



Decision and Reasons for Decision

Citation:	<i>Jose and Queensland Police Service [2014] QICmr 7 (7 March 2014)</i>
Application Number:	311779
Applicant:	Jose
Respondent:	Queensland Police Service
Decision Date:	7 March 2014
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information exchanged between managers about the applicant - administration of justice - agency's management functions - personal information and privacy - whether disclosure of the 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 applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to a report about his employment (**Report**).
2. QPS located the Report and released it in full to the applicant.¹ The applicant sought internal review on the basis that QPS had not located the two attachments mentioned in the Report. QPS subsequently located the attachments and decided² to release Attachment 1 and refuse access to Attachment 2.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision to refuse access to Attachment 2.
4. For the reasons set out below, I vary QPS's decision and find that access to Attachment 2 may be refused under section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009 (Qld)* (**RTI Act**) on the basis that disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

¹ Dated 25 July 2013.

² Dated 27 August 2013.

Background

5. Significant procedural steps are set out in the Appendix.

Reviewable decision

6. In its internal review decision dated 27 August 2013, QPS indicated that it intended to make a separate healthcare decision³ in relation to Attachment 2. As no subsequent healthcare decision was made, the decision under review is QPS's deemed decision to refuse access to Attachment 2.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

8. The information in issue is Attachment 2 which is a response provided by the applicant's then supervisor at the request of the author of the Report.⁴

Relevant law

9. Under the IP Act, an individual has a right to be given access to documents of an agency which contain the individual's personal information.⁵ This right of access is subject to some limitations, including that an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁶
10. 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.

Findings

Where does the balance of the public interest lie in this matter?

11. In assessing the public interest in this matter, I have considered all of the applicant's submissions. I am satisfied that disclosing Attachment 2 to the applicant would, on balance, be contrary to the public interest, for the reasons set out below.

Irrelevant factors

12. No irrelevant factors arise in the circumstances of this case.

³ In accordance with sections 51 and 30(5) and (6) of the RTI Act.

⁴ Section 121 of the IP Act provides that the Information Commissioner must not, in a decision, or in reasons for a decision, on an external review, include information that is claimed to be contrary to public interest information.

⁵ Section 40 of the IP Act.

⁶ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act. Section 49 of the RTI Act sets out the steps to take in deciding the public interest. Schedule 4 of the RTI Act sets out various public interest factors for and against disclosure which may be relevant in deciding where the balance of the public interest lies.

Factors favouring disclosure

Personal information of the applicant

13. Attachment 2 is about the applicant's employment with QPS and is therefore his personal information;⁷ this raises a public interest factor favouring disclosure.⁸ Given the context in which the information was given and the particular nature of the information, the public interest in the applicant having access to his personal information is high.

Transparency and accountability

14. A public interest factor in favour of disclosure will arise where disclosure of information could reasonably be expected to enhance government accountability and provide reasons or background information for government decisions.⁹ QPS has released complete copies of the Report and Attachment 1¹⁰ to the applicant. To the extent those documents set out issues relating to the applicant's employment and any associated recommendations made by QPS, I consider the above public interests have been significantly discharged. However, I acknowledge that these factors may be further advanced through disclosure of Attachment 2 and therefore, I afford them moderate weight in favour of disclosure.

Administration of justice

15. There are public interest factors favouring disclosure if disclosing information could reasonably be expected to contribute to the administration of justice for a person, including by providing procedural fairness.¹¹
16. The applicant contends that Attachment 2 is defamatory and that he has made a complaint of workplace bullying and victimisation through false reports. The applicant submits that Attachment 2 is required to prove his complaint. I have therefore considered whether disclosure of Attachment 2 would assist the applicant in pursuing legal action in this regard.
17. In *Willsford and Brisbane City Council*¹² the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor can arise if an applicant demonstrates that:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.¹³
18. On the evidence before me, I am not satisfied that the applicant has demonstrated the above elements in this matter. It is evident from the applicant's submissions that he did

⁷ Personal information is defined in section 12 of the IP Act as "information or an opinion... whether true or not... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion".

⁸ Schedule 4, part 2, item 7 of the RTI Act.

⁹ Schedule 4, part 2, items 1, 10 and 11 of the RTI Act.

¹⁰ An assessment of the applicant's performance by his supervisor during a secondment.

¹¹ Schedule 4, part 2, item 16 and 17 of the RTI Act.

¹² *Willsford and Brisbane City Council* (Unreported, Queensland Information Commissioner, 27 August 1996) (*Willsford*).

¹³ *Willsford* at paragraph 17.

not need Attachment 2 to lodge a complaint with the Anti-Discrimination Commission of Queensland as a proceeding has already been commenced. In addition, Attachment 2 comprises the opinions and observations of the author in relation to the operational capacity of the applicant. While I am unable to provide any further description of Attachment 2,¹⁴ I am not satisfied that disclosure of this information will enable the applicant to pursue a legal remedy or evaluate whether the remedy is available.

19. The applicant also contends that *"it is in the public interest for a full and frank disclosure of all documentation relating to allegations made against [him]."* I have therefore considered whether disclosure of Attachment 2 would afford the applicant procedural fairness in his dealings with QPS about his employment.
20. The type of information contained within Attachment 2 is in the nature of a supervisor providing a superior officer with their observations of a subject officer within the workplace. This type of information can be distinguished from matters involving adverse allegations against a subject officer in the context of a workplace grievance. In that situation, procedural fairness generally requires that the substance of the allegations be put to the subject officer before, and or, during the investigation.
21. As noted in paragraph 15, the Report and Attachment 1 have been released to the applicant and, to the extent they set out issues relating to the applicant's employment and any associated recommendations made by QPS, I consider the public interest in relation to the administration of justice has been discharged. Having carefully considered Attachment 2, I am satisfied that its disclosure would not further the applicant's procedural fairness in his dealing with QPS about his employment.
22. I therefore find that the public interest factor in relation to the administration of justice does not arise here.

Incorrect or misleading information

23. A public interest factor favouring disclosure also arises where disclosure could reasonably be expected to reveal the information was incorrect or misleading.¹⁵
24. The applicant argues that Attachment 2 *"contains falsehoods, embellishment of facts and exaggerations and which was written in such a way to achieve the end result that [the author] desired, which was having me forced out of the QPS."*
25. While I am prohibited from disclosing the content of Attachment 2 in the review,¹⁶ it can broadly be described as the opinions and observations of the author in relation to the operational capacity of the applicant. On the information available to me, I am not satisfied that the QPS's record of these opinions and observations is inaccurate or misleading. I therefore find that the public interest factor in relation to revealing that information was incorrect or misleading does not arise here.

Factors favouring nondisclosure

Prejudice to an agency's management functions

26. QPS has submitted that disclosure of Attachment 2 could reasonably be expected to prejudice its management function of QPS and cause a public interest harm by

¹⁴ See footnote 3.

¹⁵ Schedule 4, part 2, item 12 of the RTI Act.

¹⁶ See footnote 3.

adversely affecting the management or assessment by QPS of its staff.¹⁷ QPS has confirmed that the applicant's supervisor was *'fulfilling a management function of QPS when he submitted this information ...'* QPS has raised concerns that if managers knew that such information would be disclosed, they may be less cooperative in providing frank responses to their superiors.

27. In any workplace, supervisors have a responsibility to lead and support their employees and address particular issues arising in relation to individual employees. To effectively perform these functions, supervisors must be able to openly discuss issues impacting their area of responsibility with senior management. I am satisfied that disclosing Attachment 2 could reasonably be expected to affect QPS's management function in that supervisors may, in the future, be reluctant to candidly engage in the management of employment issues. In the circumstances of this case, I consider that significant weight should be given to these factors in favour of nondisclosure.

Personal information of third party

28. The information also contains the personal information of the applicant's supervisor; the author of Attachment 2. This raises factors favouring nondisclosure in relation to privacy and safeguarding personal information.¹⁸
29. The applicant contends that the information contained within Attachment 2 is not the *"private and personal information [of the author], but is readily known to the general police population"* as it is the author's knowledge of the applicant and there is nothing in Attachment 2 which *"would in any way impact adversely on [the author]"*.
30. Generally, information created in the course of a person's employment is considered to be their routine personal work information¹⁹ and as such, does not attract a high privacy interest and the harm arising from disclosure is considered to be low. However, I do not consider this is the case in relation to Attachment 2. Given the particular character of the information provided by the author, I am satisfied that it is not of a routine nature and the harm which could result from disclosure is high. I therefore consider that significant weight should be given to these factors in favour of nondisclosure.

Balancing the public interest

31. In this case, the factors favouring disclosure are not of insignificant weight. The applicant's ability to access his personal information carries a high weight and the accountability and transparency factors would be somewhat further advanced by disclosure of Attachment 2. However, the factors favouring nondisclosure carry significant weight. In particular, I consider that the prejudice to QPS's management function would be substantial if the particular type of information in Attachment 2 was disclosed.
32. Having carefully considered all of the information available to OIC and the relevant public interest factors discussed above, I am satisfied that the factors favouring disclosure are outweighed by the factors favouring nondisclosure. Accordingly, disclosure of Attachment 2 would, on balance, be contrary to the public interest.

¹⁷ Schedule 4, part 3, item 19 and part 4, section 3(c) of the RTI Act.

¹⁸ Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

¹⁹ Routine personal work information is information that is solely and wholly related to the routine day to day work duties and responsibilities of a public service officer. See OIC's guideline *Routine personal work information of public servants* available on OIC's website <http://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/processing-applications/routine-personal-work-information-of-public-sector-employees>.

DECISION

33. I vary the QPS's deemed decision and find that access to Attachment 2 may be refused on the basis that disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

JS Mead
Right to Information Commissioner

Date: 7 March 2014

APPENDIX

Significant procedural steps

Date	Event
8 July 2013	QPS received the access application.
25 July 2013	QPS issued a decision on the access application.
9 August 2013	QPS received the internal review application.
27 August 2013	QPS issued its internal review decision.
16 October 2013	OIC received the applicant's application for external review and sought processing information from QPS.
23 October 2013	QPS provided copies of documents relating to the processing of the access application, the Report, Attachment 1 and Attachment 2.
30 October 2013	OIC telephoned QPS to ascertain whether a separate healthcare decision had been made. QPS advised that no healthcare decision was made.
1 November 2013	OIC asked QPS to provide a submission setting out reasons why it considered access to Attachment 2 should be refused. OIC also wrote to the applicant and advised that enquiries were being made to assist OIC in considering whether to exercise discretion to extend the time for the applicant to apply for external review.
6 November 2013	OIC received a submission from the applicant.
8 November 2013	OIC notified the applicant and QPS in writing that the external review had been accepted out of time. OIC also asked QPS to provide the submission in relation to its decision.
20 November 2013	OIC received QPS's submission.
4 December 2013	OIC wrote to QPS and requested a further submission.
11 December 2013	OIC received QPS's further submission.
7 February 2014	OIC wrote to the applicant conveying a preliminary view that disclosure of Attachment 2 would, on balance, be contrary to the public interest and invited him to provide a submission supporting his case.
21 February 2014	OIC received the applicant's submission.