



Decision and Reasons for Decision

Citation:	7G5BAL and Crime and Corruption Commission [2019] QICmr 8 (29 March 2019)
Application Number:	314122
Applicant:	7G5BAL
Respondent:	Crime and Corruption Commission
Decision Date:	29 March 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - INVESTIGATION BY PRESCRIBED CRIME BODY - investigation information - 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 - sections 47(3)(a) and 48 and schedule 3, section 10(4) of the Right to Information Act 2009 (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - where applicant's complaint initiated an investigation into suspected official misconduct - whether information about the investigation report is "about" the applicant - whether information is not exempt on basis of schedule 3, section 10(6) of the Right to Information Act 2009 (Qld)

REASONS FOR DECISION

Summary

1. In 2017, the applicant made a complaint to the Crime and Corruption Commission (**CCC**) about the conduct of a named police officer in relation to a criminal investigation involving the applicant. The applicant applied¹ to the CCC under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to particular documents sent to or from the CCC in relation to the applicant's complaint about the police officer.
2. The CCC located nine documents and decided² to refuse access to this information on the basis that it was exempt information as the information had been obtained, used or prepared for an investigation by the CCC in the performance of the CCC's prescribed corruption functions. The CCC also decided that some of the requested information did not exist.

¹ Application received 9 May 2018.

² Decision dated 9 July 2018.

3. The applicant applied for internal review of the CCC's decision to refuse access to the requested information.³ On internal review, the CCC varied its decision and decided to refuse access to some information on the basis that it comprised exempt information, and the remaining information on the basis that it did not exist.⁴
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the CCC's internal review decision. During the review, the applicant advised that she sought review only in relation to the CCC's decision to refuse access to particular information sent between the CCC and Queensland Police Service (**QPS**).
5. For the following reasons, I affirm the CCC's decision to refuse access to eight full documents and one document in part on the ground that the information was obtained, used or prepared by a prescribed crime body in the performance of the prescribed crime functions of that body and therefore comprises exempt information.

Background

6. Significant procedural steps relating to the application and external review are set out in the Appendix.
7. The decision under review is the CCC's internal review decision dated 27 August 2018.
8. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Information in issue

9. Following communications with the applicant at the early stages of this external review, OIC confirmed that the information in issue responds to the following two items identified in the applicant's access application:
 1. *'The CCC document that went back to the QPS Ethical Standards Command (ESC) after the CCC had completed their investigation into [a named police officer]'; and*
 2. *'The QPS/CSS document that was sent to the CCC from the ESC regarding the complaint and ESC investigation of [a named police officer].'*⁵
10. In assessing the information identified by the CCC as responding to the above two items, I note that the CCC identified four documents in response to Item 1 and five documents in response to Item 2. The CCC refused access to eight of these documents in full and the remaining document in part.
11. The following decision applies to the refused information in these nine documents that can broadly be described as communications between QPS and the CCC relating to investigations into the conduct of a named police officer.⁶

Issue for determination

12. The issue for determination is whether access to the information in issue may be refused on the ground that it is exempt as information that was obtained, used or prepared for an

³ Application for internal review dated 30 July 2018.

⁴ Internal review decision dated 27 August 2018.

⁵ These two items of information were within the narrowed scope of information that was confirmed by the applicant in an email to the CCC dated 12 June 2018. On external review, OIC confirmed that these were the two items of information in issue in its preliminary view correspondence dated 26 October 2018.

⁶ In the course of this external review, OIC has obtained and assessed copies of these nine documents.

investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.

Relevant law

13. Under the RTI Act, a person has a right to access documents of an agency⁷ and the RTI Act is to be administered with a pro-disclosure bias.⁸ However, this right is subject to certain limitations, including grounds on which an agency may refuse access to documents.⁹ One ground for refusing access is where information comprises exempt information.¹⁰ Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed to be contrary to the public interest.¹¹
14. Information will be exempt if it was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed crime functions of the prescribed crime body (**Prescribed Crime Body Exemption**).¹²
15. An exception to this exemption applies where the information consists of information that is about the applicant and the investigation has been finalised.¹³

Applicant submissions

16. The applicant provided detailed submissions to OIC in writing¹⁴ and during telephone conversations with OIC staff.¹⁵ I have considered each of these submissions and to the extent that they relate to my findings in this matter, I have addressed them below.
17. Much of the applicant's submissions include information about various legal processes the applicant has been involved in which provide background to the information in issue. The applicant raises concerns about the conduct of police officers, the CCC, various public servants and other individuals and also provides other information to further her argument that government policy and inaction is placing victims of assault in danger and affecting their ability to pursue legal recourse. I acknowledge that these are serious concerns for the applicant however these are not matters that the Information Commissioner has jurisdiction to consider. The limits of OIC's jurisdiction under the RTI Act have been explained to the applicant in the course of this review.¹⁶

Findings

18. The CCC is expressly recognised as a prescribed crime body under schedule 3, section 10(9) of the RTI Act.
19. The applicant made a complaint to the CCC about a named QPS officer. The CCC referred the matter to the QPS¹⁷ to investigate whether the allegations of corrupt conduct could be substantiated. The prescribed corruptions functions of the CCC include referring investigations into corrupt conduct back to an agency, under the oversight of the CCC.¹⁸

⁷ Section 23 of the RTI Act.

⁸ Section 44 of the RTI Act.

⁹ As set out in section 47 of the RTI Act.

¹⁰ Section 47(3)(a) of the RTI Act.

¹¹ Section 48(2) of the RTI Act.

¹² Schedule 3, section 10(4) of the RTI Act.

¹³ Schedule 3, section 10(6) of the RTI Act.

¹⁴ On 26 September 2019, 31 December 2019, 10, 14, 16 and 26 February 2019 and 5 March 2019.

¹⁵ On 26 September 2019, 7 November 2018 and 14 February 2019.

¹⁶ In correspondence dated 12 September 2018 and 26 October 2018.

¹⁷ Under section 34(c) of the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

¹⁸ Under section 33 of the CC Act, the CCC's corruption functions include ensuring that a complaint about corruption is dealt with in an appropriate way.

20. The information in issue was created and communicated between the CCC and QPS for the purposes of this investigation. Having considered the content of the information in issue and the context of its communication between QPS and the CCC, I am satisfied that it was prepared and used for the purposes of the prescribed corruption functions of the CCC.

Does the exception to the Prescribed Crime Body Exemption apply?

21. The exception to the Prescribed Crime Body Exemption only applies where the investigation is finalised and the information is about the applicant. While the CCC's investigations have been finalised¹⁹ the information in issue is not 'about' the applicant.
22. Whether information is 'about' a given applicant is a question of fact, to be resolved by reference to the information itself. The information in issue relates to an investigation into a QPS officer following concerns raised by the applicant. OIC has dealt with several cases of this kind, in which a complainant has sought access to investigatory documents on the basis that the documents relate to a finalised investigation initiated by the applicant's complaint.
23. The recent decision of *Cronin and Crime and Corruption Commission*²⁰ explains that the word 'about' is '*to be construed to give effect to the intention of the exception: to enable persons the subject of an investigation to obtain access to information about the investigation once it is finalised. The effect of this construction is that while an investigation may be the direct result of an applicant's complaint, this does not mean that resulting investigation documents will be 'about' that applicant for the purpose of the exception.*'
24. Prior to the decision in *Cronin*, in *G8KPL2 and Department of Health*²¹ the Right to Information Commissioner considered the meaning of 'about' and found that an investigation report was **not** about the applicant, even though it was created as a result of the applicant's complaint. The investigation report was instead found to be *about* the people who were the subject of the allegations and the related investigation.
25. In applying the same reasoning, while I acknowledge that the applicant has a personal interest in the matters that were investigated, the information in issue is not *about* the applicant as the applicant was not the subject of the investigation. Accordingly, I find that the exception does not apply.

Public interest submissions made by the applicant

26. The applicant argues that the grounds for refusal under the RTI Act apply differently to *types* of documents than to *particular* documents and where considering particular documents the public interest balancing test must be considered.²² The applicant also submits that the CCC failed to adequately consider the public interest in disclosure of the information, and failed to properly exercise its discretion to release information.

¹⁹ As noted in the CCC's original and internal review decisions.

²⁰ *Cronin and Crime and Corruption Commission* [2017] QICmr 13 (6 April 2017) (*Cronin*) at [23].

²¹ *G8KPL2 and Department of Health* (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.

²² Specifically, the applicant contends that the wording of the RTI Act indicates that Parliament did not intend that '*disclosure of each and every member of (an exempt) class of documents would be contrary to the public interest.*' Instead, the applicant contends that Parliament intended that '*the statutory public interest test to be capable of providing guidance in respect of the statutory discretion to release particular "exempt" documents*' and, further, the discretion to release information despite establishing grounds to refuse access indicates that Parliament believes the public interest would '*sometimes be maximized by doing so*'. Applicant submissions received on 31 December 2018. Similar submissions were made on 26 September 2018 and 16 February 2019.

27. The applicant also contends²³ that I may decide any matter in relation to the access application that could have been decided by the CCC²⁴ and I should therefore consider whether disclosure of the information in issue could reasonably be expected to enhance a number of public interest factors favouring disclosure set out schedule 4 of the RTI Act.²⁵
28. I consider that the wording of the RTI Act is plain: an agency is entitled to refuse access to a document if it is satisfied that the information meets the description of a category set out in schedule 3 of the RTI Act.²⁶
29. While an agency such as the CCC *may* exercise its discretion to release information found to be exempt, it is not under any obligation to release that information.²⁷ In any event, I do not have the discretion, on external review, to release information found to be exempt.²⁸ Relevantly, in *BL v Office of the Information Commissioner, Department of Communities*, the Honourable Member Cullinane stated:

*It is to be noted that the discretions to allow access found in s 48(3) and s 49(6) of the (RTI) Act are not, where access has been refused, available to the Commissioner on external review: see s 105(2) of the (RTI) Act.*²⁹
30. The exemptions set out in schedule 3 to the RTI Act – including the Prescribed Crime Body Exemption – do not require or allow consideration of public interest issues. Parliament has determined that disclosure of these categories of information would be contrary to the public interest. Accordingly, if information falls within one of the categories of exempt information prescribed in schedule 3, a presumption exists that its disclosure would be contrary to the public interest, and no further consideration is permitted on external review.
31. As I am satisfied that the information in issue is exempt information under the Prescribed Crime Body Exemption, and that it does not fall within the exception to that exemption set out in schedule 3, section 10(6) of the RTI Act, I must find, for the above reasons, that disclosure would be contrary to the public interest.

DECISION

32. I affirm the CCC's decision to refuse access to the information in issue on the ground that it is exempt information as it was obtained, used or prepared for an investigation by the CCC or QPS in the performance of a prescribed function of the CCC.
33. I have made this decision under section 110 of the RTI Act, as a delegate of the Information Commissioner under section 145 of the RTI Act.

Shiv Martin
Acting Assistant Information Commissioner

Date: 29 March 2019

²³ Applicant submissions dated 26 September 2018, 31 December 2018 and 14 February 2019.

²⁴ Under section 105 of the RTI Act.

²⁵ In undertaking the public interest balancing test set out in section 49 of the RTI Act.

²⁶ Section 48(1) and (2) of the RTI Act.

²⁷ Under section 48(3) of the RTI Act.

²⁸ [2012] QCATA 149 (*BL*).

²⁹ *BL* at [13].

APPENDIX

Significant procedural steps

Date	Event
27 August 2018	OIC received the external review application.
30 August 2018	OIC notified the CCC that it had received the external review application and requested relevant procedural documents.
4 September 2018	OIC received the requested information from the CCC.
11 September 2018	OIC requested the CCC provide some of the procedural documents again due to corruption of the files. OIC received the requested documents from the CCC.
12 September 2018	OIC notified the applicant and the CCC that the external review had been accepted and asked the CCC to provide the information in issue.
26 September 2018	The applicant provided written submissions and OIC received the requested information in issue from the CCC.
26 October 2018	OIC conveyed a preliminary view to the applicant that the requested information is exempt and invited the applicant to provide further submissions if she did not accept the preliminary view.
7 November 2018	The applicant requested, and OIC granted, an extension to respond to OIC's written preliminary view. The applicant made submissions in a telephone discussion with OIC.
31 December 2018	OIC received the applicant's submissions.
9 January 2019	OIC updated the applicant on the progress of the review.
10 February 2019	OIC received the applicant's submissions.
14 February 2019	OIC received the applicant's submissions and received a telephone call from the applicant to discuss her submissions.
16 February 2019	OIC received the applicant's submissions.
26 February 2019	OIC received the applicant's submissions.
5 March 2019	OIC received the applicant's submissions.