



Decision and Reasons for Decision

Citation:	<i>Law Abiding Firearms Owners Inc and Queensland Police Service</i> [2019] QICmr 46 (25 October 2019)
Application Number:	314388
Applicant:	Law Abiding Firearms Owners Inc
Respondent:	Queensland Police Service
Decision Date:	25 October 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL WITH APPLICATION - EXEMPT CLASS OF DOCUMENTS - application for information about weapons licences and registrations - whether application expressed to relate to all documents that contain information of a stated kind or relate to a stated subject matter - whether all documents to which application relates appear to comprise exempt information - whether agency may refuse to deal with application - section 40 and schedule 3, section 10(1)(g) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information recording weapons licenses and registered¹ weapons by postcode.²
2. QPS decided³ to refuse to deal with the application under section 40 of the RTI Act, on the ground it appeared to QPS that all of the requested documents comprised exempt information.
3. The applicant applied for internal review of that decision and QPS affirmed⁴ its refusal to deal with the application under section 40 of the RTI Act.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's internal review decision.⁵
5. For the reasons set out below, I set aside QPS's decision and find that it is not entitled to refuse to deal with the application under section 40 of the RTI Act.

¹ Under the *Weapons Act 1990* (Qld) (**Weapons Act**)

² By application dated 27 September 2018. Specifically the applicant sought the information in a CSV or XLSX format.

³ On 23 November 2018.

⁴ On 17 December 2018.

⁵ External review application dated 13 January 2019.

Background

6. The decision under review is QPS's internal review decision dated 17 December 2018, refusing to deal with the applicant's access application.
7. Significant procedural steps relating to the external review are set out in the Appendix.
8. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and the Appendix).

Issue for determination

9. QPS maintains that it was entitled to refuse to deal with the application under section 40 of the RTI Act. QPS has also submitted⁶ that the requested information would, on balance, be contrary to the public interest to disclose.
10. Under section 85 of the RTI Act, a person affected by a reviewable decision may apply to have the decision reviewed by the Information Commissioner. In this review, the reviewable decision is QPS's decision to refuse to deal with the application. In making my decision, I have the power to affirm, vary or set aside the reviewable decision and substitute it with my decision.
11. In this decision I have considered whether QPS is entitled to refuse to deal with the application under section 40 of the RTI Act. I have not considered whether disclosure of any responsive information would, on balance, be contrary to the public interest.⁷

Relevant law

12. If an access application is made to an agency under the RTI Act, the agency should deal with the application unless this would not be in the public interest.⁸ One of the few circumstances where it is not in the public interest to deal with an access application is set out in section 40 of the RTI Act, which provides:

40 Exempt information

- (1) *This section applies if—*
 - (a) *an access application is expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and*
 - (b) *it appears to the agency or Minister that all of the documents to which the application relates are comprised of exempt information.*
- (2) *The agency or Minister may refuse to deal with the application without having identified any or all of the documents.*

13. Exempt information is defined as meaning information that is exempt information under schedule 3 of the RTI Act.⁹
14. In this external review, QPS has the onus of establishing that its decision refusing to deal with the application was justified.¹⁰

⁶ Submissions dated 24 April 2019.

⁷ The Queensland Civil and Administrative Tribunal has previously found that where the issue being determined by the Information Commissioner is whether an agency is entitled to refuse to deal with an access application, the Information Commissioner is not required to consider whether disclosure of information would, on balance, be contrary to the public interest. Refer to *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115 (**SJM**) at [51] per Justice Daubney.

⁸ Section 39(1) of the RTI Act.

⁹ Section 48(4) and schedule 5 of the RTI Act.

¹⁰ Under section 87(1) of the RTI Act.

Findings

Is the application expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter?

15. Yes, for the reasons that follow.

16. The application seeks to access:

1. Weapons Act licenses (as set out in s 12 of that Act) by postcode of license holder output to CSV or XLSX format...

2. Registered weapons by postcode of license holder or registrant output to CSV or XLSX format...

17. I am satisfied that the application is framed as a request for all documents that contain information of a stated kind or relate to a stated subject matter (that is, information about licences and registrations issued pursuant to the firearms licensing and registration scheme under the Weapons Act). Accordingly, I find that the first limb of section 40 of the RTI Act is satisfied.

Do all of the documents to which the application relates appear to be comprised of exempt information?

18. No, for the reasons that follow.

19. QPS submits¹¹ that all the requested documents comprise exempt information under schedule 3, section 10(1)(g) of the RTI Act because disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety, namely, the weapons licensing system established under the Weapons Act. For this provision to apply, there must be:

- an identifiable lawful method or procedure for protecting public safety; **and**
- a reasonable basis to expect that the effectiveness or enforcement of that method or procedure would be prejudiced by disclosure of the requested information.

Lawful method or procedure

20. The object of the Weapons Act is to prevent the misuse of weapons¹² and one of the ways this is achieved is through an integrated licencing and registration scheme.¹³ Section 49 of the Weapons Act requires that a firearms register be established and maintained and specifies the information which is required to be included in that register.

21. On this basis, I am satisfied that the firearms licensing and registration scheme is one of the methods and procedures used by QPS to protect public safety with respect to the monitoring of firearm possession and use.

¹¹ Submissions dated 24 April 2019.

¹² Section 3(2) of the Weapons Act.

¹³ Section 4(b) of the Weapons Act.

Could reasonably be expected to prejudice the maintenance or enforcement of the method or procedure

22. In assessing whether an event ‘*could reasonably be expected*’ to occur, the Information Commissioner has found:¹⁴

The words call for the decision-maker ... to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural “expectations”) and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist.

23. Accordingly, I must be satisfied, on an objective examination of the relevant evidence, that there is a reasonably based expectation (and not mere speculation or a mere possibility, or something that is irrational or absurd or ridiculous) that the consequences identified in the exemption will follow as a result of the information in issue being disclosed.¹⁵ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence, rather than from other circumstances.¹⁶
24. Consistent with the observations of Justice Daubney in *SJN*,¹⁷ as the party holding the onus in this review, QPS is obliged to put forward argument and/or information which could lead to a conclusion that provision of the particular requested information to this particular applicant *could reasonably be expected* to prejudice the maintenance or enforcement of the weapons licensing system.
25. QPS contends that disclosure of the requested information could reasonably be expected to:
- enable individuals to identify areas where there is a probability that weapons are being stored and potentially result in targeted offending by criminal sources¹⁸
 - be used to further or facilitate criminal activity and subvert police attention by providing information that is not readily available through other means¹⁹
 - ‘*necessarily create an intent contrary to*’ the Weapons Act by the ‘*watering down*’ of the secrecy of weapon storage locations;²⁰ and
 - lead to media criticism and increased concerns from both licence holders and the general community.²¹
26. QPS also provided OIC with additional, specific submissions in support of the above contentions and requested that these submissions not be disclosed as to do so would result in the disclosure of exempt information. Under section 108(3) of the RTI Act, I

¹⁴ *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160]. Other authorities note that the words ‘*require a judgement to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous to expect a disclosure of the information could have the prescribed consequences relied upon*’. *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 (**Cockcroft**) at 190.

¹⁵ *Abbot Point Bulkcoal Pty Ltd and Department of Environment and Science; Mackay Conservation Group Inc* (Third Party) [2018] QICmr 26 (24 May 2018) (**APB**) at [19]. In reaching a finding, it is not necessary for a decision-maker ‘*to be satisfied upon a balance of probabilities*’ that disclosing the document will produce the anticipated prejudice: see *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [192], citing *Cockcroft* at 106.

¹⁶ *APB* at [20].

¹⁷ At [74], where His Honour observed that the entity bearing the review onus did not attempt to link any of its raised disclosure concerns to the particular information sought by the particular applicant in that matter.

¹⁸ Submissions dated 21 March 2019.

¹⁹ Submissions dated 24 April 2019.

²⁰ Submissions dated 24 April 2019. In this regard, QPS referenced section 49(4) of the Weapons Act, which relevantly provides that QPS may make information in the firearms register available to another entity, within or outside the State, only where satisfied to do so would assist in achieving the object of the Weapons Act.

²¹ Submissions dated 24 April 2019.

must not disclose, in the reasons for a decision, information which is claimed to be exempt information or contrary to the public interest information. I am therefore constrained in the extent to which I can explain, in detail, the particular circumstances put forward by QPS to support its contentions.

27. In his external review application, the applicant referred to the release of similar information by QPS in response to a prior access application. This previously released information included details of firearm licences by postcode²² and the applicant submits²³ that *'at no time has that [previously released information] tended to show that firearms are "probably" stored at any particular address'*.
28. In response, QPS²⁴ maintained that disclosure of the information requested in this review would lead to the disclosure outcomes set out in paragraph 25 above. QPS did not place any evidence before me which indicated that the prior release of similar information gave rise to any of those outcomes and, more significantly, did not provide any detail about how the disclosure outcomes could reasonably be expected to prejudice the maintenance or enforcement of the firearms licensing and registration system.
29. Further, I note that this type of information is readily available through various schemes in relevant jurisdictions such as New South Wales and Victoria.²⁵ This fact was put to QPS during the course of the review,²⁶ to which QPS responded that the release by the New South Wales Police Force under the *Government Information (Public Access) Act 2009* caused complaints from, and concern by, gun licence holders and the general public. These concerns were primarily in relation to the creation of an interactive map of the concentration of the licence holders that inaccurately placed markers over certain properties and also from licence holders who feared that the release of this information *'compromised their safety by enabling criminal sources the opportunity for targeted offending'*.²⁷
30. While I acknowledge the broad natured concerns raised by QPS, I am not persuaded that disclosure of the particular requested information to the access applicant in this matter could reasonably be expected to result in the same concerns. Specifically, there is no evidence before me to demonstrate a causal link between the disclosure of the requested information and any reasonable expectation of prejudice to the maintenance or enforcement of the firearms licensing and registration system.
31. Noting that QPS bears the onus in this review, I am not satisfied that the information provided by QPS could lead a conclusion that provision of the information requested in the application to the applicant could reasonably be expected to prejudice the maintenance or enforcement of the weapons licensing system. On this basis, I am unable to find that all the requested information appears to comprise exempt information under schedule 3, section 10(1)(g) of the RTI Act.
32. As I am not satisfied that the second limb of section 40 of the RTI Act has been met, I consider that QPS is not entitled to refuse to deal with the application on that basis.

²² Previously available on the QPS RTI disclosure log web page:

<<https://www.police.qld.gov.au/rti/disclog/2016/Documents/RTI%2019576%20Final%20Adobe%20Print.pdf>>

²³ External review application.

²⁴ Submissions dated 31 May 2019 and 5 July 2019.

²⁵ Interactive maps by jurisdiction: Victoria, see media article dated 29 June 2014, access at <<https://www.thecourier.com.au/story/2378608/how-many-guns-are-registered-in-your-postcode/>> and New South Wales see <<http://www.toomanyguns.org/map>>.

²⁶ By letter dated 4 April 2019.

²⁷ Submissions dated 21 March 2019.

DECISION

33. I set aside QPS's decision and find that QPS cannot refuse to deal with the application under section 40 of the RTI Act and must continue to deal with this application in accordance with the requirements of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

S Martin
Assistant Information Commissioner

Date: 25 October 2019

APPENDIX

Significant procedural steps

Date	Event
13 January 2019	OIC received the external review application.
15 February 2019	OIC notified the applicant and QPS that the external review had been accepted.
7 March 2019	OIC conveyed a preliminary view to QPS.
21 March 2019	OIC received submissions from QPS.
3 April 2019	The applicant advised OIC that it continued to seek access to the documents requested in the application.
4 April 2019	OIC confirmed its preliminary view to QPS.
24 April 2019	OIC received further submissions from QPS.
2 May 2019	OIC conveyed a further preliminary view to QPS.
31 May 2019	OIC received further submissions from QPS.
27 June 2019	OIC conveyed a further preliminary view to QPS.
5 July 2019	OIC received further submissions from QPS.
5 August 2019	OIC received further information from QPS.
12 August 2019	OIC confirmed its preliminary view to QPS.