



Decision and Reasons for Decision

Citation: *James and Queensland Police Service* [2018] QICmr 8
(22 February 2018)

Application Numbers: 313460 and 313530

Applicant: James

Respondent: Queensland Police Service

Decision Date: 22 February 2018

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - personal information of another individual recorded in a police officer's notebook - information provided by the applicant to the police officer - personal information and privacy - 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 - NONEXISTENT DOCUMENTS - applicant believes further documents should exist in relation to her interactions with a police officer - whether agency has taken all reasonable steps to locate additional documents - whether access may be refused on the basis the documents do not exist - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - entries in a police officer's notebook unrelated to the applicant or her interactions with police - whether information has any bearing on, or is pertinent to, the terms of the access application - whether section 88 of the *Information Privacy Act 2009* (Qld) applies

REASONS FOR DECISION

Summary

1. The applicant made two separate access applications to Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) seeking access to the following:

*On 15 September 2015 I attended Roma St Police HQ for the purpose of complaining about what I believed at the time was police harassment. I was interviewed by S/Sgt Col Giles who recorded the interview. I request a copy of S/S Giles report and a list of all agencies it was sent to.*¹

and,

*All recordings, electronic files, police notebook entries, correspondence, emails and reports made at and subsequent to an interview with Senior Sergeant Col Giles at Police Headquarters Roma Street Brisbane on 15 September 2015 related to Christine James nee Reynolds.*²

2. In response to the first application, QPS identified two pages of a police officer's notebook (**Notebook**) as containing relevant information and released these to the applicant in part, subject to the removal of another individual's personal information, and some information QPS considered to be irrelevant.³ In response to the second application, QPS was unable to locate any information and issued a decision refusing access to information on the basis that it did not exist.⁴
3. The applicant applied to OIC for external review of both QPS decisions.⁵ The applicant believes that she should be entitled to an unredacted copy of the Notebook and that QPS should hold far more documentation regarding her interactions with Senior Sergeant Giles such as reports, call records and related correspondence.
4. For the reasons set out below, I affirm the decision made by QPS on both applications.

Background

5. Significant procedural steps taken by OIC in conducting these external reviews are set out in the Appendix to these reasons.
6. While considering External Review No. 313460, OIC advised the applicant that, due to the wording of the access application, the scope of the review would be limited to considering whether she was entitled to access the Notebook.⁶ The applicant then made a second, broader application to QPS to capture any other documents created at or after the time of the applicant's conversation with the QPS officer.

¹ Access application dated 26 May 2017. The date range specified was 15 September 2015 - 31 December 2015.

² Access application dated 4 September 2017. The date range specified was 15 September 2015 to the date of the application.

³ Purported internal review decision dated 7 August 2017. However, the original decision was technically a deemed decision – see footnote 7 below.

⁴ Decision dated 3 October 2017.

⁵ External review applications dated 21 August 2017 and 10 October 2017.

⁶ OIC's letter to the applicant dated 4 September 2017.

Reviewable decision

7. The decisions under review are:

- External Review No. 313460 – the decision deemed to have been made by QPS refusing access to information in the Notebook;⁷ and
- External Review No. 313530 – the decision dated 3 October 2017 refusing access to information under section 67(1) of the IP Act and 47(3)(e) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
9. The applicant provided OIC with extensive written and oral submissions.⁸ I have carefully reviewed all of those submissions, however, some concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the IP Act and this was conveyed to the applicant during the review process.⁹ For example, the applicant seeks redress for her complaints of police harassment. Accordingly, in reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination on external review.
10. The applicant emphasised to OIC that her two access applications were interrelated and in External Review No. 313530, asked OIC to also consider the submissions she had provided in External Review No. 313460.¹⁰

Information in issue

11. In External Review No. 313460, the information in issue appears on Page 2 of the Notebook and comprises:
- two handwritten lines containing the name and address of another individual (**Third Party Information**); and
 - information pertaining to other QPS matters (**Irrelevant Information**).
12. As QPS did not locate any documents in response to the second application, there is no information in issue in External Review No. 313530—that review solely concerns the issue of nonexistent documents, as set out below.

Issues for determination

13. In External Review No. 313460, the issues for determination are whether:
- access to the Third Party Information may be refused on the basis that its disclosure would, on balance, be contrary to the public interest; and

⁷ Due to an administrative oversight involving receipt of the applicant's identification, QPS did not provide written notice of its decision by the end of the processing period and therefore, under section 66(1) of the IP Act, QPS was taken to have made a decision refusing access to the requested information. However, QPS provided the applicant with a statement of reasons dated 7 August 2017 which was considered by OIC as submissions on the external review.

⁸ Including the applicant's external review applications dated 21 August 2017 and 10 October 2017, email submissions to OIC on 1, 21, 22 and 28 September 2017, 9, 12 and 13 October 2017, 1 and 2 November 2017, and 22 January 2018, and by telephone to OIC on 3 October 2017.

⁹ In email correspondence dated 4 September 2017 and 21 September 2017.

¹⁰ Applicant submissions dated 22 January 2018.

- section 88 of the IP Act applies to the Irrelevant Information.

14. In External Review No. 313530, the issue for determination is whether there are reasonable grounds to be satisfied that no documents exist in response to the terms of the access application. In examining this issue, it is also necessary to determine whether QPS has taken all reasonable steps to locate documents responding to the application.

Relevant law

15. Section 40 of the IP Act gives an individual a right to access documents of an agency to the extent they contain the individual's personal information.¹¹ However, this right of access is subject to some limitations, including grounds on which an agency may refuse access.¹²

16. The IP Act is to be administered with a pro-disclosure bias, meaning that access to information should be provided unless doing so would, on balance, be contrary to the public interest.¹³ Access may therefore be refused to information which would, on balance, be contrary to the public interest to disclose.¹⁴ To assist in determining whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act identifies various factors that may be relevant to deciding the balance of the public interest,¹⁵ and explains the steps that a decision-maker must take in doing so:

- 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.¹⁶

17. An agency may also refuse access to documents which do not exist.¹⁷ A document is nonexistent if there are reasonable grounds for the agency or Minister to be satisfied that the requested document does not exist. A decision maker must rely on their particular knowledge and experience to be satisfied that documents are nonexistent, and must have regard to a number of key factors:

- administrative arrangements of government
- agency structure, functions and responsibilities
- agency recordkeeping practices and procedures; and
- other factors including the nature and age of the requested documents and the nature of the government activity to which the requested information relates.¹⁸

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 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 the agency could refuse access to the document under section 47 of the RTI Act.

¹³ Section 64 of the IP Act.

¹⁴ Section 67(1) and sections 47(3)(b) and 49 of the RTI Act.

¹⁵ Schedule 4 of the RTI Act, Parts 1 to 4 set out the factors for deciding where the balance of the public interest lies in making a finding on whether granting access to information is contrary to the public interest. The lists are not exhaustive meaning that factors that are not included in any of the lists may also be considered in a particular case.

¹⁶ In section 49(3) of the RTI Act.

¹⁷ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁸ See *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017) at [11] which adopted the Information Commissioner's comments in *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

18. After considering these factors, an agency may determine that a particular document was not created because, for example, its processes do not involve creating the specific document. Where an agency can adequately explain the relevant circumstances accounting for non-existent documents, it would not be necessary for the agency to conduct searches. If searches are undertaken, an agency must demonstrate that all reasonable steps have been taken to locate responsive documents, prior to deciding that the documents are non-existent. In determining whether all reasonable steps have been taken, the key factors must be considered together with the circumstances of the case.
19. Section 88 of the IP Act permits deletion of information that is not relevant to the terms of the access application. Section 88 is not a ground for refusing access to information but a mechanism to allow removal of irrelevant information from documents identified for disclosure. To determine if information is irrelevant under section 88 of the IP Act, it is relevant to consider whether the information has any bearing upon, or is pertinent to, the terms of the access application.¹⁹

Findings

External Review No. 313460

Third Party Information

20. No irrelevant factors arise in the circumstances of this review, and I have not taken any into account in making my decision.
21. I accept that there is a general public interest in disclosing information held by a government agency. I also consider that providing access to the Third Party Information would allow increased transparency in the contemporaneous records made by a police officer, following interaction with a member of the public, and thereby enhance the accountability of QPS, to some extent.²⁰ However, given the limited nature of the Third Party Information, I afford this factor only low weight in favour of disclosure.
22. The applicant argues that full disclosure of the information in issue would support her beliefs about corruption and collusion within and among various government agencies, including QPS.²¹ The RTI Act recognises that there is a public interest in disclosing information that would reveal that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.²² However, given the limited nature of the Third Party Information, I do not consider that this factor applies. In the circumstances of this case, I am unable to identify any other relevant factors favouring disclosure of the Third Party Information.
23. I am satisfied that the Third Party Information comprises the personal information²³ of another individual.²⁴ Given the Third Party Information appears in an official QPS record, I am also satisfied that disclosure of that individual's details could reasonably be expected to prejudice the protection of their right to privacy.²⁵

¹⁹ See *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made in the context of section 27(3) of the repealed *Freedom of Information Act 1992* (Qld) which is equivalent to section 88 of the IP Act.

²⁰ Schedule 4, part 2, item 1 of the RTI Act.

²¹ Application for external review dated 21 August 2017.

²² Schedule 4, part 2, item 6 of the RTI Act

²³ As defined in section 12 of the IP Act.

²⁴ Giving rise to the public interest harm factor in schedule 4, part 4, section 6 of the RTI Act.

²⁵ Schedule 4, part 3, item 3 of the RTI Act.

24. It is not contested that the applicant provided the Third Party Information to QPS and I accept that the applicant's direct involvement serves to diminish the weight of the relevant factors favouring nondisclosure. However, they are not entirely negated. While the RTI Act does not support an assumption that release of documents to an applicant is necessarily release to the world at large,²⁶ once the information is disclosed, there is no control over how information may be further disseminated. Therefore, I consider that disclosing the Third Party Information in the particular context of the Notebook, an official record created by a QPS officer, would cause a moderate level of harm to that individual's personal sphere and moderately infringe upon their privacy.
25. On balance, I find that the weight of the factors which seek to safeguard the personal information and privacy of another individual is sufficient to outweigh the public interest in promoting access to information held by government and enhancing the transparency and accountability of QPS. Accordingly, I find that disclosure of the Third Party Information would be contrary to the public interest and access to it may therefore be refused under section 67 of the IP Act and section 47(3)(b) of the RTI Act.

Irrelevant Information

26. This information appears on page 2 of the Notebook. The applicant has questioned the deletion of irrelevant information and generally submits that full disclosure is necessary to expose, what she believes is, police corruption and harassment.²⁷
27. The terms of the access application are quoted above at paragraph 1 of these reasons. The scope was limited to a request for information relating to the applicant's interview with the relevant officer.
28. Due to the wide range of matters which a police officer is required to attend to in any given day, a police officer's notebook will inevitably record information relating to various inquiries, individuals and investigations and it is reasonable to expect that information about separate QPS matters will appear on the same page of a notebook.
29. I have carefully considered the Irrelevant Information and am satisfied that it comprises information about QPS matters/activities that are unrelated to the applicant's interactions with police, and therefore, the information is not pertinent to the terms of the access application. Accordingly, I am satisfied that section 88(2) of the IP Act applies to the Irrelevant Information and it can be deleted on that basis.

External Review No. 313530

30. The applicant has submitted that QPS should hold additional documents in relation to her interaction with the relevant officer on 15 September 2015, beyond the Notebook.²⁸ As set out above, the applicant specifically made the second application which is the subject of External Review No. 313530, framed in broader terms than the first application, with the expectation that it would elicit further information from QPS. The applicant believes a recording of her interaction with QPS should exist, and that QPS would have created other documents eg. reports, correspondence and records of telephone calls.

²⁶ *FG and National Archives of Australia* [2015] AICmr 26 at [32]-[44], which in turn was considered in *FH and National Archives of Australia* [2015] AICmr 27 at [20]-[28]. See also, *Bowmaker Realty and Department of Justice and Attorney-General; Andrews* [2015] QICmr 19 (17 August 2015), at [36].

²⁷ Email from the applicant to OIC dated 10 October 2017.

²⁸ Application for external review dated 21 August 2017 and submissions dated 28 September 2017, 9, 12 and 13 October 2017 and 22 January 2018.

31. QPS provided OIC with emails from the relevant police officer confirming that he had a conversation with the applicant on 15 September 2015 in which he provided her with his contact details and some advice. While he subsequently had a telephone conversation with the applicant, his recollection is that he did not make a record of that call. The police officer emphasised that the only record he created in relation to his interaction with the applicant was the entry in the Notebook.²⁹
32. QPS confirmed that upon receiving the access application, it conducted searches of the QPRIME database,³⁰ as is common practice in response to access applications of this nature; however, no entries were located in QPRIME.³¹ QPS provided OIC with records certifying those searches had been conducted.³²
33. QPS submitted to OIC that the applicant's interactions with the relevant officer were not treated as a formal complaint, and therefore, a QPRIME report was not produced. As a QPRIME report was not created, there was no incident/matter against which to record the subsequent telephone conversation. QPS also submitted to OIC that the discussions with the applicant did not constitute an interview, and therefore, an audio recording had not been created.
34. I acknowledge that the applicant's interaction with QPS on 15 September 2015 related to a matter of serious concern to her. However, I consider it is reasonable to conclude, from the evidence available to OIC, that QPS did not treat it as a formal complaint and as a result, very limited records were created in relation to it—this approach appears consistent with QPS recordkeeping practices. I consider the explanation provided by QPS as to the nonexistence of further documents is reasonable and is supported by its searches and the relevant officer's response. Also, the entry in the Notebook is very limited in nature and is therefore, congruent with QPS' submissions that the matter was not treated as a formal complaint, and did not trigger a QPRIME reporting requirement.
35. For these reasons, I am satisfied that QPS has taken all reasonable steps to locate documents in response to the access application and access may be refused to the requested documents on the basis they do not exist.³³

DECISION

36. In External Review No. 313460, I affirm QPS' decision to:
 - refuse access to the Third Party Information in the Notebook under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest; and
 - remove Irrelevant Information from the Notebook under section 88 of the IP Act.
37. In External Review No. 313530, I affirm QPS' decision to refuse access to information under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act on the basis that documents responding to the application do not exist.

²⁹ QPS submissions dated 24 October 2017 and 12 December 2017, attaching emails from the relevant police officer dated 22 September 2017 and 11 December 2017, respectively.

³⁰ The QPRIME database is used to record complaints, investigations and various other dealings with members of the public.

³¹ QPS submissions dated 12 December 2017.

³² QPS submissions dated 24 October 2017.

³³ Section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

38. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 22 February 2018

APPENDIX**Significant procedural steps****External Review No. 313460**

Date	Event
21 August 2017	OIC received the external review application.
22 August 2017	OIC notified QPS and the applicant that the external review application had been received and requested relevant procedural documents from QPS.
28 August 2017	OIC received the procedural documents from QPS.
1 September 2017	OIC received submissions from the applicant.
4 September 2017	OIC notified QPS and the applicant that the external review application had been accepted and requested further information from QPS.
21 September 2017	OIC received the requested documents from QPS. OIC conveyed a preliminary view to the applicant that access to the information may be refused under section 67 of the IP Act and section 47 of the RTI Act. The applicant provided submissions to OIC, contesting the preliminary view.
22 September 2017	OIC received submissions from the applicant.
27 September 2017	OIC provided the applicant with an update on the status of the review.
28 September 2017	OIC received submissions from the applicant.
9 October 2017	OIC wrote to the applicant confirming the preliminary view that access to the information may be refused under section 67 of the IP Act and section 47 of the RTI Act. OIC received further submissions from the applicant.
10, 12 and 13 October 2017, and 1 November 2017	OIC received further submissions from the applicant.
2 November 2017	OIC provided the applicant with an update on the status of the review and received submissions from the applicant.
4 January 2018	OIC provided the applicant with an update on the status of the review.
22 January 2018	OIC received submissions from the applicant.
24 January 2018	OIC provided the applicant with an update on the status of the review.

External Review No. 313530

Date	Event
10 October 2017	OIC received the application for external review.
11 October 2017	OIC notified QPS and the applicant that the external review application had been received and requested relevant procedural documents.
12 and 13 October 2017	OIC received submissions from the applicant.
17 October 2017	OIC received the procedural documents from QPS.
18 October 2017	OIC notified QPS and the applicant that the external review application had been accepted and requested search records from QPS.
24 October 2017	OIC received search records from QPS.

Date	Event
1 and 2 November 2017	OIC provided the applicant with an update on the status of the review and received submissions from the applicant.
1 December 2017	OIC requested further search information from QPS.
12 December 2017	OIC provided QPS with an update on the status of the review and received submissions from QPS.
4 January 2018	OIC provided the applicant with an update on the status of the review.
5 January 2018	OIC conveyed a preliminary view to the applicant that access to any further information may be refused under section 67 of the IP Act and section 47(3)(e) of the RTI Act.
8 January 2018	OIC provided QPS with an update on the status of the review.
22 January 2018	OIC received submissions from the applicant contesting the preliminary view.
24 January 2018	OIC provided the applicant with an update on the status of the review.
9 February 2018	OIC provided the applicant with an update on the status of the review.