



## Decision and Reasons for Decision

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<b>Citation:</b>	<i>F10 and Queensland Police Service</i> [2022] QICmr 2 (21 January 2022)
<b>Application Number:</b>	316072
<b>Applicant:</b>	F10
<b>Respondent:</b>	Queensland Police Service
<b>Decision Date:</b>	21 January 2022
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - body worn video footage of police attendance at an incident involving a person other than the applicant - police accountability and transparency - administration of justice - procedural fairness - safeguarding personal information and privacy of other individuals - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to the body worn camera footage of QPS officers who were called to an incident involving an individual other than the applicant on 5 December 2020 (**Incident**).<sup>2</sup>
2. QPS located six video recordings relevant to the application and decided to refuse access on the ground disclosure would, on balance, be contrary to the public interest.<sup>3</sup>
3. The applicant sought internal review of QPS' decision.<sup>4</sup> As QPS did not make an internal review decision within the prescribed timeframe, they were taken to have made a decision affirming QPS' original decision.<sup>5</sup>
4. The applicant then applied<sup>6</sup> to the Office of the Information Commissioner (**OIC**) for external review.

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<sup>1</sup> The application is dated 7 December 2020 and became compliant on 23 December 2020 when QPS received the applicant's certified identification.

<sup>2</sup> The applicant indicated in the access application that she had spoken with police officers, and other individuals, during the Incident.

<sup>3</sup> Decision dated 10 February 2021.

<sup>4</sup> On 16 February 2021.

<sup>5</sup> Under section 97(2) of the IP Act. QPS confirmed this to the applicant by letter dated 19 April 2021.

<sup>6</sup> External review application dated 13 May 2021.

5. For the reasons set out below, I affirm decision under review and find that access to the requested video recordings may be refused on the basis disclosure would, on balance, be contrary to the public interest.<sup>7</sup>

## Background

6. The Incident involved a distressed individual other than the applicant. During the Incident, the applicant had certain interactions with police officers and other individuals.
7. On external review, OIC invited the parties to consider document inspection, as an option to informally resolve the review. QPS indicated to OIC that it would be willing to resolve the review through inspection access being provided, at its offices, to those parts of the video recordings which contained the applicant's personal information. Unfortunately, the parties were unable to agree upon inspection conditions to achieve informal resolution.
8. The significant procedural steps taken during the current external review are set out in the Appendix of this decision.

## Reviewable decision and evidence considered

9. The decision under review is the decision QPS is taken to have made on internal review, affirming its decision dated 19 April 2021 to refuse access to the requested video recordings.
10. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>8</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.<sup>9</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>10</sup>

## Information in issue

12. The information in issue comprises six video recordings (**Information in Issue**). I am constrained in how I may describe this information<sup>11</sup>, however, I can confirm it includes:
  - the names, images, voices and other personal information of private individuals other than the applicant (including, but not limited to, the distressed individual who was the subject of the Incident)
  - a small amount of the applicant's personal information, primarily being her voice in conversations with various individuals; and
  - information about police matters which are completely unrelated to the Incident.

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<sup>7</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>8</sup> Section 21 of the HR Act.

<sup>9</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].

<sup>10</sup> I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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>11</sup> Section 121(3) of the IP Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

### Issue for determination

13. The issue for determination is whether access may be refused to the Information in Issue on the ground disclosure would, on balance, be contrary to the public interest.
14. The applicant's submissions seek to raise concerns beyond the jurisdiction of the Information Commissioner and which fall outside the scope of this review.<sup>12</sup> I have considered the applicant's submissions and have summarised them throughout this decision to the extent they are relevant to the issue for determination.

### Relevant law

15. Under the IP Act, an individual has the right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.<sup>13</sup> However, this access right is subject to limitations, including grounds for refusal of access.<sup>14</sup>
16. One ground for refusal is where disclosing information would, on balance, be contrary to the public interest.<sup>15</sup> In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>16</sup>
  - identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

### Findings

17. I have taken no irrelevant factors into account in making my decision and consider none apply.

### Factors favouring disclosure

18. Some, but not all, of the Information in Issue contains the image and voice of the applicant and comprises her personal information. This gives rise to a factor favouring disclosure to which I afford high weight.<sup>17</sup> However, this personal information of the applicant is mostly intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (which raises the nondisclosure factors discussed below).
19. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:

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<sup>12</sup> Including concerns about her historical complaints to, and interactions with, QPS and certain findings in published decisions.

<sup>13</sup> Section 40 of the IP Act.

<sup>14</sup> Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under section 47 of the RTI Act.

<sup>15</sup> Section 47(3)(b) of the RTI Act. The phrase '*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 merely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We know it's Important, But Do We Know What it Means' (2006) 48 *AIAL Forum* 12, 14.

<sup>16</sup> Section 49(3) of the RTI Act.

<sup>17</sup> Schedule 4, part 2, item 7 of the RTI Act.

- promote open discussion of public affairs and enhance the Government's accountability;<sup>18</sup> and
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community.<sup>19</sup>
20. I acknowledge that QPS must be transparent and accountable about how it deals with reported incidents involving distressed individuals. While I accept that disclosing the Information in Issue will enable scrutiny of the actions taken by police in responding to the Incident, I do not consider that, given the nature of this particular Information in Issue, its disclosure would advance these accountability and transparency factors in any significant way. In these circumstances, I attribute low weight to these factors.
21. Where disclosing information could reasonably be expected to contribute to the administration of justice for a person, a further public interest factor favouring disclosure arises.<sup>20</sup> In determining whether this factor applies, I must consider whether:
- 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.<sup>21</sup>
22. The applicant submits that she requires the Information in Issue for '*legal purposes*', as:
- she is currently planning legal action against a specific QPS officer '*for multiple alleged crimes*'; and
  - she considers the Information in Issue will '*show [her] eagerness to help Police*', despite the historical matters outlined in her submissions.<sup>22</sup>
23. The legal action identified in the applicant's submissions does not in any way arise from, or relate to, the Incident or the officers who attended the Incident. I am therefore unable to comment upon whether there may be a reasonable basis for the applicant to pursue that identified legal action. However, the applicant's submissions indicate that, based upon information already in her possession, she has decided to pursue that legal action. On this basis and taking into account the nature of the Information in Issue, I am not satisfied that disclosing this information is required to enable the applicant to evaluate or pursue her identified legal action. The applicant has not enunciated how she considers the Information in Issue is required to assist her in such legal action and I note that, if she does commence the foreshadowed legal action, it is reasonable to expect that relevant court disclosure processes will be available to her. In these circumstances, I consider that, to the extent this disclosure factor applies, it deserves only low weight.
24. Public interest factors favouring disclosure will also arise where disclosing information could reasonably be expected to advance the fair treatment of individuals in accordance

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<sup>18</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>19</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>20</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>21</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 at [26].

<sup>22</sup> Submissions dated 31 October 2021.

with the law in their dealings with agencies<sup>23</sup> and contribute to the administration of justice generally, including procedural fairness.<sup>24</sup>

25. In this matter, the applicant was not the subject of the Incident but simply a person who was present during the Incident and interacted with police and other individuals. On the information before me, it appears that no action has been taken, by QPS or any person, against the applicant in respect of the Incident. The applicant's submissions also confirm that she is aware of the nature and extent of her interactions with various individuals during the Incident. Although the applicant has raised concerns about her historical interactions with QPS,<sup>25</sup> she has not detailed how disclosure of the Information in Issue would advance her fair treatment in her dealings with QPS or any other agency. Nor has she explained how disclosing the Information in Issue could be expected to contribute to procedural fairness or the general administration of justice.
26. The applicant also asserts that '[t]o keep this evidence from me will be a breach of natural justice'.<sup>26</sup> To the extent this submission relates to the external review process,<sup>27</sup> I note that:
- a preliminary view was conveyed to the applicant to explain the basis for the refusal of access
  - the applicant was invited to provide submissions contesting the preliminary view;<sup>28</sup> and
  - the applicant provided submissions to OIC contesting the refusal of access.

Accordingly, the applicant has been appraised of the basis upon which information has been refused and has been afforded an opportunity to put forward submissions supporting her position. On this basis, I am satisfied that the applicant has been afforded due process in this review.

27. In these circumstances, and taking the particular nature of the Information in Issue into account, I am not satisfied that there is a reasonable expectation its disclosure would advance the applicant's fair treatment or contribute to the administration of justice generally. Accordingly, to the extent these disclosure factors<sup>29</sup> apply, I afford them only minimal weight.
28. Having regard to the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.<sup>30</sup>

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<sup>23</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>24</sup> Schedule 4, part 2, item 16 of the RTI Act. I note that the fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.

<sup>25</sup> Submissions dated 31 October 2021.

<sup>26</sup> Submissions dated 31 October 2021. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations.

<sup>27</sup> Under section 108(1)(a) of the IP Act, the procedure to be taken on external review is, subject to the Act, at the discretion of the Information Commissioner.

<sup>28</sup> As set out in the Appendix. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

<sup>29</sup> Schedule 4, part 2, items 10 and 16 of the RTI Act.

<sup>30</sup> Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Information in Issue could, for example, contribute to debate on important issues or matters of serious interest or ensure oversight of expenditure of public funds (schedule 4, part 2, items 2 and 4 of the RTI Act); allow or assist enquiry into, or reveal of substantiate, agency or official conduct deficiencies (schedule 4, part 2, items 5 and 6 of the RTI Act); reveal the reason for a government decision and information that informed the decision (schedule 4, part 2, item 11 of the RTI Act); reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); or reveal measures relating to public health and safety or contribute to the maintenance of peace and order or enforcement of the criminal law (schedule 4, part 2, items 14, 15 and 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

### **Factors favouring nondisclosure**

29. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>31</sup> and that disclosing information that could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.<sup>32</sup> The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>33</sup>
30. The Information in Issue includes personal information about private individuals other than the applicant, which appears in the sensitive context of police attending an incident involving a distressed individual.<sup>34</sup> As noted above, some of this information is intertwined with the applicant's personal information. While the applicant submitted<sup>35</sup> that, to facilitate disclosure of her personal information, the distressed individual could be '*de-identified*' and the recording '*can be silenced*' where she speaks his name, I do not consider this is possible, given the way in which the applicant's personal information appears within the Information in Issue.
31. I consider that disclosing other individuals' highly sensitive personal information would be a significant intrusion into their privacy and the extent of the harm that would arise from its disclosure would be significant. While the applicant may be aware of some of the Information in Issue by reason of her interactions with police and others during the Incident, I do not consider that reduces the weight of these nondisclosure factors to any significant degree, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act. Accordingly, I afford significant weight to these factors favouring nondisclosure.

### **Balancing the public interest**

32. I acknowledge the pro-disclosure bias in deciding access to documents under the IP Act.<sup>36</sup> I have afforded high weight to the factor favouring disclosure of the applicant's personal information within the Information in Issue, however, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. To the extent the public interest factor concerning administration of justice for the applicant applies, I consider it is deserving of low weight in the circumstances of this matter. Taking into account the nature of the Information in Issue, I also afford minimal or low weight to additional factors which favour disclosure (including those relating to QPS' accountability and transparency, fair treatment and the general administration of justice).
33. On the other hand, I have afforded significant weight to the nondisclosure factors which relate to protecting the personal information and right to privacy of other individuals in a highly sensitive context.
34. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the

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<sup>31</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>32</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>33</sup> 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.

<sup>34</sup> Section 121 of the IP Act prevents me from providing further detail about the nature or content of the Information in Issue.

<sup>35</sup> External review application and submissions dated 28 July 2021 and 31 October 2021.

<sup>36</sup> Section 64 of the IP Act.

Information in Issue would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>37</sup>

## **DECISION**

35. For the reasons set out above, I affirm<sup>38</sup> QPS' decision and find that access to the Information in Issue may be refused on the ground disclosure would, on balance, be contrary to the public interest.<sup>39</sup>

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**T Lake**  
**Acting Assistant Information Commissioner**

**Date: 21 January 2022**

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<sup>37</sup> Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

<sup>38</sup> As a delegate of the Information Commissioner, under section 139 of the IP Act.

<sup>39</sup> Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
13 May 2021	OIC received the external review application.
4 June 2021	OIC notified the applicant and QPS that the application for external review had been accepted and requested information from QPS.
27-28 July 2021	OIC received the requested information from QPS.
28 July 2021	OIC received submissions from the applicant.
14 September 2021	OIC wrote to QPS asking whether they would be willing to provide inspection access to the requested video recordings (or parts of them) in the interests of resolving the matter informally.
30 September 2021	OIC received QPS' informal resolution proposal, namely, to provide the applicant with inspection access to the parts of the video recordings which contained her personal information.
15 October 2021	<p>OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions if she did not accept the preliminary view. OIC also notified the applicant of QPS' informal resolution proposal.</p> <p>OIC received the applicant's alternate informal resolution proposal, being that QPS send the video recording to her for the purpose of inspection.</p>
19 October 2021	<p>OIC confirmed to the applicant that QPS' informal resolution proposal was to allow her to inspect parts of the video recordings at a QPS location.</p> <p>The applicant reiterated her alternate informal resolution proposal.</p>
26 October 2021	OIC asked the applicant to confirm by 1 November 2021 whether she wished to discontinue the review, proceed with the external review (and provide submissions in response to the preliminary view) or accept the QPS proposal in resolution of the review.
4 November 2021	<p>OIC notified the applicant and QPS that the external review had been resolved informally as no response was received from the applicant.</p> <p>In response, the applicant notified that she had provided submissions to OIC on 31 October 2021 and provided a copy of those submissions.</p>
9 November 2021	OIC notified the applicant and QPS that the review had been re-opened and conveyed a further preliminary view to the applicant.