



Decision and Reasons for Decision

Citation: *G71 and Queensland Corrective Services [2023] QICmr 43*
(31 August 2023)

Application Number: 316926

Applicant: G71

Respondent: Queensland Corrective Services

Decision Date: 31 August 2023

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - SYSTEM FOR PROTECTION OF PERSONS, PROPERTY, ENVIRONMENT - information relating to accommodation review reports concerning applicant's parole application - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3 section 10(1)(i) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to accommodation review reports concerning applicant's parole application - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Corrective Services (**QCS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to accommodation reviews relating to a particular address dated between August 2019 and November 2020.
2. QCS located two pages responsive to the access application and decided² to release one page in full and one page in part. It refused access to the remaining information on one page on the basis that it was either exempt information or its disclosure would, on balance, be contrary to the public interest.

¹ Access application dated 22 June 2022.

² Decision dated 5 July 2022.

3. The applicant applied³ for internal review of QCS's decision to refuse access to this information. QCS affirmed the original decision on internal review.⁴
4. The applicant then applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of QCS's internal review decision.
5. On external review, QCS released some of the refused information to the applicant.
6. For the reasons set out below, I affirm QCS's decision and find that access to the remaining information in issue may be refused on the grounds it comprises exempt information and information that would, on balance, be contrary to the public interest to disclose.

Background

7. In requesting accommodation reviews, the applicant's application is seeking access to any Accommodation Risk Assessments (**ARAs**) undertaken regarding a particular address at which they wish to reside during a specified period. According to the Parole Board Queensland:⁶

To be released to board ordered parole, or to be re-released into the community following suspension of your parole order – the Board must be satisfied that you have suitable accommodation.

An [ARA] is the process by which the home or location you wish to reside at is considered. Once you submit your ARA request, Community Corrections will review your proposed accommodation and then make a recommendation to the Board.

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

Reviewable decision

9. The decision under review is QCS's internal review decision dated 30 August 2022.

Evidence considered

10. Evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).
11. In making this decision I have had regard to the *Human Rights Act 2019 (Qld)* (**HR Act**), in particular the right of the applicant to seek and receive information.⁷ I consider that a decision-maker will, when observing and applying the IP Act and RTI Acts, be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act.⁸ I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act.⁹

³ Internal review application dated 2 August 2022.

⁴ Internal review decision dated 30 August 2022.

⁵ External review application dated 27 September 2022.

⁶ See the Parole Board Queensland's fact sheet '*What is an Accommodation Risk Assessment (ARA)?*' at <<https://pbq.qld.gov.au/wp-content/uploads/2020/06/What-is-an-Accommodation-Risk-Assessment.pdf>>.

⁷ Section 21 of the HR Act.

⁸ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁹ I note the observations by Bell J on the interaction between equivalent pieces of Victorian legislation in *XYZ*, [573]: '*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.*' I also note that OIC's approach to the HR Act set out in this paragraph has recently been

Information in issue

12. QCS's decision refused access to portions of information on one page of an ARA. On external review, QCS agreed to release some of this information to the applicant – namely, the wording of four criteria listed in the ARA.
13. The information remaining in issue comprises:
 - assessments made against the four now released criteria (**Assessment Information**); and
 - a name and other identifying information of an individual other than the applicant (**Third Party Information**).

Issues for determination

14. The issues for determination in this review are whether:
 - the Assessment Information comprises exempt information on the basis that its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment; and
 - disclosure of the Third Party Information would be, on balance, contrary to the public interest.

Assessment Information

Relevant law

15. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁰ However, this right is subject to other provisions in the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**), including grounds for refusal of access.¹¹ Relevantly, an agency may refuse access to a document to the extent it comprises exempt information.¹² Schedule 3 of the RTI Act sets out the types of information that comprise exempt information. Parliament has determined that disclosure of these types of information would be contrary to the public interest.¹³
16. Information will be exempt if its disclosure could reasonably be expected¹⁴ to prejudice a system or procedure for the protection of persons, property or the environment.¹⁵ For this exemption to apply, the following three elements must be satisfied:¹⁶

considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (noting that Judicial Member McGill saw 'no reason to differ' from our position).

¹⁰ Under section 40(1)(a) of the IP Act.

¹¹ Under section 67(1) of the IP Act, an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to a document under section 47 of the RTI Act.

¹² Section 47(3)(a) of the RTI Act.

¹³ Section 48(2) of the RTI Act.

¹⁴ A reasonable expectation is one that is reasonably based, and not irrational, absurd or ridiculous: *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009) at [189] – [193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97 ('**Cockcroft**'). This test requires a decision-maker to distinguish 'between what is merely possible ... and expectations that are reasonably based' and for which 'real and substantial grounds exist': *B and Brisbane North Regional Health Authority* [1994] QICmr 1, a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld), at [154]-[160]. Other jurisdictions have similarly interpreted the phrase 'as distinct from something that is irrational, absurd or ridiculous': *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri* (GD) [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Cockcroft* at [190].

¹⁵ Schedule 3, section 10(1)(i) of the RTI Act.

¹⁶ As set out in *I3C1ST and Department of Community Safety* (Unreported, Queensland Information Commissioner, 30 August 2011) [12].

- there exists an identifiable system or procedure
- it is a system or procedure for the protection of persons, property or the environment; and
- disclosure could reasonably be expected to prejudice that system or procedure.

Findings

17. The Assessment Information relates to the risk assessment of accommodation nominated by a person applying for parole, against four criteria. I consider that the first two elements identified above are satisfied in these circumstances.
18. The applicant submits¹⁷ that the third element required for the exemption to apply is not satisfied because releasing the Assessment Information:
- would not enable a person in prison to alter their behaviour to obtain a more favourable result in relation to an ARA because prisoners have no oversight or control over the ARA process and only provide limited information to QCS; and
 - would not prejudice a system or procedure for the protection of persons because QCS routinely releases this kind of information.
19. I am unable to comment on the reasons why an agency may have released information outside of the circumstances of this review. In considering whether information held by a government agency should be released, I must consider each case on its own merits.
20. Having carefully considered this submission and the Assessment Information, I find that unrestricted disclosure of this information under the IP Act could reasonably be expected to prejudice the assessment function used by QCS when considering the suitability of the nominated accommodation. I consider that, if prisoners are informed of the specific ways in which their behaviour is monitored or assessed in a correctional centre, or the specific systems used by QCS to gather intelligence and assess risk, those systems could be compromised as prisoners may modify their behaviour to avoid detection or achieve favourable assessments. This could also compromise QCS's ability to ensure the safety and security of offenders (while in custody and on parole), staff and the community.¹⁸ I am constrained¹⁹ in further explaining my reasoning here because to do so would disclose information which is the subject of the decision.
21. Accordingly, the third element required for this exemption to apply is also satisfied.
22. The applicant submits²⁰ that the exception set out in schedule 3, section 10(2)(d) of the RTI Act²¹ to this exemption applies because:
- an ARA comprises a report prepared in the course of an investigation by QCS
 - QCS's functions include enforcing compliance with parole orders; and
 - the Assessment Information forms part of the investigatory process used to determine the suitability of an address for a person released on parole.

¹⁷ Submissions dated 7 November 2022.

¹⁸ *Ross and Department of Justice and Attorney-General* [2017] QICmr 46 at [15].

¹⁹ Under section 121 of the IP Act.

²⁰ Submissions dated 7 November 2022.

²¹ Schedule 3, section 10(2)(d) of the RTI Act provides that '*...information is not exempt information under subsection (1) if it consists of... a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the Crime and Corruption Act 2001*'.

23. The small amounts of information comprising the Assessment Information relate to administrative consideration of risk profile information regarding a particular individual against certain criteria to determine that individual's suitability for parole. They constitute no more than brief assessments of already ascertained information against the criteria. As such, they cannot properly be categorised as an '*investigation*'.²² Accordingly, I do not consider this exception applies to abrogate the exemption at schedule 3, section 10(1)(i) of the RTI Act for the Assessment Information.
24. The applicant submits that the purpose of obtaining access to the Assessment Information is to assist the applicant '*with sourcing suitable accommodation for [the applicant's] next parole application*'.²³ While the applicant's submissions may raise public interest considerations, I cannot take these into account for the purposes of the Assessment Information. Where information meets the requirements of one of the exemptions in schedule 3 of the RTI Act – which in my view, is the case here – Parliament has determined that disclosure of this type of information is contrary to the public interest,²⁴ regardless of any public interest factors that may arise. There is therefore no scope for me to consider any public interest factors, or the applicant's reasons for seeking access to the Assessment Information.
25. For these reasons, I find that access to the Assessment Information can be refused under section 47(3)(a) of the RTI Act as it is exempt information under schedule 3, section 10(1)(i) of the RTI Act.

Third Party Information

Relevant law

26. Access to information may be refused under the IP Act if its disclosure would, on balance, be contrary to the public interest.²⁵
27. In deciding whether disclosure of information would, on balance, be contrary to the public interest,²⁶ the RTI Act requires a decision-maker to:²⁷
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
28. In reaching my decision, I have followed the steps listed above. I have disregarded irrelevant factors and considered both the non-exhaustive lists of factors favouring disclosure and non-disclosure as set down in schedule 4 of the RTI Act and the applicant's submissions.

²² The word '*investigation*' is not defined in the RTI Act. The Macquarie Dictionary defines '*investigation*' as '*a searching inquiry in order to ascertain facts; a detailed or careful examination*'; Macquarie Dictionary (7th ed, 2017) '*investigation*' (def 2).

²³ Submissions dated 7 November 2022.

²⁴ Section 48(2) of the RTI Act.

²⁵ Section 67(1) of the IP Act, and sections 47(3)(b) and 49 of the RTI Act.

²⁶ 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

²⁷ Section 49 of the RTI Act.

Findings

Irrelevant factors

29. No irrelevant factors arise in the circumstances and I have not taken any into account in making my decision.

Factors favouring disclosure

30. The applicant's submissions raise the following factors favouring disclosure of the Third Party Information:
- disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision²⁸
 - disclosure could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies;²⁹ and
 - disclosure could reasonably be expected to contribute to the administration of justice generally (including procedural fairness), or for a person.³⁰
31. The Third Party Information is limited to the name of an individual and their relationship to the applicant. In those circumstances, I do not see how its release would substantially advance the factors listed above favouring disclosure. Accordingly, I afford these factors low weight.

Factors favouring nondisclosure

32. I am satisfied that the Third Party Information comprises personal information³¹ of an individual other than the applicant. I consider that releasing this information could reasonably be expected to prejudice the protection of this individuals' right to privacy³² and reveal their personal information.³³ I afford significant weight to these factors favouring nondisclosure of the Third Party Information.
33. The applicant considers they are aware of the contents of the Third Party Information, and that accordingly there can be no such prejudice arising from its release. However, the fact that the applicant believes they are aware of some, or all, of the Third Party Information does not, of itself, warrant further disclosure of the information under the IP Act, where there can be no restriction on its use, dissemination or re-publication. I do not consider that, in the circumstances of this matter, the weight of these nondisclosure factors is in any way reduced.

Balancing the public interest factors

34. In balancing the public interest, I have had regard to the IP Act's pro-disclosure bias.³⁴ For the reasons explained above, I have afforded low weight to the factors favouring disclosure which relate to revealing the reasons or background information for a government decision, advancing the fair treatment of individuals and contributing to the

²⁸ Schedule 4, part 2, item 11 of the RTI Act.

²⁹ Schedule 4, part 2, item 10 of the RTI Act.

³⁰ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³¹ Personal information is defined in section 12 of the IP Act as 'information or an opinion... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

³² Giving rise to the factor favouring nondisclosure at schedule 4, part 3, item 3 of the RTI Act.

³³ Giving rise to the factor favouring nondisclosure at schedule 4, part 4, section 6 of the RTI Act.

³⁴ Section 64(1) of the IP Act.

administration of justice. On the other hand, I have afforded significant weight to the nondisclosure factors relating to the personal information and privacy of other individuals.

35. In these circumstances, I find that the factors favouring nondisclosure are determinative and outweigh the factors favouring disclosure. Accordingly, I find that access to the Third Party Information can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

DECISION

36. For the reasons set out above, I affirm QCS's decision. I find that access to the Assessment Information may be refused on the grounds it is exempt information³⁵ and that access to the Third Party Information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.³⁶
37. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 31 August 2023

³⁵ Under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the RTI Act.

³⁶ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
27 September 2022	OIC received the application for external review. OIC requested the preliminary documents from QCS.
10 October 2022	OIC advised QCS and the applicant that the external review application had been accepted. OIC requested the information in issue from QCS.
11 October 2022	OIC received the information in issue from QCS.
18 October 2022	OIC conveyed a preliminary view to the applicant.
2 November 2022	The applicant requested an extension of time to respond to OIC's preliminary view. OIC granted the extension of time.
7 November 2022	The applicant provided submissions contesting OIC's preliminary view.
23 February 2023	OIC conveyed a further preliminary view to the applicant.
24 February 2023	The applicant advised they did not accept OIC's preliminary view and requested a formal decision.
28 February 2023	OIC confirmed with the applicant that the matter would proceed to a formal decision.
20 July 2023	OIC conveyed a further preliminary view to QCS that a small amount of refused information should be released.
28 July 2023	QCS accepted OIC's preliminary view and agreed to release further information to the applicant.
31 July 2023	OIC asked QCS disclose the agreed further information to the applicant in accordance with OIC's preliminary view. OIC confirmed with the applicant that QCS would release a small amount of the refused information and asked the applicant to confirm whether they still wished to proceed to a formal decision with respect to the remaining refused information.
1 August 2023	QCS released the agreed further information to the applicant.
21 August 2023	The applicant sought clarification regarding OIC's preliminary view and confirmed that they continued to request a formal decision.
22 August 2023	OIC confirmed with the applicant OIC's preliminary view and that the matter would proceed to a formal decision.