



Decision and Reasons for Decision

Citation:	<i>C65 and Department of Justice and Attorney-General [2023] QICmr 53 (26 September 2023)</i>
Application Number:	317035
Applicant:	C65
Respondent:	Department of Justice and Attorney-General
Decision Date:	26 September 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - information contained in a police incident report - personal information and privacy of individuals other than the applicant - whether disclosure of information 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 applied¹ to the Department of Justice and Attorney-General (**DJAG**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) seeking access to a Queensland Police Service (**QPS**) incident report and two related video recordings² (**Recordings**) which the applicant considered to be held by Victim Assist Queensland (**VAQ**)³ in relation to an incident involving the applicant.
2. DJAG located 14 pages and decided⁴ to refuse access to:
 - parts of six pages on the ground that disclosure would, on balance, be contrary to the public interest;⁵ and
 - the Recordings on the ground that they are nonexistent or unlocatable.⁶

¹ Application dated 17 October 2022.

² For a specified date. In his access application, the applicant provided a reference number for the QPS incident report, DJAG identified that the reference number provided by the applicant was incorrect, however it located the report that related to the incident involving the applicant.

³ VAQ is an agency of DJAG.

⁴ Decision dated 8 December 2022.

⁵ Pursuant to section 67(1) of the IP Act and sections 47(3)(b) and 49 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 to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

⁶ Pursuant to sections 47(3)(e) and 52(1) of the RTI Act. In its decision, DJAG advised the applicant that the Recordings may be held by QPS and provided the applicant with the contact details for QPS's Right to Information and Privacy Unit.

3. The applicant then applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of DJAG's decision.
4. For the reasons set out below, I affirm DJAG's decision and find that access may be refused to the information remaining in issue on the ground that disclosure would, on balance, be contrary to the public interest.⁸

Background

5. Significant procedural steps taken during the review are set out in the Appendix to this decision.

Reviewable decision

6. The decision under review is DJAG's decision dated 8 December 2022.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
8. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁹ I consider that in observing and applying the law prescribed in the IP Act and the RTI Act, a decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,¹⁰ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's IP Act, RTI Act and HR Act: '*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.*'¹¹
9. The applicant raised a number of concerns outside of the Information Commissioner's external review jurisdiction, including a complaint about the conduct of QPS in its handling of the incident and concerns about the information that was considered by VAQ in reaching its decision in relation to the applicant's financial assistance application.¹² I acknowledge that the applicant has ongoing concerns about his dealings with QPS and VAQ, however the Information Commissioner has no jurisdiction to investigate complaints of this nature. To the extent that the applicant's submissions raise relevant public interest factors in relation to the disclosure of the information in issue, I have taken them into account in making my decision in this review.

Information in issue

10. The Information in Issue comprises six part-pages comprised in the QPS incident report (**Information in Issue**).¹³

⁷ On 12 December 2022.

⁸ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

⁹ As embodied in section 21 of the HR Act.

¹⁰ *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].

¹¹ *XYZ*, [573].

¹² In particular the applicant is concerned that in reaching its decision VAQ had information from QPS about the incident but did not have access to the Recordings.

¹³ At part-pages 1, 3, 4, 5, 6 and 11 of the QPS incident report.

11. The extent to which I can describe the information remaining in issue is limited by the IP Act.¹⁴ In general terms, the information comprises the identity of another individual who was involved in the incident, including that individual's name, date of birth, contact details and a visual image of that individual, together with images of other individuals who were present at the time of the incident.

Issue for determination

12. In his application for external review, the applicant made submissions to OIC contesting DJAG's refusal of access to the Information in Issue and raised concerns about the adequacy of DJAG's searches for the Recordings.
13. During the external review, OIC advised the applicant¹⁵ that VAQ had searched its systems and had not located the Recordings. In response the applicant stated, '*if Department or VAQ have never received any video recordings, then I can withdraw the request for that information*'.¹⁶
14. As a result of the applicant's comment, OIC raised further inquiries with DJAG about the searches that it conducted to locate the Recordings. Following those inquiries, OIC confirmed to the applicant¹⁷ that VAQ was never in possession of the Recordings¹⁸ and given the applicant's comment in his email of 19 April 2023, the Recordings would no longer be considered as part of the review process.¹⁹
15. In response the applicant stated that he still wished to pursue access to the Information in Issue, being parts of the six pages of the QPS incident report.²⁰ Accordingly, the issue for determination is whether access may be refused to the Information in Issue on the ground that its disclosure would, on balance, be contrary to the public interest.

Relevant law

16. An individual has a right under the IP Act, to be given access to documents to the extent they contain the individual's personal information,²¹ subject to the provisions of the IP Act and RTI Act, including grounds for refusing access to information. Relevantly, access may be refused to information where its disclosure would, on balance, be contrary to the public interest.²²
17. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:²³
 - identify and disregard any irrelevant factors
 - identify factors in favour of disclosure
 - identify factors in favour of nondisclosure; and

¹⁴ Section 121 of the IP Act.

¹⁵ On 27 March 2023.

¹⁶ Email to OIC dated 19 April 2023.

¹⁷ On 20 June 2023.

¹⁸ And that accordingly access could be refused under sections 47(3)(e) and 52(1) of the RTI Act.

¹⁹ I am also aware that the applicant is seeking access to the Recordings in an external review involving a different agency.

²⁰ Email to OIC dated 21 June 2023.

²¹ Section 40 of the IP Act.

²² Section 67(1) of the IP Act and section 47(3)(b) RTI Act. 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. 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.

- decide whether, on balance, disclosure of the information would be contrary to the public interest.
18. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,²⁴ together with all other relevant information, in reaching my decision. I have also applied the IP Act's pro-disclosure bias²⁵ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²⁶

Findings

19. In making this decision, I have not taken into account any irrelevant factors.

Factors favouring disclosure

20. The applicant's submissions demonstrate that he is seeking access to the Information in Issue to assist him in providing a submission to VAQ in response to its proposal to refuse his financial assistance application and that he considers that disclosure of the Information in Issue would expose QPS's abuse of process and obstruction of justice in dealing with the incident.²⁷ Further the applicant submits that as the incident occurred in 2020, the information he is seeking access to is '*old*' and this is something I should take into consideration in relation to disclosure of the Information in Issue.²⁸
21. The public interest will favour disclosure of information which could reasonably be expected to enhance the Government's accountability, inform the community of the Government's operations and reveal background/contextual information that has informed a government decision.²⁹
22. As noted at paragraph 11, the Information in Issue comprises another individual's name, date of birth, contact details and a visual image, together with images of other individuals who were present at the time of the incident. Given this, I am not satisfied that disclosure of the Information in Issue would enhance the accountability and transparency of DJAG to any significant extent or provide any insight into DJAG's operations. Nor, given the nature of the Information in Issue, am I able to identify how disclosure could reasonably be expected to enhance VAQ's transparency in its decision-making process in response to the applicant's application for financial assistance. Accordingly, I consider these factors favouring disclosure of the Information in Issue only attract low weight.
23. The applicant has raised concerns about the conduct of QPS and also VAQ's decision-making process.³⁰ The Information Commissioner's role in conducting external review is to conduct a merits review of government agency decisions made under the IP Act and RTI Act with respect to access to information. However, given the applicant's submissions, I have considered whether disclosure of the Information in Issue could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.³¹ and/or

²⁴ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act and any relevant factors discussed below. I note the lists in Schedule 4 are non-exhaustive.

²⁵ Section 64(4) of the IP Act.

²⁶ Section 67(2) of the IP Act.

²⁷ Emails to OIC dated 12 December 2022 and 19 April 2023.

²⁸ Email to OIC dated 19 April 2023.

²⁹ Schedule 4, part 2, items 1, 3, and 11 of the RTI Act.

³⁰ Emails to OIC dated 12 December 2022, 19 April 2023 and 21 June 2023.

³¹ Schedule 4, part 2, item 5 of the RTI Act.

- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.³²
24. As the Information in Issue, comprises the personal information of other individuals, I am satisfied that the Information in Issue is not of a kind referred to in the factors favouring disclosure as referred to in paragraph 23. Accordingly, I find that these factors do not apply.
25. Further, in view of the applicant's submission that he requires the Information in Issue to make a submission to VAQ in response to its decision to refuse him financial assistance, I have considered whether disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for a person.³³ I am not satisfied that this factor applies for two reasons:
- given the very limited nature of the Information in Issue, I cannot identify how disclosure of this information would assist the applicant in making a submission to VAQ; and
 - the Information in Issue is already in the possession of VAQ and therefore available to it when considering any submission made by the applicant.
26. I have not identified any further public interest factors to favour disclosure³⁴ of the Information in Issue.

Factors favouring nondisclosure

27. The RTI Act identifies that it is in the public interest to protect the personal information and privacy of individuals other than the applicant.³⁵ I am satisfied that the Information in Issue comprises the '*personal information*'³⁶ of individuals other than the applicant and that disclosure of this personal information could reasonably be expected to cause a public interest harm.³⁷
28. The concept of '*privacy*' is not defined in the IP Act or RTI Act. It can however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.³⁸ I am satisfied that disclosing the Information in Issue could reasonably be expected to lead to an intrusion into the privacy of those individuals.³⁹
29. The applicant submits that he has ongoing civil proceedings in relation to the incident. I acknowledge that the applicant may already be aware of some of the Information in Issue, however, I do not consider that this reduces the prejudice or public interest harm that could reasonably be expected to occur from disclosure of the Information in Issue in any significant way, particularly given there is no restriction on the further use or dissemination of information disclosed under the IP Act or RTI Act. I also do not accept the applicant's submission that the Information in Issue is '*old*' because it was obtained in 2020, or that this reduces any prejudice or public interest harm to any great extent. I consider that the factors which are intended to safeguard the personal information of other individuals and protect their right to privacy attract significant weight.

³² Schedule 4, part 2, item 6 of the RTI Act.

³³ Schedule 4, part 2, item 17 of the RTI Act.

³⁴ In reaching this decision, I have had regard to all factors set out in schedule 4, part 2 of the RTI Act.

³⁵ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

³⁶ As defined in section 12 of the IP Act.

³⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

³⁸ 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.

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

Balancing the public interest factors

30. In balancing the factors for and against disclosure, I note again that the Information in Issue is limited to the personal information of third parties, and does not provide any detail about the actions taken by government agencies. In considering the factors favouring disclosure of the Information in Issue, I have considered the pro-disclosure bias. I have also afforded some, albeit low, weight to the public interest factors associated with enhancing DJAG's accountability and transparency.
31. Weighing against this are several key factors favouring nondisclosure, being the prejudice to other individuals' right to privacy and the public interest harm in disclosing the personal information of individuals other than the applicant. I am satisfied that these factors carry significant and determinative weight in the circumstances of this case. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest.⁴⁰

DECISION

32. I affirm DJAG's decision to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the ground that disclosure would, on balance, be contrary to the public interest.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

Date: 26 September 2023

⁴⁰ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
12 December 2022	OIC received the application for external review.
13 December 2022	OIC requested preliminary documents from DJAG.
15 December 2022	OIC received preliminary documents from DJAG.
19 January 2023	OIC advised the parties that the application for review had been accepted. OIC requested further information from DJAG.
2 February 2023	OIC received the requested information from DJAG.
27 March 2023	OIC conveyed a preliminary view to the applicant.
18 April 2023	OIC advised applicant that matter would be finalised if no response was received by 27 April 2023.
19 April 2023	OIC received a submission from the applicant.
21 April 2023	OIC requested further information from DJAG.
8 May 2023	OIC received further information from DJAG.
20 June 2023	OIC conveyed a second preliminary view to the applicant.
21 June 2023	OIC received a submission from the applicant.