



Decision and Reasons for Decision

Citation:	6FX0PV and Queensland Police Service [2018] QICmr 16 (19 April 2018)
Application Number:	313330
Applicant:	6FX0PV
Respondent:	Queensland Police Service
Decision Date:	19 April 2018
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - applicant’s personal information - enhance accountability and transparency - contribute to administration of justice - personal information and privacy of another individual - disclosure prohibited by another Act - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for information held by QPS in connection with his suspension from employment as a teacher with the Department of Education and Training (**Department**).
2. QPS located and decided to refuse access to six pages of information on the basis that it comprised exempt information.¹
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review.
4. For the reasons set out below, I have found that disclosure of the information would, on balance, be contrary to the public interest, and therefore access to it may be refused under section 47(3)(b) of the RTI Act and section 67 of the IP Act.²

¹ QPS issued a decision on 5 May 2017, purporting to refuse access to the information under sections 47(3)(a) and 48 and Schedule 3, sections 6(a), 10(1)(b) and (f) of the *Right to Information Act 2009 (RTI Act)*. However QPS made this decision outside the statutory timeframe as set out in section 18 of the RTI Act and as such, a deemed refusal of access decision was taken to have been made under section 66 of the IP Act.

² Essentially, this affirms the deemed decision refusing access to information.

Background

5. Significant procedural steps taken by OIC in conducting the external review are set out in the appendix to these reasons.
6. The applicant was suspended from his employment duties with the Department after the Queensland College of Teachers (**QCT**) provided information to the Department which QCT received pursuant to the QCT and QPS' information sharing arrangement.³ The information received originated from the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**).⁴ While the applicant's employment has been re-instated he states that he remains unaware of the '*serious allegations*' made against him.⁵

Reviewable decision

7. The decision under review is the decision deemed to have been made by QPS refusing access to information.⁶
8. The applicant applied for internal review of the decision deemed to have been made by QPS, refusing access to information.⁷ QPS accepted the application for internal review and purported to issue a decision to the applicant refusing access to the information on the basis that it is exempt.⁸

Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision referred to in these reasons (including footnotes and Appendix).
10. The applicant provided written submissions to OIC supporting his case.⁹ While I have carefully reviewed all of those submissions, certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the IP Act.¹⁰ Accordingly, in reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination on external review.

Information in Issue

11. The information in issue in this review (**Information in Issue**) can generally be described as the substance of a complaint and information about the complainant's circumstances originating from the Royal Commission.¹¹

Issue for determination

12. The issue for determination is whether access to the Information in Issue may be refused on the basis that its disclosure, would, on balance be contrary to the public interest.

³ As set out in a letter from the Department to the applicant dated 13 July 2016 which the applicant provided in support of his external review application.

⁴ Documents provided by the applicant in support of his access application confirm that he was aware of the process through which information was communicated.

⁵ Application for external review dated 13 May 2017.

⁶ Under section 66 of the IP Act.

⁷ Under section 66 of the IP Act.

⁸ By letter dated 15 May 2017.

⁹ Including his external review application dated 13 May 2017 and email submissions to OIC dated 15 October 2017, 8 November 2017 and 12 December 2017.

¹⁰ As explained by letter from OIC to the applicant dated 1 December 2017.

¹¹ six pages comprising correspondence between QPS, QCT and Royal Commission and internal QPS records.

Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information.¹² In addition the IP Act is administered with a pro-disclosure bias requiring the disclosure of information unless it would be contrary to the public interest.¹³
14. Section 12 of the IP Act 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.*'
15. The right of access is however, subject to other provisions of the IP Act and RTI Act, including the grounds for refusal of access.¹⁴ Relevantly, access may be refused to information where its disclosure would, on balance, be contrary to the public interest.¹⁵
16. The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of the public interest¹⁶ and explains the steps that a decision-maker must take¹⁷ in deciding the public interest as follows:
 - identify any irrelevant factors and disregard them¹⁸
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure would, on balance, be contrary to the public interest.

Findings

17. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons that follow.

Factors favouring disclosure

Personal information of applicant

18. The applicant submits that he has a '*right to know what these "serious allegations" were*'¹⁹ that were made against him. The applicant's personal information appears throughout the Information in Issue and this gives rise to a factor favouring disclosure.²⁰
19. I acknowledge there is a strong public interest in providing individuals with access to their personal information held by public authorities. As the content of the Information in Issue is not known to the applicant, I afford this factor favouring disclosure significant weight.

¹² Section 40 of the IP Act.

¹³ Section 64 of the IP Act.

¹⁴ Section 67 of the IP Act and section 47 of the RTI Act.

¹⁵ Section 47(3)(b) of the RTI Act.

¹⁶ 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, these list of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

¹⁷ Section 49(3) of the RTI Act.

¹⁸ No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

¹⁹ Application for external review dated 13 May 2017.

²⁰ Schedule 4, part 2, item 7 of the RTI Act.

Enhance government accountability and reveal reasons for a decision

20. A public interest factor in favour of disclosure will arise where disclosure of information could reasonably be expected to:
- enhance government accountability;²¹ and
 - reveal the reason for the Department's decision and any background or contextual information that informed the decision.²²
21. The applicant submits that he remains unaware of the '*serious allegations*'²³ made against him. I have considered whether disclosing the Information in Issue could reasonably be expected to enhance QPS's accountability or transparency in the circumstances of this case.²⁴ QPS did not proceed with an investigation nor were any charges laid against the applicant. QPS advised the information was treated as intelligence only and no investigation was carried out. Further, at this stage, and on the information currently available, QPS is not taking further action regarding the information. As no investigation was conducted by QPS and the applicant is already in possession of copies of correspondence from QPS to QCT, pertaining to referral of the allegations about him originating from the Royal Commission,²⁵ I am unable to identify how disclosing the Information in Issue to him could enhance QPS's accountability or transparency in any way.
22. The applicant further submits that he was not advised of the reasons for his suspension from his employment duties with the Department.²⁶ I acknowledge the public interest in law enforcement agencies such as QPS and other government agencies – in this case QCT and the Department – being accountable and transparent in the conduct of its investigations, the decisions it makes and the performance of its functions. QCT is responsible for the registration²⁷ and discipline of teachers in Queensland, including suspending a teacher's registration.²⁸ The delegated officer of the Department has the power to suspend from duty a public service employee under the *Public Service Act 2008*.²⁹
23. I accept that disclosure of the Information in Issue would provide the applicant with a greater understanding of the information taken into account by the Department in reaching its decision to suspend the applicant's employment. However, I also consider that the statement of reasons provided to the applicant by the Department³⁰, about the grounds relied upon to suspend his employment, is sufficiently detailed to discharge these factors to a significant extent.
24. In determining the weight to be afforded to these factors I have considered the particular nature of the Information in Issue, the actions taken by QPS, QCT and the Department and the extent of information already in the applicant's possession. As no investigation was undertaken by QPS and the Information in Issue reveals minimal information about the actions taken by either QPS, QCT or the Department, I am unable to identify how disclosure of the Information in Issue could enhance government accountability or transparency and find that factor does not arise in the circumstances of this review.

²¹ Schedule 4, part 2, item 1 of the RTI Act.

²² Schedule 4, part 2, item 11 of the RTI Act.

²³ Application for external review dated 13 May 2017.

²⁴ Schedule 4, Part 2, item 1 of the RTI Act.

²⁵ Email dated 31 March 2016 and letter dated 27 June 2016 attached to the applicant's access application dated 6 March 2017.

²⁶ Application for external review dated 13 May 2017.

²⁷ See Part 2, *Education (Queensland College of Teachers) Act 2005* (Qld) (**EQCT Act**)/see EQCT Act generally.

²⁸ See Part 6, EQCT Act/see EQCT Act generally.

²⁹ Section 189.

³⁰ Letter dated 13 July 2016.

25. I also find that disclosure of the Information in Issue could reasonably be expected to reveal the reason for the Department's decision and any background or contextual information that informed the Department's decision to suspend his employment. However, the information already provided to the applicant significantly reduces the weight of this factor. Accordingly, I afford this factor minimal weight.

Administration of justice and procedural fairness

26. The Information in Issue includes information which the applicant considers prompted QCT to suspend his employment for a period of four months. The applicant further submits that he '*was not given an opportunity to respond to the "information" prior to having [his] employment suspended*'³¹ and has the '*right to know the nature of these allegations so [he] is able to defend [himself]*'.³²
27. Given these submissions, I have considered whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice generally, or for a person, including by providing procedural fairness.³³
28. In *Willsford and Brisbane City Council*³⁴ the Information Commissioner found that the administration of justice factor will arise if an applicant can demonstrate 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.³⁵
29. On the evidence before me, I am not satisfied that the applicant has demonstrated the above elements required to establish the administration of justice factor. Following QCT's receipt of information from QPS, the applicant was suspended on full pay from his employment duties with the Department until further investigations could be undertaken. However, the applicant's employment has now been re-instated and I am not aware of any further adverse action taken against the applicant. As the applicant has suffered no adverse consequences arising from his suspension, I am satisfied that disclosure of the Information in Issue is not required to enable the applicant to pursue a legal remedy or evaluate whether a remedy is available.
30. Given the applicant's submission that it is a basic human right to know the nature of these allegations³⁶, I have considered whether disclosure of the Information in Issue would afford the applicant procedural fairness in his dealings with QPS about the allegations and the Department with regards to his period of suspension from his employment.
31. As noted in paragraph 21 no investigation was conducted by QPS and the information was treated by QPS as intelligence only. Further, in *McEniery and Medical Board of Queensland*³⁷, the Information Commissioner found that an accused does not have the right to know who their accuser is, even if complaints are made falsely or maliciously.³⁸
32. In these circumstances, I am not satisfied that procedural fairness requires that the applicant be provided with the Information in Issue. I am also not satisfied that disclosure

³¹ Access application dated 6 March 2017.

³² Applicant's submission dated 8 November 2017.

³³ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³⁴ (Unreported, Queensland Information Commissioner, 27 August 1996 (*Willsford*)).

³⁵ *Willsford* at [17].

³⁶ Applicant's submission dated 8 November 2017.

³⁷ (1994) 1 QAR 349 at paragraphs [56] to [64].

³⁸ Please note, I have made no finding on whether the information provided by the complainant was done so maliciously or falsely.

of the Information in Issue would further the applicant's procedural fairness in his dealing with QPS about the allegations or the Department regarding his suspension from employment.

33. For the reasons outlined above, I find that the public interest factors in relation to the administration of justice do not arise here.

Factors favouring nondisclosure

Personal information and privacy of another individual

34. The Information in Issue includes the personal information of another individual. The nature of this information is such that it is not possible to separate the applicant's personal information from the personal information of another individual. As a result, I have considered whether disclosing the Information in Issue could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;³⁹ and
- cause a public interest harm as it would disclose personal information of a person.⁴⁰

35. The Information in Issue relates to an account provided by another individual to the Royal Commission in the context of the Commission's inquiry into institutionalised child sexual abuse. It is highly sensitive, personal and private in nature. Further, disclosing any information in relation to the substance of the complaint could reasonably be expected to identify the complainant, that is, the person who provided the information to the Royal Commission.

36. Given the personal and highly sensitive nature of the Information in Issue and the context in which it appears, I am satisfied that disclosure of this information under the RTI Act would be an intrusion into the relevant individual's privacy and the anticipated harm associated with disclosure of the personal information is significant.

37. For these reasons, I afford significant weight to both of these factors favouring nondisclosure.

Disclosure prohibited by another Act

38. A public interest factor favouring nondisclosure will arise when disclosure of the information is prohibited by another Act.⁴¹ The *Royal Commissioner Act 1902* (Cth) (**RC Act**) provides that the information it receives from individuals providing accounts to a Royal Commission remains confidential except in certain circumstances when information can be communicated to law enforcement bodies. Namely, if a person alleges a crime has been committed.⁴²

39. Section 6P of the RC Act authorises the Royal Commission to disclose information it receives in the course of inquiring into a matter in a range of specific circumstances, including for the purpose of performing his or her functions or exercising his or her

³⁹ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁰ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴¹ While section 6 of the RTI Act overrides provisions of other legislation prohibiting the disclosure of information, schedule 4, part 3, item 22 recognises a factor favouring nondisclosure includes when disclosure of the information is prohibited by an Act.

⁴² For example section 6P(1) of the RC Act discusses when the Royal Commission may communicate information it receives in the course of inquiring into a matter. If the information relates to a contravention of law or evidence of a contravention of a law, the Commission may, if it considers it appropriate, communicate the information or furnish the evidence to the Police Force of a State, amongst other agencies.

powers.⁴³ I am therefore satisfied that these provisions would generally prohibit disclosure of the Information in Issue and this factor favouring nondisclosure arises for consideration in the current case.

40. I have carefully considered the weight to be afforded to this public interest factor and balanced the RC Act against the express intention of the RTI Act to override provisions in other Acts prohibiting the disclosure of information.⁴⁴ I am satisfied that none of the circumstances authorising disclosure of information under the RC Act apply in the circumstances of this case.
41. Accordingly, I afford this factor favouring nondisclosure significant weight.

Balancing the relevant public interest factors

42. The IP Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance be contrary to the public interest.⁴⁵ In the circumstances of this review, I have afforded significant weight to the public interest in the applicant accessing his personal information. I have afforded minimal weight to the factors favouring disclosure relating to revealing reasons/background information for the Department's decision to suspend the applicant's employment. I also find that factors favouring disclosure relating to the enhancing government accountability and the administration of justice do not arise in this case.
43. Balanced against these pro-disclosure factors, is the public interest in minimising harm to the personal information of another individual, that is, the person providing an account to the Royal Commission, and the public interest in protecting the privacy of this individual.
44. In this case, there is also the public interest in protecting information from being disclosed where disclosure is prohibited under the RC Act. I consider the significant weight of these public interest factors outweighs the factors favouring disclosure of the Information in Issue.
45. For these reasons, I find that disclosing the Information in Issue would, on balance, be contrary to the public interest.

DECISION

46. For the reasons set out above, I affirm the decision refusing access to information, under section 47(3)(b) of the RTI Act and section 67 of the IP Act.
47. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Shanley
A/Assistant Information Commissioner

Date: 19 April 2018

⁴³ Section 6P(2C) of the RC Act.

⁴⁴ Section 6 of the RTI Act.

⁴⁵ Section 64 of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
13 May 2017	OIC received the external review application.
15 May 2017	OIC notified the applicant and QPS of receipt of the external review application and asked QPS to provide relevant procedural documents.
22 May 2017	QPS provided OIC with the requested documents.
8 June 2017	OIC notified the applicant and QPS that the external review application had been accepted and asked QPS to provide a copy of the located documents.
9 June 2017	OIC received the requested documents from QPS.
26 July 2017	OIC provided the applicant with an update on the status of the review.
15 September 2017	OIC provided the applicant with a further update on the status of the review.
15 October 2017	OIC received submissions from the applicant.
16 October 2017	OIC provided the applicant with an update on the status of the review.
31 October 2017	OIC conveyed a written preliminary view to the applicant that access to the information may be refused under section 47(3)(b) of the RTI Act.
8 November 2017	OIC received submissions from the applicant, contesting the preliminary view.
1 December 2017	OIC conveyed a further written preliminary view to the applicant, confirming that access to the information may be refused under section 47(3)(b) of the RTI Act.
12 December 2017	OIC received further submissions from the applicant, contesting the preliminary view.
18 December 2017	OIC provided QPS with an update on the status of the review.
19 December 2017	OIC clarified the status of the review with the applicant.
24 January 2018	OIC provided the applicant with an update on the status of the review.
2 February 2018	OIC provided QPS with an update on the status of the review.
23 March 2018	OIC provided the applicant with a further update on the status of the review.