



Decision and Reasons for Decision

Citation: *Y46 and Queensland Police Service [2020] QICmr 3 (4 February 2020)*

Application Number: 314422

Applicant: Y46

Respondent: Queensland Police Service

Decision Date: 4 February 2020

Catchwords: **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST** third party names and signatures - personal information and privacy - whether disclosure would on balance be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DOCUMENT OF AN AGENCY - DOCUMENT TO WHICH ACT DOES NOT APPLY - document relating to testing of speed camera device - whether document of an agency - section 12 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PREVENTION OR DETECTION OF POSSIBLE CONTRAVENTION OF THE LAW - information about QPS procedural information relating to road safety - prejudice prevention or detection of a possible contravention of the law - whether exempt - sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - MAINTENANCE OR ENFORCEMENT OF A LAWFUL METHOD OR PROCEDURE - information about QPS procedural information relating to road safety - prejudice maintenance or enforcement of a lawful method or procedure for protecting public safety - whether exempt - sections 47(3)(a) and 48 and schedule 3, section 10(1)(g) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:
 - the following documents relating to a particular Vitronic's Policeman Speed Photographic device [PS 783500]:
 - Test Report (**Test Report**)
 - Calibration Report containing device under test, test equipment, environmental conditions, test results/data and speed simulator test results by authorised testing authority (**Calibration Report**)
 - the relevant QPS Officer's digital mobile speed camera record of operation (together with site deployment sketch) – Reference Notice Number (Infringement) 2067278323, date of operation 22 October 2018, site #719141801, Hale Street (**Record of Operation**); and
 - Vitronic Operator's Manual – Operation (Chapter Six) (**Chapter Six of the Manual**).
2. QPS did not provide the applicant with a written notice of its decision by the end of the statutory processing period and, as a result, on 18 January 2019 QPS were taken to have made a decision (a **deemed decision**) refusing access to the documents in the applicant's access application.² As required by the RTI Act,³ QPS provided notice to the applicant of the deemed decision.⁴
3. The applicant then sought external review of QPS's deemed decision.⁵
4. During the external review QPS located the Test Report, the Record of Operation and Chapter Six of the Manual.
5. For the reasons set out below, I vary QPS's decision by finding that:
 - access to *some* of the information in the Test Report may be refused on the basis disclosure would, on balance, be contrary to the public interest
 - access to *some* information in the Record of Operation may be refused on the grounds that it comprises exempt information
 - access to Chapter Six of the Manual may not be refused. The applicant is therefore entitled to access Chapter Six of the Manual, in accordance with the right of access prescribed in section 23 of the RTI Act; and
 - the Calibration Report is not a document of QPS for the purposes of the RTI Act. Accordingly, access to it cannot be granted under the RTI Act.

Background

6. Significant procedural steps relating to the external review are set out in the Appendix.

¹ By access application dated 6 November 2018.

² Under section 46(1) of the RTI Act.

³ Under section 46(2) of the RTI Act.

⁴ On 21 January 2019

⁵ On 4 February 2019.

7. During the external review, there were several significant delays in QPS providing requested information and documents to this Office (**OIC**).⁶
8. In summary, the substantive steps taken were:
 - OIC initially requested⁷ that QPS provide OIC with a copy of the documents responsive to the applicant's access application by 17 April 2019. OIC also stated that if QPS objected to the disclosure of any documents/parts of documents to provide OIC with a submission setting out the ground/s for refusal upon which QPS sought to rely.
 - QPS did not provide the requested documents to OIC, despite OIC contacting QPS on numerous occasions to obtain a response to OIC's initial letter. As a result, on 26 June 2019 OIC served on QPS a Notice to Provide Information and Produce Documents to OIC.⁸
 - Three months after OIC initially requested the documents, QPS located and provided OIC⁹ with a copy of two of the documents responsive to the applicant's access application, namely the Test Report and a redacted copy of the Record of Operation. QPS made a submission (**Initial Submission**) about its view on disclosure of those two documents but indicated that it wished to make a further submission.
 - After OIC requested that QPS provide a full copy of the documents, QPS indicated that it was not agreeable to providing OIC with a full copy of the Record of Operation due to the sensitive nature of the information contained within the document. QPS stated that it only wished to provide OIC with a copy of the document with a small amount of information redacted.¹⁰ QPS submitted that it considered that even full disclosure of the Record of Operation to OIC would impact on this particular method of QPS's road safety procedures. QPS suggested that it was agreeable to one employee within OIC being privy to the information in an attempt to reduce the prejudice that disclosure of the information may cause. QPS adopted this position, despite section 100 of the RTI Act, which provides:

If an external review application is made, the information commissioner is entitled to full and free access at all reasonable times to the documents of the agency or Minister concerned, including documents protected by legal professional privilege.

- Subsequently, QPS contacted OIC¹¹ and requested that a meeting take place between the Assistant Information Commissioner and the Director of the Road Safety Camera Office at QPS, as the Director was best placed to provide further information regarding the Calibration Report. OIC indicated that it was agreeable to meeting with the Director, however in view of Justice Daubney's observations in *SJN and Office of the Information Commissioner*,¹² Assistant Information Commissioner Rickard advised QPS that if it wished to rely on the submission that it made during the meeting, then procedural fairness required that the submission be put to the applicant for a response. OIC also requested that QPS provide OIC with a copy of the Record of Operation at the meeting.

⁶ As recorded in the Appendix to this decision. Appendices to Office of the Information Commissioner (**OIC**) decisions do not usually record communications between OIC and agencies regarding overdue responses. However, in this review, these communications are considered significant, given the number and length of the delays caused by QPS's overdue responses.

⁷ On 3 April 2019.

⁸ Section 103 of the RTI Act.

⁹ On 17 July 2019.

¹⁰ On 28 August 2019.

¹¹ On 31 August 2019.

¹² [2019] QCATA 115 at [90]-[97].

- I met with the Director of the Road Safety Camera Office, a QPS Legal Officer and a member of QPS's Right to Information and Privacy Unit on 10 September 2019. I will address the oral submission (**Oral Submission**) made by QPS during the meeting later in this decision. During the meeting QPS indicated that it wished to make a further submission with regard to a small amount of information in the Record of Operation (referred to as the Category B Information later in this decision), on the basis that QPS considered that on balance, disclosure of this information would be contrary to the public interest (**public interest factor submission**).
 - Despite OIC providing QPS with a record of its Oral Submission from the meeting and requesting QPS confirm whether it considered the record accurately reflected its Oral Submission, QPS has not provided any confirmation to OIC as requested. Also, despite indicating during the meeting on 10 September 2019, that it wished to make a further public interest factor submission and requesting an extension to file that submission by 25 October 2019, QPS has failed to provide OIC with a public interest factor submission.
 - As no public interest factor submission had been received from QPS, I conveyed to QPS¹³ my view that I considered QPS had not met the onus of establishing that it was justified in refusing access to the Record of Operation or that the Information Commissioner should make a decision adverse to the applicant in relation to two words in the Record of Operation.
 - OIC requested on four occasions¹⁴ that QPS disclose the documents to the applicant as per my preliminary view to the applicant. OIC also requested QPS contact the applicant to facilitate an inspection of Chapter Six of the Manual. Notwithstanding these requests, QPS has failed to provide OIC with confirmation that it has disclosed the documents to the applicant or facilitated an inspection of Chapter Six of the Manual.
9. Despite the efforts made by OIC to informally resolve this matter, QPS has failed to participate in a way that would enable the matter to be progressed informally.
10. Consequently, I must now issue a formal decision to progress and finalise this external review.

Reviewable decision

11. The decision under review is QPS's decision dated 21 January 2019 in which QPS was deemed to have refused access to the requested documents.

Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including footnotes and Appendix).

Information in issue

13. As previously noted above, QPS has not confirmed whether the Test Report and Record of Operation have been disclosed to the applicant, nor whether QPS has arranged for the applicant to inspect Chapter Six of the Manual. In the absence of any response from

¹³ On 6 November 2019.

¹⁴ On 12 November 2019, 26 November 2019, 13 December 2019 and 20 December 2019.

QPS and in order not to disadvantage the applicant any further, I am proceeding on the basis that QPS has not released the documents to the applicant or arranged an inspection of Chapter Six of the Manual.

14. Accordingly, the **Information in Issue** is comprised of the following documents:

- the Test Report;
- the Calibration Report;
- a small amount of information in the Record of Operation; and
- Chapter Six of the Manual.

Issues for determination

15. The main issues for determination are:

- whether QPS has met the onus of establishing that the decision to refuse access to the Information in Issue was justified or that the Information Commissioner should give a decision adverse to the applicant under section 87(1) of the RTI Act; and
- if QPS has not met the onus, whether QPS may refuse access to the Information in Issue to the extent that:
 - the Information in Issue comprises exempt information under sections 47(3)(a) and 48 of the RTI Act; or
 - disclosure of the Information in Issue would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.

16. For ease of reference I will discuss each document individually.

Test Report

Relevant law

17. Under the RTI Act, an individual has a right to be given access to documents held by a government agency.¹⁵ However, this right is subject to the other provisions of the RTI Act, including the grounds on which an agency may refuse access.¹⁶ Relevantly, access to a document may be refused to the extent it comprises information the disclosure of which would, on balance, be contrary to public interest.¹⁷

18. 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.¹⁸

19. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁹

- identify factors irrelevant to the public interest and disregard them

¹⁵ Section 23 of the RTI Act.

¹⁶ Section 47(3) of the RTI Act.

¹⁷ Sections 47(3)(b) and 49 of the RTI Act.

¹⁸ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹⁹ Section 49(3) of the RTI Act.

- identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
20. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision.
21. Additionally, I have kept in mind the RTI Act's pro-disclosure bias²⁰ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly,²¹ and have not taken into account any irrelevant factors.
22. I have also had regard to the *Human Rights Act 2019 (Qld) (HR Act)*,²² particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,²³ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian equivalents of Queensland's RTI Act and HR Act: '*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.*'²⁴

Findings

23. In its Initial Submission to OIC,²⁵ QPS indicated that it was willing to provide partial access to the Test Report. The information to which QPS proposes to refuse access comprises the names and signatures of the Testing Officer and Approved Signatory (**Third-Party Information**) of the speed camera device. QPS stated that the Testing Officer and Approved Signatory are not QPS employees under the *Police Service and Administration Act 1990 (Qld)* and are employees of SGS Australia Pty Ltd (**SGS**), the speed camera device testing company.²⁶
24. As a consequence of QPS's position on disclosure of all but the Third-Party Information, only the Third-Party Information remains in issue in this review.
25. QPS submitted that access to the Third-Party Information should be refused on the basis that access would, on balance, be contrary to the public interest. In particular, QPS submitted that disclosure of the names and signatures could reasonably be expected to cause a public interest harm, as disclosure would disclose the personal information of a person, whether living or dead.²⁷
26. QPS did not address whether any factors favouring disclosure may apply. Further, QPS made no submission regarding where the balance of the public interest lies.

²⁰ Section 44 of the RTI Act.

²¹ Section 47(2) of the RTI Act.

²² Which came into force on 1 January 2020.

²³ *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 [11].

²⁴ **XYZ** at [573].

²⁵ On 17 July 2019.

²⁶ On 28 August 2019.

²⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

27. I conveyed my preliminary view to the applicant,²⁸ that the disclosure of the Third-Party Information would, on balance, be contrary to the public interest.
28. Although the applicant provided a response to my preliminary view, he did not specifically address my view that access to the Third-Party Information may be refused, merely stating his desire that the whole Test Report be provided to enable him to confirm that the speed camera device had been tested and the results checked. The applicant stated that, in his opinion, QPS were deliberately withholding information as a tactic to mislead alleged offenders and judicial officers. The applicant also described his previous experiences of attempting to obtain documents from QPS and stated, that in his view, QPS's continual delays in responding to OIC suggested that QPS were '*playing pathetic games*'.
29. Having carefully considered all material before me, I will now set out my reasons regarding whether disclosure of the Third-Party Information would, on balance, be contrary to the public interest.

Factors favouring disclosure

30. There is a general public interest in advancing public access to government held information, and the RTI Act is administered with a '*pro-disclosure bias*', meaning that an agency should decide to give access to information, unless giving access would, on balance, be contrary to the public interest.²⁹
31. QPS must be transparent and accountable³⁰ in ensuring that its speed camera devices are accurate and correctly calibrated, particularly when enforcing motor vehicle offences against members of the public. However, I do not consider that disclosing the names of the Testing Officer or Approved Signatory at SGS would advance QPS's accountability or transparency for ensuring that speed camera devices are correctly tested and calibrated. I afford this factor low weight, as, in my view, the balance of the information in the Test Report serves that purpose.

Factors favouring nondisclosure

32. The RTI Act recognises that disclosing an individual's personal information to another person can reasonably be expected to cause a public interest harm,³¹ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.³²

Personal Information

33. The term '*personal information*' is defined as follows in the RTI Act:³³

Information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

²⁸ On 12 November 2019.

²⁹ Section 44(1) of the RTI Act.

³⁰ Schedule 4, part 2, item 1 of the RTI Act.

³¹ Schedule 4, part 4, section 6(1) of the RTI Act.

³² Schedule 4, part 3, item 3 of the RTI Act.

³³ See schedule 5 of the RTI Act which refers to section 12 of the *Information Privacy Act 2009* (Qld).

34. Information about an individual which includes their name will ordinarily be identifying, because the individual's identity is apparent from that information.³⁴ I also consider that a person's signature forms part of their personal information.
35. OIC has previously found³⁵ the fact that an individual works for a private sector business is their personal information, disclosure of which gives rise to a public interest harm factor favouring nondisclosure. The Assistant Information Commissioner acknowledged that there may be instances where, for example, the individual concerned is a senior manager of the business and their name, title and contact details are accessible through the business website and this may reduce the privacy attaching to an individual's private sector employment information.³⁶ In this case the SGS employees concerned are not in a senior or managerial role. I note one of the employees has a LinkedIn page that refers to their employment at SGS.
36. I am satisfied that the Third-Party Information solely comprises the personal information of the third parties who are not public service officers. As noted above, one of the employees has a LinkedIn page that refers to their employment at SGS, which would slightly lower the weight of the nondisclosure factor for this particular employee with regard to their private sector employment details, however, I still afford this nondisclosure factor significant weight for both employees.

Privacy

37. A separate factor favouring nondisclosure will arise where disclosure of the relevant information could reasonably be expected to prejudice the protection of an individual's right to privacy. The concept of '*privacy*' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their '*personal sphere*'.
38. There is a community expectation that government agencies will protect the personal information it receives of private citizens. There is also an expectation that any information received will be used for limited purposes only and not subject to unrestricted dissemination. I am satisfied that disclosure of the Third-Party Information would interfere with the personal sphere of the SGS employees.
39. I consider that disclosure of the information could reasonably be expected to prejudice the protection of the right to privacy of those individuals. I afford this nondisclosure factor significant weight.

Balancing the public interest

40. I have considered the pro-disclosure bias in deciding access to information.³⁷ On balance, considering the particular nature of the Third-Party Information (that is, the names, signatures and private sector employment information of the third parties), I consider the nondisclosure factors regarding prejudice to privacy and the harm associated with the disclosure of others' personal information outweigh the disclosure factor related to transparency and accountability. Accordingly, the Third-Party Information may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.

³⁴ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [20].

³⁵ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [67] (**Underwood**)

³⁶ *Underwood* at [67].

³⁷ Section 44 of the RTI Act.

41. In relation to the Third-Party Information, I have carefully considered all other factors listed in schedule 4 of the RTI Act, and have not identified any other factors as relevant in the circumstances of this review. In terms of the factors favouring disclosure for example, I have noted that the applicant's submissions have at no stage raised matters that could reasonably be viewed as necessitating consideration of the factors listed in schedule 4, part 2, items 2 to 19 or any other public interest factors favouring disclosure not listed in the RTI Act.³⁸ Accordingly, I can identify no other public interest considerations telling in favour of disclosure of the Third-Party Information.

Calibration Report

Relevant law

42. For the purposes of the RTI Act, a document of an agency means:³⁹

a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency, and includes:

- (a) a document to which the agency is entitled access; and*
- (b) a document in the possession, or under the control, of an officer of the agency in the officer's official capacity.*

Findings

43. QPS submitted to OIC⁴⁰ that the Calibration Report⁴¹ is not in the possession of QPS and suggested the applicant contact SGS (the company performing the testing) to obtain a copy.⁴²
44. Assistant Information Commissioner Rickard advised QPS that physical possession is not the sole test as to whether a document is a document of an agency which is subject to the RTI Act. A document not in the physical possession of an agency may nevertheless be a 'document of an agency' for the purposes of the RTI Act, if it is under the control of an agency or is a document to which the agency is entitled to access. The Information Commissioner has previously found that a document will be under the control of an agency⁴³ where the agency has a present legal entitlement to take physical possession of the document.⁴⁴
45. During my meeting with QPS, QPS submitted to OIC that it is not entitled to access to the Calibration Report, nor is the Calibration Report under the control of QPS, as QPS does not have a contractual relationship with SGS. In summary QPS submitted that:
- the testing and calibration of the Vitronic speed cameras is conducted by SGS entirely independently of QPS. QPS does not have a contractual relationship with SGS
 - QPS has a contract with Vitronic (the manufacturer of the cameras). The contract requires Vitronic to supply QPS with calibrated cameras

³⁸ Which I must also consider, given that the public interest factors listed in the RTI Act are non-exhaustive – see section 49(3)(a), (b) and (c) of the RTI Act.

³⁹ Section 12 of the RTI Act.

⁴⁰ On 17 July 2019.

⁴¹ The Test Report contains a heading which states 'Test Results' and refers to the Calibration Report (SGS Report TC180147).

⁴² Memorandum from the Director, Road Safety Camera Office to Principal RTI Officer, Right to Information & Privacy Unit, QPS dated 12 July 2019.

⁴³ Or one which it is entitled to access – *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 30 (26 November 2015) at [15].

⁴⁴ *Price and the Nominal Defendant* (Unreported, Information Commissioner, 24 November 1999) at [35].

- the contract between QPS and Vitronic does not contain any provision enabling QPS to access any documents held by SGS relating to the testing and/or calibration of the speed cameras, nor does it place any obligation on Vitronic to provide QPS with such documents
 - SGS provide testing and calibration services to Vitronic, via a direct contract between SGS and Vitronic
 - in proceedings for an offence involving a motor vehicle under the *Transport Operations (Road Use Management) Act 1995* (Qld) (**TO(RUM) Act**), the prosecution is not required to produce the testing and/or calibration certificates/reports to the court. The prosecution can produce a certificate purporting to be signed by an official,⁴⁵ as evidence that the speed camera was producing results when it was tested;⁴⁶ and
 - the SGS report is not under the '*possession*' or '*under the control*' of QPS under the dictionary definitions of those terms or the expanded definition contained in the RTI Act.
46. I advised the applicant of QPS's Oral Submission in relation to the Calibration Report in my preliminary view. I also conveyed my view, that based on the submission provided to me by QPS, my preliminary view was that the Calibration Report is not a document in the possession or under the control of QPS,⁴⁷ and was not therefore subject to the RTI Act.
47. In his response to my preliminary view, the applicant advised that in a Magistrates Court Hearing⁴⁸ the QPS Prosecutor at the time submitted the '*actual laboratory report*'⁴⁹ to the Court and provided the applicant with a copy of the laboratory report.

Conclusion

48. Whilst I acknowledge the applicant's comment that a QPS Prosecutor provided the applicant with a copy of a report in 2016, I am not aware of the factual circumstances of the case in 2016 that led to the applicant being provided with a copy of a report. There may have been specific reasons related to the prosecution of that case that necessitated QPS obtaining a copy of the report from the testing company, for example by way of subpoena. The fact that the applicant was provided with a copy of a report in 2016, does not equate to the Calibration Report being a document of the agency for the purposes of the RTI Act in this review.
49. Based on the information before me, I am satisfied that QPS does not enjoy a present legal entitlement to take physical possession of the Calibration Report held by SGS. I accept the submission from QPS regarding the contractual arrangements between QPS and Vitronic and Vitronic and SGS. I also accept QPS's submission that as part of those contractual arrangements, QPS is not entitled to access to the Calibration Report.
50. In these circumstances, I consider that the Calibration Report held by SGS is not a document in the possession or under the control of QPS and is therefore not a '*document of an agency*' for the purposes of the RTI Act. Accordingly, access cannot be granted under the RTI Act.

⁴⁵ Which generally means the commissioner or chief executive – section 120(9)(a) of the TO(RUM) Act.

⁴⁶ Section 120(2A) of the TO(RUM) Act.

⁴⁷ Section 12 of the RTI Act.

⁴⁸ Which appears to have been in 2016 from the information provided by the applicant.

⁴⁹ I assume this reference to mean a calibration report.

Record of Operation

Relevant law

51. Access to information may also be refused where information comprises exempt information.⁵⁰ Schedule 3 of the RTI Act sets out the categories of information, the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.⁵¹ Schedule 3 lists the various types of information that constitute exempt information, including:

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 ... ; or

(g) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety ...

Discussion

52. QPS submitted that the applicant should be refused access to two pieces of information contained within the Record of Operation, on the basis the information was exempt information.⁵² I will refer to these two pieces of information as the **Category A Information** and **Category B Information**. While section 108(3) of the RTI Act prevents me from providing a detailed description of information which is claimed to be exempt, I can say that the Category A Information comprises QPS operational information and the Category B information comprises two words that appear at the side of the words 'Posted Speed' on the Record of Operation.

53. QPS initially submitted⁵³ that the Category A Information and Category B Information were exempt information as they fell within three categories of exempt information as referred to in Schedule 3 of the RTI Act. However, during my meeting with QPS, QPS's Oral Submission focussed on the Category A Information and Category B Information being exempt information on the basis that disclosure 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.⁵⁴

Category A Information

54. QPS submitted in its Oral Submission to OIC that the Category A Information comprises operational information that is relevant to the enforcement of the law concerning motor vehicle offences. As noted at paragraph 8 above, QPS were unwilling to disclose this small amount of operational information to OIC, but QPS provided me with a description of the operational information. In an attempt to progress the review as quickly as possible, I did not press to see this information, despite my entitlement to do so under section 100 of the RTI Act. Whilst I have not been privy to viewing this small amount of

⁵⁰ Sections 47(3)(a) and 48 of the RTI Act.

⁵¹ See section 48(2) of the RTI Act.

⁵² Schedule 3, sections 10(1)(f), 10(1)(g) and 10(1)(i) of the RTI Act.

⁵³ On 28 August 2019.

⁵⁴ Schedule 3, section 10(1)(f) of the RTI Act.

operational information, I am satisfied from its context and the description provided to me by QPS about the content that I have a good understanding of the nature of the information which is sufficient to allow me to consider whether the claimed ground of refusal applies.

55. QPS in its Oral Submission provided its view the Category A Information was exempt information for the following reasons:
- The Category A Information is only known internally within QPS.
 - Disclosure of the Category A Information would undermine road safety programmes and impact on the safety of the public. QPS provided an explanation as to why it considered the disclosure of the information would undermine road safety programmes, however due to the nature of the information, I am unable to describe in detail QPS's explanation without revealing what the Category A Information is.⁵⁵
56. I conveyed QPS's Oral Submission to the applicant in my preliminary view. I also conveyed that my preliminary view was that access to the Category A Information may be refused on the basis that it is exempt information.⁵⁶
57. In his response, the applicant advised that he had previously received full copies of records of operation from QPS, but he did not address QPS's submission specifically. Whilst I acknowledge that the applicant may have obtained copies of records of operation for previous motoring offences, this decision applies with respect to accessing the Record of Operation under the RTI Act.

Category B Information

58. Again, in its Oral Submission QPS argued that the Category B Information comprises operational information that is relevant to the enforcement of the law concerning motor vehicle offences.
59. QPS submitted⁵⁷ that in its view the Category B Information was exempt information for the following reasons:
- Disclosure of the Category B Information would undermine road safety programmes and impact on the safety of the public.
 - QPS do not disclose the Category B Information and QPS employees have been disciplined for disclosing the Category B Information.
60. QPS also made an Oral Submission that, in the alternative, disclosure of the Category B information would, on balance, be contrary to the public interest.⁵⁸ QPS indicated that it would provide OIC with a further written submission and would also provide data research that supported QPS's view.
61. As noted at paragraph 8 above, OIC has not received a public interest factor submission from QPS in relation to the Category B Information or the research to which it referred in the meeting.

⁵⁵ Section 108(3) of the RTI Act.

⁵⁶ Sections 47(3)(a) and 48 of the RTI Act.

⁵⁷ On 10 September 2019.

⁵⁸ Sections 47(3)(b) and 49 of the RTI Act.

Findings

62. As stated above, information will be exempt information if its disclosure 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;⁵⁹ or
 - maintenance or enforcement of a lawful method or procedure for protecting public safety.⁶⁰
63. These provisions will apply if the following requirements are met:
- there exists an identifiable lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention or possible contravention of the law, or for protecting public safety; and
 - disclosure of the documents to which the application relates could reasonably be expected to prejudice the effectiveness or maintenance of that method or procedure.
64. I will examine each of these requirements as they relate to the categories of information in turn.

Category A Information

a. Is there an identifiable lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law, or for protecting public safety?

65. Yes, for the reasons that follow.
66. The use of speed cameras is regulated by the TO(RUM) Act. The TO(RUM) Act establishes a scheme to allow for monitoring of compliance with the Act.⁶¹ I am satisfied that the process of QPS using speed cameras to identify individuals committing motor vehicle offences is a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention of the law. I also consider that the use of speed cameras is a lawful method or procedure for protecting public safety, on the basis that the use of speed cameras encourages drivers to drive within the set speed limits, therefore reducing the number of road traffic accidents and fatalities.
67. I am satisfied that the road safety programme is an integral part of the methods and procedures used by QPS to detect a contravention or possible contravention of the law and to protect public safety.

b. Could disclosure of the Category A Information reasonably be expected to prejudice the effectiveness or maintenance of the method or procedure?

68. I have considered whether prejudice could reasonably be expected to occur as a result of the disclosure of the Category A Information. The Category A Information is information that is not publicly known. I note QPS's submission regarding the manner in which it expects prejudice would arise if the Category A Information was released and I am satisfied that QPS's expectation is reasonably based. As noted at paragraph 52 above, I am unable to describe in detail QPS's submission without revealing what the

⁵⁹ Schedule 3, section 10(1)(f) of the RTI Act.

⁶⁰ Schedule 3, section 10(1)(g) of the RTI Act.

⁶¹ Section 3(2)(d) of the TO(RUM) Act.

Category A Information is.⁶² Accordingly, I am satisfied that disclosure of the information could reasonably be expected to prejudice QPS's road safety programme and as a result impact on public safety.

Category B Information

a. Is there an identifiable lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law, or for protecting public safety?

69. Yes, for the reasons noted above.⁶³

b. Could disclosure of the Category B Information reasonably be expected to prejudice the effectiveness or maintenance of the method or procedure?

70. I have considered whether prejudice could reasonably be expected to occur as a result of the disclosure of the Category B Information. As previously noted, whilst the legislation⁶⁴ prevents me from providing a detailed description of information which is claimed to be exempt, I can say that the Category B information comprises two words that appear at the side of the words '*Posted Speed*' on the Record of Operation.

71. In its Oral Submission, QPS stated that disclosure of the Category B Information would undermine its road safety programmes as it would reveal operational information used by QPS, as part of its enforcement of motor vehicle offences. Since the meeting with QPS, it has come to my attention that more detailed information than that contained in the Category B Information is publicly available on QPS's own website.⁶⁵ Again, as noted at paragraph 52 above, I am unable to describe in detail the information that OIC has located from QPS's website without revealing what the Category A Information is. However, based on the information on QPS's website, I do not accept QPS's submission that QPS does not reveal this operational information to the public.

72. On the basis that QPS's own website contains more comprehensive references to the operational information, I do not consider that any prejudice could reasonably be expected to flow from the disclosure of the Category B Information.

Would disclosure of the Category B Information, on balance, be contrary to the public interest?

73. During my meeting with QPS, QPS indicated that it also considered that disclosure of the Category B Information would, on balance, be contrary to the public interest⁶⁶ and wished to provide OIC with a written submission addressing this.

74. Despite OIC requesting QPS provide a submission by 25 September 2019 and providing an extension until 25 October 2019, as at the date of this decision QPS has not provided OIC with a public interest factor submission.

75. As a result, it is necessary for me to determine whether disclosure of the Category B Information would, on balance, be contrary to the public interest in the absence of any submission from QPS.

⁶² Section 108(3) of the RTI Act.

⁶³ At [66]-[67].

⁶⁴ Section 108(3) of the RTI Act.

⁶⁵ QPS has been provided with the details of where OIC located this information on QPS's website.

⁶⁶ Sections 47(3)(b) and 49 and schedule 4, part 3, item 7 of the RTI Act.

76. I repeat and rely on the matters set out at paragraphs 17 to 22 above.

Factors favouring disclosure

77. The applicant has submitted that he should have access to the Record of Operation to ascertain that the speed camera has been correctly tested and calibrated. The applicant expressed the view that QPS's refusal to provide access to the Record of Operation was a '*deliberate and calculated tactic*'⁶⁷ to prevent the applicant being able to verify if the speed camera was set up in accordance with the manufacturer's requirements.

78. As stated earlier in this decision, QPS must be transparent and accountable⁶⁸ in ensuring that its speed cameras are accurate and correctly calibrated, particularly when a member of the public may be seeking to challenge the accuracy of the speed camera's measurements.

79. Whilst I do not consider that disclosure of the Category B Information will in itself assist the applicant to ascertain if the speed camera has been set up in accordance with the manufacturer's requirements, I consider that disclosure of the information will enhance QPS's transparency and accountability. The disclosure of the Category B Information may also go some way to assuaging the applicant's concern that QPS are refusing access to information as a '*deliberate and calculated tactic*'. I afford the transparency and accountability factor substantial weight.

Factors favouring nondisclosure

80. A factor favouring nondisclosure will arise where disclosure could reasonably be expected to prejudice security, law enforcement or public safety.⁶⁹ I do not consider that the disclosure of the Category B Information could prejudice law enforcement or public safety, when QPS's website provides more comprehensive information than that contained in the Category B Information. I am therefore of the view that this nondisclosure factor is not applicable to this review.

81. However, if I am wrong in this view, I do not consider that the two words contained in the Record of Operation are of such significance on their own, and in circumstances where the Category A Information is not disclosed, that disclosure could reasonably be expected to prejudice QPS's enforcement of motor vehicle offences or QPS's road safety programmes and therefore prejudice public safety. I would therefore afford this nondisclosure factor very low weight.

Balancing the public interest

82. In summary, I am satisfied that the factor favouring nondisclosure of the Category B Information warrants no to low weight and I afford substantial weight to the public interest factor relating to promoting open discussion of public affairs and enhancing government's accountability.

83. In relation to the Category B Information, I have carefully considered all other factors listed in Schedule 4 of the RTI Act, and have not identified any other factors as relevant in the circumstances of this review. In terms of the factors favouring nondisclosure for example, I have noted that QPS's submissions have at no stage raised matters that could reasonably be viewed as necessitating consideration of the factors listed in schedule 4,

⁶⁷ On 20 November 2019.

⁶⁸ Schedule 4, part 2, item 1 of the RTI Act.

⁶⁹ Schedule 4, part 3, item 7 of the RTI Act.

part 3, items 1 to 6 and 8 to 22 or schedule 4, part 4, sections 1 to 10 or any other factors favouring nondisclosure not listed in the RTI Act.⁷⁰

Conclusion

84. I do not consider that QPS has discharged its onus of establishing QPS's decision to refuse access to the Category A Information or Category B Information was justified or that the Information Commissioner should give a decision adverse to the applicant with regard to either category of information.⁷¹
85. However, as external review is merits review, and for the sake of completeness, I have considered the application of the RTI Act to all Category A Information and Category B Information in the Record of Operation and based on the information before me I am satisfied that:
- access to the Category A Information may be refused on the basis that the Category A Information comprises exempt information; and
 - the Category B Information is not exempt information, nor would its disclosure, on balance, be contrary to the public interest.
86. Consequently, access to the Category B Information cannot be refused.

Chapter Six of the Manual

Relevant law

87. The RTI Act provides that access to a document of an agency may be given to a person in more than one form, including providing an applicant with a copy of the document⁷² or providing a reasonable opportunity for the applicant to inspect the document.⁷³

Finding

88. QPS originally submitted that Chapter Six of the Manual '*is protected by copyright and is only licensed to QPS; its unauthorised storage, printing or redistribution is prohibited*' and it refused the applicant access on that basis.⁷⁴ QPS suggested that the applicant direct his enquiries to the manufacturer of the speed camera, if he wished to obtain access to Chapter Six of the Manual.
89. Assistant Information Commissioner Rickard conveyed a preliminary view to QPS,⁷⁵ that whilst Chapter Six of the Manual may be subject to copyright and therefore reproduction is prohibited, the RTI Act provides that access may be given in more than one form.⁷⁶ Assistant Information Commissioner Rickard suggested that, QPS provide the applicant with a reasonable opportunity to inspect Chapter Six of the Manual. QPS agreed to this suggestion.⁷⁷

⁷⁰ Which I must also consider, given that the public interest factors listed in the RTI Act are non-exhaustive – see section 49(3)(a), (b) and (c) of the RTI Act.

⁷¹ Section 87(1) of the RTI Act.

⁷² Section 68(1)(b) of the RTI Act

⁷³ Section 68(1)(a) of the RTI Act.

⁷⁴ On 17 July 2019.

⁷⁵ On 24 July 2019.

⁷⁶ Section 68 of the RTI Act.

⁷⁷ On 28 August 2019.

90. I note that despite agreeing to facilitate an inspection of Chapter Six of the Manual and being requested by OIC to arrange for the applicant to inspect Chapter Six of the Manual on four occasions, QPS has not done so.
91. As QPS has not facilitated the informal resolution option that it agreed to, it is necessary for me to determine whether access to Chapter Six of the Manual should be provided to the applicant.
92. QPS have made no submissions objecting to the disclosure of Chapter Six of the Manual. As a result, it is necessary for me to determine whether disclosure of Chapter Six of the Manual would, on balance, be contrary to the public interest in the absence of any submission from QPS.
93. I repeat and rely on the matters set out at paragraphs 17 to 22 above.

Factors favouring disclosure

94. In his submission, the applicant stated that Chapter Six of the Manual should be disclosed to enable the set up and operation of the speed camera to be cross-checked and examined.
95. As speed cameras are used by QPS to detect individuals committing motor vehicle offences, it is imperative that the speed camera is set up in accordance with the manufacturer's guidelines and subsequently operated within those guidelines. QPS must be transparent and accountable in how it achieves this.⁷⁸
96. I understand that Chapter Six of the Manual contains information relating to the correct set up and safe operation of the speed camera. I consider disclosure of this information will go some way towards enhancing QPS's transparency and accountability as to how it sets up and operates its speed cameras. I therefore afford this disclosure factor significant weight.

Factors favouring nondisclosure

97. I acknowledge that disclosure of a manufacturer's operational manual could reasonably be expected in some circumstances to cause prejudice or a public interest harm because disclosure of the information would disclose the 'trade secrets' of the manufacturer for example the design of the speed camera or a uniqueness in how it is operated.⁷⁹
98. I am of the view that the weight to be given to these nondisclosure factors is reduced somewhat by a version of the Vitronic Manual being publicly available on the internet.⁸⁰ I acknowledge that the copy of the manual available online may not be the latest version produced by the manufacturer,⁸¹ however I consider any prejudice or public interest harm that could reasonably be expected to occur by disclosure of Chapter Six of the Manual to the applicant is significantly reduced when a full version of the manufacturer's manual is accessible by the public online. I therefore afford these nondisclosure factors moderate weight.

⁷⁸ Schedule 4, part 2, item 1 of the RTI Act.

⁷⁹ Schedule 4, part 3, item 15 and schedule 4, part 4, section 7 of the RTI Act.

⁸⁰ And can be accessed as <<https://www.scribd.com/document/382267391/VictronPloisacn-Manual>>.

⁸¹ The manual refers to Revision 3.0.0 and is dated June 2010.

Balancing the public interest

99. On balance, considering the particular nature of Chapter Six of the Manual, I am of the view that the disclosure factor regarding QPS's transparency and accountability outweighs the nondisclosure factors.
100. In relation to Chapter Six of the Manual, I have carefully considered all other factors listed in Schedule 4 of the RTI Act, and have not identified any other factors as relevant in the circumstances of this review. In terms of the factors favouring nondisclosure for example, I have noted that I have received no submissions that could reasonably be viewed as necessitating consideration of the factors listed in schedule 4, part 3, items 1 to 14 and 16 to 22 or schedule 4, part 4 sections 1 to 6 and 8 to 10.⁸² Accordingly, I can identify no other factors favouring nondisclosure in relation to Chapter Six of the Manual.

Conclusion

101. In the absence of any public interest factor submission from QPS, I have concluded that disclosure of Chapter Six of the Manual would not, on balance, be contrary to the public interest. I accept QPS's submission that Chapter Six of the Manual is subject to copyright, I therefore find that access to Chapter Six of the Manual should be provided to the applicant by way of inspection.

DECISION

102. For the reasons set out above, I vary QPS's decision by finding that:
- access to *some* of the information in the Test Report may be refused on the basis disclosure would, on balance, be contrary to the public interest
 - access to *some* information in the Record of Operation may be refused on the grounds that it comprises exempt information
 - access to Chapter Six of the Manual may not be refused. The applicant is therefore entitled to access Chapter Six of the Manual, in accordance with the right of access prescribed in section 23 of the RTI Act; and
 - the Calibration Report is not a document of QPS for the purposes of the RTI Act. Accordingly, access to it cannot be granted under the RTI Act.
103. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 4 February 2020

⁸² Which I must also consider, given that the public interest factors listed in the RTI Act are non-exhaustive – see section 49(3)(a), (b) and (c) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
4 February 2019	OIC received the application for external review.
3 April 2019	OIC notified the applicant and QPS that the application for external review had been received. OIC requested the procedural documents from QPS by 17 April 2019.
8 May 2019	OIC contacted QPS about the overdue procedural documents requested in OIC's letter dated 3 April 2019.
9 May 2019	OIC contacted the applicant to obtain further information about his access application.
9 May 2019	OIC contacted QPS to convey the further information provided by the applicant regarding his access application and requested QPS provide the overdue procedural documents to OIC by 23 May 2019.
24 May 2019	OIC contacted QPS about the overdue procedural documents.
28 May 2019	OIC contacted QPS about the overdue procedural documents and requested QPS provide the procedural documents to OIC by 4 June 2019.
10 June 2019	OIC contacted QPS about the overdue procedural documents and requested QPS provide the procedural documents to OIC by no later than 24 June 2019.
26 June 2019	OIC served on QPS a Notice to Produce Information and Documents pursuant to section 103 of the RTI Act, requiring the procedural documents to be provided by 17 July 2019.
17 July 2019	QPS provided OIC with the Test Report and redacted copy of the Record of Operation, however QPS advised that it had requested a full copy of the documents from the Road Safety Camera Office and would provide a full view on disclosure of the documents once a full copy of the documents was received from the Road Safety Camera Office.
24 July 2019	OIC contacted QPS requesting QPS provide, by 7 August 2019: <ul style="list-style-type: none"> • a full copy of the documents, together with QPS's view on disclosure • a copy of the Calibration Report; and • confirmation of whether QPS would offer the applicant an inspection of Chapter Six of the Manual.
22 August 2019	OIC contacted QPS about QPS's overdue response. Assistant Information Commissioner Rickard conveyed a preliminary view to QPS, that as QPS had provided limited information about its views on disclosure of the documents to the applicant, QPS had not satisfied the onus that the Information Commissioner should give a decision adverse to the applicant. ⁸³ OIC requested a response by 29 August 2019.

⁸³ Section 87(1) of the RTI Act.

Date	Event
28 August 2019	QPS contacted OIC to indicate that QPS was not agreeable to providing OIC with a full copy of the Record of Operation due to the sensitive nature contained within the Record of Operation. However, QPS stated it was agreeable to arranging for the applicant to inspect Chapter Six of the Manual.
29 August 2019	OIC contacted QPS to request QPS arrange for an OIC Review Officer to view the Record of Operation by 12 September 2019. OIC also indicated to QPS that it was still not satisfied that the Calibration Report was not a <i>document</i> of QPS and sought a response to this view by 12 September 2019.
31 August 2019	QPS requested that a meeting take place between the Assistant Information Commissioner and the Director of the Road Safety Camera Office.
4 September 2019	OIC indicated to QPS that the Assistant Information Commissioner was agreeable to meeting with the Director of the Road Safety Camera Office.
10 September 2019	Meeting between Assistant Information Commissioner Corby and QPS.
12 September 2019	OIC contacted QPS with a record of the Oral Submission made by QPS, during the meeting on 10 September 2019. OIC requested QPS confirm by 16 September 2019 whether it considered the record accurately reflected QPS's Oral Submission and whether QPS wished to rely on the Oral Submission as part of this review. OIC also requested QPS provide a further public interest factor submission by 25 September 2019.
4 October 2019	OIC contacted QPS about QPS's overdue response to OIC's letter dated 12 September 2019. OIC advised QPS that as it had not received a response from QPS, that OIC would take QPS's lack of response to mean that QPS accepted that the points referred to in OIC's letter accurately reflected the Oral Submission made by QPS during the meeting.
9 October 2019	Following a request from QPS, OIC granted an extension of time for QPS to respond to OIC's letter dated 12 September 2019 until 25 October 2019.
6 November 2019	OIC contacted QPS about QPS's overdue response to OIC's letter dated 12 September 2019. OIC advised that it did not consider that QPS had met the onus of establishing that the Information Commissioner should make a decision adverse to the applicant in relation to two words (Category B Information) in the Record of Operation. OIC provided QPS with a copy of its draft preliminary view and advised that the next step in the review would be to issue a preliminary view to the applicant. QPS were given the opportunity to provide a submission by 11 November 2019.

Date	Event
12 November 2019	<p>As no public interest submission was received from QPS, OIC conveyed a preliminary view to the applicant. The applicant was provided with an opportunity to respond to OIC's preliminary view by 26 November 2019.</p> <p>OIC also wrote to QPS:</p> <ul style="list-style-type: none"> • advising that the preliminary view had been conveyed to the applicant; • providing QPS with a marked up copy of the documents as per OIC's preliminary view to the applicant. <p>OIC requested QPS release the marked up copy of the documents to the applicant and to arrange for the applicant to inspect Chapter Six of the Manual by 19 November 2019.</p>
22 November 2019	<p>OIC received a response from the applicant to OIC's preliminary view. The applicant also advised that he had not received any contact or documents from QPS.</p>
26 November 2019	<p>OIC contacted QPS about QPS not complying with OIC's email dated 12 November 2019.</p> <p>OIC requested QPS release the marked up copy of the documents to the applicant and to arrange for the applicant to inspect Chapter Six of the Manual by 2 December 2019.</p>
13 December 2019	<p>OIC contacted QPS about QPS not complying with OIC's email dated 12 November 2019.</p> <p>OIC requested QPS release the marked up copy of the documents to the applicant and to arrange for the applicant to inspect Chapter Six of the Manual by 17 December 2019.</p>
20 December 2019	<p>OIC contacted QPS to request QPS's urgent attention to OIC's requests that documents be released to the applicant and that QPS arrange an inspection of Chapter Six of the Manual.</p> <p>OIC advised QPS that in the absence of a response and in view of the ongoing delays, OIC would proceed to issue a formal decision to finalise the external review.</p>