



Decision and Reasons for Decision

Citation: *H30 and Queensland Police Service [2019] QICmr 44*
(14 October 2019)

Application Number: 314527

Applicant: H30

Respondent: Queensland Police Service

Decision Date: 14 October 2019

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PREJUDICE TO SYSTEM OR PROCEDURE - information regarding referral of the applicant to the Queensland Fixated Threat Assessment Centre - prejudice effectiveness of a system or procedure for the protection of persons or property - whether information is exempt under schedule 3, section 10(1)(i) of the *Right to Information Act 2009* (Qld) - whether access to information may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - third party personal information - accountability and transparency - administration of justice - prejudice to other individuals' privacy and personal information harm - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied, under the *Information Privacy Act 2009* (Qld) (**IP Act**) to the Queensland Police Service (**QPS**), for access to an intelligence report, all related documents and communications, and emails and correspondence involving particular police officers.¹

¹ Access application dated 17 February 2019.

2. QPS granted the applicant full access to 29 pages and partial access to 11 pages, and decided² to refuse access to the remaining parts of 11 pages on the basis that the information was exempt or contrary to the public interest to disclose.³ One of the partially released documents was a three page Street Check Summary concerning the referral of the applicant to the Queensland Fixated Threat Assessment Centre (**QFTAC**).⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the QPS decision.⁵ The applicant submitted to OIC that the '*QFTAC report was not made in good faith and no rights attach to criminals using police or QFTAC systems to carry out reprisals on whistle-blowers*' and further that the '*public interest is in knowing how QFTAC can be used by government against political dissidents and whistle-blowers*'.⁶
4. For the reasons set out below, I affirm QPS' decision to refuse access to information in the Street Check Summary on the basis that it is exempt,⁷ or because its disclosure would, on balance, be contrary to the public interest.⁸

Background

5. Significant procedural steps relating to the external review are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
6. The decision under review is QPS' decision dated 25 March 2019.

Information in issue

7. The three page Street Check Summary is the only document containing information in issue.⁹ The document forms part of QPS' intelligence record and contains information relating to the QFTAC referral, including QFTAC's evaluation of the evidence relating to the applicant.

Issues for determination

8. The issues for determination are whether:
 - certain information¹⁰ in the Street Check Summary comprises exempt information to which access may be refused (**QFTAC Information**);¹¹ and

² QPS decision dated 25 March 2019.

³ Sections 47(3)(a) and (b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁴ QFTAC is a joint initiative between QPS and the Queensland Forensic Mental Health Service that identifies fixated individuals through irregular communications with public office holders. QFTAC seeks to mitigate the risk posed by fixated individuals by linking them with mental health interventions and addressing other identified risk factors. See the *Police Communications Centre Mental Health Liaison Service Evaluation Report* (May 2016) at page 12 for further information: <https://www.gmhc.qld.gov.au/sites/default/files/evaluation_report_police_communications_centre_mental_health_liaison_service.pdf> (accessed 17 September 2019).

⁵ External review application dated 26 March 2019.

⁶ Submission to OIC dated 16 August 2019.

⁷ Under section 47(3)(a) of the RTI Act.

⁸ Under section 47(3)(b) of the RTI Act.

⁹ Confirmed by the applicant by email to OIC dated 12 September 2019. QPS also refused access to personal information of other individuals appearing in emails from the applicant. OIC proposed, by letter dated 18 April 2019, to exclude these emails from further consideration in the external review and the applicant did not object to this proposal. Therefore, they do not form part of the information in issue which is the subject of this decision.

¹⁰ Appearing on pages 2 and 3 of the Street Check Summary.

¹¹ Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

- access to a small amount of information¹² appearing in the Street Check Summary may be refused on the basis that its disclosure would, on balance, be contrary to the public interest (**Third Party Information**).¹³

QFTAC Information

9. The QFTAC Information appears in the partially released Street Check Summary, under the heading '*QFTAC Evaluation*'. While I am limited in the extent to which I can discuss the exact content of the refused information,¹⁴ it describes the evidence relevant to the referral, QFTAC's assessment process, and steps taken in dealing with the referral.¹⁵

Relevant law

10. The IP Act provides an individual a right to access documents of an agency to the extent they contain the individual's personal information.¹⁶ This right of access is however, subject to certain limitations, including grounds for refusing access.¹⁷ One ground for refusing access is where information is exempt.¹⁸
11. Information will be exempt if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.¹⁹ For this exemption to apply, the Information Commissioner has previously found that the following three elements must be satisfied:
 - (a) there exists an identifiable system or procedure
 - (b) it is a system or procedure for the protection of persons, property or the environment; and
 - (c) disclosure could reasonably be expected to prejudice that system or procedure.²⁰
12. An exception to the exemption applies where refused information consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law.²¹

Analysis

13. I am satisfied that QFTAC can be described as a system for identifying communications of concern, gathering intelligence and referring individuals to mental health services, in order to manage the risks posed by fixated behaviour. I consider this system is designed to ensure the safety and security of the subject individuals, the broader community and in some instances, publicly/private-owned property. As a result, I find that requirements (a) and (b) above are met.
14. I am also satisfied that revealing specifics of the evaluation process undertaken by QFTAC and QPS to monitor and assess communications and associated behaviour,

¹² Two and a half lines of text, appearing on page 1 of the Street Check Summary.

¹³ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹⁴ Under section 121 of the IP Act, I am limited in the extent to which I can describe the exact content of the information in issue.

¹⁵ Noting that parts of the documents were disclosed to the applicant.

¹⁶ Section 40 of the IP Act.

¹⁷ Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act, were the document the subject of an access application under the RTI Act. Section 47(2) of the RTI Act states that it is Parliament's intention that the grounds on which access may be refused are to be interpreted narrowly.

¹⁸ Sections 47(3)(a) and 48 of the RTI Act.

¹⁹ Schedule 3, section 10(1)(i) of the RTI Act.

²⁰ *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at [9] applying *Ferrier and Queensland Police Service* (1996) 3 QAR 350. Applied in *A87 and Queensland Police Service* [2019] QICmr 37 (3 September 2019) at [12], in the context of comparable information concerning a QFTAC referral.

²¹ Schedule 3, section 10(2)(a) of the RTI Act.

could reasonably be expected to allow individuals to use that information to modify their behaviour in such a way so as to avoid detection by the QFTAC system. I am satisfied that this could reasonably be expected to result in vulnerable individuals in need of mental health intervention and support going undetected by the QFTAC system, thereby compromising its ongoing effectiveness. Therefore, I am also satisfied that requirement (c) is also met.

15. The applicant submits that *'QFTAC for criminal use is not a system'*²² and *'the intelligence report and procedures are not legitimate police or forensic medical officer work needing to be protected.'*²³ The applicant also alleges that QPS refused access to information to *'punish and silence me as a whistleblower'*, in an attempt to conceal evidence of a number of crimes, including her prosecution based on fraudulent complaints.²⁴ The applicant also submits that the '[Queensland Human Rights Commissioner] found the use of QFTAC procedures against me to be corrupt acts and human rights violations', and the *'QFTAC report was not made in good faith and no rights attach to criminals using police or QFTAC systems to carry out reprisals on whistle-blowers'*.²⁵ Further, the applicant submits that she was referred to QFTAC because *'information officers feared I would sue'*, and information was entered in QPRIME to destroy her reputation and career and have her *'arrested around 200 times with falsified police testimony'*.²⁶
16. In view of the applicant's submissions set out in the preceding paragraph I have considered whether the exception to the exemption, in schedule 3, section 10(2)(a) of the RTI Act may apply. That exception provides that information will not be exempt if it consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law. I have closely examined the Street Check Summary and I am satisfied that the QFTAC Information does not consist of matter revealing that any investigation exceeded its lawful limits. Therefore, I find the exception does not apply, and access to the QFTAC Information may be refused as it is exempt information.²⁷
17. Some of the applicant's submissions relate to the public interest in disclosure of the QFTAC Information. Under the IP Act, there is no scope for me to take into account public interest arguments where the requirements of an exemption have been established. This is because Parliament has decided that it would be contrary to the public interest to disclose this information²⁸ and the Information Commissioner does not have the power to direct that access be given to exempt information.²⁹ I have however, taken into account the applicant's public interest submissions in determining whether disclosure of the Third Party Information would, on balance, be contrary to the public interest, as discussed below.

Third Party Information

18. The Third Party Information comprises another individual's name and their personal details, eg. home address, and is listed in the Street Check Summary under the heading *'Involved People'*.

²² Applicant's submissions dated 4 October 2019.

²³ Applicant's submissions dated 16 August 2019.

²⁴ Applicant's submissions dated 28 April 2019.

²⁵ Applicant's submissions dated 16 August 2019.

²⁶ Submission dated 3 September 2019.

²⁷ Under section 47(3)(a) of the RTI Act.

²⁸ Section 48(2) of the RTI Act.

²⁹ Section 118(2) of the IP Act.

Relevant law

19. Access to information may also be refused under the IP Act where its disclosure would, on balance, be contrary to the public interest.³⁰ 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.³¹ 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.³²
20. Various factors may be relevant to deciding where the balance of the public interest lies³³ and a decision-maker is required to take specific steps in reaching a decision on disclosure.³⁴ I have set out below my assessment of, and findings in relation to, the public interest factors which I consider are relevant in this case.

Findings

21. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.
22. I have had regard to the pro-disclosure bias, as required by section 64 of the IP Act.

Factors favouring disclosure

23. I accept that disclosure of the Third Party Information would provide the applicant with a more complete version of the Street Check Summary, and therefore, disclosure would, in a general sense, enhance QPS' accountability and transparency.³⁵ However, as noted above, the Third Party Information is limited to the name and personal details of another individual and does not describe any actions or evaluation undertaken by QPS. Given the limited nature of the Third Party Information, the weight of these factors is significantly reduced. Therefore, I afford low weight to these factors in favour of disclosure.
24. The applicant submits that she is suing QPS, her '*IP application requests... evidence to support my PID and other allegations*' and OIC is withholding evidence relating to matters before the courts.³⁶ The applicant has provided OIC with evidence that she has commenced a legal proceeding.³⁷
25. A factor relating to the administration of justice³⁸ will arise where disclosure would enable the pursuit or evaluation of an appropriate legal remedy. For this factor to apply, I must be satisfied that:
 - (a) loss or damage or some kind of wrong had been suffered, in respect of which a remedy is or may be available under the law
 - (b) the applicant has a reasonable basis for seeking to pursue the remedy; and

³⁰ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

³¹ Chris Wheeler, 'The Public Interest: We know it's important, but do we know what it means' (2006) 48 *AIAL Forum* 12, 14.

³² However, there are some recognised public interest considerations that may apply for the benefit of an individual. For example, schedule 4, part 2, item 17 of the RTI Act identifies a factor favouring disclosure where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person.

³³ Including the non-exhaustive list of factors in schedule 4 of the RTI Act.

³⁴ Section 49 of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

³⁵ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

³⁶ Submissions dated 12 September 2019.

³⁷ Submissions dated 4 October 2019.

³⁸ Schedule 4, part 3, item 17 of the RTI Act.

- (c) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.³⁹
26. As noted above, the Third Party Information is limited only to the name and personal details of another individual. The Information Commissioner has previously decided that the administration of justice factor applies to disclosure of the names or other personal details of an individual, where, for example, this would enable an applicant to identify or contact a witness or potential defendant.⁴⁰
27. I am limited in the extent to which I can describe the Third Party Information.⁴¹ Given that the applicant has already commenced legal proceedings, I am satisfied that disclosure is not essential for her to pursue a remedy or evaluate whether the remedy is available or worth pursuing. However, as the applicant's legal proceedings have a connection with the subject matter of the Street Check Summary, I find this factor is relevant, but only to a limited extent.
28. The applicant also submits that her request to access information has been refused in '*concealing the crimes committed by other agencies*'.⁴² The RTI Act recognises that factors favouring disclosure will arise where disclosure of information *could reasonably be expected to*.⁴³
- allow or assist inquiry into, possible deficiencies in the conduct or administration of an agency or official⁴⁴
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct⁴⁵
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;⁴⁶ or
 - contribute to the enforcement of the criminal law.⁴⁷
29. Having considered the applicant's submissions and given the particularly limited nature of the Third Party Information, I do not consider that disclosure *could reasonably be expected to* promote the above public interest factors. Therefore, I am satisfied that the factors identified at paragraph 28 do not apply in the circumstances of this case.

Factors favouring nondisclosure

30. The RTI Act recognises that disclosure of another individual's personal information is a factor favouring nondisclosure which could reasonably be expected to lead to a public interest harm (**Harm Factor**).⁴⁸ A further factor favouring nondisclosure arises if disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁹ While the concept of 'privacy' is not defined in the RTI Act, it can be

³⁹ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

⁴⁰ For example, see *10S3KF and the Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) and *P06DKS and Queensland Police Service* [2018] QICmr 29 (15 June 2018).

⁴¹ Under section 121 of the IP Act.

⁴² Submissions dated 12 September 2019.

⁴³ In assessing whether an event '*could reasonably be expected*' to occur, the Information Commissioner has found '*The words call for the decision-maker ... to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural "expectations") and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist*'. See *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154]-[160].

⁴⁴ Schedule 4, part 2, item 5 of the RTI Act.

⁴⁵ Schedule 4, part 2, item 6 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 10 of the RTI Act.

⁴⁷ Schedule 4, part 2, item 18 of the RTI Act.

⁴⁸ Schedule 4, part 4, section 6 of the RTI Act.

⁴⁹ Schedule 4, part 3, section 3 of the RTI Act.

viewed as the right of an individual to preserve their personal sphere from interference by others.⁵⁰

31. As noted above, the Third Party Information comprises the name and other personal details of another individual. I am satisfied that this information is about and identifies that individual and therefore, comprises their '*personal information*'.⁵¹ I accept that *some* of the Third Party Information may already be known to the applicant. With respect to any information known to the applicant, I accept that release under the IP Act would not constitute a disclosure⁵² and therefore, the Harm Factor cannot apply. However, where information is *not* already known to the applicant, I am satisfied that disclosure would cause a public interest harm.
32. I also consider that disclosure of another individual's personal details such as name, date of birth and address, appearing in the highly sensitive context of a QFTAC referral, could reasonably be expected to interfere with that individual's 'personal sphere' and infringe their right to privacy.⁵³ On that basis, I afford significant weight to these nondisclosure factors.

Conclusion

33. I am satisfied that the factors relating to the protection of third party personal information (to the extent this factor applies) and safeguarding another individual's right to privacy carry significant weight in favour of nondisclosure. The low weight I have attributed to the public interest in enhancing QPS' accountability and transparency, and contributing to the administration of justice for the applicant, is insufficient to outweigh the collective weight of the nondisclosure factors. On balance, I find that access to the Third Party Information may be refused as its disclosure would, on balance, be contrary to the public interest.⁵⁴

DECISION

34. I affirm the decision of QPS and find that access to:
 - the QFTAC Information may be refused on the basis that it is exempt;⁵⁵ and
 - the Third Party Information may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.⁵⁶
35. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 14 October 2019

⁵⁰ 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 11 August 2008, at [1.56].

⁵¹ As defined in section 12 of the IP Act.

⁵² Where releasing personal information would involve conveying information that the recipient already knows, it cannot be said such release would '*disclose*' personal information within the meaning of the Harm Factor, and therefore, the factor will not apply.

⁵³ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁴ Under section 47(3)(b) of the RTI Act.

⁵⁵ Section 47(3)(a) of the RTI Act.

⁵⁶ Section 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
26 March 2019	OIC received the application for external review.
2 April 2019	OIC notified the applicant and QPS that the application for external review had been received. OIC requested procedural information from QPS.
13 April 2019	OIC received the requested information from QPS.
18 April 2019	OIC notified the applicant and QPS that the application for external review had been accepted. OIC requested that QPS provide the information in issue.
28 April 2019	OIC received written submissions from the applicant.
2 May 2019	OIC received further written submissions from the applicant.
13 May 2019	OIC received the requested documents from QPS.
16 August 2019	OIC conveyed a preliminary view to the applicant that access to the information in issue may be refused, and received written submissions from the applicant, in reply, contesting the view.
19 August 2019	OIC conveyed the above preliminary view to QPS.
20 August 2019	QPS advised OIC that it accepted the above preliminary view.
29 August and 3, 5 and 11 September 2019	OIC received further written submissions from the applicant.
12 September 2019	OIC confirmed the scope of the external review and received further written submissions from the applicant.
17 September 2019 and 4 October 2019	OIC received further written submissions from the applicant.