OFFICE OF THE
Information Commissioner
QUEENSLAND

Decision and Reasons for Decision

Citation:	**B71 and Queensland Police Service [2026] QICmr 98 (11 June 2026)**
Application Number:	**318959**
Applicant:	**B71**
Respondent:	**Queensland Police Service**
Decision Date:	**11 June 2026**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - prescribed crime body investigation information - sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)**

DECISION

1. I vary[1] the reviewable decision of Queensland Police Service (**QPS**) by finding that access to the information in issue may be refused under sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that it is exempt information.

2. This means that no information is to be released to the applicant under the RTI Act.

3. My reasons for the decision follow.

[redacted]

Joanne Kummrow
Information Commissioner

Date: 11 June 2026

[1] Under section 110(1)(b) of the *Right to Information Act 2009* (Qld).

REASONS FOR DECISION

Summary

4. The applicant applied[2] to QPS under the RTI Act for access to photographs taken by QPS's Forensic Crash Unit at the scene of her son's fatal car accident in 2024.

5. QPS decided[3] to refuse access to the photographs under sections 47(3)(f) and 53 of the RTI Act on the ground that other access was available – that is, copies could be obtained from QPS's Forensic Imaging Section upon payment of the appropriate fee.

6. In response to her subsequent request to the Forensic Imaging Section, the applicant was advised that access to the photographs could not be given while the incident was still under investigation. The applicant contacted QPS's RTI unit again[4] to seek clarification and was advised[5] that Forensic Imaging would provide her with copies of the photographs once the Coroner's investigation had been finalised. Alternatively, the applicant was advised that she could make a request direct to the Coroner.

7. The applicant applied[6] to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.

Reviewable decision

8. The decision under review is the decision of QPS dated 24 September 2025.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).[7] I have taken account of the applicant's submissions[8] to the extent they are relevant to the issues for determination in this review.

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[2] Application made on 5 September 2025.
[3] Decision dated 24 September 2025.
[4] By email on 30 September 2025.
[5] By email on 30 September 2025
[6] On 30 September 2025.
[7] Generally, it is necessary that decision makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**). However, section 11(1) of the HR Act provides that *'[a]ll individuals **in Queensland** have human rights'* (my emphasis) and, given the applicant resides in a State other than Queensland, I have not had direct regard to the HR Act in this review. I have, of course, observed and respected the law prescribed in the RTI Act in making this decision. Where the HR Act applies, doing so is construed as *'respecting and acting compatibly with'* the rights prescribed in the HR Act (*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 [111]). Accordingly, had it been necessary for me to have regard to the HR Act in this review, the requirements of section 58(1) of that Act would be satisfied, and the following observations of Bell J about the interaction between the Victorian analogues of Queensland's RTI Act and HR Act would apply: *'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'* (*XYZ* at [573]).
[8] As contained in the applicant's external review application and in her emails of 26 March 2026 and 3 May 2026.

Information in issue

10. The information in issue comprises photographs taken by QPS's Forensic Crash Unit at the scene of a traffic accident involving the applicant's son, including photographs of the roadway and the vehicles involved.

Issue for determination

11. The issue for determination is whether access to the information in issue may be refused under the RTI Act because it is exempt information under schedule 3, section 10(4) of the RTI Act.

Relevant law – exempt information

12. The RTI Act gives a right of access to documents of government agencies.[9] The Act must be applied and interpreted to further this primary object,[10] and is to be administered with a pro-disclosure bias.[11]

13. However, this right of access is subject to other provisions of the RTI Act, including grounds on which access may be refused. These grounds are to be interpreted narrowly.[12] Access may be refused to information to the extent the information comprises exempt information.[13] Schedule 3 of the RTI Act specifies the types of information that Parliament has determined are exempt because release would be contrary to the public interest.[14]

14. One category of exempt information is the 'Prescribed Crime Body Exemption' set out in schedule 3, section 10(4) of the RTI Act. The ambit of the Prescribed Crime Body Exemption is well-settled.[15] Information will be subject to this exemption if:

    a) it was *obtained, used or prepared* for an investigation
    b) the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; and
    c) the exception in schedule 3, section 10(6) of the RTI Act does not apply.

15. The terms *'obtained, used or prepared'* are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in

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[9] Section 23(1)(a) of the RTI Act.
[10] Section 3(2) of the RTI Act.
[11] Section 44 of the RTI Act.
[12] Section 47(2)(a) of the RTI Act.
[13] Sections 47(3)(a) and 48, and schedule 3 of the RTI Act.
[14] Section 48(2) of the RTI Act.
[15] See *Springborg, MP and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (***Springborg***) at [44]. *Springborg* analysed provisions in the repealed *Freedom of Information Act 1992* (Qld) which are the material equivalents of those contained in the *Crime and Corruption Act 2001* (Qld). See also *Cronin and Crime and Corruption Commission* [2017] QICmr 13 (6 April 2017), *P55 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development* [2024] QICmr 59 (12 November 2024), and *E92 and Crime and Corruption Commission* [2024] QICmr 73 (19 December 2024) at [32]-[39].

accordance with the principles of statutory interpretation. The term *'investigation'* as used in the Prescribed Crime Body Exemption has been defined expansively.[16]

16. The exception to the Prescribed Crime Body Exemption in schedule 3, section 10(6) of the RTI Act has consistently been found to apply to information *'about'* the subject officer in the investigation, as distinguished from information pertaining to a complainant.[17]

17. The exemptions in schedule 3 to the RTI Act - including the Prescribed Crime Body Exemption - do not require or allow consideration of public interest factors. This is because Parliament has already determined that disclosure of these categories of information would be contrary to the public interest.[18] Accordingly, if information falls within one of the categories of exempt information prescribed in schedule 3, a conclusive presumption exists that its disclosure would be contrary to the public interest, and no further consideration of public interest factors is required.[19]

18. Under section 87(1) of the RTI Act, QPS has the onus on external review of establishing that its refusal decision was justified or that the Information Commissioner should give a decision adverse to the applicant.

Submissions

19. At the commencement of the review, OIC expressed a preliminary view to QPS that it was not entitled to rely upon the 'other access available' ground of refusal. QPS was asked to provide further information concerning the status of the information in issue in the context of the coronial investigation to which QPS had referred in its correspondence with the applicant.

20. In response, QPS advised that the coronial investigation was ongoing and that QPS now contended that the information in issue comprised coronial documents that were not subject to the RTI Act pursuant to schedule 1, section 8 of the RTI Act. In addition, QPS advised that it appeared that the Prescribed Crime Body Exemption would also apply to the information in issue.[20]

21. By letter dated 24 March 2026, OIC communicated a preliminary view to the applicant that access to the information in issue could be refused upon a number of grounds:

- the photographs are coronial documents to which the RTI Act does not apply
- the photographs are exempt information pursuant to the Prescribed Crime Body Exemption; and/or

[16] *Springborg* at [55]-[59] contains a detailed analysis of the concept of an 'investigation' as used in the equivalent exemption provision of the repealed *Freedom of Information Act 1992* (Qld): the Information Commissioner found the term can encompass the process of examining, considering, 'dealing with' and 'assessing' a complaint. Also, schedule 2 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**) provides a non-exhaustive definition of 'investigate' as including 'examine and consider' – see *Frecklington MP and Premier and Minister for Trade* [2020] QICmr 15 (18 March 2020) at [47].

[17] *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) at [25]-[33] (***G8KPL2***); *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) at [18]-[22].

[18] Section 48(2) of the RTI Act.

[19] *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17].

[20] Emails of 13 March and 16 March 2026.

- disclosure of the photographs would, on balance, be contrary to the public interest.

22. The applicant did not accept OIC's preliminary view and provided a submission in support of her case for disclosure.[21] The submission raised a number of matters and focused primarily on public interest considerations that the applicant relied upon in favour of disclosure of the information in issue. In respect of the coronial investigation, the applicant argued that the fact that the investigation was ongoing was not a complete bar to access. In respect of the Prescribed Crime Body Exemption, the applicant submitted that:

    the existence of a complaint cannot justify blanket non-disclosure of primary factual evidence;
    the requested materials relate to the circumstances of death, not merely to the complaint process;
    withholding the material prevents any meaningful assessment of whether the complaint process was adequate.
    A broad application of this exemption risks shielding investigative processes from scrutiny.

23. On 13 April 2025, and following further inquiries, QPS provided additional information to OIC in support of the application of the Prescribed Crime Body Exemption. It advised that the applicant had made a formal complaint to QPS about the investigating officer from the Forensic Crash Unit, alleging that this officer had failed to conduct an impartial investigation and had fabricated or tampered with evidence involved in the investigation. The Crime and Corruption Commission (**CCC**) was notified of the complaint which was referred to QPS's Ethical Standards Command (**ESC**) for investigation. QPS advised that, as part of ESC's investigation into the applicant's allegations, ESC had obtained and reviewed all evidence gathered by the Forensic Crash Unit.

24. After considering this information, OIC wrote to the applicant and responded to the issues raised in her previous letter. It was emphasised to the applicant that public interest considerations are not relevant when assessing the application of exemption provisions contained in schedule 3 of the RTI Act. This means that, if OIC is satisfied that the requirements of any one exemption provision are satisfied, there is no need for OIC to go on to consider the application of the public interest balancing test. The additional information QPS provided in support of the application of the Prescribed Crime Body Exemption was communicated to the applicant by OIC in a second preliminary view and that the requirements of the exemption were satisfied.[22]

25. The applicant disagreed with OIC's preliminary view,[23] stating that the Prescribed Crime Body Exemption did not apply to the information in issue because it was *'primary evidentiary material'* and was not 'created for' a prescribed investigation: *'To treat all pre-existing evidentiary material as exempt simply because it was later*

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[21] On 26 March 2026.
[22] Letter dated 21 April 2026.
[23] Applicant's submission of 3 May 2026.

reviewed would impermissibly extend the scope of Schedule 3, section 10(4).' The applicant submitted that there must be a distinction made between material generated for the purposes of assessing allegations of misconduct, and primary factual evidence relating to the underlying incident.

26. The applicant submitted that denying access to evidentiary material was *'inconsistent with the statutory scheme'*. In addition to discussing the application of the exemption, the applicant also raised alternative public interest arguments, and requested that consideration be given to '*partial, modified, staged or conditional'* access to the information in issue. Given my findings below regarding the application of the Prescribed Crime Body Exemption, it is not necessary to consider the applicant's public interest considerations. Nor is it possible to agree to the applicant's request that access to the information in issue be given in partial or modified form.[24]

Findings

a) Information obtained, used or prepared for an investigation

27. Based on the information provided by QPS, I am satisfied that the photographs to which the applicant seeks access from QPS were obtained and used by ESC for the purposes of ESC's investigation into the applicant's complaint that an officer of the Forensic Crash Unit had engaged in misconduct or corrupt conduct by failing to conduct an impartial investigation into the accident, and by fabricating or tampering with evidence.

28. Contrary to the applicant's contentions, the fact that the information obtained or used by ESC is *'primary evidentiary material'* is irrelevant to the application of this limb of the exemption, as is the fact that the information *'existed independently of, and prior to'* the applicant's complaint. The exemption refers simply to *'information'* that was *'used, obtained or prepared'* for the investigation. Those words must be given their ordinary meaning and they make it clear that the information is not required to have been generated or created for the purposes of the investigation, but may be pre-existing.

29. In her submission, the applicant relied upon OIC's decision in *G8KPL2*[25] as authority for the proposition that *'the misconduct jurisdiction does not convert all underlying factual material into exempt information'*. However, I do not accept that this decision made any such finding. In that case, the then Right to Information Commissioner applied the requirements of the Prescribed Crime Body Exemption to a Department of Health investigative report that was in issue, and decided that the requirements of the exemption were satisfised. There was no consideration of or discussion about distinguishing any underlying factual material. In any event, and

[24] Noting, firstly, that the information in issue comprises photographs and partial or modified access is not possible in any event. But also noting that the Information Commissioner has no power under the RTI Act to direct that access to information be given if it is established that the information is exempt information or contrary to the public information: see section 105(2) of the RTI Act.

[25] See footnote 17.

as discussed above, the words of the exemption do not permit such a distinction to be made.

30. The applicant also submitted that, simply because the requested photographs may have been 'reviewed' or 'considered' in the course of ESC's investigation, this was not sufficient to bring them within the scope of the exemption – the photographs must have been specifically 'obtained or used for the purposes of' the investigation. Firstly, as noted above,[26] 'investigation' can encompass the process of examining, considering, dealing with, and assessing a complaint. Secondly, given the applicant made a complaint that the relevant QPS officer had fabricated or tampered with evidence, I am satisfied that the photographs were obtained and used for an investigation into that allegation.

b) Investigation by a prescribed crime body or another agency in the performance of the prescribed functions of the prescribed crime body

31. Under the RTI Act, the CCC is a prescribed crime body and corruption functions are included in the prescribed functions of the CCC.[27] The *Crime and Corruption Act 2001* (Qld) (**CC Act**) defines corruption functions as including *'to ensure'* that *'a complaint about, or information or matter involving, corruption is dealt with in an appropriate way'*, having regard to the corruption function principles contained in the CC Act.[28]

32. Included in these principles is the concept of 'devolution' which identifies that action to manage or investigate corruption allegations should generally happen within the agency where the alleged conduct occurred.[29] Accordingly, in appropriate circumstances, the CCC devolves its corruption investigation function under the CC Act back to the relevant agency to review and investigate, subject to monitoring by the CCC. The Information Commissioner has confirmed that where an agency is undertaking an investigation into alleged corruption, which has been referred or returned to that agency by the CCC subject to the CCC's monitoring role, the agency is performing the prescribed functions of the CCC as a prescribed crime body.[30]

33. As noted, the CCC has a prescribed corruption function. The CC Act defines 'corruption' as corrupt conduct or police misconduct. Accordingly, investigations involving allegations of corrupt conduct or police misconduct are a prescribed function of the CCC.

34. If it is suspected that a complaint involves or may involve corrupt conduct under the CC Act, the CCC must be notified. According to section 46 of the CC Act, the CCC can take certain action regarding a complaint of corruption. The Information Commissioner has found that the CCC can perform its corruption function in several ways, including by doing one or more of the following:

[26] See footnote 16.
[27] Schedule 3, section 10(9) of the RTI Act.
[28] Section 33(1)(b) of the CC Act.
[29] Section 34(c) of the CC Act.
[30] See, for example, *GM31AM and Queensland Police Service* [2015] QICmr 6 (25 March 2015) at [24]-[26].

- assessing information about corruption
- referring complaints to a public official to be dealt with by the public official; and/or
- performing its monitoring role for police misconduct or corrupt conduct.[31]

35. In regard to police misconduct, the CC Act provides that the Commissioner of Police has primary responsibility for dealing with complaints.[32] The CC Act sets out how the Commissioner of Police should deal with complaints, and provides that dealing with the complaint is subject to the CCC's monitoring role.[33] It should be noted that the monitoring role under the CC Act continues, and may be activated at any time, regardless of whether the CCC has required specific oversight to occur, or if a particular investigation has been finalised.[34]

36. For the reasons explained above, and having regard to the relevant provisions of the CC Act, I am satisfied that the investigation by ESC into the applicant's complaint against a QPS officer was an investigation conducted by 'another agency' (QPS) in the performance of the CCC's prescribed corruption functions, and was subject to monitoring by the CCC. Accordingly the requirements of schedule 3, section 10(4) of the RTI Act are satisfied.

c) Exception to the exemption

37. Schedule 3, section 10(6) of the RTI Act provides an exception to the Prescribed Crime Body Exemption in circumstances where the information consists of information about the applicant, and the investigation has been finalised.

38. In this case, the investigation into the applicant's complaint is finalised, but the information in issue is not 'about' the applicant.[35] The exception therefore does not apply.

Conclusion

39. The above are the reasons for my decision set out at paragraph 1 above.

40. Despite my decision, which is made under the RTI Act, it is open to the applicant to apply to the Coroner under section 54 of the *Coroners Act 2003* (Qld) for access to the information requested from QPS.

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[31] See *G8KPL2* which discussed the relevant principles as they applied to the then Crime and Misconduct Commission (now the CCC) and its misconduct (now corruption) functions.
[32] Section 41 of the CC Act.
[33] Section 42(2) of the CC Act.
[34] Section 47 of the CC Act.
[35] See paragraph 16 above.