



Decision and Reasons for Decision

Citation:	<i>Allianz Australia Insurance Ltd and Queensland Police Service</i> [2021] QICmr 1 (2 February 2021)
Application Number:	315436
Applicant:	Allianz Australia Insurance Limited (ACN 000 122 850)
Respondent:	Queensland Police Service
Decision Date:	2 February 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - application for access to information concerning possible cause of bushfire - whether disclosure of information is prohibited by section 288 of the <i>Youth Justice Act 1992</i> (Qld) - whether the disclosure of information is prohibited by an Act - whether information is exempt information under sections 47(3)(a) and 48 and schedule 3, section 12(1) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents concerning a 2019 fire incident.¹
2. QPS gave access to a number of pages (in full or part). Access to other information – including information identifying a third party² – was refused, on the basis its disclosure would, on balance, be contrary to the public interest.³ Decision
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision, stressing that '[k]nowledge of the identity of the offenders is crucial to our clients' rights to exercise their lawful recovery rights in respect of the damage sustained in the fire from the responsible parties or their insurer(s)'.⁴
4. OIC sought the views of the third party as to possible disclosure of information identifying that individual.

¹ The application refers to the date of the fire as November 2019, which appears to have been an error – the fire occurred in September 2019.

² The individual identified by QPS as being possibly responsible for starting the relevant fire.

³ A ground for refusing access to information: section 47(3)(b) of the RTI Act.

⁴ Application for external review dated 2 June 2020. That application was received outside the 20 business day timeframe for making applications prescribed in section 88(1)(d) of the RTI Act. OIC exercised the discretion conferred by this provision to extend the time for the making of the application.

5. The third party objected to disclosure, relevantly submitting⁵ that information identifying the third party comprised exempt information to which access may be refused under schedule 3, section 12(1) of the RTI Act, as information the disclosure of which is prohibited under section 288 of the *Youth Justice Act 1992* (Qld) (**YJ Act**).
6. The third party's submission must be accepted. Disclosure of information identifying the third party is prohibited under section 288 of the YJ Act. I therefore vary QPS's decision and find that that information is exempt information to which access may be refused, under sections 47(3)(a) and 48 of the RTI Act.

Background

7. Significant procedural steps in the review are set out in the Appendix.

Reviewable decision

8. The decision under review is QPS's decision dated 22 April 2020.

Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).⁶

Information in issue

10. Early in the review process I noted that the most comprehensive iteration of information to which I understood the applicant sought access – information identifying the third party, as the individual identified by QPS as having possibly started the fire – was contained within parts of pages 3 and 4 of a five-page document entitled 'Solicitors Office Report Details' partly released to the applicant by QPS. I advised the applicant⁷ that I would therefore confine my review to that information only.⁸ It therefore comprises the information in issue.

Issues for determination

11. The issue for determination is whether access to the information in issue may be refused as exempt information under schedule 3, section 12 of the RTI Act.

⁵ Submissions dated 20 October 2020. By email dated 19 November 2020 I invited the third party to participate in the review, in accordance with section 89(2) of the RTI Act; that invitation was not taken up.

⁶ The application in this matter was made by a corporate entity, such that at face value it may not, as against the applicant, appear necessary to consider the application of the *Human Rights Act 2019* (Qld) (**HR Act**), which only affords human rights to individuals in Queensland. However, Kingham J in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33 at [90] indicated that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and to not act or make a decision that is not compatible with human rights. To the extent then that it is necessary to observe relevant rights under section 58(1) of the HR Act – as regards any participant in this review – I am satisfied that I have done so. This is because in observing and applying the law prescribed in the RTI Act, as I have done in this case, an RTI decision-maker will be '*respecting*' and '*acting compatibly with*' applicable human rights as stated in the HR Act: *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]. In this regard, I note Bell J's observations at [573] of XYZ on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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*'.

⁷ Letter dated 7 September 2020. This letter conveyed a preliminary view on balance of public interest matters; it was not until the third party's 20 October 2020 submissions were received that the relevance and application of section 288 of the YJ Act was appreciated.

⁸ Which advice the applicant did not contest.

Relevant law

12. Section 47(3)(a) of the RTI Act permits an agency to refuse access to documents to the extent they comprise exempt information.⁹
13. Types of exempt information are stated in schedule 3 to the RTI Act. Parliament has provided that one such type of exempt information is information the disclosure of which is prohibited by, relevantly, section 288 of the YJ Act.¹⁰
14. In summary terms, section 288 of the YJ Act prohibits the disclosure¹¹ of information that would identify a child¹² who is, or has been, dealt with under the YJ Act.¹³ One of the ways that a child may be dealt with under the YJ Act includes being investigated for an offence.¹⁴

Findings

15. The information in issue identifies a child – the third party – who was being investigated by QPS in relation to an offence. Disclosure of the information in issue would therefore permit identification of a child who has been dealt with under the YJ Act. As noted, section 288 of the YJ Act prohibits disclosure of information of this kind. Schedule 3, section 12 of the RTI Act provides, in turn, that such information is exempt information, to which access may be refused under the RTI Act.
16. The information in issue is therefore exempt information, to which access may be refused under sections 47(3)(a), 48 and schedule 3, section 12(1) of the RTI Act.

Applicant's submissions

17. I conveyed the reasoning at paragraphs 12-16 above to the applicant by letter dated 28 October 2020.¹⁵ Relying on media reports apparently referring to a 17-year-old,¹⁶ the applicant initially contested the third party's status as a child subject to the YJ Act, citing an outdated reprint of that Act.¹⁷
18. By letter to the applicant dated 5 November 2020, I noted that the YJ Act was amended in 2016,¹⁸ which amendments had the effect of extending coverage of the YJ act to persons 17 years of age.¹⁹
19. In further submissions dated 12 November 2020, the applicant appeared to accept that disclosure of information identifying a child – including any 17-year-old – would be

⁹ Under section 48 of the RTI Act.

¹⁰ Schedule 3, section 12(1) of the RTI Act.

¹¹ Which release under the RTI Act would comprise, within the meaning of section 286(b) of the YJ Act.

¹² A person under 18 years of age: schedule 1, *Acts Interpretation Act 1954* (Qld).

¹³ Section 288 prohibits the intentional disclosure of information, other than under Part 9, Division 2 of the YJ Act. Section 287 of the YJ Act explains that the prohibition in section 288 applies to any person who has gained or accessed confidential information relating to a child through involvement in the administration of the YJ Act. Under section 285(1)(b) of the YJ Act, QPS members are taken to have been involved in the administration of the YJ Act. Section 284 and section 283 of the YJ Act together define confidential information as identifying information about or relating to a child who is being, or has been, dealt with under the YJ Act.

¹⁴ Section 283(2)(a) of the YJ Act.

¹⁵ This reasoning was also conveyed to QPS on the same day, together with an invitation to make submissions. In reply, QPS declined to make submissions, advising that it had 'no issues' with my view that the information in issue comprised exempt information, as information disclosure of which is prohibited by the YJ Act: QPS email dated 28 October 2020.

¹⁶ The applicant did not particularise the media reports.

¹⁷ Submissions dated 5 November 2020.

¹⁸ *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) (**Amendment Act**).

¹⁹ Relevant amendments commenced on 12 February 2018, and included omission of the YJ Act definition clause that had previously excluded 17-year-olds from the operation of the latter: see section 6 of the Amendment Act.

prohibited under the YJ Act, stating that '*...it is likely that the 17-year-old offender may be covered under the Amendment Act*'.

20. The applicant pressed, however, for access to any information identifying a 19-year-old (and thus not a child subject to the protections afforded by the YJ Act). According to the applicant,²⁰ media reports indicated that such an individual was also possibly responsible for causing the fire.
21. By email dated 13 November 2020, I advised the applicant that, regardless of media reportage, the information before me made clear that there was one individual identified by QPS as the possible cause of the fire: a child dealt with under the YJ Act.
22. The applicant replied by email dated 18 November 2020, contending that:
 - the '*relevant legislation with respect to youth suspects leaves a discretion...[that] should be exercised in favour of releasing the information*'
 - '*it was never the intention of the [YJ Act] to interfere with...*' the liability of minors for negligent acts '*...and the proper administration of civil justice between wrong doers and those harmed*'; and
 - that given plural references in information released to the applicant, '[c]learly multiple parties were involved in the circumstances that gave rise to the fire'.²¹
23. The applicant also raised other matters, effectively going to why, in the circumstances of this case, the balance of the public interest favoured release of the information in issue.
24. On the first point, the YJ Act does contain provisions authorising the release, in limited circumstances, of information the disclosure of which is otherwise prohibited by section 288 of that Act.²² My view is that the authority these provisions confer is not open to be exercised by a decision-maker under the RTI Act, who is charged only with assessing whether information falls within the prohibition stated in section 288 of the YJ Act.
25. My opinion in this regard is, however, academic: even if relevant provisions could be considered by an RTI decision-maker, I cannot see that any would stand to be enlivened in this case.²³
26. It is also the case that agencies such as QPS possess a discretion to disclose exempt information.²⁴ Such discretion is, however, expressly denied to OIC on external review.²⁵
27. Turning to the second point at paragraph 22 above, I am obliged to apply the law enacted by Parliament. In this case, that law (and concomitant Parliamentary intention) appears clear: to prohibit disclosure of information that would identify children dealt with under the YJ Act, and to render such information exempt information for the purposes of the RTI Act, to which access may be refused.

²⁰ *Ie*, in its submissions dated 12 November 2020.

²¹ Such that there may be other possible suspects, not covered by the YJ Act, whose identities may be susceptible to disclosure.

²² See sections 289-297A of the YJ Act.

²³ Noting that even the broadest of these provisions, section 289(h) of the YJ Act, still requires that disclosure of information be '*expressly permitted or required under this or another Act*.' Section 48(3) of the RTI Act does reserve to agencies a general discretion to disclose information, even where found to comprise exempt information, such that it might be said to grant agencies 'permission' to disclose information. That general discretion does not, however, amount to an *express* permission of the kind required to enliven the authority conferred by section 289(h) of the YJ Act. In any event, the preceding observations are themselves also academic: as noted in the next paragraph, the general discretion conferred on agencies by the RTI Act is not one open to OIC on external review.

²⁴ As above.

²⁵ Section 105(2) of the RTI Act.

28. Finally, I can say no more on the issue raised in the third dot point of paragraph 22 than I did in my email to the applicant dated 13 November 2020, reiterated at paragraph 21 above: the information before me²⁶ discloses that one individual was identified as having possibly started the fire, ie, the third party, a child dealt with under the YJ Act.
29. As for public interest considerations, Parliament has conclusively determined that disclosure of exempt information would, on balance, be contrary to the public interest.²⁷ Accordingly, I am precluded from having any regard to public interest considerations that may favour disclosure.

DECISION

30. QPS decided to refuse access to the information under section 47(3)(b) of the RTI Act. I vary that decision, by finding that access may be refused under section 47(3)(a).
31. I have made this decision under section 110(1)(b) of the RTI Act, as a delegate of the Information Commissioner under section 145 of the RTI Act.

Louisa Lynch
Right to Information Commissioner

Date: 2 February 2021

²⁶ See pages 3 and 4 of the Solicitors Office Report Details.

²⁷ Section 48(2) of the RTI Act. On this point, I am not, as the applicant asserted in its 18 November 2020 submissions, making ‘...an assessment on the merits of our client’s potential claims against all relevantly involved individuals’; I am simply applying statutory provisions, as enacted by the legislature.

APPENDIX

Significant procedural steps

Date	Event
2 June 2020	OIC received the application for external review.
4 June 2020	OIC requested processing documents from QPS.
15 June 2020	OIC received processing documents from QPS.
22 June 2020	OIC requested the information in issue from QPS.
13 July 2020	OIC received the information in issue from QPS.
5 August 2020	OIC advised the applicant and QPS that the application for external review had been accepted.
7 September 2020	OIC conveyed a preliminary view to the applicant.
9 September 2020	OIC received a submission from the applicant.
29 September 2020	OIC consulted with the third party.
20 October 2020	OIC received a submission from the third party objecting to disclosure.
28 October 2020	OIC conveyed a second preliminary view to the applicant.
5 November 2020	OIC received a submission from the applicant. OIC wrote to the applicant, reiterating the 28 October 2020 preliminary view.
12 November 2020	OIC received a further submission from the applicant.
13 November 2020	OIC wrote to the applicant, reiterating OIC's 28 October 2020 preliminary view.
18 November 2020	The applicant requested a written decision and provided further submissions.
19 November 2020	OIC invited the third party to apply to participate in the external review, noting that if no application was received by 3 December 2020, OIC would proceed on the basis the third party did not wish to apply to participate.
25 November 2020	OIC updated QPS on the status of the review.