



Decision and Reasons for Decision

Application Number: 310902

Applicant: 0ZH6SQ

Respondent: Queensland Police Service

Decision Date: 25 May 2012

Catchwords: ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - QUEENSLAND - REFUSAL OF ACCESS - applicant sought access to his records of interview and witness statements given by complainants against him - where records of interview and witness statements led to criminal proceedings and conviction of the applicant for sexual offences against children - relative weight in safeguarding the personal information and privacy of other individuals against administration of justice for the applicant and public interest in the applicant accessing his personal information - whether disclosing information would, on balance, be contrary to public interest

ADMINISTRATIVE LAW - RIGHT TO INFORMATION ACT - QUEENSLAND - REFUSAL OF ACCESS - under section 67(1) of the *Information Privacy Act 2009* (Qld) an agency may refuse access to information in the same way and to the same extent as under section 47 of the *Right to Information Act 2009* (Qld) - whether access to information may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant,¹ a prisoner, applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for copies of two record of interviews (**ROI**) between himself and QPS officers and two witness statements tendered during criminal proceedings conducted against him in May 1984. The criminal proceedings led to the applicant's conviction for sexual offences against minors and his involuntary indeterminate detention.² The applicant claimed to seek the information for the purpose of a parole hearing.
2. The QPS decided to grant partial access to the ROI. The QPS refused access to a small amount of information comprising those parts of the ROI that contained personal information of other individuals on the basis that disclosure would, on balance, be contrary to public interest due to the privacy interests of other individuals. The QPS refused access in full to the two witness statements, on the basis that disclosure would, on balance, be contrary to public interest due to the privacy interests of other individuals.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the QPS' decision to refuse access to information.
4. The applicant submitted that as he has been given access to these documents previously by the QPS and the Courts, it is both commonsense and in the public interest that he should have access to these documents today.⁴
5. Having considered the applicant's submissions and the relevant law, I am satisfied that the information is the applicant's personal information and that its disclosure could reasonably be expected to contribute to the administration of justice for a person and consequently, there is a public interest in the applicant accessing his personal information.⁵ However, this is outweighed by the strong public interest in protecting the privacy of the victims of child sex offences. Accordingly, I am satisfied that the QPS was entitled to refuse the applicant access to the information on the basis that its disclosure would, on balance, be contrary to public interest.

Significant procedural steps

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

Reviewable decision

7. The decision under review is the QPS' decision dated 1 December 2011 to refuse access to information on the basis that release of the information would, on balance, be contrary to the public interest.

¹ The applicant has been de-identified in this decision as the information sought relates to victims of sexual abuse, who were children at the time of the offences. This accords with the strong community view that victims of this type of crime are protected to the greatest extent possible.

² Section 18 of the *Criminal Law Amendment Act 1945* (Qld).

³ Section 47(3)(b) and section 49 of the *Right to Information Act 2009* (Qld).

⁴ The applicant suggested OIC obtain copies of the transcript of his Court appearances where his access to these documents was discussed. I did not avail myself of these transcripts for the reasons subsequently referred to in this decision.

⁵ I am also mindful that the Parole Board can itself access this information. For example, section 242 of the *Corrective Services Act 2006* (Qld) gives a Parole Board the power to require a person to produce a stated document containing information relating to a prisoner's application for parole.

Information in issue

8. The Information in Issue in this review is two ROI between the applicant and QPS officers and two witness statements tendered during criminal proceedings conducted against the applicant in May 1984 (**Information in Issue**).

Evidence considered

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

Relevant law

10. Under the IP Act, an individual has a right to access documents of an agency to the extent those documents contain their personal information.⁶ However, this right is subject to other provisions of the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**), including the grounds on which an agency may refuse access to documents.⁷
11. Under the RTI Act, an agency may refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.

Findings

Would disclosing the Information in Issue, on balance, be contrary to the public interest?

12. Yes, for the reasons that follow.

What is the public interest?

13. The “public interest” refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. The “public interest” is usually treated separately from matters of purely private or personal interest. As a general rule, a public interest consideration is one that is available to all members or a substantial part of the community, however, in some circumstances public interest considerations can apply for the benefit of particular individuals.⁸

How is the balance of the public interest determined?

14. Schedule 4 of the RTI Act lists factors which may be relevant in deciding whether disclosure of information would, on balance be contrary to the public interest.⁹ To decide this issue I must:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and

⁶ Section 40 of the IP Act.

⁷ As set out in section 67 of the IP Act and section 47 of the RTI Act. Section 67(1) of the IP Act provides that an agency may refuse access to a document, in the same way and to the same extent the agency could refuse access under section 47 of the RTI Act were the document the subject of an application under the RTI Act.

⁸ Examples include where the information is the applicant’s personal information or where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person (see schedule 4, part 2, items 7 and 17 of the RTI Act, respectively).

⁹ Section 49(2) of the RTI Act. This list is not exhaustive, factors additional to those mentioned may also be relevant.

- decide whether disclosure of the information in issue, on balance, would be contrary to the public interest.¹⁰

Where does the balance of the public interest lie in this matter?

15. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons that follow.

Irrelevant Factors

16. I have disregarded any irrelevant factors.

Factors Favouring Disclosure

Personal Information

17. The applicant says that he provided the information in his ROI, parts of which have now been refused and that it is his personal information. He further submits that the statements of the two witnesses contain his personal information.
18. If disclosing information could reasonably be expected to disclose the personal information¹¹ of the individual applying for that information, a public interest favouring disclosure arises.¹²
19. I agree that the information provided in his ROI is the applicant's personal information. I further agree that the two witness statements contain his personal information. However, his personal information is intrinsically connected with other people's personal information. As the Information in Issue is the applicant's personal information, some limited weight must be accorded to the public interest in disclosure on that basis. However, this factor must be weighed against the privacy of individuals other than the applicant. This is discussed later in this decision.
20. The applicant submitted that as he had been given access to these documents previously by the QPS and the Courts, it is both commonsense and in the public interest that he should have access to these documents today.¹³ The considerations the QPS and the Courts may have regard to when determining what information should be available to a party whether in the course of a criminal prosecution or a civil action are not relevant to the issues I must have regard to and balance under the IP and RTI Acts.¹⁴
21. For this reason I do not have regard to this submission, other than to allow that he has some knowledge of the content of the ROI and the witness statements and may be aware of the identity of some of these individuals. This may diminish the privacy

¹⁰ Sections 47(3)(b) and 49(3) of the RTI Act.

¹¹ Section 12 of the IP Act defines 'personal information' as *information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

¹² Schedule 4, part 2, item 7 of the RTI Act.

¹³ The applicant suggested OIC obtain copies of the transcript of his Court appearances where his access to these documents was discussed. I did not avail myself of these transcripts for the reasons subsequently referred to in this decision.

¹⁴ I refer to the decision, *Alexander Ronald Mackenzie and Western Australia Police* [2011] WAICmr 28 [50], of the Western Australian Information Commissioner in support of this view, where he says as follows:

"Even if the complainant did have access to some or all of Documents 4(a), 4(d), 6(d) and 7 in the course of his trial, I do not consider that necessarily equates to the public disclosure of those documents or that, in the absence of any other factors favouring disclosure the disclosure of those documents, such access significantly reduces the privacy interests of third parties whose identities could be ascertained by the disclosure of those documents."

interest attached to this information, nonetheless the privacy interest remains substantial.

The Administration of Justice

22. The applicant has advised that he requires the deletion free, ROI and both witness statements for his parole application. It is therefore necessary to consider whether disclosing the information in issue could reasonably be expected to contribute to the administration of justice for the applicant.¹⁵
23. It is not evident why two witness statements, made over 25 years ago, would be of value in his hearing before the Parole Board. Similarly, I am not convinced of the usefulness of his ROI in this process but note in any event there are only limited deletions from these documents.
24. In *Sanderson and Department of Justice and Attorney General*,¹⁶ the Information Commissioner said:

"The mere assertion by an applicant that information is required to establish pursuit of a legal remedy will not be sufficient to give rise to a public interest consideration that ought to be taken into account."

25. Without any further information, I am willing to accept that the Parole Board having access to the Information in Issue may have limited relevance to the applicant's parole application and therefore may contribute to the administration of justice for him. However, the Parole Board itself is able to access this information in full in performing its review under the *Corrective Services Act 2006* (Qld). Accordingly, I attribute only minimal weight to this factor.

Factors Favouring Nondisclosure

Other People's Personal Information and Privacy

26. As mentioned in paragraph 19 of this Decision, it is necessary to balance the weight to be attributed to the public interest in the applicant accessing his personal information with the privacy of individuals other than the applicant and any other factors favouring nondisclosure.
27. Where documents contain information relating to other individuals, the RTI Act recognises that there are circumstances in which this information should not be disclosed for example, where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy¹⁷ and disclosure could reasonably be expected to cause a public interest harm¹⁸ if it would disclose personal information¹⁹ of a person whether living or dead.
28. I consider that the Information in Issue identifies other individuals, including victims who were children at the time the ROI were made and their witness statements were given. I acknowledge that that the privacy interest in some of the information, particularly that which appears in the applicant's ROI, is reduced to some extent as the applicant gave the information contained in the ROI to the QPS and he has previously been provided with a copy of the ROI together with the two witness statements during his criminal

¹⁵ Schedule 4, part 2, item 17 of the RTI Act.

¹⁶ [2009] QICmr 5 [66].

¹⁷ Schedule 4, part 3, item 3 of the RTI Act.

¹⁸ Schedule 4, part 4, item 6 of the RTI Act.

¹⁹ As defined in section 12 of the IP Act.

proceedings. However, the privacy interest attaching to the Information in Issue remains high due to the context in which the information appears. The ROI and witness statements describe the details of the offences committed against the victims in significant detail. This information is very personal and sensitive to the third parties who were children at the time their statements were obtained and provided to the court. I am of the view that the disclosure of these other individual's names and personal details, in this context, could reasonably be expected to prejudice the protection of their privacy. I consider there is a very significant public interest in protecting the privacy of these third parties and favouring nondisclosure.

29. In Queensland, there are several pieces of legislation which prohibit publication of the identities of children involved in sexual offences and in preserving the confidentiality of any information detailing the offences committed against them, in particular, the *Criminal Law (Sexual Offences) Act 1978 (Qld)*.²⁰ I am of the view that this public interest factor²¹ applies in this case and should be afforded significant weight favouring nondisclosure.

Balancing the relevant factors

30. In the circumstances of this review the Information in Issue is the applicant's personal information and therefore, some limited weight must be accorded to the public interest in disclosure. I am willing to accept that the Parole Board having access to the Information in Issue may have limited relevance to the applicant's parole application and therefore may contribute to the administration of justice for him. However, the Parole Board itself is able to access this information in full in performing its review under the *Corrective Services Act 2006 (Qld)*. Accordingly, I attribute only minimal weight to this factor. I also consider that as the applicant has some knowledge of the content of the ROI and the witness statements, he may be aware of the identity of some of these individuals. This may diminish the privacy interest attached to this information, nonetheless the privacy interest remains substantial. Balancing against this is the strong public interest in protecting the privacy of those individuals identified in the Information in Issue. I attribute significant weight favouring nondisclosure of the personal information of child victims of sexual offences.
31. I am satisfied that disclosing the Information in Issue would, on balance be contrary to the public interest.

DECISION

32. For the reasons set out above, I affirm the QPS' decision to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Clare Smith
Right to Information Commissioner

Date: 25 May 2012

²⁰ Section 6.

²¹ Schedule 4, part 3, item 22 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
26 October 2011	The applicant applied to the QPS for access to copies of two ROI between himself and QPS officers and two statements tendered during criminal proceedings conducted against him in May 1984
1 December 2011	QPS issued a decision to the applicant
9 January 2012	OIC received the applicant's application for external review
13 January 2012	OIC received a copy of the Information in Issue from the QPS
19 January 2012	OIC received submissions from the applicant
3 February 2012	OIC issued a written preliminary view to the applicant
13 February 2012	OIC received submissions from the applicant
15 February 2012	OIC received submissions from the applicant
17 February 2012	OIC wrote to applicant acknowledging submissions and requesting further submissions to be sent by 9 March 2012
28 February 2012	OIC received submissions from the applicant
1 March 2012	OIC received submissions from the applicant
8 March 2012	OIC received submissions from the applicant
22 March 2012	OIC received submissions from the applicant
2 April 2012	OIC received submissions from the applicant
4 April 2012	OIC sent letter to the applicant updating him on the status of the review