



## Decision and Reasons for Decision

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**Citation:** *Kyriakou and Queensland Police Service* [2017] QICmr 30 (9 August 2017)

**Application Number:** 313031

**Applicant:** Kyriakou

**Respondent:** Queensland Police Service

**Decision Date:** 9 August 2017

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - application for access to information about searches on applicant's late father's name and car registration in police database - whether application is expressed to relate to all documents containing information of a stated kind - whether all of the documents to which the application relates would comprise exempt information - whether section 40 of the *Right to Information Act 2009* (Qld) applies

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - whether disclosing information in police database could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law - schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - applicant alleges unauthorised access to personal information in police database - whether information consists of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law - schedule 3, section 10(2)(a) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for information showing instances of access to his late father's name and car registration in a police database (known as QPRIME<sup>1</sup>), in a specified date range.<sup>2</sup>
2. QPS decided<sup>3</sup> to neither confirm nor deny the existence of the requested information under section 55 of the RTI Act. The applicant applied to OIC for an external review of QPS' decision.<sup>4</sup>
3. For the reasons set out below, I vary QPS' decision and find that all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act, as their disclosure could reasonably be expected to prejudice QPS' lawful methods and procedures, and, therefore, section 40 of the RTI Act applies to refuse to deal with the application.

### Background

4. Significant procedural steps relating to the application and external review process are set out in the Appendix.
5. In response to the current application, QPS decided to neither confirm nor deny the existence of documents.<sup>5</sup> Generally, that provision will only apply where confirming the very existence of documents is likely to cause the harm that an agency would otherwise seek to avoid by refusing access to the relevant information.<sup>6</sup> It is however commonly known that QPS maintains a computer database to capture and maintain records for police incidents. The applicant also referred to the prior release of QPRIME Activity Reports to other individuals.<sup>7</sup> In these circumstances, OIC conveyed a view to QPS that section 55 of the RTI Act did not apply.<sup>8</sup> QPS accepted this view and made alternative submissions as set out below.

### Reviewable decision

6. The reviewable decision is the QPS decision dated 26 September 2016 to neither confirm nor deny the existence of the requested documents under section 55 of the RTI Act.

### Evidence considered

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

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<sup>1</sup> Queensland Police Records and Information Management Exchange. This is the database used by QPS to capture and maintain records for all police incidents in Queensland.

<sup>2</sup> Access application dated 22 August 2016.

<sup>3</sup> QPS decision dated 26 September 2016.

<sup>4</sup> External review application dated 21 October 2016.

<sup>5</sup> Section 55 of the RTI Act.

<sup>6</sup> *EST and Department of Family Services and Aboriginal Affairs* (1995) 2 QAR 645 at [11] cited with approval in *Tolone v Department of Police* (Unreported, Queensland Information Commissioner, 9 October 2009) at [25].

<sup>7</sup> Applicant's external review application dated 21 October 2016.

<sup>8</sup> Letter to QPS dated 11 November 2016.

## Issues to be determined

8. One of the primary objects of the RTI Act is to give a right of access to information in the government's possession or under the government's control. This right is subject to other provisions, including grounds on which access may be refused or the application may be refused to be dealt with, as on balance, it is contrary to the public interest to give access or to allow the information to be amended.
9. External review by the Information Commissioner is merits review, that is, an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the RTI Act.<sup>9</sup> After conducting an external review of a decision, the Information Commissioner must make a decision affirming, varying, or setting aside and making a decision in substitution for, the decision under review.<sup>10</sup>
10. As set out above, QPS no longer relies on section 55 of the RTI Act to neither confirm nor deny the existence of the requested documents. Therefore, the application of that provision is not considered in these reasons for decision.<sup>11</sup> Instead, the issue for determination is whether the application may be the subject of a refusal to deal decision under section 40 of the RTI Act.<sup>12</sup> To determine that issue, I must consider whether:
  - the application is expressed to relate to all documents of a stated kind or relate to a stated subject matter; and
  - all of the documents to which the application relates comprise exempt information.

## Relevant law

11. If an access application is made to an agency under the RTI Act, the agency should deal with the application unless this would not be in the public interest.<sup>13</sup> One of the very few circumstances in which it would not be in the public interest to deal with an access application is set out section 40 of the RTI Act as follows:

### **40 Exempt Information**

- (1) *This section applies if—*
  - (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*
  - (b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*
- (2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

12. Exempt information is information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.<sup>14</sup> The RTI Act provides that certain law enforcement information is exempt, as follows:

<sup>9</sup> Section 105(1)(b) of the RTI Act.

<sup>10</sup> Section 110(1) of the RTI Act.

<sup>11</sup> The applicant's submissions in respect of QPS' decision to neither confirm nor deny the existence of documents requested in the access application have also not been addressed in these reasons for decision. While I have carefully considered all of the submissions received, the applicant's submissions are only addressed below to the extent they are relevant to the issues for determination.

<sup>12</sup> QPS does not contest the application of section 40 of the RTI Act.

<sup>13</sup> Section 39(1) of the RTI Act.

<sup>14</sup> See sections 47(3)(a), 48 and schedule 3 of the RTI Act.

## 10 Law enforcement or public safety information

- (1) Information is exempt information if its disclosure could reasonably be expected to—
  - ...
  - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law;
  - ...
- (2) However, information is not exempt under subsection (1) if it consists of—
  - (a) matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; ...
  - ...

## Findings

***Is the application expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind, or relate to a stated subject matter?***

13. Yes, for the reasons that follow.
14. OIC has recently considered the application of section 59 of the *Information Privacy Act 2009* (Qld) (**IP Act**) which is framed in the same terms as section 40 of the RTI Act, in relation to applications for the same type of information as the application which is the subject of this review.<sup>15</sup> As set out in those decisions, for section 40 of the RTI Act to apply, I must be firstly satisfied that the application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind, or relate to a stated subject matter. To determine this issue, it is necessary to examine the terms of the access application.
15. The applicant requested access to ‘copies of all accesses linked to Paulos Kyriakou’s name and his car registration that have been made by Queensland Police data base on Q Prime.’<sup>16</sup> QPS has previously advised OIC that QPRIME access information would be contained in a document known as a QPRIME Activity Report.<sup>17</sup> I am satisfied that the information requested by the applicant in this review, if it exists, would also be contained in a QPRIME Activity Report.
16. I am satisfied that the application is framed as a request to access all documents or documents of a stated class which, identify instances of the applicant’s late father’s name and/or car registration number being searched in the QPRIME database. I am also satisfied that the application is expressed to relate to all documents that contain information of a stated kind, that is, search history relating to the applicant’s late father’s personal information in the QPRIME database, within the specified timeframe. Accordingly, I find that the first limb of section 40 of the RTI Act is satisfied.

***Are all of the documents to which the application relates comprised of exempt information?***

17. Yes, for the reasons that follow.

<sup>15</sup> See *Eaves and Queensland Police Service* [2017] QICmr 23 (30 June 2017) (**Eaves**), *Shelton and Queensland Police Service* [2017] QICmr 18 (29 May 2017) (**Shelton**), *Isles and Queensland Police Service* [2017] QICmr 1 (12 January 2017) (**Isles**) and *Flori and Queensland Police Service* [2017] QICmr 5 (16 February 2017) (**Flori**).

<sup>16</sup> For the period August 2010 to August 2016, particular interest around 3 February 2014.

<sup>17</sup> Oral submissions made to OIC by QPS on 16 September 2016 regarding unrelated external review applications where the terms of the access applications were substantially the same as this application.

18. As noted above, I must also be satisfied that all of the documents to which the application relates are comprised of exempt information. Information will be exempt information if the following are established:
  - there exists a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
  - disclosure could reasonably be expected to prejudice that method or procedure.<sup>18</sup>
19. Having considered the submissions provided by QPS on external review,<sup>19</sup> I am satisfied that the process of QPS officers accessing the QPRIME database forms an integral part of QPS' lawful methods and procedures for preventing, detecting or investigating contraventions, or possible contraventions of the law, specifically in terms of intelligence and surveillance operations.
20. QPS submits that:<sup>20</sup>
  - disclosing QPRIME Activity Reports would generally reveal the number of occasions on which QPS officers have accessed the QPRIME database in relation to a particular individual, the badge number of the inquiring officer and the nature of access
  - in addition to revealing the level of access to such information, QPRIME Activity Reports would also identify particular members of the police service who accessed the information and enable an individual to determine which area of the police force may be targeting the individual; and
  - it has serious concerns that disclosing this type of information would enable an individual to identify whether they are under QPS surveillance/investigation, the level of any surveillance/investigation, and which particular QPS units may be monitoring an individual.
21. The applicant submits<sup>21</sup> that disclosing the use of a computerised database as a method or procedure for preventing, detecting, investigating or dealing with a contravention, or possible contravention of the law, cannot reasonably prejudice the *effectiveness* of QPRIME as a method or procedure. In support of this argument, the applicant relies on the following:
  - the fact that police officers access and use QPRIME for law enforcement purposes is '*not novel, covert or clandestine*'
  - disclosing methods or procedures which are obvious and well known to the community is not likely to prejudice their effectiveness; and
  - if Parliament had intended that keeping documents in the QPRIME database be regarded as an integral part of QPS' methods and procedures for preventing, detecting or investigating contraventions or possible contraventions of the law, such that disclosing information pertaining to access of all or any of those documents would be exempt, then it would have been unnecessary for Parliament to have enacted the specific provisions in schedule 3, section 10 of the RTI Act relating to prejudice to particular investigations and law enforcement functions.<sup>22</sup>
22. I accept the applicant's first two points above – revealing the existence of the QPRIME database or the fact that police officers access the database would not prejudice the effectiveness of a method or procedure. I also acknowledge that the specific provisions in schedule 3, section 10 of the RTI Act referred to by the applicant require an

<sup>18</sup> Schedule 3, section 10(1)(f) of the RTI Act.

<sup>19</sup> QPS submissions dated 9 June 2017.

<sup>20</sup> QPS submissions dated 9 June 2017.

<sup>21</sup> Submissions dated 20 December 2016.

<sup>22</sup> Specifically, schedule 3, sections 10(1)(a), 10(3), 10(4) and 10(5)(a)-(c) of the RTI Act.

investigation to be on foot, and to comprise information which was given in the course of an investigation, or obtained, used or prepared for an investigation.<sup>23</sup> I consider the nature of the information which may be subject to these exemptions is distinguishable from the information in issue in this review. In this case, the applicant is not simply seeking access to the records held by QPS in relation to his late father, but rather is seeking to understand who may have accessed, viewed or otherwise utilised his late father's records within QPRIME.

23. The prejudice to QPS' methods and procedures does not stem from revealing the existence of the database, how the database works or the information contained in the database. Rather, the prejudice results from an individual's ability to identify the level of surveillance they may or may not be under, thereby reducing the effectiveness of QPRIME as a system. I am satisfied that revealing the extent of information in a QPRIME Activity Report, for *any individual*, whether that individual is subject to intelligence and surveillance operations or not, could reasonably be expected to prejudice these lawful methods and procedures as a whole.<sup>24</sup>
24. As to whether this expectation of prejudice is reasonable,<sup>25</sup> I am satisfied that QPS has demonstrated to OIC that there are particular circumstances in which disclosing information could reasonably be expected to prejudice QPS' lawful methods and procedures, even though the information may appear innocuous, on its face, or when read in isolation.<sup>26</sup>
25. For the reasons set out above, I am satisfied that the QPRIME Activity Report comprises exempt information under schedule 3, section 10(1)(f) of the RTI Act.

***Does the exception to the exemption in schedule 3 section 10(1)(f) of the RTI Act apply?***

26. No, for the reasons that follow.
27. The applicant refers to previous cases of unauthorised QPRIME access and '*a culture within the QPS of officers accessing the QPRIME database unlawfully...*' and submits that the exception to the exemption applies.<sup>27</sup>
28. Schedule 3, section 10(2)(a) of the RTI Act provides that information will not be exempt where the information reveals the scope of a law enforcement investigation has exceeded the limits imposed by law.
29. As noted in the recent decisions of *Eaves*,<sup>28</sup> *Shelton*,<sup>29</sup> *Isles*<sup>30</sup> and *Flor*<sup>31</sup>, for this exception to apply, the information must consist of material that objectively and

<sup>23</sup> By the relevant law enforcement body for the purposes of schedule 3, sections 10(1)(a), 10(1)(3), 10(4) and 10(5)(a)-(c) of the RTI Act.

<sup>24</sup> I note that the applicant seeks access to the QPRIME Activity Report for his late father and I have considered whether this impacts the application of the exemption in this case. In the circumstances, I consider the expectation of prejudice is reasonable and is relevant for any individual, even if the QPRIME Activity Report relates to a deceased person.

<sup>25</sup> The requirements of the phrase '*could reasonably be expected to*' in the particular context of this exemption were discussed by the Right to Information Commissioner in *Gold Coast Bulletin and Queensland Police Service* (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

<sup>26</sup> Under section 108(3) of the RTI Act, I must not disclose information claimed to be exempt or contrary to the public interest in reasons for decision. I am therefore constrained in the extent to which I can explain the particular circumstances put forward by QPS in support of the application of this exemption.

<sup>27</sup> Applicant's submissions dated 20 December 2016. For example, the applicant refers to the following two media articles among others: AAP, 'Qld cop stood down over 'database breach' (17 May 2016) <http://www.news.com.au/national/breaking-news/qld-cop-stood-down-over-database-breach/news-story/a62186679a17dd70ca4eea4c589c83e2>; CCC Media Release, 'Police officer charged for unauthorised access and disclosure of confidential information' (22 June 2016) <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/police-officer-charged-for-unauthorised-access-and-disclosure-of-confidential-information-22-june-2016>

<sup>28</sup> At [24]

<sup>29</sup> At [28].

<sup>30</sup> At [21].

<sup>31</sup> At [25].

authoritatively reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law.

30. QPRIME Activity Reports generally reveal the amount of activity and the number of occasions on which QPS officers have accessed QPRIME in relation to an individual, the badge number of the inquiring officer, and includes a technical log of interactions within the database. This information alone (or together with any information currently before me) would not reveal in any authoritative manner that any particular access was unauthorised, or that the scope of a law enforcement investigation has exceeded the limits imposed by law in any other way. At best, this type of information may amount to untested evidence concerning authority to access the QPRIME database in a particular instance.
31. Although the applicant may have general concerns that his late father's personal information within QPRIME has been accessed unlawfully in light of the recent media attention around this issue, it is the *material* itself which must reveal that the scope of a law enforcement investigation has exceeded the limits imposed by law. In this case, I do not consider a QPRIME Activity Report would reveal evidence of an investigation having exceeded its limits.
32. Given the above, I am satisfied that on the evidence available to me in this review, the exception to the exemption in schedule 3, section 10(2)(a) does not apply.<sup>32</sup>

### ***Previous release of QPRIME Activity Reports by QPS***

33. The applicant has also referred to other individuals that have successfully sought access to their QPRIME Activity Report from QPS, in circumstances which reveal searches in excess of 1,400 times.<sup>33</sup> I acknowledge that QPS has, in the past, disclosed QPRIME Activity Reports.<sup>34</sup> However, QPS has recently reconsidered its position on releasing QPRIME Activity Reports. A series of applications has recently been made to QPS under the RTI Act and IP Act, by various individuals seeking access to their personal information in QPRIME Activity Reports. In considering these requests, QPS identified a number of issues associated with disclosing QPRIME Activity Reports, which ultimately led QPS to make submissions to OIC regarding the expectation of prejudice to its methods and procedures.<sup>35</sup>
34. As a decision-maker conducting merits review, I am required to determine each matter on its own facts and on the basis of available evidence at the time of making my decision—there is no requirement for me to follow the approach taken by an agency in a previous external review. Similarly, there is nothing in the RTI Act which prevents an agency from, over time, reconsidering its approach to disclosing particular information. I also note that while an agency retains the discretion to disclose exempt information, the Information Commissioner does not.<sup>36</sup>
35. For these reasons, I am satisfied that the position previously taken by QPS in relation to disclosure of QPRIME Activity Reports does not have any impact on my finding that this information meets the requirements for exemption under schedule 3, section 10(1)(f) of the RTI Act.

<sup>32</sup> There is no evidence available to OIC to indicate that any other exceptions in schedule 3, section 10(2) of the RTI Act apply.

<sup>33</sup> Applicant's external review application dated 21 October 2016.

<sup>34</sup> *Wolfe and Queensland Police Service* [2016] QICmr 27 (30 June 2016).

<sup>35</sup> Discussed previously in paragraph 20 in this decision.

<sup>36</sup> Sections 39(3) and 105(2) of the RTI Act.

### **Public interest considerations**

36. The applicant has also put forward public interest arguments favouring disclosure of the QPRIME Activating Reports.<sup>37</sup> I acknowledge that the RTI Act is to be administered with a pro-disclosure bias and the grounds for refusal are to be interpreted narrowly.<sup>38</sup> However, the exemptions in schedule 3 of the RTI Act set out the types of information which Parliament has decided, would, on balance, be contrary to the public interest to disclose. Once the requirements of an exemption have been established, as I have found in this case, I am precluded from considering any public interest factors, no matter how compelling.<sup>39</sup>

### **DECISION**

37. I vary the decision of QPS and find that section 40 of the RTI Act applies on the basis that the access application is expressed to relate to all documents containing information of a stated kind, and all of the documents to which the application relates comprise exempt information under schedule 3, section 10(1)(f) of the RTI Act.
38. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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Tara Mainwaring  
**Acting Assistant Information Commissioner**

**Date: 9 August 2017**

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<sup>37</sup> External review application dated 21 October 2016.

<sup>38</sup> Sections 39(1) and 47(2) of the RTI Act.

<sup>39</sup> Under section 105(2) of the RTI Act, the Information Commissioner does not have the power to direct that access to an exempt document be granted. I also note that concerns about alleged unlawful access to QPRIME records are able to be considered by other bodies, such as the Crime and Corruption Commission, which would have access to such records.

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

<b>Date</b>	<b>Event</b>
21 October 2016	OIC received the external review application.
24 October 2016	OIC asked QPS to provide relevant procedural documents.
2 November 2016	OIC received the relevant procedural documents.
11 November 2016	OIC notified the applicant and QPS that the external review application had been accepted, conveyed a preliminary view to QPS and invited QPS to provide submissions in response.
29 November 2016	QPS accepted OIC's preliminary view.
6 December 2016	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case if he did not accept the preliminary view.
20 December 2016	OIC received the applicant's submissions.
24 April 2017	OIC requested written submissions from QPS.
9 June 2017	OIC received the written submissions from QPS.