



## Decision and Reasons for Decision

---

**Application Number:** 310654

**Applicant:** P6Y4SX

**Respondent:** Department of Police

**Decision Date:** 31 January 2012

**Catchwords:** **INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – applicant sought access to a police report concerning stalking allegations made against him from the Queensland Police Service – Queensland Police Service had determined that the allegations were unfounded – whether disclosing information 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)**

### Contents

REASONS FOR DECISION .....	2
Summary .....	2
Background.....	2
Information in Issue .....	2
Reviewable decision .....	3
Material considered .....	3
Relevant law .....	3
What is the public interest? .....	3
How is the balance of the public interest determined? .....	3
Findings .....	3
Where does the balance of the public interest lie in this matter? .....	3
QPS accountability .....	4
Personal information and privacy.....	4
Administration of justice .....	5
Information not contained in the information in issue .....	6
Prejudice the flow of information.....	7
Conclusion – balancing the factors .....	8
DECISION .....	8

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Police Service (**QPS**) for access to a police report and all of the complainant's submitted evidence, including a CD, arising out of stalking allegations made against the applicant.
2. The police report indicated that the applicant was accused of stalking and raping<sup>1</sup> the complainant, however, the police investigation concluded that '*no offence has occurred*'.
3. QPS released parts of the police report but refused access to 19 pages in full and 9 pages in part as well as the CD on the basis that disclosing this information would, on balance, be contrary to the public interest under section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
4. As QPS concluded the allegations were unfounded, the applicant submits that he should have access to all of the information surrounding those allegations. In particular, the applicant expresses concern about the effect the allegations have had on his and his wife's wellbeing and contends that he hasn't had a chance to clear his name and requires access to the information in issue to do so.
5. Having considered the applicant's submissions and the relevant law, I am satisfied that there is a strong public interest in the applicant accessing his personal information as well as in protecting the privacy of the complainant (in relation to a significant portion of the information in issue) and other individuals. However, I consider that the public interest in protecting the free flow of information to QPS from members of the community is sufficiently strong as to tip the balance in favour of nondisclosure. Accordingly, I am satisfied that QPS was entitled to refuse access to the information in issue on the basis that its disclosure would, on balance, be contrary to the public interest.

### Background

6. Significant procedural steps relating to the external review application are set out in the Appendix.

### Information in Issue

7. On external review QPS agreed to release to the applicant a small amount of additional information.<sup>2</sup> Further, in a letter dated 7 August 2011 the applicant indicated that he did not require access to a letter he sent to QPS. The additional information released by QPS and the applicant's letter are no longer in issue in this review.
8. The information remaining in issue is a CD and 27 pages<sup>3</sup> comprising a police report, witness statement, draft witness statement, QPS file note and correspondence sent by the complainant to QPS.

---

<sup>1</sup> QPS subsequently confirmed in an email to the applicant that there had been a misunderstanding and no allegations of rape had been made.

<sup>2</sup> This release was consistent with QPS's decision.

<sup>3</sup> 19 pages in full and 8 pages in part.

## Reviewable decision

9. The decision under review is QPS's decision dated 9 May 2011 to refuse the applicant access to the information in issue.

## Material considered

10. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix).

## Relevant law

11. Under the *Information Privacy Act 2009* (Qld) (**IP Act**), a person has a right to be given access to documents of an agency to the extent they contain that person's personal information.<sup>4</sup> However, this right is subject to other provisions of the IP Act including the grounds on which an agency may refuse access to documents.<sup>5</sup> Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.<sup>6</sup>

### ***What is the public interest?***

12. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, 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.

### ***How is the balance of the public interest determined?***

13. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest. It also explains the steps that a decision-maker must take in deciding the public interest. To decide whether disclosing the information in issue would be contrary to the public interest, I must:<sup>7</sup>
  - 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 disclosing the information would, on balance, be contrary to the public interest.

## Findings

### ***Where does the balance of the public interest lie in this matter?***

14. I am satisfied that disclosing the information in issue would, on balance, be contrary to the public interest for the reasons that follow.
15. I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied I have not taken into account any irrelevant factors in reaching my decision.

---

<sup>4</sup> Section 40 of the IP Act.

<sup>5</sup> Section 67 of the IP Act – access may be refused in the same way and to the same extent as under section 47 of the RTI Act.

<sup>6</sup> Section 47(3)(b) of the RTI Act.

<sup>7</sup> Section 49(3) of the RTI Act.

16. I consider that there are a number of factors favouring disclosure and nondisclosure in this case. I discuss these and their relative weight below.

### **QPS accountability**

17. There is a clear public interest in ensuring that agencies such as QPS are accountable for the conduct of their investigations.<sup>8</sup> However, in this instance, the information disclosed to the applicant evidences the investigation processes undertaken by QPS and disclosing the information remaining in issue would not significantly advance this public interest consideration. In any event, the investigation has been finalised and no action taken against the applicant. Accordingly, this public interest factor favouring disclosure should be afforded minimal weight.

### **Personal information and privacy**

18. If disclosing information could reasonably be expected to disclose the personal information of the individual applying for that information, a public interest factor favouring disclosure arises.<sup>9</sup> As some of the information in issue refers to the applicant and includes statements and information about the applicant, this factor is relevant.<sup>10</sup>
19. In submissions to the Office of the Information Commissioner (**OIC**) throughout this review the applicant has conveyed the extremely detrimental impact dealing with the allegations and their aftermath has had on both he and his wife. Understandably, the applicant has made impassioned requests to 'know' **all** that has been said against him. Given the nature of the information in issue and the extent to which it concerns the applicant, I consider that this factor favouring disclosure warrants significant weight.
20. Whilst much of the information in issue comprises the applicant's personal information, the information is also the personal information of the complainant as well as a small amount of other individuals' personal information. Consequently, in a practical sense, it is not possible to separate the applicant's personal information from that of the complainant and other individuals. Therefore, the relevant privacy interests of the complainant (and any other factor favouring nondisclosure) must be balanced against this factor favouring disclosure.
21. The RTI Act provides that it is reasonable to expect that disclosing an individual's personal information to someone other than that individual will cause a public interest harm.<sup>11</sup> Information an individual provides to a law enforcement agency such as QPS about a matter they seek to have investigated is that individual's personal information. On this basis it is reasonable to expect that disclosing the information in issue to the applicant will cause a public interest harm. It is therefore relevant to consider the extent of that harm. In this instance the harm is reflected in the intrusion into the complainant's privacy.
22. If disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy a public interest factor favouring nondisclosure will arise and it will also be relevant to consider the weight of this factor.<sup>12</sup> The applicant contends

---

<sup>8</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>9</sup> Schedule 4, part 2, item 7 of the RTI Act

<sup>10</sup> Section 12 of the *Information Privacy Act 2009* (Qld) defines 'personal information' as *information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

<sup>11</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>12</sup> Schedule 4, part 3, item 3 of the RTI Act.

that he already knows the complainant's name, date of birth and address details.<sup>13</sup> Information provided to the applicant indicates that he has viewed parts of the CD. Further, the substance of the allegations made against the applicant was put to him for his response as part of the police investigation process. Where information is already known to an applicant, this potentially reduces (though does not negate) the privacy interest attaching to the information. Therefore, to the extent that the applicant already knows specific aspects of the information in issue, the public interest in protecting the complainant's privacy is significantly diminished. This is not the case in relation to information which is not known to the applicant.

23. In raising issues of concern with QPS the complainant has provided information of a private nature relating to their personal experience. I am satisfied that disclosing the information in issue could reasonably be expected to prejudice the complainant's privacy and the privacy of other individuals. The extent of the intrusion, and therefore the anticipated harm is considerably lowered in respect of information which is already known to the applicant, however, this harm remains significant and the public interest factor warrants substantial weight in relation to information not already known to the applicant.

### **Administration of justice**

24. If disclosing information could reasonably be expected to contribute to the administration of justice for a person or generally, including procedural fairness, it is relevant to consider these public interest factors favouring disclosure.<sup>14</sup>
25. The applicant indicates that he is particularly concerned to know all of the allegations made against him.<sup>15</sup> He also contends that he needs to respond to the allegations and clear his name, stating *'the stigma will always be there till I get my name cleared through the courts.'*
26. QPS officers interviewed the applicant in relation to the allegations. No further action was taken and the investigation was finalised because, as stated in the police report, *'evidence indicates offence did not occur'* and the *'matter [was] unfounded'*. Having considered the information already disclosed to the applicant, I am satisfied the applicant has also been made aware of the substance of the allegations made against him.
27. No procedural fairness issues arise because the applicant had an opportunity to refute the allegations through the police investigation process, which ultimately lead to the matter being finalised. As QPS determined that no offence occurred, the matter did not proceed to charges being laid and being heard before a court. The applicant has not been named in a criminal matter as generally occurs when such matters proceed to court. In any event, he has already been cleared of any wrongdoing through the preliminary investigation process. There is simply no case for the applicant to answer because QPS concluded there was no substance to the claims and therefore this factor favouring disclosure does not arise in this case.
28. The applicant also indicates that he requires all of the information in issue for his solicitors, stating:<sup>16</sup>

<sup>13</sup> Submissions dated 4 January 2012.

<sup>14</sup> Schedule 4, part 2, item 16 and 17 of the RTI Act.

<sup>15</sup> Submissions dated 4 January 2012.

<sup>16</sup> Submissions dated 16 December 2011.

*We want to take legal proceedings against [the complainant] for making these false and malicious allegations against me, for [the complainant] invading our privacy by photographing/videoing us at will and hopefully stop [the complainant] from doing the same thing to someone else...*

29. In *Willsford and Brisbane City Council*<sup>17</sup> the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor can arise if an applicant demonstrates that:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - they have a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>18</sup>
30. The applicant has not specified the particular remedies being considered by his solicitors. I note though that under section 10.21 of the *Police Service Administration Act 1990* (Qld) (**PSA Act**), it is an offence to **knowingly** make a false representation to QPS, which leads to an investigation. Further, in Australia there is neither a constitutional right to privacy nor is there a generally recognised legal cause of action of 'unjustified invasion of privacy', although the possibility of one has not necessarily been excluded and Justice Skoien in *Grosse v Purvis*<sup>19</sup> formed the view that there was such an actionable right.
31. In this matter it is possible that the first two requirements identified in *Willsford* are met, though this is not the case in relation to the third requirement. In respect of the claim of making false allegations to QPS, accessing the information in issue would not assist the applicant to pursue a remedy because the applicant is able to, and I understand, has already, taken this matter up with QPS. Similarly, in relation to the privacy matter, the applicant's concerns are specific and he is already in a position to convey his concerns to his solicitor for consideration as to relevant causes of action. Further, I do not consider there is any basis on which to conclude that having access to the information in issue is necessary for the applicant to commence any relevant legal action.
32. In view of the above, I am satisfied that this public interest factor does not arise here. In any event, if it did, the weight attributable to it would be minimal.

#### ***Information not contained in the information in issue***

33. The applicant also expresses concern that information he expected to be detailed in the police report wasn't mentioned, including QPS's conclusion about CCTV cameras and the applicant's concerns regarding the contents of the CD.
34. The right of access conferred by the IP Act is a key mechanism for enabling citizens to access Queensland government information. The right of access is however, subject to other provisions of the Act and confined to information in documents that exist on the day the access application is received.<sup>20</sup> I accept that the QPS report does not contain information which the applicant wants to know. However agencies are not obliged to

<sup>17</sup> *Willsford and Brisbane City Council* (Unreported, Queensland Information Commissioner, 27 August 1996) (**Willsford**).

<sup>18</sup> *Willsford* at paragraph 17.

<sup>19</sup> *Grosse v Purvis* (2003) Aust Torts Reports 81-706.

<sup>20</sup> Sections 40 and 47 of the IP Act.

create new documents to satisfy an applicant's request for particular information. In processing the access application QPS was only required to locate and determine whether to give access to documents relevant to the application existing at the time the application was made. That those documents do not contain all of the information anticipated by the applicant is not a relevant consideration here.

### Prejudice the flow of information

35. If disclosing information could reasonably be expected to prejudice the flow of information to the police, a public interest factor favouring nondisclosure arises.<sup>21</sup>
36. The applicant acknowledges the significance of this public interest factor favouring nondisclosure. However, he expresses concern that a person can make false allegations to QPS and the accused cannot access the identity and statements of the complainant through RTI legislation.<sup>22</sup>
37. As I have already indicated, QPS in this instance found the allegations were unfounded. Nonetheless, that the applicant was the subject of such allegations has had a very negative effect on the health and wellbeing of the applicant and his wife. Any person wrongly accused of a serious crime may, understandably, experience a sense of unfairness and injustice in being unable to know the identity and statements of their accuser. This is a difficult issue which has received judicial consideration, both in Australia and elsewhere.
38. In *McEniery and Medical Board of Queensland (McEniery)*, the Information Commissioner noted that there is no unqualified principle under the common law in Australia that entitles an accused to know their accuser, due to the public policy in protecting the free flow of information to police.<sup>23</sup> I am satisfied the same public policy considerations arise in relation to balancing the public interest in this review.
39. In *McEniery* the Information Commissioner acknowledged that the public policy considerations underlying the rule are arguably insensitive to the plight of the person who is falsely accused and that such conduct has '*severe and unwarranted consequences for the person improperly informed against*' and '*occasions a waste of scarce public resources*'.<sup>24</sup> In *McEniery* the Information Commissioner noted that these unfortunate consequences must be tolerated where informants genuinely, but mistakenly, believe that a person requires investigation by the relevant authorities.<sup>25</sup> He also acknowledged that the effect of the weight afforded to the public policy considerations protecting this type of information provides a shield of anonymity for those who **knowingly** make false allegations to police and regulatory authorities, noting though that relevant legislation, including section 10.21 of the *Police Service Administration Act 1990* (Qld), act as a deterrent and afford some means of redress.<sup>26</sup> In this review, as in *McEniery*, I am not required to determine, and it is not being suggested, that the complainant knowingly made false allegations, as the QPS investigation concluded only that '*evidence indicates offence did not occur*' and the '*matter [was] unfounded*'.

<sup>21</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>22</sup> Submissions dated 4 January 2012.

<sup>23</sup> *McEniery and Medical Board of Queensland* (Unreported, Queensland Information Commissioner, 28 February 1994). This decision considered section 42(1)(b) of the now repealed *Freedom of Information Act 1992* (Qld), which provides that matter is exempt if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained,

<sup>24</sup> *McEniery* at paragraph 62.

<sup>25</sup> *McEniery* at paragraph 62.

<sup>26</sup> *McEniery* at paragraph 62.

40. As already explained, it is generally recognised that there is very strong public interest in protecting the free flow of information to law enforcement agencies, even where this may result in an agency investigating false and/or unsubstantiated allegations. Agencies such as QPS rely significantly on information from the public to be alerted to and to pursue breaches of the law. Routinely disclosing the type of information in issue in this review would tend to discourage individuals from coming forward with relevant information and concerns. This in turn would significantly prejudice QPS's ability to effectively discharge its functions in enforcing the law. I am satisfied that, notwithstanding that the allegations were not substantiated, this public interest factor weighs very heavily against disclosure.

***Conclusion – balancing the factors***

41. In the circumstances of this review I consider there is a strong public interest in the applicant accessing his personal information. Balanced against this, however, is the strong public interest in protecting the privacy of the complainant (in relation to a significant portion of the information in issue) and other individuals as well as the key public interest in protecting the free flow of information to QPS from members of the community. I consider these strong public interest factors favouring nondisclosure tip the balance of the public interest in favour of nondisclosure of all of the information in issue.
42. I am therefore satisfied that disclosing the information in issue would, on balance, be contrary to the public interest.

**DECISION**

43. For the reasons set out above, I affirm the decision under review by finding that disclosure of the information in issue would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
44. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

---

**Suzette Jefferies**  
**Assistant Information Commissioner**

**Date: 31 January 2012**



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

<b>Date<sup>27</sup></b>	<b>Event</b>
30 March 2011 <sup>28</sup>	The applicant applied to QPS for access to a police report and all submitted evidence, including a CD, arising out of stalking allegations made against him.
9 May 2011	QPS issued a decision to the applicant ( <b>access decision</b> ).
2 June 2011 <sup>29</sup>	The applicant applied to the OIC for external review of the access decision.
9 June 2011	OIC informed QPS and the applicant that the external review application had been accepted for review.
13 July 2011	OIC conveyed an oral preliminary assessment to the applicant.
26 July 2011	OIC issued a written preliminary assessment to the applicant.
7 August 2011	The applicant provided submissions to OIC.
19 September 2011	The applicant provided submissions to OIC.
8 November 2011	The applicant provided submissions to OIC.
22 November 2011	The applicant provided submissions to OIC.
5 December 2011	The applicant provided submissions to OIC.
14 December 2011	OIC issued a preliminary view to the applicant.
16 December 2011	The applicant provided submissions to OIC.
4 January 2012	The applicant provided submissions to OIC.
24 January 2012	In response to a request from OIC, QPS agreed to release the additional information identified in paragraph 7 above.

---

<sup>27</sup> Of correspondence or relevant communication unless otherwise stated.

<sup>28</sup> Access application dated 28 March 2011 received by QPS.

<sup>29</sup> External review application dated 1 June 2011 received by OIC.