



Decision and Reasons for Decision

Citation: *B56 and Queensland Police Service [2020] QICmr 72 (4 December 2020)*

Application Number: 315120

Applicant: B56

Respondent: Queensland Police Service

Decision Date: 4 December 2020

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - police body worn camera footage of the applicant - personal information and privacy of other individuals - whether disclosure 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)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENT NONEXISTENT OR UNLOCATABLE - applicant seeking section 95 certificate - the information sought is nonexistent or unlocatable - section 67(1) of the *Information Privacy Act 2009 (Qld)* and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to body worn camera footage (**BWC Footage**), and the accompanying certificate created in accordance with section 95(3) of the *Evidence Act 1977 (Qld)* (**Section 95 Certificate**).²
2. QPS located³ the BWC Footage and released it to the applicant subject to the redaction (by pixelation) of third party⁴ personal information⁵ in the footage on the basis it would, on balance, be contrary to the public interest to disclose.⁶ QPS acknowledged it had

¹ On 27 September 2019.

² Section 95 of the *Evidence Act 1977 (Qld)* outlines the admissibility of statements in documents or things produced by processes or devices.

³ Decision dated 19 December 2019 (the applicant granted QPS two extensions of the processing period).

⁴ That is, anyone on the footage who was not a QPS Officer or the applicant.

⁵ Defined in section 12 of the IP Act.

⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

previously possessed the Section 95 Certificate but it could not be found, and so refused access on the basis it was unlocatable.⁷

3. The applicant applied⁸ for external review of QPS's decision and submitted⁹ that QPS had wrongly pixelated the identity of an allegedly undercover QPS Officer.
4. For the reasons below I affirm QPS's decision to refuse access to parts of the BWC Footage on the basis that disclosure would, on balance, be contrary to the public interest and find that access to the Section 95 Certificate can be refused on the basis that it is unlocatable.

Background

5. On external review the applicant expressed ongoing concerns about the events in the BWC Footage. He has lodged complaints with relevant bodies and commenced court proceedings against a number of parties including QPS and complaint bodies, which have since been dismissed.¹⁰ In making this decision I have had regard to the relevant findings of the court, in so far as it relates to the public interest in disclosure of the BWC Footage.
6. I acknowledge the applicant has considerable concerns about the events captured by the BWC Footage, however significant aspects of his submissions are not relevant to the issue of whether QPS may refuse access to the information it considered would, on balance, be contrary to the public interest to disclose. I have addressed his submissions, to the extent they are relevant, in this decision.

Reviewable decision

7. The decision under external review is QPS's decision issued 19 December 2019.

Evidence considered

8. Significant procedural steps relating to the external review are set out in the Appendix.
9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld),¹¹ particularly the right to seek and receive information.¹² I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.¹³ I have acted in this way in making this decision.¹⁴ I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁵ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹⁶

⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(b) of the RTI Act.

⁸ On 16 January 2020.

⁹ Email submissions received 17 February 2020, 20 February 2020, and 24 July 2020; verbal submissions made by telephone on 17 June 2020, 7 July 2020 and 24 July 2020; and written and disc submissions received by OIC on 8 July 2020.

¹⁰ Unreported judgement issued by the Supreme Court of Queensland on 1 March 2018.

¹¹ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

¹² Section 21 of the HR Act.

¹³ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁴ In accordance with section 58(1) of the HR Act.

¹⁵ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁶ **XYZ** at [573].

Issue/s for determination

11. The issues for determination are whether QPS may refuse access to:
- images of other individuals' faces in the BWC Footage (**Third Party Information**)¹⁷ on the basis that disclosure would, on balance, be contrary to the public interest;¹⁸ and
 - the Section 95 Certificate on the basis it is unlocatable.¹⁹

Information in issue

12. The information in issue is the Third Party Information on the BWC Footage.

Contrary to the public interest

Relevant law

13. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²⁰ That right is subject to certain limitations set out in the IP Act and RTI Act, with the relevant provisions in this matter, examined below.
14. Access may be refused to information where its disclosure would, on balance, be contrary to the public interest.²¹ 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 substantial segment of, the community, as distinct from matters that concern purely private or personal interests.²²
15. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²³
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
16. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision. Additionally, I have kept in mind the pro-disclosure bias²⁴ of the IP and RTI Acts and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.²⁵

¹⁷ OIC is in possession of both the unredacted footage and the redacted version released to the applicant.

¹⁸ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

¹⁹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(b) of the RTI Act.

²⁰ Section 40 of the IP Act.

²¹ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

²² However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²³ Section 49(3) of the RTI Act.

²⁴ Section 64 of the IP Act and section 44 of the RTI Act.

²⁵ Section 47(2) of the RTI Act.

Findings

Irrelevant factors

17. I have not taken any irrelevant factors into account in reaching my decision.

Factors favouring disclosure

18. The applicant made detailed submissions throughout the external review.²⁶ In summary, he considers:
- he was unlawfully targeted, assaulted and arrested by QPS Officers in 2014
 - he was injured by QPS Officers during this arrest
 - the charges against him were dismissed which confirms his view that it was unlawful
 - the Crime and Corruption Commission (**CCC**) and QPS Ethical Standards Command (**ESC**) did not take any action on his complaints; and
 - he has identified a person in the BWC Footage wearing a checked shirt (**Person A**) who he contends is an undercover QPS Officer who should be identified.
19. The applicant provided CCTV footage²⁷ to OIC as supporting evidence for his assertions.²⁸ The applicant provided a 14 page statement describing what he saw in the CCTV Footage and his opinion of it. I have included some excerpts below:²⁹

In the CCTV footage you can see that he [Person A] takes a drink from a water bottle, and then places the water bottle into the bag...

...

...you will see that this individual [Person A] turns to his right, and towards the camera, he then interacts with the camera operator by firstly shaking his head, and then he gestures or points in my direction with his head, and then he proceeds to unnaturally shake his shoulders, as if to indicate a requirement for engagement or something along those lines...

...

...you will see that he [Person A] seems to smile towards the camera, and then he uses his chin to point in my direction, with this, it is self-evident and clearly evident that this individual has direct [sic] the camera operator to use facial recognition software and that he had directed the camera operator to focus in on myself...

...

...in this case it was myself that was targeted and unlawfully arrested, and whom received injuries amounting to grievous bodily harm, but this could be anybody, this could be your son or daughter, or your niece or nephew, or it could be your husband or wife....So I implore you to take careful consideration of the aforementioned evidence/information, and truly consider the ramifications of allowing this kind of criminal abuse of authority and corruption to continue.

...

With regards to [Person A], I maintain that it is clearly obvious and observable that this individual is working for and/or with the Queensland Police Service, and that he is working as

²⁶ By email on 17 February 2020, 20 February 2020, and 24 July 2020; by telephone submission on 17 June 2020, 7 July 2020 and 24 July 2020; and by hand on 8 July 2020.

²⁷ Received by OIC on 8 July 2020.

²⁸ As explained to the applicant on external review, OIC was unable to view this footage supplied by the applicant as our information security systems did not allow the unauthorised application to be downloaded.

²⁹ Disc and written submission received by hand on 8 July 2020 (written submission dated 6 July 2020).

a Police officer and/or an undercover Police officer at that time, and it is clear to see that this individual undercover QPS officer is most certainly interacting with the CCTV camera operators and/or other Parties associated with the State of Queensland and/or the QPS.

20. The applicant made lengthy verbal submissions during three telephone calls to OIC³⁰ as part of his response to my preliminary view.³¹ In particular, he focused on a 'thumbs up' gesture from one of the QPS Officers and contended this 'thumbs up' gesture was made to Person A which in his view clearly proved he is undercover and working with the police.³² The applicant also submitted that he required the Third Party Information to take legal action, although could not identify the specific remedy he sought;³³ and advised OIC that we had a legal obligation to investigate misconduct.³⁴ The applicant also provided four police statements³⁵ as further evidence in support of his submissions.
21. Prior to considering the balance of the public interest, I have considered the applicant's assertions that Person A is an undercover QPS Officer, and therefore '*a public servant... who should not have his image pixelated*'.³⁶ Having considered the unredacted BWC Footage, it is my assessment that Person A appears to be a member of the public. I have also considered the four police statements and the unreported judgment in 2018 by the Supreme Court of Queensland dismissing a statement of claim by the applicant against QPS, the CCC, and other persons and agencies in relation to this issue. These records also indicate that Person A is a member of the public and not an undercover police officer. On the basis of the evidence before me, I do not agree with the applicant's assertions that Person A is an undercover police officer.³⁷
22. QPS must be transparent and accountable about how it deals with members of the public.³⁸ The Third Party Information comprises the personal information of other individuals appearing in the context of QPS officers responding to and dealing with the applicant's alleged conduct in a public space. I do not consider that the disclosure of the Third Party Information would advance QPS's accountability and transparency in any significant way, particularly given the applicant has received the entirety of the BWC Footage, with only the faces of third party individuals who are neither the applicant nor QPS Officers pixelated. I am satisfied that the information which **has** been disclosed to the applicant in this review, and in the earlier court matters,³⁹ has significantly reduced the weight of these factors favouring disclosure of the Third Party Information.⁴⁰ Accordingly, I afford each of these four factors⁴¹ very low weight.
23. The applicant has stated that he requires the Third Party Information to assist him with a legal remedy. However, given his submission, I have considered whether disclosing the Third Party Information could reasonably be expected to contribute to the

³⁰ On 17 June 2020, 7 July 2020 and 24 July 2020.

³¹ Issued 2 June 2020.

³² Oral submission of 17 June 2020.

³³ Oral submission of 17 June 2020. The applicant confirmed he had sought legal advice about the events of 2014 but no-one would take his case.

³⁴ In relation to this submission, the OIC Officer advised the applicant that Queensland public servants have an obligation to report clear misconduct or corrupt conduct to the CCC, as we do not possess any investigation powers. However, as the applicant confirmed, he had already provided these videos and submissions to the CCC who had referred it back to QPS ESC. Under the CCC legislation this is still considered a CCC reviewed complaint, so even if OIC thought the 'thumbs up' and other conduct amounted to clear evidence of misconduct or corrupt conduct, we would not refer documents to the CCC that had already been reviewed.

³⁵ By email on 24 July 2020.

³⁶ Applicant submissions received on 8 July 2020.

³⁷ Even if the applicant was able to provide persuasive proof of his assertion, this would engage further factors favouring nondisclosure of the Third Party Information for my consideration, including the prejudice to law enforcement, security or public safety that would be reasonably expected to result from disclosure: Schedule 4, part 3, item 7 of the RTI Act.

³⁸ Schedule 4, part 2, items 1, 2, 3 and 10 of the RTI Act.

³⁹ Such as the four police statements the applicant provided to OIC.

⁴⁰ *Kalman and Queensland Police Service* [2016] QICmr 17 (13 May 2016) at [23] to [24]; and *Kalman and Queensland Police Service* [2015] QICmr 28 (8 October 2015) at [24] to [25] (**Kalman No 1**).

⁴¹ Schedule 4, part 2, items 1, 2, 3 and 10 of the RTI Act.

administration of justice for a person⁴²— for example, by allowing a person to access information that may assist them in legal proceedings. In determining whether this public interest factor in favour of disclosure applies, I must consider whether:⁴³

- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- the applicant has a reasonable basis for seeking to pursue the remedy; and
- disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.

24. I have carefully considered all of the material before me, including the applicant's submissions and the Third Party Information. The applicant contends he has suffered a loss in relation to the police arrest. The applicant could not identify the legal remedy he was seeking, nor how disclosure of the Third Party Information could specifically assist him in pursuing the unspecified legal remedy or evaluating whether any remedy is available or worth pursuing.⁴⁴ In order for this disclosure factor to apply, the Third Party Information **itself** must comprise information that would be reasonably expected to contribute to a legal remedy for the applicant, or assist the applicant in pursuing any remedy or evaluating whether a remedy is available or worth pursuing.
25. Given the specific nature of the Third Party Information—pixelated faces of individuals other than the applicant—I cannot identify how disclosure could reasonably be expected to assist the applicant in contributing to a legal remedy for the applicant, or assist him in evaluating whether he could pursue a remedy. Accordingly, I consider this factor does not apply to disclosure of the Third Party Information.⁴⁵
26. I also note the applicant's submission that procedural fairness requires disclosure of the Third Party Information. This is a factor that often arises for consideration in the context of a workplace investigation or criminal prosecution where an applicant may have received a detrimental outcome.⁴⁶ Again, given the specific content of the Third Party Information, the information already released to the applicant in this review, the applicant's submission that the charges against him were dropped by QPS, and the finalised CCC outcomes, I am unable to identify how disclosure of the Third Party Information would contribute to the administration of justice generally, including procedural fairness.⁴⁷ Accordingly, I am satisfied that this factor favouring disclosure does not apply to the Third Party Information.
27. Throughout his submissions the applicant has stated that QPS officers engaged in serious misconduct. He has already lodged complaints about these events with the CCC, and attempted to pursue the CCC, QPS and other agencies in court for these events. I understand his submissions to raise two factors favouring disclosure of the Third Party Information, where it could reasonably be expected to allow or assist inquiry into possible deficiencies of conduct or administration by an agency or official, or reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁴⁸

⁴² Schedule 4, part 2, item 17 of the RTI Act.

⁴³ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] (**Willsford**). See also *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

⁴⁴ *Willsford* at [17].

⁴⁵ Schedule 4, part 2, item 17 of the RTI Act.

⁴⁶ *Nine Network Australia Pty Ltd and Queensland Police Service* (Unreported, Queensland Information Commissioner, 31 July 2013) at [16] to [33]; *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [87] to [94].

⁴⁷ Schedule 4, part 2, item 16 of the RTI Act.

⁴⁸ Schedule 4, part 2, items 5 and 6 of the RTI Act.

28. The Third Party Information itself comprises the faces of individuals other than the applicant. Having reviewed the unredacted footage, I have not identified any evidence that suggests any misconduct or deficiencies of conduct by government. The government information—that is, the QPS Officers and their conduct and engagement with the applicant—has already been fully released to the applicant. I am satisfied that the Third Party Information does not comprise any information relating to deficiencies in government conduct, or misconduct or negligent, improper or unlawful conduct.⁴⁹
29. The applicant has submitted that the purpose of his arrest was to:⁵⁰
- meet arrest quotas and to raise revenue through the criminal abuse of [QPS's] position of authority and the criminal abuse of the Criminal Justice System and the Queensland Magistrate Courts' in which the QPS are using their position of trust and/or authority to extort money out of individual members' of the Public... [sic]*
30. While the applicant's submissions are focussed on the alleged misconduct by QPS Officers, I understand from his submission that he considers disclosure of the Third Party Information could reasonably be expected to ensure oversight of expenditure of public funds.⁵¹ As noted in my reasons above, this public interest factor is only enlivened if disclosure of the specific Third Party Information **itself** could reasonably be expected to ensure oversight of public expenditure. Given the Third Party Information comprises pixelated faces of individuals other than the applicant or QPS Officers, I am satisfied that disclosure would not contribute to oversight of QPS expenditure and that this factor⁵² does not apply.

Factors favouring nondisclosure

31. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁵³ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁵⁴ I am satisfied that each of these factors carry significant weight for the reasons explained below.
32. The Third Party Information comprises only of the faces of the bystanders who were in the same public space as the QPS Officers and the applicant at a particular point in time. 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 material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*
33. Previous decisions of the Information Commissioner have established that information other than a name, such as a photograph (or moving footage), or a detailed identifying description may also identify an individual and will comprise their personal information.⁵⁵ In this case, I am satisfied that the information in issue is solely the personal information of other individuals. Given the location, timing and content of the footage, I consider that

⁴⁹ V78 and Queensland Police Service [2020] QICmr 42 (28 July 2020) at [37] to [38]; F60XCX and Queensland Ombudsman [2014] QICmr 28 (13 June 2014) at [47] to [54]; Van Kuijck and Queensland Police Service [2014] QICmr 35 (19 August 2014) at [27] to [30].

⁵⁰ Received 20 February 2020.

⁵¹ Schedule 4, part 2, item 4 of the RTI Act.

⁵² Schedule 4, part 2, item 4 of the RTI Act.

⁵³ Schedule 4, part 4, section 6(1) of the RTI Act.

⁵⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁵ Seven Network (Operations) Limited and Logan City Council [2018] QICmr 21 (11 May 2018).

disclosure of the Third Party Information would cause a public interest harm by disclosing personal information of individuals other than the applicant.⁵⁶

34. In these circumstances, the impact on these individuals' right to privacy⁵⁷ also arises as a public interest consideration. The concept of 'privacy' can essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others.⁵⁸ There is a community expectation that, while some video recording systems are likely to operate in public places, the personal information they collect will be used for limited purposes only, and will not be subject to unrestricted dissemination.⁵⁹ Members of the community are entitled to expect that they will enjoy a reasonable degree of privacy and anonymity whilst traversing public spaces, at least as regards surveillance conducted by government agencies.⁶⁰ On this basis, I am satisfied that disclosure of the Third Party Information would interfere with the personal sphere of the individuals depicted, and could reasonably be expected to prejudice the protection of their right to privacy.⁶¹

Balancing the public interest

35. I have considered the pro-disclosure bias in deciding access to information.⁶² For the reasons set out above, I afford:
- no weight to the factors relating to oversight of public expenditure;⁶³ assisting inquiry into possible deficiencies of conduct or misconduct or unlawful conduct by an agency or officials;⁶⁴ and the administration of justice generally and for a person;⁶⁵ and
 - very low weight to the public interest factors in enhancing the government's accountability and transparency in favour of disclosure of the Third Party Information.⁶⁶
36. On the other hand, I afford significant weight to the public interest factors in favour of nondisclosure of the Third Party Information, namely the factors recognising the public interest harm in disclosing personal information and the prejudice to the protection of an individual's right to privacy.⁶⁷
37. Having balanced the relevant public interest factors in this case, I consider the factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that access to the Third Party Information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest.

⁵⁶ *Kalman No 1* at [18] to [23]; *Young and Queensland Police Service* (Unreported, Queensland Information Commissioner, 25 June 2013) at [20].

⁵⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁸ Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

⁵⁹ *Seven Network (Operations) Limited and Logan City Council* [2018] QICmr 21 (11 May 2018) at [46].

⁶⁰ *Kalman No 1* at [21].

⁶¹ Schedule 4, part 3, item 3 of the RTI Act.

⁶² Section 64 of the IP Act.

⁶³ Schedule 4, part 2, item 4 of the RTI Act.

⁶⁴ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁶⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁶⁶ Schedule 4, part 2, items 1, 2, 3 and 10 of the RTI Act.

⁶⁷ Schedule 4, part 4, section 6(1) and schedule 4, part 3, item 3, of the RTI Act.

Sufficiency of QPS's searches

Relevant law

38. Access to a document may be refused if the document is nonexistent or unlocatable.⁶⁸ A document is nonexistent⁶⁹ if there are reasonable grounds to be satisfied that the document does not exist. A document is unlocatable⁷⁰ if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.
39. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors including:⁷¹
- the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant, including:
 - the nature and age of the requested document/s; and
 - the nature of the government activity the request relates to.⁷²
40. When proper consideration is given to relevant factors, it may be unnecessary for searches to be conducted. However, if an agency or Minister relies on searches to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the requested documents. The key factors identified above are also relevant to a consideration of whether an agency or Minister has taken all reasonable steps before concluding that documents are unlocatable.⁷³

Findings

41. In its decision letter⁷⁴ QPS advised that it had undertaken searches for the Section 95 Certificate sought by the applicant, and that it was refusing access on the basis it was unlocatable. QPS stated:

As the court matters have been finalised, the document is not required to be maintained by the Queensland Police Service.

The certificate if still in the possession of the Queensland Police Service it would be maintained on the Queensland Police Records and Information Management Exchange. Searches of this system show no records of the certificate. [sic]

⁶⁸ Sections 47(3)(e) and 52(1) of the RTI Act.

⁶⁹ Section 52(1)(a) of the RTI Act.

⁷⁰ Section 52(1)(b) of the RTI Act.

⁷¹ *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*). *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of which are replicated in section 52 of the RTI Act.

⁷² *PDE* at [37] - [38].

⁷³ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [20] - [21].

⁷⁴ Dated 19 December 2019.

42. On external review the applicant confirmed he required review of the '*non-location of the s95 certificate*'.⁷⁵ OIC requested copies of the QPS search records and certifications for the Section 95 Certificate.
43. QPS provided search certifications which confirmed that searches were conducted between 4 November 2019 and 8 November 2019 to locate the Section 95 Certificate, but it was not found.
44. I explained QPS's submissions regarding its searches to the applicant during the external review⁷⁶ and asked the applicant to advise me if he did not accept QPS's explanation. The applicant did not make any further submissions on this issue. For completeness, I find that QPS may refuse access to the Section 95 Certificate on the basis it is unlocatable.⁷⁷
45. During the external review, when providing telephone submissions on disclosure of the Third Party Information, the applicant queried the length of the BWC Footage and asked why it cut off as the QPS Officers began their arrest.⁷⁸ The OIC officer requested that the applicant identify any evidence he had that QPS was in possession of further footage. The applicant subsequently provided a 14 page submission to OIC but did not make any specific submissions regarding any further body worn camera footage held by QPS but not yet located. Accordingly, I have not considered this any further in this review.

DECISION

46. As a delegate of the Information Commissioner,⁷⁹ I affirm the QPS decision and find that:
 - access to the Third Party Information may be refused under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest; and
 - access to the Section 95 Certificate may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(b) of the RTI Act on the basis that it is unlocatable.

S Martin
Assistant Information Commissioner

Date: 4 December 2020

⁷⁵ Email dated 17 February 2020.

⁷⁶ Letter dated 2 June 2020.

⁷⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(b) of the RTI Act.

⁷⁸ On 7 July 2020.

⁷⁹ Under section 139 of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
16 January 2020	OIC received the application for external review.
20 January 2020	OIC requested preliminary documents from QPS.
22 January 2020	QPS provided the preliminary documents to OIC.
14 February 2020	OIC advised the applicant and QPS that the application for external review had been accepted. OIC requested the relevant footage and search information from QPS.
17 February 2020	The applicant provided a submission to OIC.
20 February 2020	The applicant provided further submissions to OIC.
2 March, 11 March, 1 April, 13 May, 21 May and 28 May 2020	OIC followed up with QPS on its request for the relevant footage.
29 May 2020	QPS provided the relevant footage to OIC.
1 June 2020	OIC received the search information from QPS.
2 June 2020	OIC conveyed a preliminary view to the applicant.
17 June and 7 July 2020	The applicant provided further submissions to OIC by phone.
8 July 2020	OIC received further submissions from the applicant by hand.
23 July 2020	The applicant provided further submissions to OIC by phone.
24 July 2020	The applicant provided further submissions to OIC by email.
11 September 2020	OIC provided the applicant with an update.