



Decision and Reasons for Decision

Citation: *Flori and Queensland Police Service* [2017] QICmr 5
(16 February 2017)

Application Number: 312935

Applicant: Flori

Respondent: Queensland Police Service

Decision Date: 16 February 2017

Catchwords: ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL TO DEAL - applicant seeking access to information about searches for his personal information appearing in police database - whether application is expressed to relate to all documents containing information of a stated kind - whether all of the documents to which the application relates would comprise exempt information - whether section 59 of the *Information Privacy Act 2009* (Qld) applies

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - whether disclosure of information about searches for an applicant's personal information in police database could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law - whether information is exempt under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - applicant alleges culture of unlawful access to citizens' personal information within police service - whether information in police database consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law - whether the exception in schedule 3, section 10(2)(a) of the *Right to Information Act 2009* (Qld) applies

REASONS FOR DECISION

Summary

1. The applicant, a police officer, applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**), for access to all records of QPRIME¹ searches conducted on him, in a specified date range.²
2. QPS decided to neither confirm nor deny the existence of the requested information under section 69 of the IP Act.³ The applicant applied to OIC for external review of the QPS decision. In support of his right to access his personal information in the QPRIME database, the applicant submitted that he was *'highly concerned and very suspicious that his profile on the QPRIME database has been accessed unlawfully by QPS officers'*.⁴
3. On external review, I have decided to vary the QPS decision, for the reasons set out below. In summary, I have found that all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**), as their disclosure could reasonably be expected to prejudice QPS' lawful methods and procedures, and that therefore, section 59 of the IP Act applies to refuse to deal with the application.

Background

4. Significant procedural steps relating to the application and external review process are set out in the Appendix.
5. On external review, QPS confirmed to OIC⁵ that the information requested by the applicant would be contained in a document known as a QPRIME Activity Report.
6. The applicant is a QPS officer. He is therefore, familiar with the purpose served by, and way in which, the QPRIME system operates. The applicant has made previous IP Act applications to QPS requesting access to his personal information appearing in the QPRIME system and QPS has, in the past, released QPRIME Activity Reports to the applicant.⁶
7. In response to the current application, QPS decided to neither confirm nor deny the existence of documents.⁷ Generally, that provision will only apply where confirming the very existence of documents is likely to cause the harm that an agency would otherwise seek to avoid by refusing access to the relevant information.⁸ As set out above, the applicant has previously obtained access to a QPRIME Activity Report under the IP Act, albeit for a different date range. In the circumstances of this case, I formed, and conveyed to QPS, a view that the earlier disclosure of QPRIME Activity Reports to the applicant

¹ Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records for all police incidents in Queensland.

² Access application dated 30 June 2016.

³ QPS decision dated 15 August 2016.

⁴ Submission to OIC dated 2 November 2016.

⁵ Oral submissions made to OIC on 16 September 2016.

⁶ During external review the applicant provided OIC with a copy of the QPRIME Activity Report that was disclosed to him by QPS under an earlier IP Act application. The access application which is the subject of this review was dated to capture any QPRIME access records that were generated since the date of the previous disclosure. QPS has also previously released this type of information under the IP Act to other individuals, see *Wolfe and Queensland Police Service* [2016] QICmr 27 (30 June 2016) (**Wolfe**) at [56] – [58]. However, QPS has since reconsidered its approach to releasing QPRIME Activity Reports under the IP Act, see *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017) (**Isles**) and paragraph 32 below.

⁷ Section 69 of the IP Act.

⁸ *EST and Department of Family Services and Aboriginal Affairs* (1995) 2 QAR 645 at [11] cited with approval in *Tolone v Department of Police* (Unreported Queensland Information Commissioner, 9 October 2009) at [25].

rendered the neither confirm nor deny provision inapplicable.⁹ QPS accepted this view and made alternative submissions, as set out below.¹⁰

Reviewable decisions

8. The reviewable decision is the QPS decision dated 15 August 2016 to neither confirm nor deny the existence of the documents requested by the applicant in the access application dated 30 June 2016.

Evidence considered

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

Issue to be determined

10. External review by the Information Commissioner¹¹ is merits review, i.e., an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.¹² After conducting an external review of a decision, the Information Commissioner must make a decision affirming, varying, or setting aside and making a decision in substitution for, the decision under review.¹³
11. As set out in paragraph 7 above, QPS is no longer advancing the argument that section 69 of the IP Act applies to neither confirm nor deny the existence of documents requested in the access application. Therefore, that provision is not examined in these reasons for decision. Instead, I consider the issue for determination is whether the application may be the subject of a refusal to deal decision under section 59 of the IP Act.¹⁴ To enliven that provision, the following issues must be considered:
 - a. whether the application is expressed to relate to all documents of a stated kind or relate to a stated subject matter; and
 - b. whether all of the documents to which the application relates comprise exempt information.
12. The applicant has made extensive submissions to OIC in support of his right to access his personal information in the QPRIME database. I have carefully considered all of those submissions. However, some of the submissions concern issues that are beyond OIC's jurisdiction, or outside the scope of this review. Accordingly, the applicant's submissions are only addressed below to the extent they are relevant to the issues for determination.

Relevant law

13. If an access application is made to an agency under the IP Act, the agency should deal with the application unless this would not be in the public interest.¹⁵ Section 59 of the

⁹ Letter to QPS dated 29 September 2016.

¹⁰ Letter to OIC dated 7 October 2016.

¹¹ Or delegate.

¹² Section 118(1)(b) of the IP Act.

¹³ Section 123(1) of the IP Act.

¹⁴ QPS does not contest the application of section 59 of the IP Act.

¹⁵ Section 58(1) of the IP Act.

IP Act states that one of the only circumstances in which it would not be in the public interest to deal with an access application, is as follows:

59 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*
 - (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.*

14. Exempt information is information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.¹⁶ The RTI Act provides that certain law enforcement information is exempt, as follows:

10 Law enforcement or public safety information

- (1) *Information is exempt information if its disclosure could reasonably be expected to—*
- ...
 - (f) *prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;*
 - ...
- (2) *However, information is not exempt under subsection (1) if it consists of—*
- (a) *matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; ...*
 - ...
 - (d) *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...¹⁷*

Findings

15. Recently, in *Isles*, I considered the application of section 59 of the IP Act to an access application which was framed in very similar terms to, and sought access to the same type of information as, the application which is the subject of this review. As set out in *Isles*,¹⁸ for section 59 of the IP Act to apply, a decision maker must firstly be satisfied that the 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. To determine this issue, the terms of the access application must be considered.

16. In his access application, the applicant requested access to:

QPRIME searches on – [applicant's name and QPS badge number] after 19.8.2014 till even date.¹⁹

¹⁶ The Dictionary in schedule 5 of the IP Act provides that 'exempt information' means information that is exempt information under the RTI Act. See section 48 and schedule 3 of the RTI Act.

¹⁷ The applicant specifically emphasised these subsections in his submissions to OIC dated 2 November 2016, at page 5.

¹⁸ At [12].

¹⁹ QPS' decision incorrectly quoted a broader date range. However, the extent of the date range is of no material effect on my finding on the issues for determination in this review.

17. I am satisfied that the application is framed as a request for access to *all* records, or all data that demonstrates instances of the applicant's name being searched in the QPRIME database, including which officers accessed the information.²⁰ I am also satisfied that the application is expressed to relate to all documents that contain information of a *stated kind*, i.e., search history relating to the applicant's personal information in the QPRIME database, within the specified timeframe. Accordingly, I find that the first limb of section 59 of the IP Act is satisfied.
18. Secondly, I must be satisfied that all of the documents to which the application relates are comprised of exempt information. The relevant exemption relied on by QPS is set out in schedule 3, section 10(1)(f) of the RTI Act, and it applies if the following are established:
- there exists a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
 - disclosure *could reasonably be expected to* prejudice that method or procedure.
19. QPS has submitted that disclosure of QPRIME Activity Reports would generally reveal the number of occasions on which QPS officers have accessed QPRIME in relation to a particular individual, and would disclose the badge number of the inquiring officer and the reasons for access. QPS has serious concerns that the disclosure of such information would enable an individual to deduce the level of QPS surveillance/investigation they are under, and/or identify any particular QPS units which may/may not be monitoring an individual's behaviour/involvement in activities.²¹
20. Having considered the evidence provided by QPS on external review,²² I am satisfied that the process of QPS officers accessing the QPRIME database forms an integral part of QPS's lawful methods and procedures for preventing, detecting or investigating contraventions, or possible contraventions of the law, specifically in terms of intelligence and surveillance operations.
21. I am also satisfied that revealing the extent of information in QPRIME Activity Reports and the specific circumstances of each instance of access, *for any individual*, could reasonably be expected to prejudice these lawful methods and procedures. QPRIME Activity Reports show when, how often and, in some cases, why QPS officers have accessed the QPRIME database in relation to an individual and I find that the disclosure of such information could reasonably be expected to prejudice QPS's ability to gather intelligence. As to whether this expectation of prejudice is reasonable,²³ I am satisfied that QPS has demonstrated to OIC that there are particular circumstances in which disclosing information could reasonably be expected to prejudice QPS's lawful methods and procedures, even though the information may appear innocuous, on its face, or when read in isolation.²⁴
22. On the basis of my findings in paragraphs 20 to 21 above, I am satisfied that the requirements of the exemption in schedule 3, section 10(1)(f) of the RTI Act are made out, on the facts of this case. However, I have considered below the various submissions

²⁰ As confirmed in the applicant's submissions to OIC dated 2 November 2016.

²¹ Oral submissions made by QPS to OIC in a meeting on 16 September 2016.

²² Particularly the oral submissions made by QPS to OIC on 16 September 2016.

²³ The requirements of the phrase '*could reasonably be expected to*' in the particular context of this exemption were discussed by the Right to Information Commissioner in *Gold Coast Bulletin and Queensland Police Service* (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

²⁴ Under section 121(3) of the IP Act, I must not disclose information claimed to be exempt or contrary to the public interest in reasons for decision. I am therefore, constrained in the extent to which I can explain the particular circumstances put forward by QPS in support of the application of this exemption.

made by the applicant which seek to set aside the application of this exemption to QPRIME Activity Reports.

23. The applicant accepts that accessing the QPRIME database *can* form an integral part of QPS' lawful methods or procedures in the relevant sense and that an individual's QPRIME data could comprise '*lawful accesses which may conceivably be covered by*' the exemption.²⁵ However, the applicant goes on to argue that, it is clear from various media reports²⁶ and a Crime and Corruption Commission (CCC) publication,²⁷ that '*there is a culture within QPS of unlawful access*' of QPRIME data and as such, QPRIME Activity Reports should be subject only to partial redaction of legitimately exempt information, with the remainder disclosed as it would fall within one of the stated exceptions to the exemption, specifically, schedule 3, section 10(2)(a) of the RTI Act.²⁸
24. I acknowledge that the relevant CCC publication reports on substantiated findings against QPS officers of unlawfully accessing another individual's personal information. However, there is no evidence available to OIC to suggest that any of those cases have involved access to the *applicant's* personal information. I have also considered the media articles referred to by the applicant and note that they too concern individuals other than the applicant. I also note that most of the media reports refer to cases at investigation stage only, which is of limited evidentiary value.
25. As I identified in *Isles*, for the exception to apply, a decision-maker would generally need to have available to them some form of objective and authoritative finding that the scope of a law enforcement investigation has exceeded the limits imposed by law and that the information subject to the access application consists of material revealing this.²⁹ I do not consider the RTI Act intends for a decision-maker to draw a conclusion of this nature by assessing untested evidence or unsubstantiated allegations, or by drawing an inference based on the findings in unrelated investigations.
26. On the basis of the above, I am satisfied that the evidence in this case does not establish that the exception in schedule 3, section 10(2)(a) of the RTI Act applies. I also find that there is no evidence available to OIC to find that any of the other exceptions in schedule 3, section 10(2) of the RTI Act apply in the circumstances of this case.
27. In addition, the applicant submits that applying a '*blanket exemption*' to information in QPRIME Activity Reports is contrary to the legislative requirement to interpret the grounds for refusal of access narrowly.³⁰ The applicant also suggests that this approach is inconsistent with other exemptions provided for in schedule 3, section 10 of the RTI Act.³¹ Specifically, the applicant argues that the exemption for QPRIME information used by the QPS State Intelligence Group could validly be set aside when that group's investigation is finalised³² but that there appears to be no such capacity to set aside the exemption with respect to QPRIME Activity Reports used by '*ordinary members of the*

²⁵ Submission to OIC dated 2 November 2016, pp 12-13.

²⁶ For example, the applicant refers to the following two media articles among others: AAP, "Qld cop stood down over 'database breach' (17 May 2016) <http://www.news.com.au/national/breaking-news/qld-cop-stood-down-over-database-breach/news-story/a62186679a17dd70ca4eea4c589c83e2> ; CCC Media Release, "Police officer charged for unauthorised access and disclosure of confidential information" (17 May 2016) <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/police-officer-charged-for-unauthorised-access-and-disclosure-of-confidential-information-17-may-2016>.

²⁷ CCC Confidential Information Paper <http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/confidential-information-paper.pdf> (accessed on 23 January 2017). This publication sets out the CCC's findings in relation to the Queensland public sector generally, but also makes specific reference to QPS cases.

²⁸ Page 5 of the applicant's submissions dated 2 November 2016 appear to indicate that the exception in schedule 3, section 10(2)(d) of the RTI Act may also apply. However, the arguments put forward by the applicant focus primarily on the application of the 10(2)(a) exception and therefore, that is what I have considered in these reasons.

²⁹ See *Isles* at [21].

³⁰ Section 58 of the IP Act and section 47(2)(a) of the RTI Act.

³¹ Submissions to OIC dated 2 November 2016, page 14.

³² Schedule 3, section 10(5)-(6) of the RTI Act.

QPS'.³³ The applicant argues that the preferable approach is to thoroughly examine the particular content of QPRIME information in each individual case, and to narrowly apply any relevant exemptions.

28. With respect, this line of argument is somewhat misconceived. Finding that one exemption has not been made out, or a valid exception applies, does not preclude the application of another exemption to the same information. In other words, it is possible for the relevant information to meet the requirements of a different exemption, particularly given the ambit of the exemptions in schedule 3, section 10 of the RTI Act which are all directed at protecting law enforcement and public safety information.
29. In deciding this matter, I am conscious of the requirement to interpret the grounds for refusal of access narrowly. For the reasons set out in paragraphs 21 to 22 above, I have found that the evidence and submissions put forward by QPS in support of the expected prejudice to its lawful methods and procedures is compelling and determinative, in this case. Further, I am satisfied that schedule 3, section 10(1)(f) of the RTI Act applies to wholly exempt QPRIME Activity Reports and enliven section 59 of the IP Act.
30. The applicant also submits that there is a significant public interest in disclosing the type of information he is seeking. Broadly speaking, the applicant considers there is a need for accountability and transparency in the performance of QPS' functions and that disclosure would serve to promote the administration of justice for individuals whose QPRIME records may have been the subject of unlawful access.³⁴
31. The categories of exempt information set out in schedule 3 of the RTI Act represent the types of information which Parliament has already decided, would, on balance, be contrary to the public interest to disclose. As such, once the requirements of an exemption have been established, the RTI Act does not allow for the analysis of applicable public interest factors, no matter how compelling they may be in a particular case.³⁵ As I have found that the requirements of the exemption are established on the facts of this case, I have not considered it is necessary, to examine, in the alternative, whether disclosure would, on balance, be contrary to the public interest.³⁶ In any event, I note that any concerns about alleged unlawful access to QPRIME records are able to be considered by other bodies that would have access to such records.³⁷
32. The applicant also seeks to rely on the prior disclosure of QPRIME Activity Reports by QPS to both him, and other individuals, to support his right of access.³⁸ As I acknowledged in *Isles*,³⁹ QPS has, in the past, decided to disclose this type of information under the IP Act.⁴⁰ However, a series of access applications has, in recent months, been made to QPS under the IP Act, by various individuals seeking access to their personal information in QPRIME Activity Reports. In processing these applications, QPS identified a number of issues associated with disclosure of QPRIME Activity Reports, which led it to make submissions to OIC regarding an expectation of prejudice to its methods and procedures, as they relate to the QPRIME database.⁴¹

³³ Submissions to OIC dated 2 November 2016, page 14.

³⁴ Applicant's submissions dated 2 November 2016.

³⁵ Also, the Information Commissioner does not have the power to direct that access to an exempt document be granted – see section 118 of the IP Act.

³⁶ Section 47(3)(b) of the RTI Act. This approach was supported in the decision of *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149 at [15].

³⁷ See for example the CCC's role as discussed in its publication referred to at footnote 27 above.

³⁸ Applicant's submissions dated 2 November 2016.

³⁹ At [24].

⁴⁰ See *Wolfe* at [56] – [58].

⁴¹ See paragraphs 19 to 21 above.

33. As a decision-maker conducting merits review, I am required to determine each matter on its own facts and on the basis of available evidence at the time of making my decision—there is no requirement for me to follow the approach taken by an agency in response to a previous access application. Similarly, there is nothing in the IP Act which prevents an agency from, over time, reconsidering its position on disclosure of particular information. In any event, an agency retains the discretion to disclose exempt information, whereas the Information Commissioner does not.⁴²
34. On the basis of the above, I am satisfied that the position previously taken by QPS in relation to disclosure of QPRIME Activity Reports under the IP Act does not have any impact on my finding that this information meets the requirements for exemption under schedule 3, section 10(1)(f) of the RTI Act.

Conclusion

35. In summary, while I have given careful consideration to the applicant's submissions in this case, I have not been persuaded by any of the applicant's arguments which seek to set aside the application of the relevant exemption. Accordingly, I find that the second limb of section 59 of the IP Act is satisfied as all of the information to which the access application relates comprises exempt information under schedule 3, section 10(1)(f) of the RTI Act.

DECISION

36. I vary the decision of QPS and find that section 59 of the IP Act applies on the basis that the access application is expressed to relate to all documents containing information of a stated kind, and all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act.
37. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 16 February 2017

⁴² Sections 64(4) and 118(2) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
24 August 2016	OIC received the external review application.
25 August 2016	OIC asked QPS to provide relevant procedural documents.
31 August 2016	QPS provided OIC with relevant procedural documents.
2 September 2016	OIC notified the applicant and QPS that the external review application had been accepted and asked QPS to provide further information.
2 September 2016	OIC received the requested information from QPS.
16 September 2016	OIC received further oral submissions from QPS.
29 September 2016	OIC conveyed a preliminary view to the QPS and invited QPS to provide submissions in response.
7 October 2016	QPS notified OIC that it accepted the preliminary view.
18 October 2016	OIC conveyed a preliminary view to the applicant and invited him to provide submissions in response.
2 November 2016	The applicant provided written submissions to OIC.
30 January 2017	OIC provided the applicant's lawyer with an update on the status of the external review.