



Decision and Reasons for Decision

Application Number: 311039

Applicant: T5Q2EE

Respondent: Queensland Police Service

Decision Date: 7 August 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - applicant sought access to two reports - whether the reports were obtained, used or prepared for an investigation by a prescribed crime body or another agency in the performance of the prescribed functions of the prescribed crime body - whether the reports are exempt under schedule 3 section 10(4) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied for review of Queensland Police Service's (**QPS**) decision to refuse access to two reports sought by the applicant.
2. Although QPS initially refused access to the reports in issue on the basis that they comprised exempt information because their disclosure could reasonably be expected to prejudice the investigation of a possible contravention of the law; on external review, QPS contended that the reports comprised exempt information on the basis that they were obtained, used or prepared for an investigation by the QPS Ethical Standards Command, in performing the prescribed functions of the Crime and Misconduct Commission (**CMC**).
3. The applicant submitted that she was entitled to see the reports because they concerned her and impacted upon her employment. She also argued, with respect to one of the reports, that the report's author did not require the report to remain confidential and she was aware of the contents of the report. She did not consider that disclosing the reports to her could prejudice any current investigations into her conduct.
4. As the requirements of schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**) were satisfied, it was found that Queensland Police Service was entitled to refuse access to the two reports.

Steps taken on external review

5. Significant procedural steps relating to the application and external review are set out in the Appendix.

Reviewable decision

6. The decision under review is QPS' decision dated 19 April 2012 refusing access to the reports on the basis that their disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law and they therefore comprised exempt information.¹

Information in issue

7. In her access application,² the applicant requested two reports completed by particular QPS officers within a specified date range.
8. QPS located two relevant documents:
 - **Report A:** a memo dated 26 August 2011 addressed to the Assistant Commissioner, Operations Support Command from the Deputy Commissioner (Specialist Operations).
 - **Report B:** a memo dated 3 March 2010 addressed to the Inspector, Fingerprint Bureau from the QPS officer named by the applicant in her access application.

Material considered

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

Issue for determination

10. The issue for determination in this review is whether QPS is entitled to refuse access to Reports A and B.

Relevant law

11. A person has a right to be given access to documents of an agency.³ However, this right is subject to other provisions of the RTI Act, including the grounds on which access can be refused.
12. Access can be refused under the RTI Act where the information sought in an access application comprises exempt information.⁴ Schedule 3 of the RTI Act specifies the type of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, information is exempt if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body (**CMC Exemption**).⁵

Findings

13. QPS is entitled to refuse access to the information in issue if:
 - a) the exception to the CMC Exemption does not apply⁶
 - b) Reports A and B were obtained, used or prepared for an investigation by QPS; and

¹ Under sections 47(3)(a) and 48, and schedule 3, section 10(1)(a) of the RTI Act.

² Dated 26 March 2012.

³ Section 23 of the RTI Act.

⁴ Section 47(3)(a) of the RTI Act.

⁵ Schedule 3, section 10(4) of the RTI Act.

⁶ In schedule 3, section 10(6) of the RTI Act.

- c) in undertaking the investigation, QPS was performing the prescribed functions of the prescribed crime body.

14. The applicant contends⁷ that she is entitled to access Reports A and B because:

- she has been suspended on the basis of Report A
- she is aware of the existence of Report A and the contents of Report B and therefore disclosure of this information to her will not prejudice any ongoing investigation;⁸ and
- the author of Report B “*does not require his identity or report to be treated as confidential as he previously authorised the release of an amended copy of this report in an earlier RTI application*”.

15. I acknowledge the submissions made by the applicant. However, the matters the applicant raises are not relevant to the issue to be decided in this review. This is because, provided Reports A and B satisfy the requirements set out in paragraph 13 above, QPS will be entitled to refuse access on the basis that the reports comprise exempt information.

Are the requirements of the CMC Exemption satisfied?

16. Yes, the requirements are satisfied and therefore QPS is entitled to refuse access to the information in issue. I explain the basis for reaching this conclusion below.

a) Does the exception in schedule 3, section 10(6) of the RTI Act apply?

17. No, the exception does not apply in this case.

18. The CMC exemption cannot apply if the:

- information in issue is about the applicant; and
- investigation has been finalised.⁹

19. Whilst the first requirement may be satisfied in this case, as the applicant is the subject of the investigations, the second is not. I accept QPS’ submission that it is conducting two relevant investigations¹⁰ and these investigations are ongoing.¹¹

b) Has QPS ‘obtained, used or prepared’ Reports A and B for the investigations?

20. Yes, each report satisfies this requirement.

21. The terms ‘obtained, used or prepared’ are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) and so are to be given their ordinary meaning.¹²

22. QPS submits that:¹³

- Report A was prepared by officers working in the QPS Ethical Standard Command for the purposes of a current police misconduct investigation; and

⁷ In her external review application dated 6 May 2012 and in telephone discussions with OIC on 10 May 2012 and 12 June 2012.

⁸ Referring to *McCann and Queensland Police Service* (1997) 4 QAR 30.

⁹ Schedule 3, section 10(6) of the RTI Act.

¹⁰ Investigate, in this context, includes to ‘examine or consider’; Schedule 2, *Crime and Misconduct Act 2001* (Qld) (**CM Act**) and *Springborg and the Crime and Misconduct Commission* (2006) 7 QAR 77.

¹¹ Submissions received by OIC from QPS on 6 June 2012. The applicant also refers to ongoing investigations in her submissions to OIC during telephone discussions on 10 May 2012 and 12 June 2012.

¹² *Springborg and the Crime and Misconduct Commission* (2006) 7 QAR 77.

¹³ In a letter to OIC dated 6 June 2012.

- Report B was obtained by QPS Ethical Standard Command from the QPS Fingerprints Bureau and is being used in a police misconduct investigation.

23. I accept QPS' submissions at paragraph 22 and am satisfied that Report A was prepared, that is, created for the purposes of a police misconduct investigation and Report B is being used, that is, it forms part of the material being considered, in a police misconduct investigation.¹⁴

c) Are the investigations being conducted by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body?

24. Yes, QPS Ethical Standard Command is conducting the investigations, and in so doing, is performing the CMC's misconduct functions.

25. Whilst QPS is not a prescribed crime body, the CMC is.¹⁵ The CMC's prescribed functions include its misconduct functions.¹⁶

26. The CMC's misconduct functions include ensuring that a complaint about misconduct is dealt with in an appropriate way.¹⁷ The CMC must perform its misconduct function having regard to the principles of cooperation, capacity building, devolution and the public interest.¹⁸

27. The CM Act defines 'misconduct' to include 'official misconduct or police misconduct'.¹⁹

28. The term 'police misconduct' is defined in the CM Act²⁰ as:

... conduct, other than official misconduct, of a police officer that—

- (a) *is disgraceful, improper or unbecoming a police officer; or*
- (b) *shows unfitness to be or continue as a police officer; or*
- (c) *does not meet the standard of conduct the community reasonably expects of a police officer.*

29. If the Commissioner of Police reasonably suspects that a complaint involves or may involve police misconduct, the Police Commissioner must notify the CMC.²¹ However, the Commissioner of Police has primary responsibility for dealing with such complaints,²² subject to the CMC's monitoring role.²³

30. The CM Act provides that the Commissioner of Police must deal with a complaint about police misconduct in the way the commissioner considers most appropriate, subject to the CMC's monitoring role.

31. I accept QPS' submission that the relevant investigations are into allegations, which if proven, may constitute police misconduct. In conducting these investigations, QPS is performing the CMC's misconduct function by ensuring the complaints are dealt with in accordance with the requirements of the CM Act,²⁴ with oversight from the CMC.

¹⁴ As indicated in QPS' submission to OIC dated 6 June 2012.

¹⁵ Schedule 3, section 10(9) of the RTI Act.

¹⁶ Schedule 3, section 10(9) of the RTI Act.

¹⁷ Section 33(b) of the CM Act.

¹⁸ Section 33(b) and section 34 of CM Act.

¹⁹ See the Dictionary in Schedule 2 of the CM Act.

²⁰ Dictionary in Schedule 2 of the CM Act.

²¹ Section 37 of CM Act.

²² Section 41(1) of the CM Act.

²³ Sections 45 (2) and 47 of the CM Act.

²⁴ Section 42 of the CM Act.

Conclusion

32. On the basis of the matters set out above, I am satisfied that the requirements of the CMC Exemption are met and Reports A and B therefore comprise exempt information under section 48 and schedule 3, section 10(4) of the RTI Act.

DECISION

33. I affirm QPS' decision to refuse access to the information in issue under sections 47(3)(a) and 48 of the RTI Act, though on the basis that it comprises exempt information under schedule 3, section 10(4) of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Suzette Jefferies
Assistant Information Commissioner

Date: 7 August 2012

APPENDIX

Significant procedural steps

Date	Event
28 March 2012	QPS received the access application.
19 April 2012	QPS issued its decision on the application under the RTI Act.
6 May 2012	The applicant lodged the external review application and supporting submissions.
11 May 2012	OIC confirmed with the applicant and QPS that the external review application had been accepted and asked QPS to provide a submission on the application of schedule 3, section 10(1)(a) of the RTI Act to the information in issue.
7 June 2012	OIC received a submission dated 6 June 2012 from QPS explaining the information in issue was held by the QPS Ethical Standards Command and varying its claim for exemption to schedule 3, section 10(4) of the RTI Act.
12 June 2012	<p>OIC conveyed an oral preliminary view to the applicant that the information in issue was exempt and access may be refused under schedule 3, section 10(4) of the RTI Act.</p> <p>The applicant indicated that she did not accept the preliminary view and asked that a formal decision be issued by OIC as soon as possible.</p> <p>The applicant also asked OIC to refer the matter to the Queensland Civil and Administrative Tribunal (QCAT) under section 118 of the RTI Act.</p>
13 June 2012	QPS provided OIC with a copy of an internal QPS memorandum which provided further information about the information in issue and confirmed that the information in issue was held by the QPS Ethical Standards Command.
14 June 2012	<p>OIC wrote to the applicant:</p> <ul style="list-style-type: none"> • confirming the oral preliminary view • inviting the applicant to make further submissions to OIC • advising of the Information Commissioner's decision not to refer the matter to QCAT; and • enclosing a copy of the QPS submission dated 6 June 2012.
6 August 2012	OIC confirmed in a telephone discussion with QPS that the relevant investigations were ongoing.