



Decision and Reasons for Decision

Citation:	<i>F77 and Queensland Police Service</i> [2025] QICmr 72 (20 October 2025)
Application Number:	318289
Applicant:	F77
Respondent:	Queensland Police Service
Decision Date:	20 October 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSE TO DEAL - EXEMPT CLASS OF DOCUMENTS - request for all documents regarding prosecution of a named police officer - whether application seeks all documents containing information relating to a stated subject matter - whether all requested documents are comprised of exempt information - whether agency may refuse to deal with the application - section 40 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - request for access to documents regarding the prosecution of a named police officer - whether information is exempt under schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld) - whether exception in schedule 3, section 10(6) of the <i>Right to Information Act 2009</i> (Qld) applies

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (QPS) under the *Right to Information Act 2009* (Qld) (RTI Act)² for access to:

*All documents relating to matters pertaining to the prosecution of [QPS officer] ... and the disciplinary records for [QPS officer].*³

¹ Access application dated 13 May 2024 and received by QPS on 14 May 2024.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (IPOLA Act) came into force, effecting changes to the RTI Act. As the applicant's application was made before this change, the RTI Act as in force prior to 1 July 2025 remains applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act in this decision is to that Act as in force prior to 1 July 2025.

³ The access application also named the deceased adult son of the applicant. I am limited in the extent to which I can include background details of the relevant court proceedings and police incidents, other than to say that the named QPS officer had been charged with certain offences in connection with the applicant's son. Separately and prior to those proceedings, the applicant's son had been involved in a QPS incident. To protect the privacy of all individuals involved, I have not included further details of the relevant incidents in these reasons.

2. QPS decided to refuse to deal with the application under section 41 of the RTI Act on the basis that the work involved in dealing with it would, if carried out, substantially and unreasonably divert the resources of QPS from their use in the performance of its functions.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.⁵
4. On external review,⁶ I formed the view that QPS may refuse to deal with the application under section 40 of the RTI Act as all requested information comprised exempt information under schedule 3, section 10(4) of the RTI Act.⁷ QPS accepted this view however the applicant did not.⁸ The applicant provided submissions in support of their position that the exception to the exemption had been interpreted too narrowly, the public interest in disclosure should be considered and OIC should direct that the information sought be disclosed.⁹
5. As QPS no longer relies on section 41 of the RTI Act to refuse to deal with the application, the issue for determination is whether instead, the refusal to deal provision in section 40 of the RTI Act applies on the basis that all of the requested documents comprise exempt information.
6. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as set out in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information¹⁰ and in doing so, I have acted in accordance with section 58(1) of the HR Act.¹¹
7. For the reasons set out below, I vary the reviewable decision and find that QPS is entitled to refuse to deal with the application under section 40 of the RTI Act on the basis that all of the requested documents comprise exempt information under schedule 3, section 10(4) of the RTI Act, to which the exception in section 10(6) does not apply.

Relevant law

8. Section 39 of the RTI Act provides that where an access application is made, an agency should deal with the application unless this would, on balance, be contrary to the public interest. Section 40 of the RTI Act sets out one of the sets of circumstances in which Parliament has considered it would, on balance, be contrary to the public interest to deal with an access application:

40 Exempt Information

(1) *This section applies if—*

- (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*

⁴ Decision dated 3 October 2024. This is the *reviewable decision* for the purpose of the external review.

⁵ By email dated 24 October 2024.

⁶ External review is a merits review process whereby the Information Commissioner stands in the shoes of the agency to make the correct and preferable decision under the RTI Act. See *Palmer and Townsville City Council* [2019] QICmr 43 (3 October 2019).

⁷ Conveyed to QPS by letter dated 21 August 2025 and the applicant by letter dated 12 September 2025

⁸ QPS submission dated 4 September 2025 and applicant submission dated 29 September 2025.

⁹ Submission dated 29 September 2025.

¹⁰ Section 21 of the HR Act.

¹¹ OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

(b) it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.

(2) The agency or Minister may refuse to deal with the application without having identified any or all of the documents.

9. In effect, this allows an agency to refuse to deal with an application if:

- the application requests all documents, or all documents of a particular class, that contain information of a stated kind or relate to a stated subject matter; and
- it appears to the agency that all of the documents to which the application relates are comprised of 'exempt information', as defined in section 48 of the RTI Act and described in schedule 3 of the RTI Act.

10. If an agency relies on section 40 of the RTI Act, it is not required to identify any or all of the documents.¹² The agency is, however, required under section 54(2)(f) of the RTI Act to set out:

- the provision of schedule 3 of the RTI Act under which it is said the information in the documents sought would comprise exempt information; and
- why the documents sought would comprise exempt information.

11. Exempt information is information the disclosure of which Parliament has proclaimed would, on balance, be contrary to the public interest. Relevantly, information is exempt if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body (**Prescribed Crime Body Exemption**).¹³ The exemption will not apply, however, where the information consists of information about the applicant and the investigation has been finalised.¹⁴

Submissions

12. QPS provided a submission listing the types of documents that would respond to the narrowed scope (in connection with the prosecution) including complaint details, investigation report, QP9, notice to appear and other relevant evidence extracted from QPS devices and databases.¹⁵ In accepting OIC's view that section 40 of the RTI Act was the preferable provision to rely on in this case, QPS agreed that, given the nature of the offences for which the named officer was prosecuted, the existence of police misconduct and consequent QPS ESU involvement was reasonably apparent based on the facts of this case.¹⁶

13. In summary, the applicant submitted:¹⁷

- *'the CCC exemption is only used for cases that haven't yet concluded which is not the case ... all cases involving the information ... have been finalised'*
- as next of kin, they have a right to participate in all proceedings concerning their son
- the information sought *'goes directly to [their son's] safety and the circumstances surrounding his death'* and to suggest that they *'are mere members of the public'*

¹² Section 40(2) of the RTI Act.

¹³ Schedule 3, section 10(4) of the RTI Act.

¹⁴ Schedule 3, section 10(6) of the RTI Act.

¹⁵ Submission dated 15 August 2025.

¹⁶ QPS submission to OIC dated 4 September 2025.

¹⁷ Submissions dated 12 August 2025 and 29 September 2025.

with no entitlement to this evidence is unjust and inconsistent with victims' rights under Queensland law'

- OIC's 'narrow interpretation' that 'only the "subject officer" may access material once an investigation is finalised' is 'inconsistent with' the purpose of the RTI Act, the Victims of Crime Assistance Act 2009 (Qld) and the Victims Charter
- 'Parliament cannot have intended that the exemption would operate to conceal evidence from the very victims of the unlawful conduct of police officers, especially where the information was critical to a coronial inquest into a police killing'
- denying the applicant access 'compounds the miscarriage of justice already committed' as the information sought was withheld from their son's inquest and it 'undermines community confidence in both the QPS and the OIC as oversight bodies'
- denying the applicant access to 'this information on the basis of a rigid technical exemption is to perpetuate a grave miscarriage of justice and risks bringing the administration of justice into disrepute'
- OIC should 'exercise its powers to direct disclosure of the requested records'; and
- information regarding the prosecution of the named QPS officer is already in the public domain as evidenced by an included media article.¹⁸

Findings

14. The applicant sought access to the following information:¹⁹

All documents relating to matters pertaining to the prosecution of [QPS officer] ... and the disciplinary records for [QPS officer].

15. In seeking external review, the applicant stated they were 'only requesting evidence pertaining to the case involving our son and [QPS officer] who pleaded guilty' (**narrowed scope**).
16. I am satisfied that the narrowed scope was framed so as to seek access to *all* documents containing information of a stated kind, or relating to a stated subject matter, namely, evidence obtained for the prosecution of the named QPS officer for an offence in connection with the incident involving the applicant's son.²⁰ For these reasons, I find that the requirement in section 40(1)(a) of the RTI Act is met.
17. I have had regard to the information received from QPS about the types of documents falling within the narrowed scope, as set out at paragraph 12. I have also considered the applicant's submissions including reference to a published media article which confirms that the QPS officer was to face disciplinary action following the court proceeding. Taking into account that the nature of the offences for which the officer was prosecuted, I am satisfied that police misconduct and corresponding QPS ESU involvement is reasonably apparent based on the facts of this case.²¹
18. Taking into account the information provided by QPS about the type of documents falling within the narrowed scope, the nature of the investigation, the involvement of QPS's ESU, and the broad application of the CCC exemption, I am satisfied that all documents responsive to the narrowed scope comprise exempt information under schedule 3,

¹⁸ A copy of the media article was provided with the submission dated 29 September 2025. To protect the privacy of individuals concerned, I have not included details of the media article in these reasons.

¹⁹ Access application dated 13 May 2024. Documents were sought for the period 'September 2022 - May 2024'.

²⁰ I also note that the original application, in my view, would also have satisfied the requirements of section 40(1)(a) of the RTI Act as it requested access to all documents containing information of a stated subject matter.

²¹ ESU involvement in such police matters is routine QPS procedure and in accordance with relevant legislation. See the *Police Service Administration Act 1990* (Qld) and the *Crime and Corruption Act 2001* (Qld).

section 10(4) of the RTI Act as they were obtained, used or prepared for an investigation by QPS's Ethical Standards Unit in the performance of the CCC's prescribed functions.

19. The exception to the Prescribed Crime Body Exemption which appears in schedule 3, section 10(6) of the RTI Act will apply only if the investigation is finalised *and* the information is about the applicant. Whether information concerns an applicant is a question of fact to be determined by the decision-maker. 'About' is a non-technical word not defined by the RTI Act and should be given its ordinary meaning.²² The Information Commissioner has previously decided the information will be 'about' an applicant where they are the subject of the relevant investigation.²³
20. I acknowledge the applicant's submissions at paragraph 13 that '*all cases involving the information ... have been finalised*', '*Parliament cannot have intended that the exemption would operate to conceal evidence from the very victims of the unlawful conduct of police officers*' and that the interpretation of 'about' is '*inconsistent with*' the purpose of the RTI Act. However, while the object of the RTI Act is to give a right of access to information in the government's possession, as set out at paragraph 8, section 40 of the RTI Act sets out one of the circumstances in which Parliament considers it would, on balance, be contrary to the public interest to deal with an access application. While I acknowledge that the applicant in this case has a deep personal interest in the investigation regarding the named QPS officer, neither the applicant nor their son was the subject of the allegations or investigation. Rather, the subject of the investigation was the named QPS officer. Therefore, while I accept that the investigation has been finalised, I am satisfied that the exception in schedule 3, section 10(6) of the RTI Act does not apply.
21. The applicant submits they have a right to participate in all proceedings concerning their son and denying access to the information sought '*risks bringing the administration of justice into disrepute*'.²⁴ I acknowledge that the applicant is seeking access to information regarding offences in connection with their son's personal information and that this would ordinarily raise public interest factors favouring disclosure.²⁵ However, schedule 3 of the RTI Act prescribes categories of exempt information which Parliament has already decided are contrary to the public interest to release. Accordingly, where information meets the requirements of an exemption, the legislation does not allow a decision maker to take into account any public interest factors. To the extent the applicant's submissions raise public interest factors, they are not relevant to the application of the exemption and accordingly, I am unable to take them into account in making this decision.
22. As to the applicant's request that I exercise '*powers to direct disclosure of the requested records*', while an agency or Minister has the discretion to release documents that it considers are exempt, I do not have the same discretion.²⁶
23. For the above reasons, I find that the information sought comprises exempt information under schedule 3, section 10(4) of the RTI Act and in accordance with section 48 of the RTI Act.

²² *Darlington v Office of The Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52]. The Macquarie Dictionary (7th ed, 2017) defines 'about' as 'of; concerning; in regard to ... connected with' (def 1 and 2).

²³ *G8KPL2 and Department of Health (Unreported, Queensland Information Commissioner, 31 January 2011)* at [32]. This decision was affirmed on appeal: *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. See also *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014). An appeal against this decision was also dismissed: see footnote 23.

²⁴ Submission dated 29 September 2025.

²⁵ Schedule 4, part 2 of the RTI Act.

²⁶ Section 105(2) of the RTI Act.

24. In the circumstances of this case, I am satisfied that the requirements of section 40 are met, as follows:
- a. the application seeks access to *all documents* that contain information of a stated kind or relate to a stated subject matter, namely, the evidence obtained for the prosecution of the named QPS officer for an offence in connection with the applicant's son, thereby satisfying the requirement in section 40(1)(a) of the RTI Act; and
 - b. it appears that all of the documents to which the application relates are comprised of exempt information as they were '*obtained, used or prepared*' for the purpose of an investigation conducted by QPS's ESU in the performance of the CCC's prescribed functions, thereby satisfying the requirement in section 40(1)(b) of the RTI Act.
25. Based on the above, I find that QPS may refuse to deal with the application under section 40 of the RTI Act as *all* of the requested information is exempt information under section 48 and schedule 3, section 10(4) of the RTI Act, and the exception in schedule 3, section 10(6) of the RTI Act does not apply.

DECISION

26. For the reasons set out above, I vary²⁷ the reviewable decision and find that QPS is entitled to refuse to deal with the application under section 40 of the RTI Act on the basis that all of the requested documents to which the application relate are comprised of exempt information under section 48 and schedule 3, section 10(4) of the RTI Act.
27. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Katie Shepherd
Assistant Information Commissioner

Date: 20 October 2025

²⁷ Under section 110(1)(b) of the RTI Act.