



## Decision and Reasons for Decision

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Application Number: 311037

Applicant: Lichfield-Bennett

Respondent: Queensland Police Service

Decision Date: 6 March 2013

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – applicant sought access to documents relating to complaints made to the Queensland Police Service – whether there are reasonable grounds to be satisfied that documents are nonexistent – section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – applicant sought access to documents relating to complaints made to the Queensland Police Service – whether information is irrelevant to the access application – section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – applicant sought access to documents relating to complaints made to the Queensland Police Service – whether disclosure of information 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 the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information relating to complaints she made to QPS.
2. QPS located 105 pages and 1 recording and refused access in full to 7 pages and granted partial access to 63 pages on the basis that disclosure of the information would, on balance, be contrary to the public interest.<sup>2</sup>

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<sup>1</sup> Application dated 6 January 2012 and received by QPS on 11 January 2012.

<sup>2</sup> Decision dated 22 February 2012.

3. The applicant sought<sup>3</sup> an internal review of QPS's decision and submitted that further documents should have been located. QPS affirmed its original decision.<sup>4</sup>
4. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision to refuse access and again submitted that QPS had not located all relevant documents.
5. During the external review, 3 additional pages and 1 recording were located. QPS agreed to release the recording and parts of the 3 pages to the applicant. QPS submitted that the remaining information was either irrelevant to the access application or would be contrary to the public interest to release.
6. For the reasons set out below, QPS is entitled to refuse access to:
  - documents which the applicant contends have not been located on the basis that they do not exist
  - parts of pages 108 and 109 identified as irrelevant; and
  - the remaining information on the basis that its disclosure is, on balance, contrary to the public interest.

## Background

7. Significant procedural steps relating to the application and external review are set out in the appendix.

## Reviewable decision

8. The decision under review is QPS's internal review decision dated 2 April 2012.

## Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).

## Information in issue

10. The information remaining in issue falls into two categories:
  - information claimed to be irrelevant (**Category A Information**);<sup>6</sup> and
  - information claimed to be contrary to the public interest to disclose (**Category B Information**).<sup>7</sup>

## Issues for determination

11. The issues for determination are whether QPS:
  - has taken all reasonable steps to locate documents responding to the access application—**sufficiency of search**

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<sup>3</sup> Application dated 21 March 2012.

<sup>4</sup> Internal review decision dated 2 April 2012.

<sup>5</sup> Application dated 2 May 2012.

<sup>6</sup> Parts of pages 108 and 109.

<sup>7</sup> All of pages 56-61 and 70 and parts of Pages 1-4, 7, 10-23, 25-26, 28-47, 50-52, 62, 66, 69, 71, 73, 77, 79, 85-89, 92, 94, 96-100, 107 and 109.

- is entitled to delete irrelevant information from 2 pages<sup>8</sup>—**irrelevant information**; and
- is entitled to refuse access to the remaining information comprising 7 full pages<sup>9</sup> and 64 part pages<sup>10</sup> on the basis that disclosure of the information is, on balance, contrary to the public interest—**refusal of access**.

### Sufficiency of search

12. Section 67(1) of the IP Act provides that access to a document may be refused on the same basis upon which access to a document could be refused under section 47 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).
13. The RTI Act provides that access to a document may be refused if the document is nonexistent or unlocatable.<sup>11</sup> A document is nonexistent if there are reasonable grounds for the agency or Minister dealing with the access application to be satisfied that the document does not exist.<sup>12</sup>
14. The RTI Act is silent on how an agency or Minister can be satisfied that a document does not exist. However in *PDE and the University of Queensland*<sup>13</sup> (**PDE**), the Information Commissioner explained that, to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:
  - the administrative arrangements of government
  - the agency structure
  - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
  - the agency's practices and procedures (including but not exclusive of its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including:
    - the nature and age of the requested document/s; and
    - the nature of the government activity the request relates to.
15. Alternatively, an agency may rely on searches to satisfy itself that a document does not exist. In such cases the Information Commissioner indicated in *PDE* that in order to substantiate a conclusion that there are reasonable grounds to be satisfied that the document does not exist, it may be necessary for the agency or Minister to take all reasonable steps to locate the document sought. To ensure all reasonable steps have been taken to locate documents, a decision-maker should make enquiries and undertake searches of all relevant locations, having regard to the key factors listed in *PDE*.<sup>14</sup>

<sup>8</sup> On pages 108-109.

<sup>9</sup> Pages 56-61 and 70.

<sup>10</sup> Pages 1-4, 7, 10-23, 25-26, 28-47, 50-52, 62, 66, 69, 71, 73, 77, 79, 85-89, 92, 94, 96-100, 107, and 109.

<sup>11</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>12</sup> Section 52(1)(a) of the RTI Act.

<sup>13</sup> Unreported, Queensland Information Commissioner, 9 February 2009. Note — Although *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

<sup>14</sup> See *PDE* at paragraph 49.

## Findings

16. In deciding that QPS has taken all reasonable steps to locate any additional documents and that there is a reasonable basis to be satisfied that no additional documents exist, I have had regard to:
- the information identified by QPS in response to the access application—including both the information released to the applicant and the Category A and Category B information
  - QPS's recordkeeping practices as they relate to the types of documents the applicant sought
  - the nature and extent of the searches conducted by QPS in processing the access application and on external review; and
  - the signed search certifications and memorandum provided by QPS officers.
17. The applicant submits<sup>15</sup> that additional documents should have been located including:
- correspondence created as a consequence of phone conversations between staff of QPS, Queensland Health (QH) and Queensland Ambulance Service (QAS) on 3 and 4 November 2011
  - photographs of vehicles provided to QPS on 22 October 2011
  - three 000 calls made on 25 October 2011<sup>16</sup>
  - details of a phone conversation between the applicant and a specific police officer on 26 April 2011
  - notes of phone conversations and police incident reports relating to specific vehicles and notes of a phone conversation on 11 September 2011
  - notes relating to police contact with persons of concern
  - a police report following attendance at the applicant's residence on 25 October 2011
  - correspondence between staff of QPS, QH and QAS during November 2011
  - a Justice Examination Order requested by QPS on or about 2-3 November 2011
  - written correspondence between staff of QPS and QH on or about 2-3 November 2011; and
  - notes made by specified police officers regarding complaints made by the applicant in April and November 2011.
18. On receipt of the access application, QPS conducted searches of records and databases of QPS, including the following area and positions:<sup>17</sup>
- Information and Communication Technology
  - Assistant Commissioner, Operations Support Command; and
  - Assistant Commissioner, Metropolitan South Region.

<sup>15</sup> Submissions received 9 May 2012 and 25 May 2012.

<sup>16</sup> During a conversation with the applicant on 14 August 2012, it was established that only one call had been made to 000. The two other calls had been made to a specific police station within the hour preceding the 000 call.

<sup>17</sup> As stated at page 1 of QPS's decision dated 22 February 2012.

19. On external review, QPS undertook the following further searches:
  - at Cleveland Police Station—searches were conducted of the relevant officer's personal phone, hard copy files, Qprime, notebooks, logs, occurrence sheets and ITAS which resulted in 3 additional pages being located<sup>18</sup>
  - at Policelink—searches were conducted of the Policelink Customer Relationship Management System and the Policelink recording system NICE using the search parameters of timeframe, incoming phone numbers and contact type; and
  - at Police Communications Centre, which forms a part of Operations Support Command—searches were conducted of the CAD ESCORT (ARCHIVE) due to the date of the records sought and the NICE recording system and a recording of one call to 000 was located.<sup>19</sup>
20. As a result of the searches, QPS agreed to release to the applicant the 000 recording and parts of the additional 3 pages located.<sup>20</sup>
21. Following release of this additional information, the applicant made further lengthy submissions<sup>21</sup> about why further documents relevant to the access application should exist and should have been located by QPS. Those submissions:
  - questioned whether a specified QPS officer at Cleveland Police Station had been required to conduct searches for documents that they may hold; and
  - repeated statements made in the original submissions about additional documents which should have been located.
22. As a result of the applicant's further submission, OIC asked QPS<sup>22</sup> about their practice and procedures when investigating complaints (such as where details of telephone calls with a complainant may be recorded by a police officer, the procedure for enquiring about motor vehicles and how the results of these enquires are recorded) and whether searches had been conducted to locate documents held by the specified QPS officer at Cleveland Police Station.
23. QPS provided further verbal submissions<sup>23</sup> detailing practices and procedures when investigating complaints. Specifically, they explained that details of phone calls and the results of searches for motor vehicles are recorded in the officers notebook or activity log for the day. QPS also confirmed that the officer responsible for the original searches at Cleveland Police Station also conducted searches for documents held by the specified QPS officer and did not locate any documents.
24. As QPS has conducted searches in response to the applicant's submissions that additional documents exist, the issue is whether QPS has taken all reasonable steps to locate the additional documents. In deciding this issue I do not consider it necessary to deal separately with each of the contentions raised by the applicant, nor QPS's individual responses as to why particular categories of documents do not exist.
25. QPS has conducted wide ranging searches for relevant information in appropriate locations on numerous occasions during this process. QPS has conducted searches of

<sup>18</sup> The 3 additional documents were numbered pages 107-109 for the purpose of the external review.

<sup>19</sup> The recording of the 000 call was numbered folio 110 for the purpose of the external review.

<sup>20</sup> By correspondence dated 14 and 27 September 2012.

<sup>21</sup> Submission dated 22 October 2012.

<sup>22</sup> On 12 and 13 November 2012.

<sup>23</sup> Verbal submissions provided on 12 and 13 November 2012.

its electronic record management systems using appropriate search terms. QPS has identified relevant officers and areas which would be likely to hold documents and conducted searches of their records. QPS also responded to the applicant's extensive submissions which set out the areas and officers of QPS identified by the applicant and conducted searches using those terms where they were relevant.

26. QPS also provided clarification on their record keeping practices and procedures where it was relevant to the information the applicant was seeking.
27. Upon careful consideration of all the information before me—including the information released to the applicant in response to her access application, the Category A and B information and the submissions made by QPS and the applicant—I am satisfied that QPS has taken all reasonable steps to locate relevant documents, and that there is a reasonable basis to be satisfied that no additional documents responding to the access application exist.<sup>24</sup>

### **Irrelevant information—Category A Information**

28. Where giving access to a document will disclose to the applicant information that QPS reasonably considers is not relevant to the access application, QPS may give access to a copy of the document with the irrelevant information deleted.<sup>25</sup> QPS may only give access in this way if it considers from the terms of the application, or after consultation with the applicant, that the applicant would accept the copy and it is reasonably practicable to give access to the copy.<sup>26</sup>

### **Findings**

29. Referring to the Category A Information, the applicant submits:<sup>27</sup>

*I refer to page numbered 108 where at the bottom of the page it appears to be a shopping list of groceries that the QPS officers were planning for dinner. I believe this to be irrelevant information and now ask the question if the relevant information is the information that has been concealed. This needs to be clarified. I also wish to refer you to page 109 of this document. It is dated the 23/10/11... You will note that the officers involved are marked at the top of the page as [named officer] and [named officer]. This is important as [named officer] was the initial contact in relation to my initial complaint with QPS. Considering this document also contains my address ..., I believe this to be an extremely important document in relation to my initial request under RTI and am requesting that this be released to me on these grounds...*

30. I have considered the Category A Information and I am satisfied that:

- the Category A Information is not relevant to the applicant's access application—the pages the Category A information appears on is a police activity sheet for 23 October 2011 and the Category A Information are entries which are unrelated to the applicant's contact with police, instead relating to other matters and/or duties attended to by those police officers during their shift; and
- QPS was entitled to consider from the access application that the applicant would accept a copy of the documents with the Category A Information deleted given that the information clearly falls outside the scope of the access application

<sup>24</sup> Pursuant to section 47(3)(e) of the RTI Act on the ground set out in section 52(1)(a) of the RTI Act.

<sup>25</sup> Section 88 of the IP Act.

<sup>26</sup> Section 88(3) of the IP Act.

<sup>27</sup> Submission to OIC dated 22 October 2012.

because it does not relate to the applicant's contact with police regarding her complaints.

### **Refusal of access—Category B Information**

31. The RTI Act also provides that an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.<sup>28</sup>
32. 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.
33. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>29</sup> and explains the steps that a decision-maker must take<sup>30</sup> in deciding the public interest as follows:
  - 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.<sup>31</sup>
34. In providing submissions about the issue of refusal of access, the applicant has made extensive submissions about the application of the public interest balancing test with reference to the repealed *Freedom of Information Act 1992 (Qld)*, the *Freedom of Information Act 1982 (Cth)* (**Commonwealth FOI Act**) and the Office of the Australian Information Commissioner's guideline on the public interest test under the Commonwealth FOI Act.
35. These submissions are not relevant to a consideration of the public interest balancing test under the RTI Act and I have not taken these into account.

### ***Irrelevant factors***

36. I do not consider that any irrelevant factors arise in this case.

### ***Factors favouring disclosure and nondisclosure of the Information in Issue***

37. Some of the Category B Information is the applicant's personal information. This creates a public interest factor favouring disclosure.<sup>32</sup>
38. The remaining Category B Information is:

<sup>28</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>29</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

<sup>30</sup> Section 49(3) of the RTI Act.

<sup>31</sup> As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

<sup>32</sup> Schedule 4, part 2, item 7 of the RTI Act.

- names, addresses and contact details of persons other than the applicant (third parties)
- employment details of third parties
- vehicle registrations and descriptions of vehicles belonging to third parties
- opinions expressed by third parties; and
- photographs depicting personal residences and vehicles of third parties.

39. Disclosure of this information could reasonably be expected to:

- prejudice an individual's right to privacy;<sup>33</sup> and
- cause a public interest harm as disclosure would disclose personal information of a person.<sup>34</sup>

***Balancing the public interest factors favouring disclosure and nondisclosure***

40. The applicant generally submits<sup>35</sup> that the Category B Information is information which is relevant to her access application and that, on this basis, it should be released to her in full.
41. QPS submits<sup>36</sup> that the Category B Information is the personal information of third parties.
42. Personal information is '*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*'.<sup>37</sup>
43. I have carefully considered the Category B Information and I am satisfied that it is the personal information of third parties which, if disclosed, could reasonably be expected to cause a public interest harm by revealing the personal information of those third parties and prejudicing their privacy. I consider that some weight should be given to these factors in favour of nondisclosure.
44. The applicant has submitted that some of the Category B Information is "*comments... made about me without substantiated evidence and it is crucial to my case...*"<sup>38</sup> In this matter, a small amount of the information is the applicant's personal information. This creates a factor in favour of disclosure. However, this information is interwoven with that of others in such a way that it cannot be separated and is properly characterised as 'mutual personal information'. As this information cannot be separated, the applicant's personal information cannot be released without also releasing the personal information of others. Therefore this factor favouring disclosure should be given minimal weight.
45. Given the above, I am satisfied that the release of the Category B Information would not advance the public interest in any significant way and disclosure of the Category B Information would, on balance, be contrary to the public interest.

<sup>33</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>34</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>35</sup> Submission dated 22 October 2012.

<sup>36</sup> As set out in its decision and internal review decision. Further, by correspondence dated 27 September 2012, QPS accepted OIC's view that certain information contained within the additional documents located was personal information.

<sup>37</sup> See section 12 of the IP Act.

<sup>38</sup> Submission received 25 May 2012.



## DECISION

46. I vary the internal review decision by finding that QPS is entitled to refuse access to:
- further documents under section 47(3)(a) of the RTI Act on the ground that they do not exist under section 52(1)(a) of the RTI Act
  - the Category A Information under section 88 of the IP Act on the ground that it is not relevant to the access application; and
  - the Category B Information under section 47(3)(b) of the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
47. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

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**Acting Assistant Information Commissioner Meagher**

**Date: 6 March 2013**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
11 January 2012	QPS receives the applicant's application dated 6 January 2012.
16 February 2012	QPS requests an extension to process the application. The applicant agrees to an extension until 24 February 2012.
22 February 2012	QPS locates 105 pages and a recording, and decides to release the recording and 35 pages in full, partially release 63 pages and refuse access in full to 7 pages.
21 March 2012	QPS receives the applicant's application for internal review.
2 April 2012	QPS affirms the initial decision.
2 May 2012	OIC receives the applicant's application for external review.
11 May 2012	OIC advises the applicant and QPS that the application has been accepted for review. OIC requests submissions from the applicant in relation to possible additional documents.
25 May 2012	OIC receives a submission from the applicant about the additional documents which the applicant submits should have been located.
10 July 2012	OIC asks QPS to provide search certifications and a record of the searches undertaken when searching for documents which respond to the access application by 24 July 2012.
20 July 2012	QPS seeks an extension of time to provide a submission. OIC grants QPS an extension until 27 July 2012.
27 July 2012	QPS seeks a further extension of time to provide a submission. OIC grants QPS an extension until 10 August 2012.
13 August 2012	OIC receives a submission from QPS.
14 September 2012	OIC receives a further submission from QPS.
25 September 2012	OIC conveys a view to QPS. OIC invites QPS to provide a submission by 5 October 2012 if it wishes to challenge the view.  OIC also conveys a view to the applicant on the issues in this review and advises that QPS have agreed to release a recording of a 000 call which had been located. OIC invites the applicant to provide a submission by 12 October 2012 if she does not accept the view.
27 September 2012	QPS advises that it accepts the view as set out in OIC's correspondence dated 25 September 2012 and confirms that it has forwarded documents numbered 107-110 to the applicant subject to deletions in accordance with OIC's view dated 25 September 2012.
10 October 2012	The applicant seeks an extension of time to provide a submission.
11 October 2012	OIC grants the applicant an extension until 19 October 2012.
18 October 2012	The applicant seeks a further extension of time to provide a submission. OIC grants the applicant an extension until 22 October 2012.
22 October 2012	OIC receives a submission from the applicant.

12 November 2012	QPS provides a verbal submission.
13 November 2012	QPS provides a further verbal submission.
12 December 2012	<p>The applicant asks OIC to respond to her submission in writing rather than verbally.</p> <p>OIC writes to the applicant confirming that the next step is to issue a decision finalising the review.</p>