



Decision and Reasons for Decision

Citation:	<i>F78 and Queensland Police Service [2022] QICmr 41 (18 August 2022)</i>
Application Number:	316542
Applicant:	F78
Respondent:	Queensland Police Service
Decision Date:	18 August 2022
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - information about a police investigation into a person's death - personal information and privacy of other individuals - personal information and privacy of a deceased person - prejudice to flow of information to police - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information, from 1 August 2016 onwards, concerning his son's death.
2. Significant delays were experienced in QPS processing the application. Eventually, it was agreed between the applicant and QPS² that the application fee paid by the applicant in connection with his application would be transferred to a new application made by the applicant, with a reduced scope. That application was received by QPS on 25 November 2021.
3. By decision dated 7 January 2022, QPS decided to give the applicant full access to two pages, partial access to 19 pages, and to fully refuse access to 191 pages. QPS refused access to this information on the grounds that its disclosure would, on balance, be contrary to the public interest.

¹ Application dated 4 July 2021.

² Email from QPS to the applicant of 25 November 2021.

4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision.³
5. For the reasons explained below, I affirm QPS's decision.

Background

6. The applicant's son died on 11 January 2016. As the death was reportable under the *Coroners Act 2003* (Qld), an autopsy was performed, and QPS investigated the circumstances of the death. QPS found that the circumstances of the death were not suspicious. At the conclusion of the coronial process, taking account of the autopsy results and QPS's findings, the Coroner decided that it was not necessary to hold an inquest.
7. The applicant did not accept that his son's death was not suspicious. Over the course of the next several years, he continued to raise concerns with the Coroner about the QPS investigation into his son's death, the examination and findings of the pathologist, the coronial process, and the Coroner's findings. In 2019, the Coroner decided to re-open the coronial investigation. As part of that re-opening, QPS conducted a review of its investigation, including reviewing the information and evidence collected at the time of its initial investigation, as well as conducting further investigations and inquiries into certain matters that were of concern to the applicant. At the conclusion of that review, QPS found that the initial findings made by both it and the Coroner were correct, and that there were no suspicious circumstances surrounding the death of the applicant's son. Those findings were presented to the applicant by QPS, however, he does not accept them. The applicant continues to contend that the QPS investigation was flawed and believes that QPS has altered or modified its investigative documents, including photographs, to cover up its errors.

Reviewable decision

8. The decision under review is QPS's decision dated 7 January 2022.

Evidence considered

9. Significant procedural steps relating to the external review are set out in the Appendix.
10. In reaching my decision, I have had regard to the submissions, evidence, legislation, and other material referred to throughout these reasons (including footnotes and Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁴ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.⁵ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁶ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be*

³ Email of 19 January 2022.

⁴ Section 21 of the HR Act.

⁵ *XYZ v Victoria Police (General)* [2010] VCAT 255 (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 at [111].

⁶ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

*observed by reference to the scheme of, and principles in, the Freedom of Information Act.*⁷

Information in issue

12. It is clear that the applicant has received access to much of the information in issue, either through release by the Coroner,⁸ or through release by the QPS investigating officer at the conclusion of QPS's investigation.⁹ I described this material in my letter to the applicant dated 17 May 2022.
13. In addition, much of the information in issue is information that the applicant himself (or his lawyers, on his behalf) provided to the Coroner or QPS, including statements made by a number of persons. Again, I described this information to the applicant in my letter dated 17 May 2022. As this information originated with the applicant, I did not deal with it further during the course of the review, and it is not considered in these reasons.
14. During the review, QPS agreed to give the applicant access to parts of a QPS Supplementary Form 1. Upon release of this information, the applicant advised that he in fact already had a complete copy of this document. I have therefore not dealt with this document any further, and it is not considered in these reasons.¹⁰
15. The information remaining in issue comprises information the disclosure of which QPS decided would, on balance, be contrary to the public interest under the RTI Act (**Information in Issue**).¹¹ It includes internal communications between QPS and the Coroner, internal QPS communications and forms, internal coronial forms and reports, and QPS investigative material.
16. As noted, the applicant has already received access to much of this information outside the RTI Act. While not withdrawing his application to access this information under the RTI Act, the applicant stated in his submissions (which I will discuss in detail below) that he wished to pursue access to *'original copies'* of QPS's investigative documents, *'and not the altered and modified versions that the QPS want us to accept'*.

Issue for determination

17. The issue for determination is whether access to the Information in Issue may be refused under the RTI Act because its disclosure would, on balance, be contrary to the public interest.

Relevant law - public interest balancing test

18. The RTI Act gives a right of access to documents of government agencies.¹² This right is subject to other provisions of the RTI Act, including grounds on which access may be refused. Access may be refused to information where its disclosure would, on balance, be contrary to the public interest.

⁷ XYZ at [573].

⁸ As an immediate family member of the deceased, the applicant was entitled to apply directly to the Coroner under the *Coroners Act 2003* (Qld) for information concerning the death of his son. The Coroner accepted the applicant's status as next of kin and released information to him. The applicant then provided OIC with copies of the documents released to him by the Coroner.

⁹ Instances of release to the applicant by the QPS investigating officer of investigative material are referred to throughout the QPS documents.

¹⁰ Pages 180-196.

¹¹ All or part of pages 1-14, 69, 75-122, 138-179 and 197-208.

¹² Section 23(1)(a) of the RTI Act.

19. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹³
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
20. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,¹⁴ together with all other relevant information, in reaching my decision. I have kept in mind the RTI Act's pro-disclosure bias¹⁵ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.¹⁶

Applicant's submissions

21. It is clear that, despite the volume of information he has received from both the Coroner and QPS regarding his son's death and the investigation into his death, the applicant remains dissatisfied with the QPS investigation. As noted, he alleges that QPS has altered its investigative records, including photographs of the scene of his son's death, to cover up the fact that QPS's investigation was flawed and that his son was murdered. He provided information in support of what he considers are inconsistencies or errors in the QPS investigation and requested that he be given access to *'the true photos and reports'*.¹⁷ Following the release to him by QPS of parts of the QPS Supplementary Form 1, the applicant submitted:¹⁸

We have received some documents from RTI (QPS). I don't know why they went to the trouble of all the redacting they done, because we already have an unredacted copy of what they sent. Most of that report is basically a pack of lies.

The COVER UP by the QPS still continues. We required the original copies of photos and reports and not the altered and modified versions that the QPS want us to accept.

22. In my letter to the applicant dated 30 May 2022, I advised the applicant that there was no evidence before me to support the allegations he had made about the QPS investigation – that there were no *'original copies of photos and reports that have not been altered or modified by QPS'* in issue, and no indication that any alteration or modification to the Information in Issue had occurred. I clarified that OIC does not hold an investigative role under the RTI Act and that its only function in the circumstances of this review was to review QPS's decision, and the refused information, and decide whether QPS's decision was correct. I advised the applicant that I remained of the view that disclosure of the Information in Issue would, on balance, be contrary to the public interest.
23. The applicant did not accept my preliminary view. He continued to argue that photographs taken of the scene of his son's death had been altered, as had other

¹³ Section 49(3) of the RTI Act.

¹⁴ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below.

¹⁵ Section 44 of the RTI Act.

¹⁶ Section 47(2) of the RTI Act.

¹⁷ Email of 18 May 2022.

¹⁸ Email of 25 May 2022.

investigative documents, for the purpose of covering up the murder of his son, and that disclosure of the Information in Issue was therefore in the public interest:¹⁹

We have supplied the OIC with evidence that proves the State Coroner has stated in his findings that there was a blue A frame ladder in the shed, which is what we seen [sic] also. There isn't any blue A frame ladder in any of the photos taken at the scene. We would like a copy of the photos that the State Coroner has seen. It is plain to see that the photos have been altered.

We also supplied evidence to prove that the CCR's have been modified, and also proof that the iPhone that was extracted wasn't [our son's] phone. We understand that the OIC does not hold an investigative role, and you decide whether the agency's decision was correct. The ladder isn't the only thing in the photos that has been altered, but due to the State Coroner's paragraph about the blue A frame ladder, we did not supply all photos that have been altered. Naturally the QPS won't believe what the State Coroner has stated because the Bundaberg Detective's [sic] have altered the photos.

All of the evidence that we have supplied is from the State Coroner, Telstra, Apple and a Forensic Expert. What the QPS is saying is that all of these people either don't know what they are talking about or they are lying.

We are sure you will agree that the photos being altered, and documents being modified to cover up the murder of our son, is in the public interest.

Factors favouring disclosure

24. I have considered all the factors contained in the RTI Act that favour disclosure of information. I have identified the following as relevant:

- a) disclosure could reasonably be expected to enhance government accountability²⁰
- b) disclosure could reasonably be expected to inform the community of QPS's operations²¹
- c) disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official²²
- d) the information is the applicant's personal information²³
- e) the information is the personal information of a person who has died and the applicant is an eligible family member of the person²⁴
- f) disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision²⁵
- g) disclosure could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;²⁶ and
- h) disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.²⁷

¹⁹ Email of 31 May 2022.

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

²¹ Schedule 4, part 2, item 3 of the RTI Act.

²² Schedule 4, part 2, item 5 of the RTI Act.

²³ Schedule 4, part 2, item 7 of the RTI Act. 'Personal information' is defined in section 12 of the *Information Privacy Act 2009* (Qld) 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'.

²⁴ Schedule 4, part 2, item 9 of the RTI Act.

²⁵ Schedule 4, part 2, item 11 of the RTI Act.

²⁶ Schedule 4, part 2, item 12 of the RTI Act.

²⁷ Schedule 4, part 2, item 16 of the RTI Act.

25. As I have noted, the applicant has already had access to the bulk of the Information in Issue, including crime scene photographs. He has been advised of the steps taken by QPS to review its investigation; the information that QPS gathered during that review; and its conclusions and findings. I reiterate that there is nothing before me to indicate that the Information in Issue has been altered or modified by QPS in any way. QPS has stated that it is not possible to alter crime scene photographs. I accept that it is the applicant's recollection at the time he attended the scene of his son's death that the ladder he saw was blue in colour, and that there is a reference to a blue ladder in the extract from a coronial document that the applicant provided under cover of his email 18 May 2022. It seems likely that the latter reference is based upon information provided by the applicant. I am prevented by section 108(3) of the RTI Act from disclosing the contents of information that is claimed to be contrary to the public interest information. However, I can say that there are no photographs in issue before me that depict a blue ladder. Nor is there any evidence before me to give any indication that the photographs in issue are other than those that have already been viewed by the applicant, or that they have been modified in any way, or that any other photographs exist.²⁸
26. Notwithstanding the above, I accept that disclosure would provide the applicant with a more comprehensive record of the information held by QPS in relation to the investigation of his son's death. This would in turn, advance QPS' accountability, transparency and decision-making processes to some degree. Taking into account what information is already held by the applicant and the particular nature of the Information Issue, I do not consider that disclosure of the Information in Issue would significantly enhance any of these factors. Therefore, I afford only low weight to factors a), b), f) and h).
27. Despite the applicant's assertions, there is nothing before me to indicate that the Information in Issue is incorrect. I am therefore not satisfied that factor g) applies to the Information in Issue. I afford low weight to factor c). While there is nothing before me that I consider indicates any deficiencies in the conduct of those persons involved in QPS's investigation, I accept that disclosure of the Information in Issue would permit the applicant the opportunity to examine the information for purpose of identifying any such deficiencies.
28. As regards to factor d), I accept that some Information in Issue comprises the personal information of the applicant. However, that information is generally contained in documents or correspondence that were prepared or provided by the applicant to the Coroner/QPS (and which is not considered in these reasons), or has otherwise already been disclosed to the applicant by QPS or the Coroner. In light of this, I afford low weight to factor d). I also accept that the applicant is an eligible family member for the purposes of the application of factor e), and that this gives rise to a public interest in him obtaining access to the personal information of his son.²⁹ Again, however, given the volume of information already provided to the applicant by QPS or the Coroner

²⁸ The applicant's submissions during the review proceeded on the basis that there are 'original' photographs and investigative records in QPS's possession to which he has not had access, that is, photographs and records which, in his view, have not been altered/modified. Despite my view conveyed to the applicant on 30 May 2022 that there were no such 'original' photographs and records in issue before me, and no evidence that any modification or alteration had taken place in respect of any of the information in issue, the applicant continued to seek access to 'original' documents. To the extent that the applicant was intending to raise an issue about the adequacy of QPS's searches, I confirm that there is no evidence before me that QPS's searches for responsive documents were inadequate or that there are reasonable grounds for believing that any additional responsive documents exist in QPS's possession.

²⁹ Who can be an 'eligible family member' for a deceased person is set out in schedule 5 of the RTI Act and listed in order of priority. A parent is listed third, but can be regarded as the eligible family member for the deceased if the persons listed higher in priority are not 'reasonably available'. I have no evidence that the spouse of the deceased is reasonably available and there is no evidence the deceased has any adult children. I also note that the Coroner accepted the applicant's status as next of kin in deciding to give him access to information.

concerning the applicant's son and the circumstances of his death, I would afford only low weight to factor e).

Factors favouring nondisclosure

29. I have considered all the factors contained in the RTI Act that favour nondisclosure of information. I have identified the following as relevant:
 - a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy³⁰
 - b) the information is the personal information of a deceased person and disclosure could reasonably be expected to impact on that person's privacy³¹
 - c) disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose the personal information of a person, whether living or dead;³² and
 - d) disclosure could reasonably be expected to prejudice the flow of information to the police.³³
30. Much of the Information in Issue is the personal information of other persons connected with the applicant's son, including other family members. Disclosure of this information under the RTI Act therefore automatically gives rise to a public interest harm in disclosure. There is also an associated public interest in protecting the privacy interests of the relevant persons. The concept of privacy is not defined in the RTI Act, but it can be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.³⁴
31. It is clear, through the information to which he has already gained access, that the applicant is aware of the bulk of the personal information of other persons that is in issue. However, while the fact that an applicant is aware of this information may sometimes lessen the weight to be afforded to the public interest in protecting the right to privacy of those persons, it must be remembered that disclosure under the RTI Act is to be regarded as disclosure to the world at large, as there are no restrictions or limitations on the use which can be made of information obtained under the RTI Act.³⁵ The RTI Act recognises the importance of protecting the right to privacy of persons and the prejudice to that right that can flow from disclosure of their personal information to the world at large.
32. For these reasons, even taking account of the information of which the applicant is already aware, I nevertheless afford moderate to significant weight to factors a) and c) as they apply to the personal information of other persons that is in issue. This is in recognition of the highly personal and sensitive nature of the Information in Issue, and the context in which it was collected or provided, namely, a police investigation into the death of a person.

³⁰ Schedule 4, part 3, item 3 of the RTI Act.

³¹ Schedule 4, part 3, item 5 of the RTI Act.

³² Schedule 4, part 4, item 6 of the RTI Act.

³³ Schedule 4, part 3, item 13 of the RTI Act.

³⁴ *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22] paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' *Australian Law Reform Commission Report No. 108* released 11 August 2008, at paragraph 1.56. The report is available at https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf.

³⁵ Noting that '*there is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination*' – see *FLK v Information Commissioner* [2021] QCATA 46 at [17] per McGill J.

33. As to the protection of the personal information and privacy interests of the applicant's son as a deceased person, factors b)³⁶ and c) apply. I afford these factors moderate to significant weight. While I recognise both the applicant's status as an eligible family member for his son, as well as the fact he has already gained access to a large volume of his son's personal information, the information in question is highly personal and sensitive in nature, relating as it does to the circumstances surrounding his son's death. I am satisfied that its disclosure to the world at large under the RTI Act could reasonably be expected, if the applicant's son were alive, to impact on his privacy.
34. I afford significant weight to factor d) and to the public interest in protecting the flow of information to police from witnesses and others involved in a police investigation. These persons voluntarily cooperated with police in agreeing to be interviewed and providing relevant information to assist police with their initial investigation and the subsequent review of the investigation. I consider that it is reasonable to expect that significant prejudice would be caused to the ability of police to obtain voluntary cooperation from witnesses were the information they provide to be disclosed to the world at large under the RTI Act.

Finding

35. I have taken no irrelevant public interest factors into account.
36. I acknowledge the application of those public interest factors that weigh in favour of disclosure to a parent of information concerning their deceased adult child. I accept that the applicant is genuine in his concerns about the police investigation into his son's death and that he seeks access to the Information in Issue in order to further explore those concerns. However, for the reasons explained, after balancing the public interest factors favouring disclosure and nondisclosure of the Information in Issue, I find that the factors favouring nondisclosure, particularly protecting the personal information and privacy of the deceased, as well as the privacy of other persons in connection with sensitive personal information, outweigh the factors favouring disclosure discussed above at paragraphs 24 to 28. On balance, I find that disclosure of the Information in Issue would be contrary to the public interest and that access to it may therefore be refused under the RTI Act.

DECISION

37. I affirm the decision of QPS that access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act because its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
38. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Acting Right to Information Commissioner

Date: 18 August 2022

³⁶ To the extent that the 'eligible family member' nondisclosure factor applies, it is neutralized by application of the 'eligible family member' pro-disclosure factor discussed at paragraph 28 above. Even if a stricter interpretation of 'eligible family member' were taken so as to exclude the applicant, it would have no impact on the overall balancing of the factors for and against disclosure, or the outcome of this review.

APPENDIX**Significant procedural steps**

Date	Event
19 January 2022	OIC received the application for external review OIC requested that QPS provide preliminary information
4 February 2022	OIC received the preliminary information from QPS
11 February 2022	OIC advised the applicant and QPS that the external review application had been accepted OIC requested that QPS provide copies of the information in issue OIC requested that the applicant provide copies of documents he had obtained from the Coroner
21 February 2022	OIC received documents from the applicant
3 March 2022	OIC received copies of the information in issue from QPS
23 March 2022	OIC communicated a preliminary view to QPS regarding the release of some information
11 May 2022	QPS advised OIC that it accepted the preliminary view
17 May 2022	OIC communicated a preliminary view to the applicant
18 May 2022	OIC received submissions from the applicant
24 May 2022	QPS released information to the applicant
25 May 2022	OIC received submissions from the applicant
30 May 2022	OIC communicated a further preliminary view to the applicant
31 May 2022	OIC received submissions from the applicant