



## Decision and Reasons for Decision

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<b>Application Number:</b>	<b>311638</b>
<b>Applicant:</b>	<b>Tedesco</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>13 December 2013</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT - REFUSAL OF ACCESS – applicant sought access to activity log of Queensland Police Service – whether access may be refused on the basis that the document does not exist – section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a range of information relating to complaints made by him to QPS between 2006 and 2010.
2. QPS identified 42 pages responding to the access application and decided to grant full access to 5 pages and partial access to 37 pages.<sup>2</sup>
3. The applicant sought internal review of QPS's decision on the basis that additional documents should have been located. Although QPS conducted further enquiries, no further documents were located. QPS determined that all documents relating to the application had been identified and released to the applicant.<sup>3</sup>
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision to refuse access,<sup>4</sup> submitting that an additional QPS activity log regarding a complaint made by the applicant (**Additional Activity Log**) should have been located.

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<sup>1</sup> Application dated 15 March 2013.

<sup>2</sup> Partial access was due to the deletion of some irrelevant material pursuant to section 88 of the IP Act and deletion of some personal information the disclosure of which would have been contrary to the public interest pursuant to section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld). The applicant did not seek external review of these refusals.

<sup>3</sup> By internal review decision dated 5 June 2013.

<sup>4</sup> External review application dated 2 July 2013.

5. For the reasons set out below, I affirm QPS's internal review decision and find it is entitled to refuse access to the Additional Activity Log on the basis that it does not exist under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

### **Background**

6. Significant procedural steps relating to the application and the external review are set out in the appendix to this decision.

### **Reviewable decision**

7. The decision under review is QPS's internal review decision dated 5 June 2013.

### **Evidence considered**

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

### **Issues for determination**

9. The issue for determination<sup>5</sup> in this external review is whether QPS is entitled to refuse access to the Additional Activity Log on the basis that this document is nonexistent.<sup>6</sup>

### **Relevant law**

10. Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent that it could refuse access to the document under section 47 of the RTI Act.
11. The RTI Act provides that access to a document may be refused if the document is nonexistent or unlocatable.<sup>7</sup> A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.<sup>8</sup>
12. The RTI Act is silent on how an agency can be satisfied that a document does not exist. However in *PDE and The University of Queensland (PDE)*,<sup>9</sup> the Information Commissioner explained that, to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:
  - the administrative arrangements of government
  - the agency structure

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<sup>5</sup> On internal review, the applicant indicated that all documents relating to a police visit to his home on 11 November 2006 were not disclosed. On external review, the applicant requested release of the activity log for the 11 November 2006 visit written by both attending police officers and he has discussed the significance of that visit to him. OIC confirmed with the applicant by letters dated 23 July and 30 September 2013 that the issue being considered on external review was that QPS had not disclosed an additional activity log regarding the visit to his home on 11 November 2006. Throughout the external review and in numerous conversations with OIC staff and in correspondence (as already indicated) the issue has at all times been the existence of an additional activity log for 11 November 2006. Only after notification to the applicant that a final decision would issue shortly, did he raise a further issue regarding non-location of documents on a different date. However, that issue has not been considered here.

<sup>6</sup> Sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>7</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>8</sup> Section 52(1)(a) of the RTI Act. See *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [43]. Although this decision concerned section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are substantially replicated in section 52 of the RTI Act.

<sup>9</sup> (Unreported, Queensland Information Commissioner, 9 February 2009).

- the agency’s functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
  - the agency’s practices and procedures (including but not exclusive to its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including:
    - the nature and age of the requested document/s; and
    - the nature of the government activity the request relates to.
13. When these factors are properly considered and a conclusion reached that the document does not exist, it may be unnecessary for searches to be conducted. Alternatively, an agency may rely on searches to justify a decision that the document sought does not exist. If an agency relies on searches, all reasonable steps must be taken to locate the requested document. In determining whether all reasonable steps have been taken, regard should be had to the factors listed in *PDE* as set out above.

## Findings

14. In deciding that QPS has taken all reasonable steps to locate the Additional Activity Log and that there is a reasonable basis to be satisfied that this document does not exist, I have had regard to the information identified by QPS in response to the access application, the nature of the requested document and QPS’s recordkeeping practices and procedures.
15. I have carefully reviewed the applicant’s submissions. He submits that it is contrary to QPS practice not to prepare an activity log when a serious complaint is made.<sup>10</sup>
16. QPS did locate an activity log regarding the day in question prepared by a QPS officer that includes an entry regarding the applicant but this entry does not detail the conversation between the two attending police officers and the applicant regarding his complaint. No further documents were located by QPS.<sup>11</sup> The applicant submits that there must be another activity log (the Additional Activity Log) detailing the conversation prepared by the other officer who attended his home at the same time.<sup>12</sup>
17. In response to OIC requests for information regarding QPS practices, QPS submits that the normal practice is for one activity log to be prepared for each “crew” per shift.<sup>13</sup> Accordingly, it would not be consistent with normal QPS practice for both officers who together attended upon the applicant on the day in question to each prepare an activity log in relation to that day.
18. In addition to this submission about QPS practice, the senior attending police officer on the day in question has expressly confirmed to OIC that only one activity log was prepared in relation to the visit and it was written by the other officer who attended with him on that day.<sup>14</sup>
19. On this occasion, I am satisfied that the Additional Activity Log does not exist, and the activity log located by QPS is the only activity log relevant to the applicant’s application

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<sup>10</sup> Submissions received 18 October 2013.

<sup>11</sup> Submissions received 5 September 2013.

<sup>12</sup> External review application dated 2 July 2013 and submissions received on 18 October 2013.

<sup>13</sup> Submissions received 30 September 2013.

<sup>14</sup> Submissions received 30 September 2013.

for the day in question. Accordingly, QPS is entitled to refuse access to the Additional Activity Log on the ground that it is nonexistent.

20. Finally, the applicant submits that the QPS activity log regarding the day in question should have been more detailed. As OIC has explained to the applicant,<sup>15</sup> the only issue the Information Commissioner can consider is whether there are reasonable grounds to be satisfied that the Additional Activity Log does not exist. Issues about what QPS has recorded in the activity log are not within the Information Commissioner's jurisdiction.<sup>16</sup>

## **DECISION**

21. I affirm the internal review decision by finding that QPS is entitled to refuse access to the Additional Activity Log under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act on the ground that it does not exist under section 52(1)(a) of the RTI Act.
22. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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Louisa Lynch  
**Assistant Information Commissioner**

**Date: 13 December 2013**

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<sup>15</sup> In conversation with the applicant on 1 and 25 October 2013 and by email dated 21 October 2013.

<sup>16</sup> Section 137(2) of the IP Act.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
15 March 2013	QPS received the applicant's application.
22 April 2013	QPS located 42 pages and decided to release 5 pages in full and it partially released 37 pages.
10 May 2013	QPS received the applicant's application for internal review.
5 June 2013	QPS made its internal review decision again deciding to release 5 pages in full and partially release 37 pages.
2 July 2013	OIC received the applicant's application for external review.
23 July 2013	OIC advised the applicant and QPS that the application had been accepted for review and confirmed the issue OIC would consider was whether an additional actively log existed in relation to an attendance by police upon the applicant on 11 November 2006.
23 July 2013	OIC asked QPS for copies of documents located in response to the access application.
9 August 2013	OIC received the requested documents from QPS.
23 August 2013	OIC asked QPS to conduct further searches for documents relevant to the day in question.
5 September 2013	OIC received the requested submissions from QPS.
16 September 2013	OIC requested QPS provide a submission about its record keeping practices.
30 September 2013	OIC received the requested submission from QPS.
30 September 2013	OIC conveyed a preliminary view to the applicant that access may be refused to the Additional Activity Log because it does not exist.
1 October 2013	OIC clarified to the applicant that it cannot investigate complaints about agency record-keeping practices.
18 October 2013	OIC received submissions from the applicant.
21 October 2013	OIC confirmed receipt of the applicant's submissions and further clarified that OIC cannot investigate complaints about agency record-keeping practices.
25 October 2013	Applicant confirmed verbally that he would like OIC to proceed to a formal decision.