



Decision and Reasons for Decision

Citation: *Taggart and Queensland Police Service* [2015] QICmr 16 (29 June 2015)

Application Number: 312145

Applicant: Taggart

Respondent: Queensland Police Service

Decision Date: 29 June 2015

Catchwords: ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to allegations the applicant made about a police officer - 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 - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - INVESTIGATION BY PRESCRIBED CRIME BODY - information relating to allegations the applicant made about a police officer - information obtained, used or prepared for an investigation by a prescribed crime body or another agency in performing the prescribed functions of the prescribed crime body - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - NONEXISTENT DOCUMENTS - whether the agency has taken all reasonable steps to locate the documents but the documents do not exist - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a range of information generally relating to her dealings with QPS and allegations she made about the conduct of a police officer.

2. QPS initially located 29 pages and three audio recordings in response to the application and decided to:
 - refuse access to some of this information on the grounds that it comprised exempt information or its disclosure would, on balance, be contrary to the public interest
 - refuse access to some of the requested information as it was unlocatable or non-existent; and
 - neither confirm nor deny the existence of certain information.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS' decision. On external review, QPS located more documents relevant to the application and agreed to release a small amount of additional information to the applicant.
4. QPS' decision on the remaining issues is varied. Access to the information in issue can be refused on the basis that:
 - its disclosure would, on balance, be contrary to the public interest
 - it comprises exempt information as it is information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; and
 - it is non-existent.

Reviewable decision

5. The decision under review is QPS' decision dated 7 August 2014.

Evidence considered

6. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the appendix).

Issues for determination

7. A number of issues were informally resolved on external review.¹ The issues for determination are whether access to the remaining information can be refused on the grounds that:
 - its disclosure would, on balance be contrary to the public interest
 - it comprises exempt information because it is information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; and
 - it is non-existent.

Contrary to the public interest information

8. This information comprises 27 part pages and two audio recordings and can be generally described as information:²

¹ QPS accepted OIC's preliminary view that it was not entitled to neither confirm nor deny the existence of documents relating to item 5 of the application. QPS also agreed to release a small amount of additional information to the applicant. As these issues have been resolved informally, they are no longer in issue on external review and are not dealt with in these reasons for decision.

² The information relates to items 1 and 2 of the application.

- identifying a witness and the QPS officer who was the subject of the applicant's allegations
- provided to QPS' Ethical Standards Unit (ESU) by the witness and subject officer; and
- about the handling of those allegations by ESU including the detailed findings and recommendations.

Relevant law

9. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information. However, this right is subject to limitations, including grounds for refusal of access.³ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁴
10. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁵ and explains the steps that a decision-maker must take⁶ in deciding the public interest. To determine the balance of the public interest a decision-maker 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
 - decide whether disclosure of the information would, on balance, be contrary to the public interest.

Findings

11. No irrelevant factors arise in the circumstances of this case. I will now consider the factors favouring disclosure and nondisclosure of this information.

Accountability and transparency

12. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability;⁷ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁸
13. QPS must be transparent and accountable in how it deals with allegations about police conduct and disciplinary investigations. I consider that disclosing this information would provide the applicant with a more comprehensive understanding of how QPS handled the investigation and the reasoning behind its decision about her complaint. This would advance these factors to some degree and I consider that these factors are

³ 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 it could refuse access to the document under section 47 of the *Right to Information Act 2009* (Qld) (RTI Act) were the document to be the subject of an access application under the RTI Act.

⁴ Sections 47(3)(b) and 49 of the RTI Act. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁵ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

⁶ See section 49(3) of the RTI Act.

⁷ Schedule 4, part 2, item 1 of the RTI Act.

⁸ Schedule 4, part 2, item 11 of the RTI Act.

relevant. It is now necessary for me to determine the weight to be afforded to them in the circumstances of this external review.

14. The requirement for QPS to be accountable and transparent in the conduct of disciplinary investigations does not, in my view, oblige QPS to provide the applicant with access to its entire investigation file nor reveal all of the information it gathered in dealing with the investigation.⁹ QPS notified the applicant of the outcome of its investigation and released information to her about its handling of the complaint under the IP Act. This information furthers the applicant's understanding, to some degree, of how the investigation was conducted. As this information has been made available to the applicant, I consider this reduces the weight of these factors and I afford them both moderate weight.

Personal information of the applicant

15. Some of this information is about the applicant and comprises her personal information.¹⁰ This gives rise to a factor favouring disclosure.¹¹ I acknowledge the importance of providing individuals with access to their personal information held by public authorities and I attribute significant weight to this factor to the extent the information comprises the applicant's personal information.

Personal information and privacy of other individuals

16. However, the information is also the personal information of other individuals. It comprises their identifying information, feelings and opinions in the course of a police investigation. I am unable to separate it from the applicant's personal information because of the way it appears in the documents. The RTI Act recognises that:
 - a factor favouring nondisclosure will arise where disclosing the information could reasonably be expected to prejudice the protection of an individual's right to privacy;¹² and
 - disclosing the information could reasonably be expected to cause a public interest harm if it would disclose personal information of another person.¹³
17. I acknowledge that information relating to the day-to-day work duties and responsibilities of a public sector employee¹⁴ may generally be disclosed under the IP Act, despite it falling within the definition of personal information. This is because the potential harm from disclosing routine personal work information is, in most circumstances, minimal or nonexistent. However, agency documents can also contain personal information of employees which is not *routine* work information even though the information arises in a work context.
18. I am satisfied that the information provided by officers in respect of the applicant's allegations is personal information of this kind. Although the personal information appears in a workplace context, it comprises the opinions, observations and experiences of the relevant individuals obtained in the context of an investigation into their conduct and recommendations about the action to be taken as a result of the applicant's complaint. As a result, I am satisfied such information is not related wholly to the routine day-to-day work activities of these individuals and is not their routine

⁹ 8A3BPQ and Queensland Police Service [2014] QICmr 42 (30 October 2014) (8A3BPQ) at paragraph 24.

¹⁰ 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'.

¹¹ Schedule 4, part 2, item 7 of the RTI Act.

¹² Schedule 4, part 3, item 3 of the RTI Act.

¹³ Schedule 4, part 4, item 6(1) of the RTI Act.

¹⁴ In 8A3BPQ at footnote 29, I acknowledged that, although police officers are not employed under the *Public Service Act 2008* (Qld), they are employees of an agency which is subject to the IP Act and the same principle applies to disclosure of their routine work information.

personal work information. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the IP Act.

19. In this context, I consider the information is personal and sensitive in nature. Its disclosure under the IP Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of the public interest factors favouring nondisclosure significant weight.

Prejudice management function and flow of information

20. I have also considered whether disclosing this information could reasonably be expected to:

- prejudice QPS' management function;¹⁵ and
- cause a public interest harm if it could have a substantial adverse effect on the management or assessment by QPS of its staff.¹⁶

21. Staff usually supply information to workplace investigators on the understanding that it will only be used for the investigation or any subsequent disciplinary action. It is reasonable to expect staff to cooperate with an investigative process, particularly as QPS officers are directed by the Police Commissioner to truthfully, completely and promptly answer questions in an investigation into a disciplinary complaint.¹⁷ However, in my view, disclosing this information outside of the investigation process and under the IP Act, where there can be no restriction on its use, dissemination or republication, could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of information to investigators. This, in turn, could reasonably be expected to adversely impact QPS' ability to conduct workplace investigations and manage staff.¹⁸

22. For these reasons, I afford these nondisclosure factors significant weight in the circumstances.

Balancing the relevant factors

23. The RTI Act is to be administered with a pro-disclosure bias, meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.¹⁹ I have taken into account the pro-disclosure bias in balancing the relevant factors.

24. The information which QPS has provided to the applicant furthers the applicant's understanding of how the investigation was conducted and the outcome. The weight of the factors relating to transparency and accountability is reduced in relation to the remaining information in issue. As a result, I afford both of these factors moderate weight.

25. To the extent the information comprises the applicant's personal information, I afford the factor favouring disclosure significant weight. However, the information also comprises the personal information of other individuals which is sensitive and the relevant nondisclosure factors relating to personal information and privacy carry significant weight.

¹⁵ Schedule 4, part 3, item 19 of the RTI Act.

¹⁶ Schedule 4, part 4, item 3(c) of the RTI Act.

¹⁷ Section 4.9 of the *Police Service Administration Act 1990* (Qld) allows the commissioner to give such directions the commissioner considers necessary or convenient for the efficient and proper functioning of the police service.

¹⁸ 8A3BPQ at paragraph 42.

¹⁹ Section 44 of the RTI Act.

26. Disclosing this information could reasonably be expected to adversely impact QPS' ability to conduct workplace investigations and manage staff and, as a result, I afford significant weight to both of the public interest factors favouring nondisclosure.
27. For these reasons, the factors favouring nondisclosure of this information outweigh the factors favouring disclosure. Accordingly, I find that QPS was entitled to refuse access to this information as its disclosure would, on balance, be contrary to the public interest.

Crime and Corruption Commission exemption

28. The applicant seeks access to information about two incidents which she alleges occurred between her and a QPS officer including audio recordings of police attending her vehicle and a triple zero call she made. QPS refused access to all of the information which relates to this part of the application²⁰ on the grounds that it comprised exempt information under schedule 3, section 10(4) of the RTI Act.

Relevant law

29. An agency may refuse access to documents to the extent that they comprise exempt information.²¹ Information will be exempt from disclosure if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body.²² The exemption will not apply, however, where the information consists of information about the applicant and the investigation has been finalised.²³

Findings

30. The allegations which are the subject of this part of the application were made to the Crime and Corruption Commission (**CCC**).²⁴ The CCC determined that the allegations would, if proven, amount to what is now known as corrupt conduct.²⁵ The CCC referred the matters to QPS' ESU to deal with, subject to the CCC's monitoring role.
31. I have carefully reviewed the relevant information and I am satisfied that it was obtained, used or prepared for the purpose of this investigation. However, I must also be satisfied that the relevant investigations were conducted by QPS in performing the prescribed functions of a prescribed crime body.
32. The CCC is a prescribed crime body under the RTI Act.²⁶ The CCC's prescribed functions include its corruption function as defined in section 33 of the CC Act.²⁷ The CCC's corruption function includes dealing with complaints about corrupt conduct by itself or in cooperation with a unit of public administration.²⁸
33. In conducting this investigation, QPS was performing the CCC's corruption function by ensuring the complaint was dealt with in accordance with the requirements of the CC Act, with oversight by the CCC. I am satisfied that QPS was performing the prescribed

²⁰ The information relates to item 3 of the application.

²¹ Sections 47(3)(a) and 48 of the RTI Act.

²² Schedule 3, section 10(4) of the RTI Act.

²³ Schedule 3, section 10(6) of the RTI Act.

²⁴ Previously named the Crime and Misconduct Commission.

²⁵ As a consequence of amendments to the *Crime and Corruption Act 2001 (Qld) (CC Act)* effected by the *Crime and Misconduct and Other Legislation Amendment Act 2014 (Qld)*, the concept of 'corrupt conduct' has replaced what was previously referred to as 'official misconduct': see section 400(c) of the CC Act. Dealing with corrupt conduct comprises an aspect of the CCC's corruption function: schedule 2 and section 15 of the CC Act. Corruption is a 'prescribed function' of the CCC for the purpose of schedule 3, section 10(4) of the RTI Act.

²⁶ Schedule 3, section 10(9) of the RTI Act.

²⁷ Schedule 3, section 10(9) of the RTI Act.

²⁸ Sections 35(1)(e) of the CC Act.

functions of a prescribed crime body within the meaning of this provision. Therefore, the information meets the requirements of schedule 3, section 10(4) of the RTI Act.

34. The exception to this exemption which appears in schedule 3, section 10(6) of the RTI Act will apply only if the investigation is finalised *and* the information is about the applicant. I accept that the investigation has been finalised. However, this information must also be *about* the applicant.
35. In *G8KPL2 and Department of Health*,²⁹ the Right to Information Commissioner considered the meaning of 'about' in schedule 3, section 10(6) of the RTI Act and found that the investigation report in that case, while created as a result of the applicant's complaint, was not about the applicant but was about the persons who were the subject of the allegations and related investigation. On this basis, the Right to Information Commissioner concluded that the exception in schedule 3, section 10(6) of the RTI Act did not apply.
36. While I acknowledge in this case that the applicant has a personal interest in the CCC's investigation, the applicant was not the subject of the allegations or investigation. Furthermore, in accordance with the reasoning in *G8KPL2*, I find that this information is not *about* the applicant and the exception does not apply to this information.
37. For the reasons set out above, I am satisfied that QPS was entitled to refuse access to this information on the basis that it comprises exempt information under schedule 3, section 10(4) of the RTI Act.
38. QPS did not locate the audio recordings of police attending the applicant's vehicle or the applicant's triple zero call and provided submissions to OIC on these documents. I have not addressed QPS' submissions in these reasons for decision as I am satisfied that, if these recordings exist, access to these recordings can be refused under schedule 3, section 10(4) of the RTI Act, for the reasons previously addressed. As a result, I do not consider it necessary to ask QPS to perform any further searches to locate these recordings.

Nonexistent information

39. QPS did not locate any documents relating to some parts of the application.³⁰

Relevant law

40. Access to a document may be refused if the document is nonexistent.³¹ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.³²
41. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.³³

²⁹ (Unreported, Queensland Information Commissioner, 31 January 2011) (*G8KPL2*). In considering the appeal of *G8KPL2*, the Queensland Civil and Administrative Tribunal did not disagree with the Information Commissioner's interpretation of 'about' in schedule 3, section 10(6) of the RTI Act. See *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. See also *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012) and *Dickinson and Queensland Police Service* [2014] QICmr 30 (20 June 2014).

³⁰ That is, items 4 and 5 of the application.

³¹ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

³² Section 52(1)(a) of the RTI Act.

³³ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at paragraph 19 which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009). The key factors include: the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); the agency's practices and procedures (including but not exclusive to its information management approach) and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

Findings

42. The applicant seeks access to information about particular allegations she considers were made about her and QPRIME logs about her for a specific period. QPS conducted searches of the QPRIME database (using the applicant's name as a search term), notebooks, patrol logs, electronic logs and audio recordings but these searches did not locate any relevant documents.
43. The applicant also sought access to any RTI Act applications made by any other person for her police file. On external review, QPS searched its database for all applications made relating to the applicant and no documents were located.
44. I am satisfied that the searches QPS has performed for these documents were comprehensive and appropriately targeted in the circumstances and would have located the requested documents if they existed. The applicant has made no submissions on external review on these documents and has provided no reasonable grounds to believe they exist or to warrant further searches within QPS. I therefore find that QPS has taken all reasonable steps to locate the requested documents and access to them can be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act as they are nonexistent.

DECISION

45. For the reasons set out above, I vary QPS' decision and find that access to the information in issue can be refused under section 67(1) of the IP Act on the basis that:
 - its disclosure would, on balance, be contrary to the public interest³⁴
 - it is exempt information as it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body;³⁵ and
 - it is nonexistent.³⁶
46. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Tara Mainwaring
A/Assistant Information Commissioner

Date: 29 June 2015

³⁴ Sections 47(3)(b) and 49 of the RTI Act.

³⁵ Sections 47(3)(a) and 48 and schedule 3, section 10(4) of the RTI Act.

³⁶ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
8 July 2014	QPS received the access application.
7 August 2014	QPS issued its decision to the applicant.
22 August 2014	OIC received the application for external review of QPS' decision. OIC notified QPS that the external review application had been received and requested it provide relevant procedural documents by 29 August 2014.
26 August 2014	OIC received the requested procedural documents from QPS.
5 September 2014	OIC notified the applicant and QPS that it had accepted the external review application. OIC asked QPS to provide a copy of the located documents by 19 September 2014.
11 September 2014	OIC received the requested information from QPS.
17 February 2015	OIC conveyed a preliminary view to QPS and requested it provide further information relevant to the review. OIC invited QPS to provide submissions supporting its case by 4 March 2015 if it did not accept the preliminary view.
24 February 2015	QPS requested an extension of time until 27 March 2015 to provide its response to the preliminary view.
25 February 2015	OIC granted an extension of time until 18 March 2015 for QPS to provide its response to the preliminary view.
16 March 2015	OIC received QPS' response to the preliminary view. QPS located more documents relevant to the application and agreed to release a small amount of additional information to the applicant.
1 May 2015	OIC requested clarification from QPS on a number of remaining issues and asked QPS to provide the relevant information by 8 May 2015. OIC also asked QPS to release the additional information to the applicant by 8 May 2015.
8 May 2015	OIC received the requested information from QPS and QPS confirmed it had released the relevant information to the applicant.
20 May 2015	OIC conveyed its preliminary view to the applicant and invited her to provide submissions supporting her case by 3 June 2015 if she did not accept the preliminary view.
2 June 2015	The applicant notified OIC she did not want the matter to be closed but did not provide any submissions supporting her case.