



## Decision and Reasons for Decision

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**Citation:** *F42 and Queensland Police Service [2023] QICmr 63 (29 November 2023)*

**Application Number:** 317020

**Applicant:** F42

**Respondent:** Queensland Police Service

**Decision Date:** 29 November 2023

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY - SERIOUS ACT OF HARASSMENT OR INTIMIDATION - documents referring to the applicant - applicant's previous conduct - frequent, hostile communications - insulting, derogatory comments - unsubstantiated accusations - threats of complaints, legal action and physical assault - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - names and contact details of individuals - personal information and privacy - 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)

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Queensland Police Services (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to certain documents referring to them in connection with their dealings with a QPS officer or an investigation into any offences, within the date range 31 May 2022 to 20 July 2022.
2. QPS considered that all of the requested documents comprised information the disclosure of which could reasonably be expected to result in a person being subjected

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<sup>1</sup> On 25 July 2022.

to a serious act of harassment or intimidation<sup>2</sup> and therefore decided<sup>3</sup> to refuse to deal with the access application without identifying relevant documents.<sup>4</sup> QPS affirmed this decision on internal review.<sup>5</sup>

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.<sup>6</sup> In accordance with OIC's view, QPS agreed to release a small amount of information to the applicant.
4. For the reasons explained below, I find that access to the information remaining in issue in this review may be refused on the ground that it is exempt information<sup>7</sup> or its disclosure would, on balance, be contrary to the public interest.<sup>8</sup>

## Background

5. Significant procedural steps relating to the application and external review process are set out in the Appendix.
6. During this review, upon OIC's request,<sup>9</sup> QPS identified 314 documents relevant to the access application.<sup>10</sup>
7. OIC conveyed a preliminary view to QPS that a small amount of this information was not exempt and should be released.<sup>11</sup> In accordance with this view, QPS released eight full pages and parts of 50 pages of information to the applicant (**Released Information**).<sup>12</sup>
8. The applicant has confirmed they continue to seek access to all of the documents identified by QPS.

## Reviewable decision

9. The decision under review is QPS's internal review decision dated 1 November 2022.

## Evidence considered

10. Evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent they are relevant to the issues for determination in this review. The applicant has, throughout their submissions, raised a number of matters outside OIC's jurisdiction, primarily allegations of corrupt conduct against particular QPS officers. I have not addressed these matters in this decision, as I am limited to reviewing access and amendment decisions of an agency or Minister under the RTI Act or IP Act.

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<sup>2</sup> Schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>3</sup> On 20 September 2022.

<sup>4</sup> Section 59(2) of the IP Act.

<sup>5</sup> On 1 November 2022.

<sup>6</sup> On 29 November 2022.

<sup>7</sup> Section 47(3)(a) and schedule 3, section 10(1)(d) of the RTI Act.

<sup>8</sup> Section 47(3)(b) of the RTI Act.

<sup>9</sup> On 11 January 2023.

<sup>10</sup> Consisting of 309 pages and 5 other documents. 37 pages were outside the scope of the access application because they are either outside the date range or they discuss matters that are not factually relevant. OIC confirmed to QPS on 25 May 2023 that these documents would not be considered in this review.

<sup>11</sup> Dated 25 May 2023.

<sup>12</sup> On 19 June 2023.

11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>13</sup> 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 RTI Act.<sup>14</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observation of Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>15</sup> '*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*'.<sup>16</sup>

### Information in issue

12. The information remaining in issue in this review comprises:
- **Category A Information** - 219 full documents and parts of 50 documents;<sup>17</sup> and
  - **Category B Information** - names and contact details of third party individuals on parts of 2 documents.<sup>18</sup>

### Issues for determination

13. The issues for determination in this review are:
- whether access to the Category A Information may be refused under the IP Act because it is exempt information; and
  - whether access to the Category B Information may be refused under the IP Act because its disclosure would be, on balance, contrary to the public interest.

### Category A Information

#### **Relevant law**

14. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>19</sup> However, this right is subject to provisions of the IP Act and RTI Act, including grounds for refusal of access.<sup>20</sup> Relevantly, an agency may refuse access to information that is exempt.<sup>21</sup>
15. Schedule 3 of the RTI Act specifies the types of information that Parliament has determined are exempt because its release would be contrary to the public interest.<sup>22</sup> Relevantly, schedule 3, section 10(1)(d) of the RTI Act provides that information is

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<sup>13</sup> Section 21(2) of the HR Act.

<sup>14</sup> *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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

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

<sup>16</sup> *XYZ* at [573].

<sup>17</sup> Note – our preliminary view to the applicant dated 28 June 2023 incorrectly referred to 256 documents and parts of 50 documents, as its page count included the 37 pages identified as outside the scope of the access application, as mentioned in footnote 10. above.

<sup>18</sup> Which comprise some of the redacted information on pages 100 and 124 of the 309 pages mentioned in footnote 10. above. These pages constitute pages 6 and 24 of the Released Information.

<sup>19</sup> Section 40 of the IP Act.

<sup>20</sup> 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 it 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 the RTI Act.

<sup>21</sup> Section 47(3)(a) and 48 of the RTI Act.

<sup>22</sup> Section 48(2) of the RTI Act.

exempt information if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.

16. For this exemption to apply, I must be satisfied that:

- there is an expectation of harassment or intimidation that is serious in nature
- the expectation is reasonable; and
- the expected harassment or intimidation arises as a result of disclosure (as opposed to independently of disclosure).<sup>23</sup>

## Findings

### Is there an expectation of a serious act of harassment or intimidation?

17. Yes.

18. The IP Act and RTI Act do not define harassment or intimidation. Accordingly, these terms are given their ordinary meanings.<sup>24</sup> Relevantly, the Information Commissioner has previously found that a '*serious act of harassment*' is an action that '*attacks, disturbs or torments a person and that causes concern or apprehension or has undesired consequences*'.<sup>25</sup>

19. Factors which may be relevant in considering whether harassment and intimidation could reasonably be expected to occur include, but are not limited to:

- past conduct or a pattern of previous conduct
- the nature of the information in issue
- the nature of the relationship between the relevant parties; and
- relevant contextual and/or cultural factors.<sup>26</sup>

20. In this matter, I have carefully reviewed:

- a. the Released Information
- b. the Category A Information
- c. the applicant's submissions
- d. QPS's submissions<sup>27</sup> and contemporaneous material provided in corroboration of its submissions;<sup>28</sup> and
- e. further material provided by QPS – namely documents disclosed by the Commonwealth Director of Public Prosecutions (**CDPP**) to the applicant<sup>29</sup> during proceedings regarding two charges brought against the applicant for use of a carriage service to menace, harass or cause offence under section 474.17(1) of the *Criminal Code Act 1995* (Cth).

<sup>23</sup> *Watson v Office of the Information Commissioner Queensland & Ors* [2015] QCATA 095 (**Watson**) at [19]; *6ZJ3HG and Department of Environment and Heritage Protection; OY76VY (Third Party)* [2016] QICmr 8 (24 February 2016) (**6ZJ3HG**) at [29]-[30].

<sup>24</sup> *Sheridan and South Burnett Regional Council, Local Government Association of Queensland Inc. and Dalby Regional Council* (Unreported, Queensland Office of the Information Commissioner, 9 April 2009) (**Sheridan**) at [188].

<sup>25</sup> *Ogawa and Queensland police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13], applying *Sheridan* at [199]-[200].

<sup>26</sup> *6ZJ3HG* at [31], citing *Sheridan* at [193] and *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) (**Richards**) at [19]; recently cited in *WJA Trading Pty Ltd and Office of Industrial Relations; R97 (Third Party)* [2023] QICmr 12 (15 March 2023) (**WJA**) at [22].

<sup>27</sup> Dated 20 March 2023, 13 June 2023, 19 June 2023, 2 November 2023 and XX November 2023.

<sup>28</sup> On 20 June 2023.

<sup>29</sup> Under cover of letters dated 20 January 2023, 29 March 2023 and 4 May 2023. Note – I did not receive compact discs attached some of the statements provided under cover of these letters. The statements in question indicate that these discs contain footage taken from various viewpoints of the circumstances that resulted in the charge of obstructing a police officer.

21. I am satisfied that the material before me shows that the applicant has engaged in a pattern of conduct in their dealings with QPS which has included:
- making a large number of telephone calls to QPS stations and units, often many times per day, and in some cases continuing after they had been asked to stop
  - insulting QPS staff and using hostile, derogatory language in communications with them
  - frequently making accusations about QPS staff
  - demanding responses from QPS staff within specific timeframes
  - frequently threatening to make complaints or take legal action
  - threatening to physically assault QPS staff; and
  - making statements indicating they were watching a certain police station.
22. In this decision, I am limited in what I can say about how the Category A Information<sup>30</sup> informed my conclusion about the pattern of conduct noted in the previous paragraph. This constraint is necessary to avoid subverting the very purpose of the review, and is required by the IP Act, which prevents me from including information that is claimed to be exempt information in a decision.<sup>31</sup>
23. Similarly, it is not possible for me to set out in this decision the aspects of QPS's submissions and supporting material<sup>32</sup> which I have taken into account. While doing so would not disclose any information in issue in this review, it would nevertheless divulge information of the same nature – that is, information that could reasonably be expected to give rise to the same concerns and claims of exemption,<sup>33</sup> if it were to become the subject of an access application. It would be paradoxical to include such information in this decision to explain why other information of the same nature may be refused. Doing so would be not only antithetical to the exemption provision being considered; it would also be inconsistent with the IP Act's purpose and general focus on the public interest.
24. Much to the applicant's frustration, the same types of constraints also applied during the review. The applicant questioned how they could be given a fair opportunity to respond to OIC's preliminary views without being given detail about the material considered by OIC, and contended that OIC's failure to provide this information was biased and unreasonable.<sup>34</sup>
25. I acknowledge that it was difficult for the applicant to make meaningful submissions interrogating the extent to which my view about their abovementioned pattern of conduct relied on the Category A Information itself and QPS's submissions and supporting material.<sup>35</sup> However, again the IP Act,<sup>36</sup> as well as the practical need to avoid obviating the purpose of the review, prevented me from providing the applicant with details of the Category A Information. Further, my concerns about providing information of the same nature as the Category A Information, as mentioned at paragraph 23 above, were applicable at this point as well.
26. Given these considerations, I was satisfied that *not* giving the applicant details of the Category A Information or QPS's submissions and supporting material was both

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<sup>30</sup> Noted at paragraph 20.b. above.

<sup>31</sup> Section 121(3) of the IP Act.

<sup>32</sup> Noted at paragraph 20.d. above.

<sup>33</sup> As is apparent from QPS's submissions dated 21 March 2023 and 28 March 2023.

<sup>34</sup> By telephone on 16 May 2023 and 29 June 2023.

<sup>35</sup> Noted at paragraph 20.b. and d. above.

<sup>36</sup> Section 118(2) of the IP Act.

reasonable and necessary, notwithstanding obligations of fairness in the IP Act<sup>37</sup> and at common law. I am satisfied that I ‘adopt[ed] procedures that are fair, having regard to the obligations of the commissioner under this Act’,<sup>38</sup> as is within my discretion as a delegate of the Information Commissioner.<sup>39</sup>

27. I do note, however, that the constraints noted at paragraphs 22 to 26 above did not apply to *all* of the information I relied on in reaching my conclusion about the pattern of conduct outlined in paragraph 21. The applicant had opportunity to consider *some* of this material – specifically, the content of the Released Information<sup>40</sup> and the documents disclosed by the CDPP to the applicant during court proceedings about two charges brought against the applicant for use of a carriage service to menace, harass or cause offence.<sup>41</sup> In my opinion, this material, on its own, provide sufficient support for my conclusion about this pattern of conduct.
28. In relation to the latter type of material, the applicant submitted that these charges were withdrawn<sup>42</sup> and, in doing so, queried the relevance of this material. QPS confirmed<sup>43</sup> that the CDPP offered no evidence regarding these two charges and that they were dismissed. However, QPS also noted that the CDPP had then presented three further charges under section 474.17(1) of the *Criminal Code Act 1995* (Cth) and demonstrated the overlap between the first two charges and the subsequent three charges.<sup>44</sup> Given this overlap, I am satisfied that the documents disclosed by the CDPP to the applicant have continuing relevance in this review.
29. The applicant submits that any interactions they had outside of their contact with a particular officer specified in their access application are irrelevant, and that I should not consider information about these other interactions.<sup>45</sup> I do not agree. The Information Commissioner has previously decided that past conduct or patterns of previous conduct are relevant in considering whether a serious act of harassment or intimidation could reasonably be expected to occur.<sup>46</sup> I also note the IP Act provides I am not bound by the rules of evidence and may inform myself on any matter in any way I consider appropriate.<sup>47</sup>
30. The applicant strongly denies that they would harm anyone and denies:<sup>48</sup>
- ever threatening to harm anyone
  - having acrimony towards QPS; and
  - being rude, menacing, harassing or offensive towards QPS staff.
31. Rather, the applicant contends that QPS harasses and intimidates them.

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<sup>37</sup> Section 110(2)(a) of the IP Act.

<sup>38</sup> Section 110(2)(a) of the IP Act.

<sup>39</sup> Section 108(1)(a) of the IP Act.

<sup>40</sup> Noted at paragraph 20.a. above.

<sup>41</sup> Noted at paragraph 20.e. above.

<sup>42</sup> Email dated 8 September 2023.

<sup>43</sup> Email dated 22 November 2023.

<sup>44</sup> Specifically:

- i. one of the new charges related to the same types of conduct towards officers and staff of the same police unit over a period including the same timeframe as one of the earlier charges
- ii. another of the new charges related to the same incident involving the same person at the same police station on the same date as one of the earlier charges; and
- iii. the final charge related to similar types of conduct as mentioned at i. towards officers and staff at the police station where the incident mentioned at ii. occurred.

<sup>45</sup> By telephone on 29 June 2023.

<sup>46</sup> *WJA* at [22]; *6ZJ3HG* at [31], citing *Sheridan* at [193] and *Richards* at [19].

<sup>47</sup> Section 108(1) of the IP Act.

<sup>48</sup> By telephone on 29 June 2023 and email dated 8 September 2023.

32. While I have carefully considered these submissions, I am satisfied that the material noted at paragraph 20 above supports the pattern of past conduct described at paragraph 21 above. Accordingly, I find that the behaviour described in relation to various QPS officers and staff constitutes harassment, as it has involved repeated actions that attack, disturb or torment these individuals.
33. I am fortified in this regard by the recent outcome of the three charges brought against the applicant for use of a carriage service to menace, harass or cause offence under section 474.17(1) of the *Criminal Code Act 1995* (Cth) noted at paragraph 28 above. I am aware<sup>49</sup> that these three charges recently led to convictions and a court order that the applicant not contact or communicate with certain specified QPS officers and give security of \$1,000 in relation to a two year good behaviour bond.<sup>50</sup>
34. Previous decisions have observed that, when considering whether the relevant conduct is 'serious', it is not necessary to demonstrate a likelihood of criminal behaviour resulting from disclosure,<sup>51</sup> and evidence of a criminal conviction is not required. Taking into account the pattern of conduct outlined in paragraph 21, I find that this repeated, contemptuous behaviour was a cause for substantial concern or apprehension for a number of QPS officers and staff. Accordingly, I am satisfied that the apprehended harassment and intimidation is serious in nature. Again in this regard, I am fortified by the outcome of the charges noted in the preceding paragraph.

#### Is the expectation reasonable?

35. Yes.
36. The term 'could reasonably be expected to' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,<sup>52</sup> nor merely a possibility.<sup>53</sup> This requires me to objectively examine the relevant material before me.<sup>54</sup>
37. I accept that the applicant disagrees that there is a reasonable basis for the expectation that a serious act of harassment may result from disclosure. However, having carefully considered the material before me noted at paragraph 20 above, I find that this expectation is not irrational, absurd, ridiculous or merely a possibility – rather, there is a reasonable basis for the expectation.<sup>55</sup>
38. The applicant submitted, in relation to the charges against them, that in Queensland a person is innocent until proven guilty. I note that, since making this submission, they have been convicted of three charges regarding use of a carriage service to menace, harass or cause offence – see paragraph 33 above. Regardless, under the IP Act, it is not necessary for me to be satisfied beyond reasonable doubt, or even upon a balance of probabilities<sup>56</sup> that disclosing the relevant information *will* produce the anticipated serious harassment or intimidation. The relevant evidentiary threshold I must consider

<sup>49</sup> From QPS's submissions dated 22 November 2023.

<sup>50</sup> I am also aware that a charge of obstructing a police officer under section 790(1)(b) of the *Police Powers and Responsibilities Act 2009* (Qld), relating to circumstances at the time QPS officers informed the applicant of the two earlier charges was finalised with a six month good behaviour bond, a fine of \$500 and no conviction recorded.

<sup>51</sup> *Conde and Queensland Police Service* (Unreported, Queensland Information Commissioner, 18 October 2012) (**Conde**) at [23].

<sup>52</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**) at [29].

<sup>53</sup> *6ZJ3HG and Department of Environment and Heritage Protection; OY76VY (Third Party)* [2016] QICmr 8 (24 February 2016) (**6ZJ3HG**) at [30]; *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**) at [44], citing *Re B and Brisbane North Regional Health Authority* (1996) 1 QAR 279 at [160].

<sup>54</sup> *Murphy* at [45]-[47].

<sup>55</sup> Again, my ability to explain how this conclusion is informed by the Category A Information and QPS's submissions and supporting material (at paragraph 20.b. and d.) is constrained, and I note that the content of the Released Information and the documents disclosed by the CDPP (at paragraph 20.a. and e.) would, in any event, support this conclusion

<sup>56</sup> *Cockcroft* at [29], cited in *Sheridan* at [192].

is whether the anticipated harassment or intimidation *'could reasonably be expected to'* occur. I am, as explained in the preceding paragraph, satisfied that this threshold has been met.

**Does the expectation arise as a result of disclosure of the Category A Information?**

39. Yes.
40. For the exemption to apply, it must be reasonably expected that the relevant conduct arises as a result of disclosure, rather than independently or from any other circumstance.<sup>57</sup>
41. I am satisfied that there is a history of acrimony between the applicant and QPS which pre-exists the access application. This is denied by the applicant; however in the same submissions they asserted that QPS is harassing and intimidating them, rather than vice versa, and described to OIC a history of mistreatment of them by QPS officers over a period of 20 years.<sup>58</sup> Given this, I consider it likely that *some* level of harassment or intimidation could reasonably be expected to continue independently of disclosure of the Category A Information.
42. QPS described in its internal review decision that the applicant's behaviour (as set out in paragraph 21 above) *'increased in its intensity, frequency and seriousness following release of information to [them] from a previous access application which sought a similar type of information'*.<sup>59</sup> The information before me indicates that the applicant's persistent phone calls and hostile communications did increase in their intensity and frequency following this release of similar information.<sup>60</sup>
43. Having considered the applicant's pattern of past behaviour and the nature of the Category A Information,<sup>61</sup> I consider that disclosure of the Category A Information could reasonably be expected to result in further repeated, aggressive calls and correspondence to QPS staff. Taking into account the material before me, I consider that this remains reasonably possible despite the court order noted at paragraph 33 above, which requires that the applicant not contact or communicate with certain specified QPS officers. In the circumstances leading to the charges, the applicant ignored requests from QPS to refrain from similar contact. Also, the order only applies to listed QPS officers and staff, leaving open the possibility that the applicant may engage in similar contact with others. Given these considerations, I find that there is the necessary nexus between disclosure of the Category A Information and the reasonable expectation of relevant conduct.

**Other matters raised by the applicant**

44. The applicant expressed concerns that OIC is biased and unreasonable because OIC just accepted whatever QPS said but wouldn't tell them what this was.<sup>62</sup> I have addressed the applicant's concerns about procedural fairness and considering interactions other than the interaction that is the subject of their access application at paragraphs 22 to 29 above.

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<sup>57</sup> *Watson v Office of Information Commissioner Qld & Ors* [2015] QCATA 95 per Thomas J at [19].

<sup>58</sup> By telephone on 29 June 2023 and email dated 8 September 2023.

<sup>59</sup> On 1 November 2022.

<sup>60</sup> Including that noted at paragraphs 20.a., b., d. and e. above.

<sup>61</sup> Section 121(3) of the IP Act limits what I can say about this information.

<sup>62</sup> By telephone on 29 June 2023.



45. The applicant also contended that OIC is influenced by a desire not to upset QPS because external reviews involving QPS are 25% of OIC's work and if OIC upsets QPS, OIC loses this work and would cease to exist.<sup>63</sup> The applicant's conception of OIC losing work if it 'upsets' QPS is misconceived, given QPS's role as a respondent agency in external reviews sought by applicants such as themselves. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.<sup>64</sup>
46. Generally, in terms of bias, I have considered the applicant's submissions alongside the High Court's tests for assessing actual and apprehended bias of a decision maker. The High Court's test for actual bias is a subjective test about the state of mind of the particular decision-maker<sup>65</sup> which requires a finding that the decision-maker was 'so committed to a conclusion already formed as to be incapable of alteration, whatever evidence or arguments may be presented'.<sup>66</sup> Its test for apprehended bias requires consideration of 'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide'.<sup>67</sup> In terms of apprehended bias, the High Court has also noted that [t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made'.<sup>68</sup>
47. I have not to my knowledge dealt with the applicant in any capacity prior to their reviews, and cannot identify any conflict of interest in my dealing with this review. In these circumstances, paraphrasing the High Court's test for actual bias, I was not committed to any particular conclusion in this external review; rather, I considered and acted on the basis of the evidence and arguments before me. Further, paraphrasing the High Court's test for apprehended bias, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I<sup>69</sup> might not bring an impartial and unprejudiced mind to the resolution of this matter.
48. The applicant has also complained about the quality of documents QPS released to them in this external review<sup>70</sup> and in a previous external review.<sup>71</sup> I have informed the applicant that OIC has no power under the IP Act to consider the quality of documents.<sup>72</sup>
49. Finally, the applicant submits that they require the requested information because:<sup>73</sup>
- QPS is being deliberately deceptive; and
  - they intend to take legal action against a QPS Officer.
50. These submissions could be construed as raising public interest factors<sup>74</sup> favouring disclosure of the Category A Information. However, once I am satisfied that the

<sup>63</sup> By telephone on 29 June 2023.

<sup>64</sup> Section 108 of the IP Act.

<sup>65</sup> *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 (**Michael Wilson**) at [33] per Gummow ACJ, Hayne, Crennan and Bell JJ.

<sup>66</sup> *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 at [72] per Gleeson CJ and Gummow J.

<sup>67</sup> *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson* at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

<sup>68</sup> *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Keifel, Bell, Keane and Nettle JJ.

<sup>69</sup> As a delegate of the Information Commissioner under section 139 of the IP Act.

<sup>70</sup> Email dated 19 June 2023.

<sup>71</sup> By telephone on 29 June 2023.

<sup>72</sup> Letter to the applicant dated 28 June 2023.

<sup>73</sup> Email dated 19 June 2023 and telephone on 29 June 2023.

relevant information is exempt, as is the case for the Category A Information, there is no scope for me to take public interest factors favouring disclosure into account. This is because Parliament has already determined that disclosure of the kinds of information listed in schedule 3 of the RTI Act is contrary to the public interest, regardless of any types of public interest that may arise in particular circumstances.<sup>75</sup>

## Conclusion

51. For the reasons set out above, I find that disclosure of the Category A Information could reasonably be expected to result in QPS staff being subjected to a serious act of harassment or intimidation. Accordingly, access to this information may be refused on the basis that it is exempt information.

## Category B Information

### Relevant law

52. An agency may also refuse access to information, the disclosure of which would, on balance, be contrary to the public interest.<sup>76</sup> In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>77</sup>

- 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.

53. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,<sup>78</sup> together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias<sup>79</sup> and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.<sup>80</sup>

## Findings

### Irrelevant factors

54. No irrelevant factors arise in the circumstances and I have not taken any into account in making my decision.

### Factors favouring disclosure

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<sup>74</sup> Schedule 4, part 2 of the RTI Act sets out the factors favouring disclosure that a decision-maker must take into account when deciding the balance of public interest.

<sup>75</sup> Section 48(2) of the RTI Act.

<sup>76</sup> Section 47(3)(b) and 49 of the RTI Act. The term public interest refers to 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.

<sup>77</sup> Section 49(3) of the RTI Act.

<sup>78</sup> I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below for the Category B Information.

<sup>79</sup> Section 64 of the IP Act.

<sup>80</sup> Section 67(2) of the IP Act and section 47(2) of the RTI Act.

55. As the Category B Information is limited to names and contact details of individuals, I do not consider that any factors favouring disclosure would be advanced by the release of the Category B Information to the applicant.<sup>81</sup>
56. I have noted the applicant's submission that they require the requested information because:<sup>82</sup>
- QPS is being deliberately deceptive; and
  - they intend to take legal action against a QPS Officer.
57. Given this submission, I have considered whether disclosure of the Category B Information could reasonably be expected to advance fair treatment of the applicant or the administration of justice generally or for the applicant.<sup>83</sup> However, noting the nature of the Category B Information (that is, names and contact details of third party individuals in particular contexts) and the absence of any detail regarding the legal action referenced by the applicant, there is nothing before me to suggest that these factors are relevant.

### Factors favouring nondisclosure

58. The Category B Information is the personal information<sup>84</sup> of individuals other than the applicant. I consider that releasing this information would reveal the personal information of other individuals<sup>85</sup> and prejudice their right to privacy.<sup>86</sup>
59. The Category B Information appears in emails authored by the applicant. I consider this reduces the weight of the abovementioned factors to some degree. However, I still do consider these nondisclosure factors apply to the Category B Information, as it is not possible to place restrictions on the use, dissemination or republication of information released under the IP Act. In these circumstances, I afford these factors favouring nondisclosure moderate weight.

### Balancing the public interest factors

60. For the reasons explained above, I do not consider that any factors favouring disclosure apply to the Category B Information. On the other hand, I have afforded moderate weight to the factors favouring nondisclosure which relate to the personal information and privacy of other individuals.
61. In these circumstances, I find that the factors favouring nondisclosure are determinative. I therefore find that that access to the Category B Information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

### DECISION

62. For the reasons set out above, I vary QPS's decision and find that:

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<sup>81</sup> In particular, I do not consider that disclosing the Category B Information would reveal the applicant's personal information to them (schedule 4, part 2, item 7 of the RTI Act), advance the accountability or transparency of QPS (schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act) or reveal or enable inquiry into possible deficiencies in QPS conduct (schedule 4, part 2, items 5 and 6 of the RTI Act).

<sup>82</sup> Email dated 19 June 2023 and telephone on 29 June 2023.

<sup>83</sup> Schedule 4, part 2, items 10, 16 and 17 of the IP Act.

<sup>84</sup> 'Personal information' is defined in section 12 of the IP Act 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'.

<sup>85</sup> Harm factor at schedule 4, part 4, section 6 of the RTI Act.

<sup>86</sup> Factor favouring nondisclosure at schedule 4, part 3, item 3 of the RTI Act.

- access to the Category A Information may be refused on the ground that it comprises exempt information, as its disclosure could reasonably be expected to result in a serious act of harassment or intimidation; and
- access to the Category B Information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

63. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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A Rickard  
**Acting Right to Information Commissioner**

**Date: 29 November 2023**

## APPENDIX

### Significant procedural steps

Date	Event
29 November 2022	External review application received.
30 November 2022	OIC requested that QPS provide initial documents.
15 December 2022	OIC received initial documents from QPS.
11 January 2023	OIC requested that QPS provide the information in issue and submissions supporting its position.
24 February 2023	OIC received the information in issue from QPS.
21 March 2023	OIC received the requested submissions from QPS.
28 March 2023	OIC received an email from QPS about its submissions.
26 April 2023	OIC discussed aspects of the external review with the applicant by telephone.
28 April 2023	OIC requested that QPS provide further information about matters raised, and copies of documents referenced, in its submissions.
2 May 2023	OIC discussed aspects of the external review with the applicant by telephone.
3 May 2023	OIC received further information from QPS by telephone.
12 May 2023	OIC conveyed a preliminary view to applicant.
14 May 2023	OIC received a submission from applicant.
16 May 2023	OIC discussed aspects of the external review with the applicant by telephone.
18 May 2023	OIC received a further submission received from applicant.
19 May 2023	OIC received a further email received from applicant.
22 May 2023	OIC received a further email received from applicant.
24 May 2023	OIC received an email from the applicant advising they did not intend to make further submissions.
25 May 2023	OIC conveyed a preliminary view to QPS that certain information should be released and requested clarification of certain matters raised in its submissions.
8 June 2023	OIC received advice from QPS that it agreed to release certain information to the applicant.
12 June 2023	OIC advised the applicant that certain information would be disclosed to them shortly. OIC requested that QPS disclose the relevant information to the applicant and repeated OIC's request for further information about certain matters raised in QPS's submissions.
13 June 2023	OIC received submissions from QPS providing requested further information.

Date	Event
19 June 2023	QPS released certain information to the applicant as requested. OIC received further submissions from QPS providing requested further information. OIC received a submission from the applicant.
20 June 2023	OIC received by file transfer copies of documents mentioned in QPS's email dated 13 June 2023. The applicant emailed the Minister for Police, the Commissioner of Police and their local Member of Parliament to complain about redactions to the pages released to them, and copied this email to OIC.
23 June 2023	OIC received further information from QPS about matters raised in its submissions.
27 June 2023	OIC received a submission from the applicant.
28 June 2023	OIC conveyed a second preliminary view to the applicant.
29 June 2023	OIC discussed aspects of the external review with the applicant by telephone and received submissions. OIC gave the applicant an extension of time to 31 August 2023 to provide further submissions.
1 August 2023	OIC received further information from QPS about matters raised in submissions.
7 September 2023	OIC advised the applicant that, in the absence of further submissions, the review would be closed if no response was received that day.
8 September 2023	OIC advised the applicant that the review had been closed in the absence of a response. OIC received a request from applicant seeking re-opening of the review and a formal decision.
11 September 2023	OIC confirmed to the applicant that the review had been re-opened. OIC requested clarification from QPS about matters raised in submissions
14 September 2023	OIC received the further requested information from QPS.
1 November 2023	OIC requested further information from QPS.
2 November 2023	OIC received the further requested information from QPS.
5 November 2023	OIC received an email from the applicant.
6 November 2023	OIC advised the applicant of relevant complaints and oversight information and confirmed that a formal decision would be issued shortly.
8 November 2023	OIC requested clarification of certain information from QPS.
15 November 2023	OIC sent a further email to QPS regarding its request for clarification.
22 November 2023	OIC sent a further email to QPS regarding its request for clarification and received the requested information from QPS.

