



## Decision and Reasons for Decision

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Citation:	<i>B9QR0K and Queensland Police Service</i> [2014] QICmr 8 (7 March 2014)
Application Number:	311619
Applicant:	B9QR0K
Respondent:	Queensland Police Service
Decision Date:	7 March 2014
Catchwords:	<p><b>ADMINISTRATIVE LAW - REFUSAL OF ACCESS - EXEMPT INFORMATION</b> - report prepared about the applicant by a medical practitioner - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - whether the report comprises exempt information under schedule 3, section 10(1)(d) of the <i>Right to Information Act 2009</i> (Qld) - whether access may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and section 47(3)(a) of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION</b> - report prepared about the applicant by a medical practitioner - personal employment information - procedural fairness - whether disclosure would on balance be contrary to the public interest under section 49 of the <i>Right to Information Act 2009</i> (Qld) - whether access may be refused under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. The applicant, an officer with Queensland Police Service (**QPS**), applied to QPS under the *Information Privacy Act 2009* (Qld) (**IP Act**), for access to a report prepared about him (**Report**). The Report was prepared by a medical practitioner after the applicant was directed to attend an examination under the *Police Service Administration Act 1990* (Qld).
2. In considering the application, QPS sought the views of a third party. The third party objected to disclosure of the Report due to their concerns about potential harassment

and personal safety. QPS decided to refuse access to the entire Report, on the basis that disclosure would, on balance, be contrary to the public interest.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision. On external review, the third party maintained its objections to disclosure, but declined to participate in the review. In the final stages of the review, QPS submitted that it has no objection to the release of the Report.
4. For the reasons set out below, I set aside QPS's decision. In substitution, I find that the Report is not exempt information, its disclosure would not, on balance, be contrary to the public interest and that therefore, access to the Report may be granted.

### **Background**

5. Significant procedural steps relating to the application and external review process are set out in the appendix.

### **Reviewable decision**

6. The decision under review is QPS's decision dated 12 June 2013 refusing access to the Report.<sup>1</sup>

### **Evidence considered**

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

### **Information in issue**

8. The information in issue is the Report concerning the applicant dated 14 March 2013.
9. I am prevented from disclosing the specific content of the Report in these reasons.<sup>2</sup> However, it can be generally described as a psychiatric assessment of the applicant which includes information about his employment history, personal life, medical history, medication, and an assessment of the applicant's mental state and fitness for duty.

### **Issues for determination**

10. Due to the nature of the concerns raised by the third party, I have firstly considered whether the Report comprises exempt information.<sup>3</sup> Although QPS's final submission in the review<sup>4</sup> was that it has no objection to the release of the Report, it did reiterate the third party's objections to disclosure. Because the objections relied, in part, on a public interest factor favouring disclosure, I have also assessed whether disclosure of the Report would, on balance, be contrary to the public interest.

### **Does the Report comprise exempt information?**

11. No, for the reasons that follow.

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<sup>1</sup> Under section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**). 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 the agency could refuse access under section 47 of the RTI Act were the document the subject of an RTI Act application.

<sup>2</sup> Section 121(1)(a) of the IP Act.

<sup>3</sup> Under schedule 3, section 10(1)(c) and (d) of the RTI Act.

<sup>4</sup> Dated 27 February 2014.

## Relevant law

12. Under the IP Act, an individual has a right to access documents of an agency to the extent those documents contain the individual's personal information.<sup>5</sup> It is Parliament's intention that an agency should decide to give access unless giving access would, on balance, be contrary to the public interest.<sup>6</sup> The right of access is subject to other provisions of the IP Act and *Right to Information Act 2009 (RTI Act)*, including the grounds on which access to information may be refused. The RTI Act provides that access may be refused to exempt information.<sup>7</sup>
13. Information will be exempt if its disclosure could reasonably be expected to '*endanger a person's life or physical safety*'.<sup>8</sup> The Information Commissioner has previously confirmed that these words require:
 

*...an evaluation of the expected consequences of disclosure in terms of endangering (i.e. putting in danger) a person's life or physical safety, rather than in terms of the actual occurrence of physical harm...*

*...a source (or sources) of danger to the life or physical safety or persons must be in contemplation, and there must be evidence of a risk that disclosure of information in issue would endanger a person's life or physical safety.*<sup>9</sup>
14. Information will also be exempt if its disclosure could reasonably be expected to result in a person being subjected to a '*serious act of harassment or intimidation*'.<sup>10</sup> The Information Commissioner has previously accepted the following definitions for these terms:
  - '*harass*' includes '*to trouble by repeated attacks, ... to disturb persistently; torment*'; and
  - '*intimidate*' includes '*to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear*'.<sup>11</sup>
15. The Information Commissioner has previously observed that some degree of harassment or intimidation is likely to be tolerated before this exemption will apply.<sup>12</sup> In this regard, relevant dictionary definitions of '*serious*' include '*weighty or important*',<sup>13</sup> '*giving cause for apprehension; critical*',<sup>14</sup> and '*having (potentially) important, esp. undesired, consequences; giving cause for concern*'.<sup>15</sup>
16. The phrase '*could reasonably be expected*' has been found to require a decision maker to determine whether the expectation is reasonable rather than '*irrational, absurd or ridiculous*'.<sup>16</sup> This means that there must be real and substantial grounds for expecting that the anticipated consequence will result from disclosure.<sup>17</sup>

<sup>5</sup> Section 40 of the IP Act.

<sup>6</sup> Section 64 of the IP Act. This is referred to as the 'pro-disclosure bias'.

<sup>7</sup> Section 47(3)(a) of the RTI Act. The categories of exempt information are listed in schedule 3 to the RTI Act.

<sup>8</sup> Schedule 3, section 10(1)(c) of the RTI Act.

<sup>9</sup> See *Murphy and Queensland Treasury* (1995) QAR 744 where the Information Commissioner approved extracts of the Justices' reasoning in *Department of Agriculture and Rural Affairs v Binnie* [1989] VR 836.

<sup>10</sup> Schedule 3, section 10(1)(d) of the RTI Act.

<sup>11</sup> *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) applying *Sheridan and South Burnett Regional Council (and others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*) at paragraphs 194-197 referring to the *Macquarie Dictionary Online* (Fourth Edition). The decision in *Sheridan* concerned section 42(1)(ca) of the now repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as the provision considered in *Sheridan*. Therefore, the Information Commissioner's findings in that matter are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

<sup>12</sup> *Sheridan* at paragraph 187.

<sup>13</sup> *Macquarie Dictionary Online* (Fifth Edition).

<sup>14</sup> *Macquarie Dictionary Online* (Fifth Edition).

<sup>15</sup> New Shorter Oxford Dictionary (Fourth Edition), as quoted by the Information Commissioner in *Sheridan*.

<sup>16</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97, per Bowen CJ and Beaumont J at paragraph 156.

<sup>17</sup> See *Searle Australia Pty Ltd v Public Interest Advocacy Centre and Another* (1992) 108 ALR 163 at paragraphs 175-178.

17. In *Sheridan*, the Information Commissioner considered that factors founding a reasonable expectation that disclosure of information could result in a serious act of harassment or intimidation may include (but are not limited to):
- past conduct or a pattern of previous conduct
  - nature of the information in issue
  - nature of the relationship between the parties and/or relevant third parties; and
  - relevant contextual and/or cultural factors.<sup>18</sup>

### **Findings**

18. The third party submitted that they held concerns about their personal safety, potential harassment by the applicant and being the subject of future complaints by the applicant.<sup>19</sup> The third party based their concerns on the fact that the applicant is a police officer and therefore, has knowledge of the legal system. On external review, the third party reiterated their concerns for their personal safety. However, the third party did not provide OIC with any specific evidence to support their concerns, nor did they refer to any past conduct of the applicant to explain the basis for their objections.
19. I am prevented from describing the content of the Report in these reasons.<sup>20</sup> However, I have carefully considered the Report and am satisfied that it does not contain any information indicating that the applicant has previously engaged in any conduct which could reasonably be considered as harassment or intimidation, either towards the third party, or generally. Further, I do not consider that there is any evidence in the Report, or in the information available to me in this review, to indicate that there are real and substantial grounds to expect that disclosing the Report would endanger the third party's life or physical safety.
20. Given the content of the Report described at paragraph 9 above, the nature of the Report's findings and in the absence of any evidence to support the third party's concerns, I am satisfied that disclosure of the Report could not reasonably be expected to endanger the third party's life or physical safety, or result in an individual being subjected to a serious act of harassment or intimidation.
21. Accordingly, I find that the Report does not comprise exempt information under schedule 3, section 10(1)(c) or (d) of the RTI Act.

### **Would disclosure of the Report, on balance, be contrary to the public interest?**

22. No, for the reasons that follow.

### **Relevant law**

23. Access to information may also be refused under the RTI Act where disclosure would, on balance, be contrary to the public interest.<sup>21</sup> The RTI Act identifies various factors that may be relevant to deciding where the balance of the public interest lies.<sup>22</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 is common to all members of, or a

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<sup>18</sup> *Sheridan* at paragraph 193.

<sup>19</sup> Third party's consultation response to QPS dated 11 June 2013.

<sup>20</sup> See footnote 2 above.

<sup>21</sup> Section 47(3)(b) of the RTI Act.

<sup>22</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

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.<sup>23</sup>

## Findings

24. The applicant has submitted that he should be allowed access to the Report because he was directed to attend the medical examination by his employer and he understands that the Report has been, and will continue to be, used to inform QPS's decisions about the applicant's employment. As set out in paragraph 9, the Report is a psychiatric assessment of the applicant and it includes details of his personal life, employment and medical history, medication, and an assessment of his mental state and fitness for duty. This is the applicant's personal information<sup>24</sup>, and I am satisfied that there is a very strong interest in disclosing such information under the IP Act.<sup>25</sup>
25. The Report was obtained by QPS to assess the applicant's fitness for employment. To the extent that the Report identifies the issues which QPS asked the medical practitioner to assess, I consider disclosure could reasonably be expected to enhance QPS's accountability.<sup>26</sup> The Report serves to demonstrate how QPS manages such processes under the *Police Service Administration Act 1990* (Qld). I also consider that disclosing the Report will show the applicant what information is available to QPS, when making decisions in relation to his employment, now and into the future.<sup>27</sup> Given that the employment issues between the applicant and QPS are ongoing, I am also satisfied that disclosing the Report will afford the applicant procedural fairness<sup>28</sup> in terms of his participation in any further employment processes, involving the Report.
26. As previously explained<sup>29</sup> QPS did not maintain its position that disclosure would be contrary to the public interest, aside from emphasising the third party's objections. The third party indicated<sup>30</sup> that it considered disclosure of the Report could prejudice a person's fair treatment, and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.<sup>31</sup> The third party relied on their concerns regarding potential harassment and complaints<sup>32</sup> to support the application of this factor. I am satisfied that the Report is not about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and therefore, this public interest factor does not apply in the circumstances of this case.
27. The Report was obtained by QPS to inform decisions relating to the applicant's employment. In view of the nature of the Report and its conclusions, I find that the public interest factors discussed in paragraph 25 should be afforded significant weight in favour of disclosure. For the reasons set out in paragraph 26, there are no competing public interest factors favouring nondisclosure. Accordingly, I find that disclosure of the Report would not, on balance, be contrary to the public interest.

<sup>23</sup> Examples include where the information is the applicant's personal information or where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person (schedule 4, part 2, items 7 and 17 of the RTI Act, respectively).

<sup>24</sup> As defined in section 12 of the IP Act.

<sup>25</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>26</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>27</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>29</sup> See paragraph 10.

<sup>30</sup> In its original objection form to QPS dated 11 June 2013.

<sup>31</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>32</sup> As discussed at paragraph 18.

## DECISION

28. For the reasons set out above, I set aside QPS's decision to refuse access to the Report. In substitution, I find that the Report does not comprise exempt information and that its disclosure would not, on balance, be contrary to the public interest. Therefore, access to the Report may be granted.
29. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 7 March 2014**

## APPENDIX

### Significant procedural steps

Date	Event
7 May 2013	QPS received the access application under the IP Act.
27 May 2013	QPS asked the third party to respond with any concerns about release of the Report to the applicant by 11 June 2013.
11 June 2013	The third party informed QPS that it objected to the release of the Report to the applicant.
12 June 2013	QPS decided to refuse access to the Report in its entirety on the basis that disclosure would, on balance, be contrary to the public interest.
19 June 2013	OIC received the application for external review of QPS's decision.
3 July 2013	OIC notified the applicant and QPS that the external review application had been accepted for review.
13 September 2013	OIC conveyed a written view to QPS and a third party that disclosure of the Report would not, on balance, be contrary to the public interest. OIC invited QPS and the third party to provide submissions in response setting out any objections to disclosure.
23 September 2013	QPS advised OIC that it did not accept OIC's view, and relied upon the reasoning in its decision dated 12 June 2013.
14 October 2013	The applicant provided OIC with a further submission in support of his external review application.
6 December 2013	OIC was advised that the third party did not receive OIC's correspondence dated 13 September 2013. OIC resent the correspondence and invited the third party to provide submissions in response by 17 January 2014.  OIC provided the applicant with a written update on the status of the review.
22 January 2014	The third party confirmed its objections to disclosure of the Report and informed OIC that it did not wish to participate in the external review.
23 January 2014	OIC invited the third party to provide specific details in relation to their concerns regarding disclosure by 31 January 2014. The third party did not respond to this request.
6 February 2014	OIC provided the applicant with a written update on the status of the review.
7 February 2014	OIC asked QPS to provide an additional submission in relation to its concerns regarding prejudice to QPS's management function.
27 February 2014	QPS provided a submission stating that while it <i>'has no objection to the release'</i> of the Report, it wished to reiterate the third party's objections to disclosure.
5 March 2014	OIC provided the applicant with a written update on the status of the review.