



## Decision and Reasons for Decision

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<b>Citation:</b>	<i>L52 and Queensland Police Service [2020] QICmr 69 (24 November 2020)</i>
<b>Application Number:</b>	315281
<b>Applicant:</b>	L52
<b>Respondent:</b>	Queensland Police Service
<b>Decision Date:</b>	24 November 2020
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - applicant seeks incident report involving former partner - prejudice flow of information to agency - protection of an individual's right to privacy - personal information - whether disclosure would, on balance, be contrary to public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 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 an incident report involving the applicant and his former de facto partner, for use in court proceedings in an overseas jurisdiction.
2. QPS located 1 page and decided<sup>2</sup> to refuse access to parts of the page on the ground that disclosure would, on balance, be contrary to the public interest.
3. The applicant applied<sup>3</sup> to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision refusing access.
4. For the reasons set out below, I affirm QPS's decision and find that access to the information in issue may be refused on the ground that disclosure would, on balance, be contrary to public interest.

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<sup>1</sup> Access application dated 4 February 2020.

<sup>2</sup> Decision dated 19 March 2020.

<sup>3</sup> External review application dated 19 March 2020.

## Background

5. Significant procedural steps taken in the external review are set out in the Appendix.

## Reviewable decision

6. The decision under review is QPS's decision dated 19 March 2020.

## Evidence considered

7. In reaching my decision, I have had regard to the submissions, evidence, legislation, and other material referred to throughout these reasons (including footnotes and Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>4</sup> particularly the right to seek and receive information.<sup>5</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>6</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation<sup>7</sup>: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>8</sup>

## Information in issue

9. The information in issue is parts of a one page document entitled "*Street Check Summary*" (**Information in Issue**) and can be described as the personal information of the applicant's former de facto partner.

## Issue for determination

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

## Relevant law

11. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>9</sup> However, this right is subject to other provisions of the IP Act and the RTI Act including the grounds on which an agency or Minister may refuse access to documents.<sup>10</sup>
12. Access may be refused to information where its disclosure would, on balance, be contrary to the public interest.<sup>11</sup> 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

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<sup>4</sup> The HR Act came into force on 1 January 2020.

<sup>5</sup> Section 21 of the HR Act.

<sup>6</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>7</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>8</sup> *XYZ* at [573].

<sup>9</sup> Section 40 of the IP Act.

<sup>10</sup> 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 it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

<sup>11</sup> Section 67(1) of the IP Act and section 47(3)(b) and 49 of the RTI Act.

is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.<sup>12</sup>

13. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>13</sup>
- identify factors irrelevant to the public interest and disregard them
  - identify factors in favour of disclosure of information
  - identify factors in favour of nondisclosure of information; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.
14. Additionally, I have kept in mind the pro-disclosure bias<sup>14</sup> of the RTI Act and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.<sup>15</sup>

## Findings

### *Irrelevant factors*

15. I have not taken any irrelevant factors into account in reaching my decision.

### *Factors favouring disclosure*

16. QPS must be transparent and accountable in how it deals with members of the public (**Transparency and Accountability Public Interest Factors**).<sup>16</sup> The Information in Issue comprises the personal information of another individual/s appearing in the context of QPS officers responding to and dealing with a request for assistance involving the applicant and his former de facto partner. I accept that disclosing this information would advance the Transparency and Accountability Public Interest factors to some degree. However, I do not consider that the disclosure of the Information in Issue would advance QPS's accountability and transparency in any significant way, particularly given the applicant has been provided with all of the information that is solely his personal information and which details his interactions with the QPS officers. I am satisfied that the information which *has* been disclosed to the applicant provides sufficient information to further his understanding of how QPS handled the request for assistance, thereby substantially reducing the weight to be afforded to these factors. Accordingly, I afford these two factors favouring disclosure low weight.

17. The applicant submitted:<sup>17</sup>

*The two parties to the Incident that [the applicant seeks] a full release of information is and [the applicant's former de facto partner].*

*[The former de facto partner] and [the applicant] had, up to September of last year been in a 9 year long Defacto relationship, Living together both in [another country] and Australia.*

*Since September 2019 [the former de facto partner] and [the applicant] separated for the reason detailed in the incident report...*

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<sup>12</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>13</sup> Section 49(3) of the RTI Act.

<sup>14</sup> Section 44 of the RTI Act.

<sup>15</sup> Section 47(2) of the RTI Act.

<sup>16</sup> Schedule 4, part 2, items 1 and 3 of the RTI Act.

<sup>17</sup> Email to OIC seeking external review dated 19 March 2020.

*The Family Court of the [other country] is presently in the process of hearing evidence to separate [their] common property, and a final separation of assets.*

*Having the un-redacted report is [an] important piece of information that [the applicant needs] to submit as relevant evidence. The redacted report is like any piece of half evidence...useless.*

18. The applicant further submitted:<sup>18</sup>

*[He is] aware the different jurisdictions might be a problem but [he is] again hoping common sense prevails and hopefully it won't be necessary to request the [Family Court of the other country] provide a subpoena to request the document as [he knows] this will be time consuming and delaying when in essence common sense should prevail...*

19. And:<sup>19</sup>

*The foreign jurisdiction is obviously far different to our own .. to ask the family court in Australia for a Subpoena to release the report [...] is a simple matter .. the [Family Court of the other country] will not issue a subpoena requiring the release of information for many legal reasons beyond [the applicant's] grasp of their laws . so all [the applicant] can do is ask [OIC] for common sense and common law to prevail .. and give [him] access to a document that both parties instigated [sic]*

20. The applicant also submitted that the Street Check Summary is a 'substantive part of [his] affidavit'.<sup>20</sup>

21. Given these submissions, I have considered whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice generally, including procedural fairness,<sup>21</sup> or to the administration of justice for a person, namely the applicant.<sup>22</sup>

22. Procedural fairness, or natural justice, refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it.<sup>23</sup> Accordingly, the person must be provided with adequate information about material that is credible, relevant and significant to the adverse finding to be made, so that the person can be given the opportunity to make effective representations to the decision-maker.<sup>24</sup> My understanding is that the applicant believes that disclosure of the Information in Issue will afford him the opportunity to make effective representations in the Family Court proceedings which have already been commenced in the other country. I have carefully examined the Information in Issue and the information within the Street Check Summary which has been released to the applicant by QPS. I consider that disclosure of the Information in Issue would not assist the applicant in any significant way in such proceedings nor afford the applicant procedural fairness because, broadly speaking, it details the state and feelings of the former de facto partner of the applicant that carry with them no criminality or illegality and

<sup>18</sup> Submission to OIC dated 30 June 2020.

<sup>19</sup> Submission to OIC dated 16 October 2020.

<sup>20</sup> Submission to OIC dated 23 June 2020.

<sup>21</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>22</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>23</sup> *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J.

<sup>24</sup> *Kioa* at 629 per Brennan J.

the information already released to the applicant demonstrates that QPS were of the view that no action was warranted.

23. Additionally, I note that in proceedings such as those in which the applicant is involved in the other country, disclosure or discovery processes appear to be available to him, as acknowledged in his submission set out at paragraphs 18 and 19 above. I also note that Division 4 of Chapter 4 of the *Uniform Civil Procedure Rules 1999* (Qld) provides a mechanism by which foreign legal process can be served in Queensland. While I acknowledge the applicant's submissions, that the subpoena process may be 'time consuming' and 'beyond [the applicant's] grasp', I note that he has advised OIC that he has a legal representative acting on his behalf in those proceedings.<sup>25</sup> Given the availability of these disclosure mechanisms, his legal representation, and also noting that '[t]he RTI Act was not ... designed to serve as an adjunct to court processes',<sup>26</sup> I conclude that disclosure of the Information in Issue could not reasonably be expected to contribute to the administration of justice generally.
24. Accordingly, I consider that the factor favouring disclosure relating to the administration of justice generally, including procedural fairness, does not apply in these circumstances.
25. In some circumstances, information can be accessed under the RTI Act for litigation purposes,<sup>27</sup> but only if the administration of justice for a person factor is sufficient to outweigh other public interest considerations, such as privacy. This is generally limited to circumstances where disclosure of the information sought 'would assist [an applicant] to pursue [a] remedy, or to evaluate whether a remedy is available, or worth pursuing'.<sup>28</sup> Usually, such consideration precedes any pursuit of a legal remedy. Here, however, the applicant has advised that he is currently involved in proceedings, knows his cause of action, and is pursuing a remedy. What he seeks is an unredacted copy of the Street Check Summary for evidentiary purposes. Given this, I consider disclosure of the Information in Issue could not reasonably be expected to contribute to the administration of justice in the sense contemplated in *Willsford* in relation to the proceedings which have already been commenced in a substantive way.<sup>29</sup> Additionally, I note the existence of court discovery processes outlined at paragraph 23 above and the fact that the RTI Act was not designed to be an adjunct to such processes. Accordingly, while I consider that the factor favouring disclosure relating to the administration of justice for the applicant applies in these circumstances, I consider that it has low weight.
26. Based on the above, I consider that the factor favouring disclosure relating to the administration of justice generally, including procedural fairness does not apply in the circumstances of this matter. While I consider the disclosure of the information in issue could reasonably be expected to contribute to the administration of justice specifically for the applicant, I afford the factor low weight because disclosure of the Information in Issue would not assist the applicant in any significant way in the proceedings in which he is involved and there are mechanisms in place which would allow the applicant to access information of this type within those proceedings. Accordingly, I afford the factor favouring disclosure relating to the administration of justice for the applicant low weight.

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<sup>25</sup> Submission to OIC dated 30 June 2020.

<sup>26</sup> *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

<sup>27</sup> A public interest factor favouring disclosure arises where disclosure could contribute to the administration of justice for an individual (schedule 4, part 2, item 17). A relevant public interest consideration was also identified and analysed by the Information Commissioner in *Willsford and Brisbane City Council* (1996) 3 QAR 368 (*Willsford*) at [17].

<sup>28</sup> *Willsford* at [17](c).

<sup>29</sup> *Willsford* at [17](c).

### ***Factors favouring nondisclosure***

27. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>30</sup> and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>31</sup>
28. While the Information in Issue appears in a Street Check Summary about the applicant, it is itself solely comprised of the personal information of another individual/s which, broadly, includes personal contact details relating to an attendance at a Police Station. Given the nature of the personal information, I am satisfied that the extent of the public interest harm that could be anticipated from disclosure is significant.
29. Additionally, I consider that disclosure would disclose private details about the individual/s, resulting in an intrusion into their private life or 'personal sphere', thus giving rise to a reasonable expectation of prejudice to the protection of the individuals' right to privacy. Accordingly, I am satisfied that the privacy public interest factor favouring nondisclosure applies and carries significant weight.
30. Accordingly, I afford the personal information harm factor and the privacy factor, significant weight.

### ***Balancing factors***

31. I have considered the pro-disclosure bias in deciding access to information.<sup>32</sup> On balance, I consider the nondisclosure factors outweigh the disclosure factors in relation to the Information in Issue. Accordingly, I find that access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

### **DECISION**

32. I affirm QPS's decision by finding that disclosure of parts of 1 page would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Assistant Information Commissioner Corby**

**Date: 24 November 2020**

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<sup>30</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

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

<sup>32</sup> Section 44 of the RTI Act.

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

<b>Date</b>	<b>Event</b>
19 March 2020	OIC received the applicant's application for external review.
26 March 2020	OIC notified QPS and the applicant that the application for external review had been received and requested procedural documents from QPS.
30 March 2020	OIC received the procedural documents from QPS.
7 April 2020	OIC notified QPS and the applicant that the external review application had been accepted and requested a copy of the document located from QPS.
15 April 2020	OIC received a copy of the document located from QPS.
21 May 2020	OIC received an emailed submission from the applicant.
23 June 2020	OIC received an emailed submission from the applicant.
30 June 2020	OIC conveyed a preliminary view to the applicant. OIC received an emailed submission from the applicant.
2 July 2020	OIC received an emailed submission and an oral submission from the applicant.
24 July 2020	OIC wrote to the applicant confirming the preliminary view.
25 July 2020	OIC received an emailed submission from the applicant.
28 July 2020	OIC received an oral submission from the applicant.
16 October 2020	OIC received an emailed submission from the applicant.