



## **Decision and Reasons for Decision**

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**Application Number:** 210608

**Applicant:** Megumi, Ogawa

**Respondent:** Department of Police

**Decision Date:** 7 April 2009

**Catchwords:** **FREEDOM OF INFORMATION – section 28A(1) of the *Freedom of Information Act (Qld)* - Refusal of Access – Agency or Minister is satisfied the documents do not exist.**

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## REASONS FOR DECISION

### Summary

1. For the reasons set out below, I find that access to the documents sought is refused under section 28A(1) of the *Freedom of Information Act 1992 (FOI Act)* as the documents do not exist.

### Background

2. 30 June 2008 the applicant applied to the Department of Police (**Department**) for access to:

*... a copy of all records of my personal affairs held by the QPS.*

3. The Department wrote to the applicant on 9 July 2008 requesting that she provide more specific information about the records to which she sought access.

4. On 26 July 2008 the applicant applied to the Department for access to:

*all draft witness statements in relation to the charge filed in the Brisbane Magistrates Court against me on or around 14 April 2008;*

*all records concerning the preparation of the witness statements in relation to the charge referred to in the foregoing paragraph 1 herein;*

*all records of correspondence between Jeff Sipek of Women's College and the QPS in relation to Jeff Sipek's complaint against me in or around May 2006 that I had sent threatening emails to Women's College; and*

*all records in relation to the investigation of the Jeff Sipek's complaint referred to in the foregoing paragraph 3 herein. (FOI Application)*

5. In a letter dated 11 August 2008, the Department advised the Applicant that as she had been charged with a federal offence, the Commonwealth Director of Public Prosecutions (**CDPP**) now had carriage of the matter. Accordingly, the Department relied on section 22(a) of the FOI Act to refuse access to the documents on the basis that the Applicant could reasonably get access to the documents from the CDPP (**Original Decision**).
6. In a letter dated 16 August 2008 the applicant applied for internal review of the Original Decision on the basis that: (a) the decision maker took into account irrelevant facts; (b) the decision maker failed to take into account relevant facts; (c) the decision was made on facts that did not exist; and (d) the decision was so unreasonable that no reasonable person could possibly make (sic). The applicant also stated the decision maker made the decision on the assumption that the records were requested for the use as evidence in the court proceedings.
7. In a letter dated 3 September 2008, the Department affirmed its Original Decision (**Internal Review Decision**).
8. In an email dated 6 September 2008, the Applicant applied to this Office for external review of the Internal Review Decision.

### **Decision under review**

9. The decision under review is the Internal Review Decision of the Department dated 3 September 2008.

### **Steps taken in the external review process**

10. By letter dated 15 September 2008 the Acting Information Commissioner advised the Department that its decision would be reviewed. In that same letter copies of all documents responsive to the applicant's application to which access had been refused were requested.
11. By letter dated 21 October 2008 the Department made submissions concerning the application of section 22(a) of the FOI Act to the documents sought in the FOI Application.
12. During the external review enquiries were made with the Department and the CDPP in relation to the arrangements between the Department and CDPP for the provision of access to information other than under the FOI Act.
13. On 3 March 2009 I wrote to the Department pursuant to section 76(1)(e) of the FOI Act, requesting that it provide me with a copy of the documents responsive to the FOI Application for the purpose of deciding whether the documents were documents to which access may be refused under section 22 of the FOI Act.
14. By letter dated 6 March 2009 the Department sought clarification in relation to my request of 3 March 2009.
15. Following verbal clarification with the Department on 16 March 2009 the Department sent an electronic mail message (**email**) on 23 March 2009 3:09 PM outlining that the documents sought in the FOI Application did not exist.
16. In reaching this decision, I have taken into account:
  - the Applicant's FOI Application;
  - the Original Decision;
  - the Internal Review Decision;
  - correspondence between this Office and the Department;
  - relevant legislation and case law.

### **Issue for determination**

17. The issue for determination in this review is whether there are reasonable grounds to be satisfied that the documents sought by the applicant in her FOI Application do not exist and accordingly, whether access can be refused under section 28(A)(1) of the FOI Act

### **The law**

18. Section 28A(1) of the FOI Act provides:

#### **28A Refusal of access – document nonexistent or unlocatable**

*(1) An agency or Minister may refuse access to a document if the agency or Minister is satisfied the document does not exist.*

*Example –  
Documents that have not been created*

19. The question to be asked when applying section 28A(1) of the FOI Act is: *Are there reasonable grounds to be satisfied that the requested documents do not exist?*<sup>1</sup>
20. If searches are necessary to substantiate a conclusion that the documents sought do not exist, it is appropriate in reviewing the searches undertaken to also ask:

*“Have all reasonable steps been taken to find the document?”*<sup>2</sup>

### **The Department’s submissions**

21. In its letter dated 21 October 2008, the Acting Inspector PJ Robinson of the Department stated that:

*Upon initially receiving [the Applicant’s] application I conducted checks against her name via the Queensland Police Service’s (QPS) criminal complaint databases: Crime Reporting Information System for Police (CRISP); and QPrime which has now replaced CRISP. If a formal criminal complaint, other than an internal complaint made against a police officer, is made to the QPS it is recorded on these systems (CRISP is no longer used to enter new complaints but this unit searches for pre QPrime complaints).*

*The only “hits” for [the Applicant] were: CRISP report 06/127532; and QPrime occurrence report QP0610156741 (which is simply a QPrime file “converted” from the original CRISP report). These two reports are effectively one and the same report recorded on two different systems. There are no other recorded complaints against Ogawa.*

22. In the letter dated 21 October 2008, Acting Inspector PJ Robinson of the Department also stated that he had contacted the investigating and arresting officer in the matter of CRISP report 06/127532 and QPrime occurrence report QP0610156741 Plain Clothes Constable (PCC) Matthew Chapman, from the Brisbane City Criminal Investigation Unit, who had advised that:

*... [the Applicant] had been arrested in relation to the aforementioned CRISP report; the matter was presently before the courts...*

and

*... the Commonwealth Director of Public Prosecutions (CDPP) had carriage of the matter...*

23. In an email forwarded by Acting Inspector PJ Robinson to this Office on 23 March 2009 3:09 PM, PCC Matthew Chapman of the Brisbane City Criminal Investigation Branch of the Department stated that:

1. *No charges were brought against [the Applicant] on or about 14 April 2008 by myself or any other member of the QPS. By 14 April 2008, [the Applicant] had been before the District Court (on a charge from 2006) once and had the matter adjourned until October 2008. I therefore cannot provide any ‘draft witness statements’ in relation to this request*
2. *Subsequently no records of the request by [the Applicant] exist, including records concerning the preparation of witness statements.*

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<sup>1</sup> PDE and University of Queensland, 210631, para 43, February 2009

<sup>2</sup> PDE and University of Queensland, 210631, para 49, February 2009

3. *I can find no record of any complaint by Jeff SIPEK of the Women's College in relation to [the Applicant]. I can find no record of any complaint against [the Applicant] except the matter that was dealt with in 2006 and for which she is being sentenced on Wednesday 25 March 2009 in the Brisbane District Court.*
4. *No investigation was undertaken on behalf of Jeff SIPEK, therefore no records exist of the kind requested by [the Applicant]. I am aware that SIPEK was a witness for the crown in relation to charges preferred by the Australian Federal Police in 2006. [The Applicant] is also being sentenced for these on Wednesday.*

## Findings of fact

24. Having considered the above submissions, I make the following findings of fact:
- The Department now records all formal criminal complaints on its database known as QPrime.
  - Prior to the inception of the QPrime database formal criminal complaints were recorded on the CRISP database.
  - Some criminal complaints are recorded on both databases because following the commencement of the QPrime database certain CRISP reports were converted to QPrime files.
  - The Department conducted searches of both the QPrime and CRISP databases for any matter concerning the Applicant and located CRISP report 06/127532 (**CRISP Report**) and QPrime occurrence report QP0610156741 (**QPrime Report**).
  - The QPrime Report is the file converted from the CRISP Report and concerns a matter which occurred in 2006.
  - Neither the QPrime Report nor the CRISP Report refer to charges filed in the Brisbane Magistrates Court in or around 14 April 2008.
  - Neither the QPrime Report nor the CRISP Report refers to a complaint from Mr Jeff Sipek to the Department in or around May 2006.
  - Neither the QPrime Report nor the CRISP Report refers to an investigation having been conducted by the Department in relation to a complaint from Mr Jeff Sipek.
  - The Department made enquiries with PCC Chapman who was the investigating and arresting officer in the CRISP Report and QPrime Report matters in 2006.
  - No charges were laid by the Department against the Applicant on or around 14 April 2008.
  - The Department searched its QPrime and CRISP databases and made enquiries with PCC Chapman and was unable to locate any document responsive to the terms of the FOI Application.

## Analysis

### ***Are there reasonable grounds to be satisfied that the requested documents do not exist?***

25. As previously noted, the first question I must ask when applying section 28A of the FOI Act is whether there are reasonable grounds to be satisfied that the requested documents do not exist?
26. The answer to this question is yes.
27. The Department records information pertinent to any complaint about an individual in its QPrime database and formerly in its CRISP database. Thus, in this case a search for information concerning any complaint about the Applicant in both of those databases will quickly ascertain the existence of a complaint (or charge or other

document pertinent to a complaint) and will comprise all the reasonable steps necessary to be taken to try and locate documents responsive to the FOI Application. In this case the searches of those databases did not locate any document responsive to the terms of the Applicant's FOI Application.

28. In this external review I am satisfied that:

- there are reasonable grounds to be satisfied that the documents sought by the applicant do not exist because they were not created
- access to the document should be refused under section 28A(1) of the FOI Act.

## **DECISION**

29. For the reasons set out above, I set aside the decision of the Department to refuse access to the documents pursuant to section 22(a) of the FOI Act and find that access to the documents is refused under section 28A(1) of the FOI Act on the basis that the documents sought do not exist.

30. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

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**Assistant Commissioner Corby**

**Date: 7 April 2009**