OFFICE OF THE
Information Commissioner
QUEENSLAND

Decision and Reasons for Decision

Citation:	***B87 and Queensland Police Service*** **[2026] QICmr 149 (18 August 2026)**
Application Number:	**00022859**
Applicant:	**B87**
Respondent:	**Queensland Police Service**
Decision Date:	**18 August 2026**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - email correspondence between government agencies during machinery of government change - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)**

DECISION

I vary[1] the reviewable decision of Queensland Police Service (**QPS**) and find that access to the information in issue can be refused because:

- its disclosure would be, on balance, contrary to the public interest; and
- it is subject to legal professional privilege and, therefore, exempt.

[1] Under section 123(1)(b) of the *Information Privacy Act 2009* (Qld) (**IP Act**).

This means that no further information is to be released to the applicant. My reasons for the decision follow.[2]

[redacted]

S Davis
Assistant Information Commissioner

Date: 18 August 2026

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[2] I have made this decision as a delegate of the Information Commissioner under section 139 of the IP Act. On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts, which may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> respectively.

REASONS FOR DECISION

Summary

1. The applicant applied[3] to QPS under the IP Act to access the following documents:

> *Apply for communication (emails, reports correspondence) that relate to information supplied about myself, [applicant's name], as a former employee of the Queensland Police Service (QPS), and or Transport & Main Roads (DTMR). I apply for the Queensland Public Entity's (QPS & DMR) related communications, that were provided in accordance with section 97 of the PS Act 2022 (inc Disciplinary Information as defined) between the Chief Executives and their delegates, including any miscellaneous communications as it relates to my transfer to TMR (inc Human Resource Divisions and Business Units communications).*
> *I also apply for related communications as they relate to myself, specifically as a direct transfer subject to Public Service Departmental arrangements, Departmental Arrangement Notice (number 1) 2024 (Gazettal 12/4/2024).*
>
> *Dare range 12/4/2024 to present. (time of application).*
>
> ...
>
> *[Where you think the documents may be located]: QPS Road Policing + Regional Support Command (RPRSC) – Assistant Commissioner and Chief Superintendent. Inc QPS (RPRSC) HR Section/Office. Ethical Standards Command.*

2. QPS decided[4] to refuse to deal with the application under section 59 of the IP Act,[5] on the basis that the application requested exempt information under schedule 3, section 10(1)(a) of the RTI Act.

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

Background

4. During the review, OIC conveyed a preliminary view to QPS that it had not met its onus of establishing that it could refuse to deal with the application, or that all of the located information was exempt.[7]

5. OIC issued a notice to produce to QPS during the review.[8]

6. While QPS initially maintained that the refused information was exempt, it did ultimately accept OIC's view that it could not refuse to deal with the application under section 59 of the IP Act.

7. QPS completed searches for the requested information and located:

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[3] On 19 December 2024.
[4] On 19 February 2025.
[5] QPS's decision did not identify whether the refusal to deal was on the basis of subsections 59(1)(a) or (b) of the IP Act.
[6] On 11 March 2025.
[7] Preliminary view dated 12 November 2025.
[8] On 21 January 2026.

- 1377 pages for the Road Policing Group (**RPG**)
- 1435 pages for Human Resources (**HR**); and
- 81 pages for Ethical Standards Command (**ESC**).

8. While QPS did not continue to rely on section 59 of the IP Act to refuse to deal with the application, once searches were completed, QPS sought to rely on section 60(1) of the IP Act to refuse to deal with the application, on the basis that processing the request would be a substantial and unreasonable diversion of QPS' resources.[9]

9. The applicant confirmed that they wanted to access the 81 located pages of ESC documents.[10] OIC asked QPS to process the ESC documents and release them to the applicant during the review. QPS consulted with third parties about some information in the ESC documents, and those parties did not object to its release. QPS released the ESC documents to the applicant, subject to redactions.[11]

10. OIC conveyed a preliminary view to the applicant that the information QPS had redacted from the ESC documents could be refused because it was either irrelevant to the request, or its disclosure would be, on balance, contrary to the public interest.[12]

11. OIC consulted with the applicant about the scope of the request insofar as it related to the HR and RPG documents. The applicant agreed to narrow the scope to communications involving two named individuals.[13]

12. QPS confirmed that this reduced the volume of the HR and RPG documents to 1710 pages, and that this removed QPS' refusal grounds.[14] OIC asked QPS to process these pages.

13. QPS also consulted with third parties about some information in the HR and RPG documents. The Department of Transport and Main Roads (**DTMR**) objected to the disclosure of two paragraphs on page 876.[15] No other third parties objected to the disclosure of information.

14. QPS released the HR and RPG documents to the applicant on 8 July 2026, subject to redactions and some information which was deferred pending third party consultation.

15. The applicant has confirmed during the review[16] that they are not interested in accessing the following, which made up most of the refused information:

    - email addresses, phone numbers, signatures or middle initials

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[9] Submissions dated 5 February 2026.
[10] On 11 February 2026.
[11] On 17 March and 8 April 2026.
[12] Preliminary view dated 9 April 2026.
[13] In a phone call with an OIC officer on 3 March 2026 and by email on 12 March 2026.
[14] Email from QPS on 11 May 2026.
[15] QPS confirmed this to OIC on 17 June 2026.
[16] In a telephone call with an OIC officer on 4 June 2026.

- names appearing at the top of email documents, indicating the QPS officer who processed documents for the access request
- banner images from emails; and
- other employees' information which is not about the applicant.

16. For the remaining refused information, OIC conveyed preliminary views to the applicant that:

- access to information on page 876 could be refused because its disclosure would, on balance, be contrary to the public interest;[17] and
- access to certain information redacted from the HR and RPG documents could be refused on the basis that it was subject to legal professional privilege and exempt.[18]

17. The applicant confirmed they accepted OIC's view with respect to legal professional privilege information, but they did not accept OIC's view with respect to the information on page 876.[19]

18. While QPS originally proposed redacting most of the deferred information on the basis that it was subject to legal professional privilege and exempt, OIC conveyed a preliminary view that most of the deferred information was not exempt.[20] QPS accepted OIC's view.[21] OIC consulted directly with DTMR regarding the deferred information.[22] DTMR confirmed that it did not object to OIC's view that this information should be released, subject to redactions.[23] QPS released that deferred information to the applicant on 30 July 2026, subject to redactions.

19. Once QPS agreed to disclose the deferred information, OIC conveyed a further preliminary view to the applicant that information redacted from these pages could be refused because it was subject to legal professional privilege and therefore, exempt.[24] The applicant did not respond to this further preliminary view.

Evidence considered

20. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).

21. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression[25] (which includes the right to seek and receive information) and the right to privacy and reputation.[26] I consider a decision-maker will be '*respecting and acting compatibly with*' those rights and others prescribed in

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[17] Preliminary views dated 2 and 8 July 2026.
[18] Preliminary view dated 2 July 2026.
[19] In an email dated 6 July 2026.
[20] On 2 July 2026.
[21] By email dated 8 July 2026.
[22] Letter dated 8 July 2026.
[23] On 27 July 2026.
[24] Preliminary view dated 28 July 2026.
[25] Section 21 of the HR Act.
[26] Section 25 of the HR Act.

the HR Act, when applying the law prescribed in the RTI Act.[27] I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:[28] that '*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'.[29]

Issues for determination

22. The issues for me to determine in this decision are:

- whether disclosing two paragraphs of an email from DTMR to QPS (**Category 1 Information**)[30] would be, on balance, contrary to the public interest; and
- whether access to information occurring on parts of pages 6-7 of the HR and RPG documents (and its duplicates)[31] can be refused because it is subject to legal professional privilege and, therefore, exempt (**Category 2 Information**).

Relevant law

23. An individual has a right, under the IP Act, to be given access to documents of an agency to the extent they contain the individual's personal information.[32] However, this right is subject to the provisions of the IP Act and the RTI Act, including grounds for refusing access. Section 67 of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to a document under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.

24. One such refusal ground is where the disclosure of information would, on balance, be contrary to the public interest.[33] 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.[34] 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, although there are some recognised public interest considerations that may apply for the benefit of an individual.

25. In deciding whether disclosure of information would, on balance, be contrary to the public interest, section 49 of the RTI Act requires a decision-maker to identify any irrelevant factors and disregard them; identify relevant public interest factors favouring disclosure and nondisclosure; balance the relevant factors favouring

[27] *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].
[28] *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[29] *XYZ* at [573].
[30] On page 876 of 1710.
[31] On pages 21-22, 23-24, 33-34, 45-46, 246-248, 654-655 of 1710.
[32] Section 40 of the IP Act.
[33] Section 47(3)(b) of the RTI Act.
[34] Refer to Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

disclosure and nondisclosure; and decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

26. 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 considered these lists, together with all other relevant information, in reaching my decision.

27. An agency can also refuse access to exempt information.[35] Schedule 3 of the RTI Act sets out the categories of exempt information – that is, information for which Parliament has determined disclosure would be contrary to the public interest. Relevantly, information will qualify as exempt where it would be privileged from production in a legal proceeding on the ground of legal professional privilege.[36] This exemption reflects the requirements for establishing legal professional privilege at common law.

28. A document will be subject to legal professional privilege if it comprises a confidential communication:

- between a lawyer and their client for the dominant purpose of seeking or providing legal advice or professional legal assistance; or
- for the dominant purpose of legal proceedings either on foot or reasonably anticipated at the time of the relevant communication.[37]

29. The 'dominant purpose' has been described as '*the ruling, prevailing or most influential purpose'*[38] and it is to be determined objectively.[39]

30. The privilege may also protect communications between a salaried legal adviser of a government department or statutory authority and their employer as the client (including communications through other employees of the same employer), provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character, notwithstanding the employment.[40]

31. Legal professional privilege can also extend to other material where its release could reveal or allow a reader to know or infer the nature, content or substance of a privileged communication.[41]

32. There are qualifications and exceptions to legal professional privilege (such as waiver and improper purpose) which may affect the question of whether information

[35] Section 47(3)(a) of the RTI Act.
[36] Schedule 3, section 7 of the RTI Act.
[37] *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 at 73; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] 265 CLR 646 at 659-660.
[38] *Commissioner of Taxation (Cth) v Spotless Services Ltd* (1996) 186 CLR 404 at 416.
[39] *AWB Limited v Cole (No 5)* (2006) 155 FCR 30 at 44-45.
[40] *Waterford v Commonwealth* (1987) 163 CLR 54 at 95 per Mason and Wilson JJ.
[41] *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 401 at 569; *AWB v Cole (No. 1)* (2006) 152 FCR 382 at 417-420.

attracts or remains subject to it, and therefore whether it comprises exempt information under the RTI Act.

Findings

Category 1 Information

33. The Category 1 Information discusses, at a high level, how DTMR and QPS proposed to deal with administrative matters affecting the applicant and another person.

34. In considering whether disclosing the Category 1 Information would be contrary to the public interest, I have balanced the factors favouring disclosure against those favouring nondisclosure.[42] I have taken no irrelevant factors[43] into account in making this decision.

35. The applicant submitted that:[44]

- the '*prejudice to management function*' factor favouring nondisclosure should be 'tested', and scrutinising the application of this factor '*is consistent with s49 of the RTI Act 2009 and Schedule 4, part 2 at (3) (5) (6) (10) (11)*'
- they wanted to '*ascertain whether bias, conscious or unconscious informed decisions in this matter'*
- '[T]*he management function, by policy, procedure or as applied through Legislation should be open and transparent*'
- they requested the information for the reasons described in schedule 4, part 2, item 11 of the RTI Act – i.e. to '*reveal the reason for a government decision and any background or contextual information that informed the decision'*
- The matters subject to the request for information related to QPS proposing '*to undertake lawful functions, that may or may not be interpreted as management functions,'* which should be open to scrutiny
- it is relevant to the public interest balancing test '*…that the public entity has an ability to follow due process, without bias to deny procedural fairness and natural justice*'
- '*…the transactions should not be redacted as they will relate to due process, that is an observed, published process, that has at its origins, a delegated legislative power to provide that person or persons the ability to act in this matter and for this, it must meet scrutiny of public interest.*'

36. The public interest factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act relate, generally, to government accountability and transparency. I accept that these factors apply for the Category 1 Information. In determining the weight to afford these factors, I have considered the Category 1 Information itself as well as the volume and content of information already disclosed to the applicant during this review. I find that these factors deserve low-to-moderate weight in favour of disclosure.

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[42] As required by section 49(3) of the RTI Act.
[43] Including those set out in schedule 4, part 1 of the RTI Act.
[44] On 6 July 2026.

37. I have considered whether disclosing the Category 1 Information could reasonably be expected to allow or assist inquiry into possible deficiencies in conduct within QPS or DTMR.[45] While there is no specific information before me to indicate that disclosing the Category 1 Information would advance this factor, the Information Commissioner has previously recognised that the threshold for this factor applying is low.[46] Accordingly, I have afforded low weight to this factor.

38. Given the Category 1 Information includes the applicant's personal information, I have considered the factor favouring disclosure at schedule 4, part 2, item 7 of the RTI Act. Having considered the information already released to the applicant during this review, I afford high weight to this factor favouring disclosure. I do note, however, that this information is intertwined with the information of another individual (as discussed below) to an extent that it cannot sensibly be separated to allow disclosure of only the applicant's personal information.

39. Having considered the Category 1 Information, I do not consider its disclosure could reasonably be expected to reveal any misconduct or negligent, improper or unlawful conduct within QPS or DTMR.[47] I also do not consider there is anything in the Category 1 information which could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies,[48] or contribute to the administration of justice either generally or for a person.[49] I find that these factors do not apply.

40. On the other hand, I consider that releasing the Category 1 Information could reasonably be expected to prejudice the management function of DTMR or QPS.[50] The documented discussion occurred during a machinery of government change process. I consider that management needs to be able to discuss certain matters freely and may be less likely to do so if information of this nature is routinely released under the IP Act. I afford this factor significant weight.

41. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm.[51] As mentioned, the Category 1 Information includes discussions about a person other than the applicant. I consider that disclosing this information, which is sensitive in nature, would reveal the personal information of a person other than the applicant and prejudice their right to privacy.[52] I afford significant weight to these factors favouring nondisclosure.

42. In balancing the public interest for the Category 1 Information, I have had regard to the pro-disclosure bias of the IP and RTI Acts[53] and Parliament's intention that

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[45] Schedule 4, part 2, item 5 of the RTI Act.
[46] *L80 and Queensland Police Service* [2023] QICmr 28 (19 June 2023) at [32]; applied in *E92 and Crime and Corruption Commission* [2024] QICmr 73 (19 December 2024) at [89].
[47] Schedule 4, part 2, item 6 of the RTI Act.
[48] Schedule 4, part 2, item 10 of the RTI Act.
[49] Schedule 4, part 2, items 16 and 17 of the RTI Act.
[50] Schedule 4, part 3, item 19 of the RTI Act.
[51] Schedule 4, part 4, section 6(1) of the RTI Act.
[52] Giving rise to the nondisclosure factors at schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.
[53] Section 64 of the IP Act and section 44 of the RTI Act.

grounds for refusing access to information be interpreted narrowly.[54] I have identified and considered the public interest factors which are relevant to the Category 1 Information. For the reasons mentioned above, I afford low-to-moderate weight to the factors relating to the accountability and transparency of government agencies. I have also afforded low weight to the pro-disclosure factor relating to allowing or assisting inquiry into possible deficiencies in QPS or DTMR's conduct and high weight to the pro-disclosure factor relating to providing the applicant with their own personal information. On the other hand, I have afforded significant weight to the non-disclosure factors relating to the privacy and personal information of other people and prejudice to QPS and/or DTMR's management function.

43. On balance, the factors favouring nondisclosure outweigh those favouring disclosure of the Category 1 Information. I find that access to the Category 1 Information can therefore be refused because its disclosure would, on balance, be contrary to the public interest.

Category 2 Information

44. While the IP Act limits what I can say about the Category 2 Information,[55] having reviewed this information I confirm that it comprises:

- a record of confidential communications about reasonably anticipated legal proceedings; and
- discussions about confidential legal advice sought/provided to QPS by an internal lawyer.

45. I am satisfied that the necessary professional relationship exists between QPS (as the client) and its internal lawyer.

46. Having also considered the content of the Category 2 Information, I am also satisfied that the documented communications were confidential and made for the dominant purpose of:

- legal proceedings that were reasonably anticipated at the time of the communication; or
- seeking or providing legal advice.

47. I have considered the qualifications and exceptions to legal professional privilege and am satisfied that none apply for the Category 2 Information. There is nothing before me which reasonably indicates that legal professional privilege in the Category 2 Information has been waived, either expressly or impliedly by QPS, or that the relevant communication was created in furtherance of an illegal, improper or dishonest purpose.

48. Accordingly, I find that the Category 2 information is subject to legal professional privilege, exempt and access to it can be refused.

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[54] Section 67(2)(a) of the IP Act and section 47(2)(a) of the RTI Act.
[55] Section 121(3) of the IP Act.

Conclusion

49. The above are the reasons for my decision set out at pages 1-2.