for refusal of access are listed in section 47(3) of the RTI Act. Section 47(2) of the RTI Act provides that these grounds are to be interpreted narrowly.

<sup>16</sup> In *Henderson and Department of Education* (Unreported, Queensland Information Commissioner, 22 July 1997) at [23] in the context of the equivalent provision in section 50 of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**).

- contains unsubstantiated allegations which have not been determined by a court and the series of events described is only one source's account of events; and
- identifies incidents of a criminal nature which may be subject to criminal proceedings, and if disclosed, there is a reasonable expectation that it would adversely affect the impartiality of jurors and/or judicial officers.

24. I acknowledge that the Information in Issue contains allegations which may have not yet been determined by a court. However, as I have found that individuals could not reasonably be identified from the Information in Issue, I consider that any pending criminal or civil proceedings associated with the incidents could not be connected to the Information in Issue with any level of certainty. For this reason, I am not satisfied that disclosure could interfere with any such proceeding to constitute contempt of court.
25. I therefore find that the Information in Issue is not exempt under schedule 3, section 6(a) of the RTI Act.

***Schedule 3, section 6(b) - contrary to an order or direction***

26. The Applicant submits that:
- there is a real possibility that an order has been made or direction given by a royal commission or commission of inquiry or a person or body having power taking evidence on oath to which public disclosure would be contrary; and
  - the decision-maker is compelled to check and ensure that no such orders have been made or directions given prior to any disclosure being contemplated.
27. The Applicant has not provided any supporting evidence to show that there has been an order made or direction given by a royal commission or commission of inquiry, or by a person or body having power to take evidence on oath, not to disclose the Information in Issue. As the onus is on the Applicant to establish that a decision not to disclose the Information in Issue on the basis of this exemption is justified<sup>17</sup> and in the absence of any available evidence to support its submission, I find that the Information in Issue is not exempt under schedule 3, section 6(b) of the RTI Act.

***Schedule 3, section 10(1)(a) - prejudice to an investigation***

28. The Applicant submits that:
- all of the Information in Issue relates to contraventions or possible contraventions of the law, largely of an allegedly criminal nature, some or all of which are likely to be subject to investigation and/or court proceedings
  - the Information in Issue arguably allows for the identification of suspects and victims and contains a significant number of unsubstantiated allegations; and
  - if the Information in Issue is disclosed, it could reasonably be expected to impact adversely on the ability of QPS to discharge its duties.
29. For this exemption to apply, there must be evidence of an investigation. The Applicant has not, however, provided any evidence to show that investigations are currently being conducted by QPS (or any other law enforcement agency) in relation to the incidents. I acknowledge that some of the incidents *may* be the subject of QPS investigations into alleged criminal offences. However, in the absence of any evidence as to specific investigations and in view of my findings at paragraphs 15-18 above, I am satisfied that the Applicant has not established the requisite level of prejudice to satisfy this exemption.

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<sup>17</sup> See paragraph 11 above.

30. I therefore find that the Information in Issue is not exempt under schedule 3 section 10(1)(a) of the RTI Act.

***Schedule 3, section 10(1)(b) - reveal a confidential source***

31. The Applicant submits that the Information in Issue identifies a number of officers and could enable the identity of victims, suspects, security personnel, employees of the Applicant and witnesses to be ascertained, many of which are likely to be confidential sources of information.
32. For this exemption to apply, a confidential source of information must exist in relation to the enforcement or administration of the law.<sup>18</sup> There is no evidence available to OIC to demonstrate that any individuals involved in the incidents provided information to QPS officers confidentially. Even if I had been satisfied on this point, for the reasons set out at paragraphs 15-18 above, I do not consider that disclosure of the Information in Issue could reasonably be expected to enable the identity of any individuals to be ascertained.
33. I therefore find that the Information in Issue is not exempt under schedule 3 section 10(1)(b) of the RTI Act.

***Schedule 3, section 10(1)(c) - endanger a person's life or physical safety***  
***Schedule 3, section 10(1)(d) - serious act of harassment or intimidation***

34. The Applicant submits that it could reasonably be expected that a person who has divulged information or taken action against a person of interest, whose identity is reasonably determinable from this information, may reasonably fear their physical safety is in danger. For the same reasons, the Applicant submits that disclosure of the Information in Issue could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
35. I acknowledge that there may be cases in which witnesses to, and/or victims of, criminal offences, may have well-founded concerns of the nature submitted by the Applicant. However, in view of my findings at paragraphs 15-18 above that individuals are not identifiable from the Information in Issue, I do not consider that the Information in Issue could be used for the purpose of committing acts which may endanger a person's life or physical safety and/or constitute serious harassment or intimidation. Accordingly, I do not consider that the outcomes contemplated by these exemptions could reasonably be expected to<sup>19</sup> occur through disclosure of the Information in Issue.
36. I therefore find that the Information in Issue is not exempt under schedule 3 section 10(1)(c) or (d) of the RTI Act.

***Schedule 3, section 10(1)(e) - prejudice a fair trial***

37. The Applicant submits that disclosure would impact adversely on the impartiality of jurors and/or judicial officers as the Information in Issue identifies suspects and victims and discloses incidents of an allegedly criminal nature in the context of unsubstantiated accounts which have not been determined by a court.

<sup>18</sup> *McEniery and the Medical Board of Queensland* (1994) 1 QAR 349 in the context of the equivalent provision in section 42(1)(b) of the repealed FOI Act.

<sup>19</sup> The phrase 'could reasonably be expected to' requires that the expectation is reasonably based and not irrational, absurd or ridiculous (*Attorney-General v Cockcroft* (1986) 64 ALR 97 at [106]) nor merely a possibility (*Murphy and Treasury Department* (1995) 2 QAR 744). Whether the expected consequence is reasonable requires an objective examination of the relevant evidence (*Murphy* at [45-47]). It is not necessary for a decision-maker 'to be satisfied upon a balance of probabilities' that disclosing the document will produce the anticipated prejudice, or, as in this case, a public good (*Sheridan and South Burnett Regional Council & Others* (Unreported, Queensland Information Commissioner, 9 April 2009)). Importantly, the expectation must arise as a result of disclosure, rather than from other circumstances (*Murphy* at [54]).

38. A 'person's fair trial' only refers to a criminal trial and does not extend to civil proceedings.<sup>20</sup> The phrase 'impartial adjudication of a case' is wide enough to extend to civil proceedings or any case that is formally adjudicated by a decision maker.<sup>21</sup>
39. For the reasons set out at paragraph 24 above, I am satisfied that the Information in Issue could not reasonably be expected to prejudice any criminal or civil proceedings relating to the incidents and is therefore, not exempt under schedule 3 section 10(1)(e) of the RTI Act.

**Schedule 3, section 10(1)(f) and (i) - prejudice methods, systems or procedures**

40. The Applicant submits that releasing the Information in Issue will:
- negatively impact the important relationship between licensees, their staff and QPS, as licensees would be less likely to contact QPS in relation to liquor-related incidents; and
  - prejudice the effectiveness of the LEAPS project because voluntary participants would no longer cooperate to as full an extent, thereby decreasing the accuracy of the information obtained by LEAPS and the effectiveness of its efforts to address liquor-related issues or predict trends.
41. The Information in Issue records suspected offences which have occurred at, or in the vicinity of the Applicant's venue. I am satisfied that the attendance of QPS officers at licensed venues, either at the request of the venue, or through other intelligence sources, constitutes (i) a lawful method for preventing, detecting and dealing with contraventions or possible contraventions of the law and/or (ii) a system for the protection of persons and property.<sup>22</sup>
42. The *Liquor Act 1992* (Qld) (**Liquor Act**) places a number of obligations on licensed venues in relation to safety and security, for example:
- licensees are required to maintain a safe environment for their patrons and staff<sup>23</sup>
  - licensees must ensure liquor is served, supplied and promoted in a way that is compatible with minimising harm from the use of liquor and preserving the peace and good order of the neighbourhood of the premises;<sup>24</sup> and
  - venues must keep a register about each incident at the licensed venue (i) in which a person is injured or (ii) requiring a person to be removed from the venue.<sup>25</sup>
43. In view of the above legislative requirements and the regulatory environment in which licensed premises operate, I consider it is reasonable to expect that licensees would notify QPS of any incidents at their venue requiring QPS attention to ensure the safety of their venue, staff and patrons. In my view, maintaining open and regular communication with a law enforcement agency would be advantageous to a licensee as it would support the venue in managing and responding to liquor-related incidents, provide an added level of protection for staff and patrons and generally, enhance venue safety. For these reasons, I am not persuaded that the disclosure of information

<sup>20</sup> *Uksi and Redcliffe City Council; Cook (Third Party)* (1995) 2 QAR 629 (**Uksi**) at [34].

<sup>21</sup> *Uksi* at [35].

<sup>22</sup> I have also considered whether the communication of the liquor-related incidents by QPS officers to OLGR is a system, method or procedure for the purpose of these exemptions. I am satisfied that this aspect of the LEAPS program does not meet the necessary requirements as the purpose of the communications is to assist OLGR in its regulatory activities, eg. identifying trends at licensed premises. I consider this aspect of the LEAPS program is relevant to the public interest factors relating to accountability, discussed at paragraphs 50-57 below.

<sup>23</sup> Section 148A(1)(a) of the Liquor Act.

<sup>24</sup> Section 148A(1)(b) of the Liquor Act.

<sup>25</sup> Section 142A(1)(a) of the Liquor Act.

under the RTI Act would lead to licensees being reluctant to contact QPS about liquor-related incidents.<sup>26</sup>

44. For the above reasons, I am not satisfied that it is reasonable to expect that the relevant methods, systems and/or procedures could be prejudiced through disclosure of the Information in Issue. Accordingly, I find that the Information in Issue is not exempt under schedule 3, section 10(f) or (i) of the RTI Act.

***Would disclosure, on balance, be contrary to the public interest?***

45. No, for the reasons that follow.

**Relevant law**

46. An agency may refuse access to information under the RTI Act where its disclosure would, on balance, be contrary to the public interest.<sup>27</sup> The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>28</sup> and explains the steps that a decision-maker must take<sup>29</sup> in deciding the public interest as follows:

- (i) identify any irrelevant factors and disregard them
- (ii) identify relevant public interest factors favouring disclosure and nondisclosure
- (iii) balance the relevant factors favouring disclosure and nondisclosure; and
- (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

**Analysis**

***(i) Irrelevant factors***

47. The Applicant has questioned the intentions of the access applicant for seeking access to the Information in Issue and the use to which the Information in Issue may be put once released.<sup>30</sup>
48. The RTI Act provides that the conduct of the access applicant which may result from disclosure is an irrelevant factor in deciding the public interest.<sup>31</sup> I also consider that the access applicant's reasons for requesting information under the RTI Act are irrelevant when assessing the public interest.<sup>32</sup>
49. For the above reasons, I have not taken the Applicant's submissions on this issue into account. I do not consider any other irrelevant factors arise in this case.

<sup>26</sup> Even if I was persuaded on this point, I am satisfied that licensees are not the only source of intelligence for QPS in relation to liquor-related incidents. I consider that victims, patrons and even venue staff, would still be likely to contact QPS to attend such incidents, notwithstanding the disclosure of related information under the RTI Act.

<sup>27</sup> Section 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>28</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

<sup>29</sup> Section 49(3) of the RTI Act.

<sup>30</sup> Submissions to OIC dated 24 February 2012 and 20 July 2012.

<sup>31</sup> Schedule 4, part 1, item 3 of the RTI Act.

<sup>32</sup> In *State of Qld v Albietz, Information Commissioner (Qld) & Anor* [1996] 1 Qd R 215, de Jersey J noted at [219] "... the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant". Although this decision was made in the context of the repealed FOI Act, I consider the reasoning equally applies when considering applications under the RTI Act.



**(ii) Factors favouring disclosure**

50. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance the government's accountability<sup>33</sup>
  - contribute to positive and informed debate on important issues or matters of serious interest;<sup>34</sup> and
  - reveal environmental or health risks or measures relating to public health and safety.<sup>35</sup>
51. OLGR is responsible for regulating Queensland's liquor industry and its development, within a socially responsible framework, and in a way that is compatible with minimising harm caused by alcohol abuse.<sup>36</sup> As part of its regulatory role, OLGR records liquor-related incidents as reported by QPS officers, whether or not breach action against the licensee/venue has been taken, to enable OLGR to identify any trends at licensed premises that may require proactive negotiations with the licensee and to reduce the likelihood of significant incidents in the future.<sup>37</sup> OLGR performs this part of its functions with the cooperation of QPS officers, through the LEAPS program.
52. The Information Commissioner has previously recognised that it is essential for the public to have confidence in the way a regulatory agency performs its functions.<sup>38</sup> Given the nature of the Information in Issue, as described at paragraph 9 above, I consider that disclosure would allow the community to scrutinise QPS' response to liquor-related incidents and the way such incidents are communicated to OLGR, for the purpose of it performing its regulatory activities relating to liquor and licensed venues. For these reasons, I am satisfied that disclosure would enhance government accountability and promote open discussion of public affairs.
53. The occurrence of liquor-related incidents at licensed premises is an issue of serious interest and the impact this issue has on the community is well-recognised.<sup>39</sup> I consider that disclosure of the Information in Issue would allow members of the public to scrutinise the nature and frequency of liquor-related incidents reported by QPS in relation to the Applicant's venue and the actions taken by QPS at the time of the incident. I am satisfied that this would reveal measures relating to public safety and would contribute to positive and informed debate on matters of serious interest to the community.
54. The Applicant argues strongly against the weight to be given to the above public interest factors on the basis that the Information in Issue describes alleged incidents which occurred some time ago and does not discuss the role of OLGR or QPS, or measures taken, to ensure safety or contribute to accountability.<sup>40</sup> The Applicant also submits that because the venue has a low incident rate in comparison to the number of patrons who attend the venue, the weight of these factors should be further reduced.<sup>41</sup>

<sup>33</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>34</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>35</sup> Schedule 4, part 2, item 14 of the RTI Act.

<sup>36</sup> <http://www.olgr.qld.gov.au/aboutUs/index.shtml>.

<sup>37</sup> <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf>

<sup>38</sup> See *Kenmatt Projects Pty Ltd and Building Services Authority* (Unreported, Queensland Information Commissioner, 27 September 1999) at [47] and *Seven Network (Operations) Limited and Redland City Council; A third party* (Unreported, Queensland Information Commissioner, 30 June 2011) at [25].

<sup>39</sup> See, for example, Law, Justice and Safety Committee, 'Inquiry into Alcohol-Related Violence – Final Report (Report No. 74)', March 2010 at <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2010/5310T1903.pdf>; Queensland Government, 'Queensland Government Response to Law, Justice and Safety Committee's final report into alcohol-related violence', 27 August 2010 at <http://www.parliament.qld.gov.au/documents/Committees/LJSC/2009/alcohol-related-violence/responseReport74.pdf>; Ministerial Council on Drug Strategy, 'National Alcohol Strategy 2006-2009 – Towards Safer Drinking Cultures', May 2006 at [http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/\\$File/nas-06-09.pdf](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/$File/nas-06-09.pdf).

<sup>40</sup> Page 2 and 5 of Applicant's submission to OIC dated 20 July 2012.

<sup>41</sup> Page 4 of Applicant's submission to the Department dated 12 October 2011.

55. I acknowledge that the age of the information potentially reduces its utility for the purpose of public discussion. However, OLGR remains the regulating body for licensed premises and OLGR has confirmed that information about liquor-related incidents continues to be communicated between QPS and OLGR in the context of the LEAPS program, to assist OLGR in performing its regulatory functions. Accordingly, I am satisfied that disclosure of the Information in Issue, despite its date range, could still reasonably be expected to enhance government accountability, contribute to discussion and debate within the community on matters of serious interest and reveal measures relating to public safety.
56. In my view, whether the number of liquor-related incidents reported in relation to a licensed venue is high or low, disclosure will still allow the public to see the way in which incidents are reported by QPS and communicated to OLGR. Accordingly, I am satisfied that a venue's incident rate does not decrease the public interest in enhancing the accountability of the law enforcement agency and regulatory body in relation to their responsibilities concerning liquor-related incidents and licensed premises.
57. For the reasons set out above, I afford the public interest factors identified at paragraph 50 significant weight in favour of disclosure.

***(iii) Factors favouring nondisclosure***

58. The Applicant has raised numerous public interest factors in schedule 4 of the RTI Act which it considers favour nondisclosure of the Information in Issue.<sup>42</sup> The Applicant's primary concern is that disclosure of the Information in Issue will prejudice its business affairs and damage its reputation.<sup>43</sup> The Applicant submits that disclosure would lead to decreased patronage and financial implications for the venue.
59. The Information in Issue describes liquor-related incidents recorded by QPS as having occurred at, or in the vicinity of the Applicant's venue. While I am prevented from describing the particular nature of the Information in Issue in these reasons<sup>44</sup>, the information refers generally to the behaviour of venue patrons and their level of intoxication, any suspected criminal offences and any violence involved in the incident.
60. I consider that it is reasonable to expect that the Applicant's business and/or financial affairs could suffer some level of prejudice through disclosure of this type of information as some members of the public may be less inclined to patronise the Applicant's venue to avoid exposure to such incidents. Accordingly, I find that this public interest factor applies in this case. However, I afford this factor only moderate weight on that basis that members of the public are generally aware that liquor-related incidents occur in many licensed venues and still choose to attend the venues. I also consider that a venue's history of liquor-related incidents is only one factor considered by potential patrons in selecting a venue to attend.
61. I acknowledge that the Information in Issue is about allegations of criminal conduct which at the time of recording had not been tested in court. However, as no individuals are identified in the Information in Issue, I find that the public interest factor in schedule 4, part 3, item 6 of the RTI Act does not apply in this case.
62. For the reasons set out at paragraph 24 above, I find that disclosure of the Information in Issue could not reasonably be expected to impede the administration of justice for a person, or generally and therefore find that the public interest factors in schedule 4, part 3, items 8 and 9 of the RTI Act do not apply in this case.

<sup>42</sup> These are listed in the Appendix.

<sup>43</sup> Submission to OIC dated 20 July 2012.

<sup>44</sup> Due to the operation of section 108 of the RTI Act – see footnote 12 above.

63. For the reasons set out at paragraph 43 above, I find that disclosure could not reasonably be expected to prejudice the flow of information to a law enforcement or regulatory agency and that therefore, the public interest factor in schedule 4, part 3, item 13 of the RTI Act does not apply in this case.
64. There is no evidence available to indicate that the Information in Issue was communicated confidentially, either to QPS by persons involved in the incidents or between QPS and OLGR. I am therefore not satisfied the Information in Issue is confidential and accordingly, find that the public interest in schedule 4, part 3, item 16 does not apply in this case.
65. For the reasons set out in paragraphs 15-18 above, I am not satisfied that the Information in Issue identifies individuals or that any identities could reasonably be ascertained from the Information in Issue. Accordingly, I find that disclosure of the Information in Issue would not reveal the personal information<sup>45</sup> of any individual and that therefore, the public interest factor in schedule 4, part 4, item 6 of the RTI Act does not apply in this case.
66. The Applicant did not make any specific submissions to support the application of the public interest factors concerning prejudice to intergovernmental relations and prejudice to security, law enforcement and public safety. As the onus is on the Applicant to establish that a decision not to disclose the Information in Issue is justified<sup>46</sup> and in the absence of any evidence to support the application of these factors, I find that they do not apply in this case.

***(iv) Balancing the public interest***

67. Enhancing the accountability of regulatory and law enforcement agencies which deal with liquor-related incidents in relation to licensed premises is a factor carrying significant weight in favour of disclosure of the Information in Issue. Given that the occurrence of such incidents raises issues of public safety, I am also satisfied that disclosure of the Information in Issue would lead to open discussion of public affairs and positive and informed debate on matters of serious interest. Weighing against these factors is the prejudice to the Applicant's business and/or financial affairs which may result from disclosure of the Information in Issue, however, I am satisfied that this carries only moderate weight in this case in view of the general level of public awareness of the occurrence of liquor-related incidents in licenced premises.
68. On balance, I am satisfied that the public interest favours disclosure in this case and therefore, find that disclosure of the Information in Issue would not be contrary to the public interest.

**DECISION**

69. For the reasons set out above, I affirm the Department's decision to grant access to the Information in Issue on the basis that it is not exempt information and that disclosure would not, on balance, be contrary to the public interest.
70. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 29 October 2012**

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<sup>45</sup> As defined in section 12 of the *Information Privacy Act 2009* (Qld).

<sup>46</sup> See paragraph 11 above.

## APPENDIX

### Significant procedural steps

Date	Event
8 August 2011	The Department received the access application.
27 September 2011	The Department consulted with the Applicant under section 37 of the RTI Act about disclosure of the relevant information to the access applicant and invited to Applicant to identify any objections to disclosure.
12 October 2011	The Applicant notified the Department that it objected to disclosure of the relevant information and provided submissions supporting its case.
31 October 2011	The Department issued its initial decision to the Applicant, deciding to disclose information in relation to the Applicant's venue.
28 November 2011	The Applicant applied to the Department for internal review.
21 December 2011	The Department affirmed its initial decision.
13 January 2012	OIC received the external review application.
19 January 2012	The Department provided OIC with relevant documents including the Information in Issue.
24 February 2012	OIC received the Applicant's further submissions.
30 April 2012 – 22 May 2012	OIC sought clarification from the Department in relation to the Information in Issue.
28 June 2012	OIC issued a written preliminary view to the Applicant that there is no basis on which the Information Commissioner can set aside the Department's decision on the Information in Issue. OIC invited the Applicant to provide submissions supporting its case if it did not accept the preliminary view.
20 July 2012	The Applicant advised OIC it did not accept the preliminary view and lodged submissions in response.
31 July 2012	OIC telephoned OLGR to obtain information about the LEAPS program as it relates to OLGR's role in regulating licensed venues.
27 August 2012	OIC provided the Applicant with an update on the status of the external review.
21 September 2012	OIC provided the Department with an update on the status of the external review and asked the Department to convey the status of the review to the access applicant.
28 September 2012	OIC provided the Applicant with a further update on the status of the external review.
	The Department received the access application.

## **Schedule 3 of the RTI Act - Exempt information**

### **6 Information disclosure of which would be contempt of court or Parliament**

*Information is exempt information if its public disclosure would, apart from this Act and any immunity of the Crown—*

- (a) be in contempt of court; or*
- (b) be contrary to an order made or direction given by—*
  - (i) a royal commission or commission of inquiry; or*
  - (ii) a person or body having power to take evidence on oath; or*

...

### **10 Law enforcement or public safety information**

*(1) Information is exempt information if its disclosure could reasonably be expected to—*

- (a) prejudice the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case; or*
- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or*
- (c) endanger a person's life or physical safety; or*
- (d) result in a person being subjected to a serious act of harassment or intimidation; or*
- or*
- (e) prejudice a person's fair trial or the impartial adjudication of a case; or*
- (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law); or*

...

- (i) prejudice a system or procedure for the protection of persons, property or the environment; or*

...

## **Schedule 4 of the RTI Act - Factors for deciding the public interest**

### **Part 3 Factors favouring nondisclosure in the public interest**

- 6 *Disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.*
- 7 *Disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety.*
- 8 *Disclosure of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness.*
- 9 *Disclosure of the information could reasonably be expected to impede the administration of justice for a person.*
- ...
- 13 *Disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.*
- 14 *Disclosure of the information could reasonably be expected to prejudice intergovernmental relations.*
- ...
- 16 *Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.*
- ...

### **Part 4 Factors favouring nondisclosure in the public interest because of public interest harm in disclosure**

- 6 ***Disclosing personal information***
  - (1) *Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.*