



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>F14 and Queensland Corrective Services [2023] QICmr 1 (17 January 2023)</i></b>
<b>Application Number:</b>	<b>316625</b>
<b>Applicant:</b>	<b>F14</b>
<b>Respondent:</b>	<b>Queensland Corrective Services</b>
<b>Decision Date:</b>	<b>17 January 2023</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information of other individuals - personal information and privacy - 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)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Queensland Corrective Services (**QCS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the following information:<sup>2</sup>
  1. *Minutes from Prisoner Advisory Committee (PAC) at Borallon Training and Correctional Centre (BTCC) from 13 September 2018 to 6 December 2021 for what was recorded from the PAC at all meeting with management at BTCC; and*
  2. *What units did these prisoners from PAC that attended these meetings were accommodated.* [sic]
2. QCS located 351 responsive pages and gave the applicant partial access.<sup>3</sup> It refused access to some personal information of QCS officers and prisoners. It also refused access to the information requested in item 2 of the access application, that is, accommodation information for those prisoners who attended PAC meetings with management (as recorded in PAC meeting minutes).
3. By application dated 20 March 2022, the applicant applied to the Office of the Information Commissioner (**OIC**) for review of QCS's decision insofar as it refused access to prisoner accommodation information.<sup>4</sup>

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<sup>1</sup> Application dated 15 December 2022.

<sup>2</sup> As summarised in QCS's letter to the applicant dated 22 December 2021.

<sup>3</sup> Decision dated 14 March 2022.

<sup>4</sup> Confirmed in OIC's letter to the applicant dated 19 April 2022.

4. During the course of the review, QCS agreed to give the applicant access to accommodation block letters, but continued to object to disclosure of accommodation unit numbers.<sup>5</sup>
5. For the reasons explained below, I find that the disclosure of the accommodation unit numbers remaining in issue would, on balance, be contrary to the public interest and that access to that information may therefore be refused under the RTI Act.

### Reviewable decision

6. The decision under review is QCS's decision dated 14 March 2022.

### Evidence considered

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 set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>6</sup> 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 and the *Information Privacy Act 2009* (Qld).<sup>7</sup> 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:<sup>8</sup> '*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.*'<sup>9</sup>

### Information in issue

10. The information in issue comprises references in PAC meeting minutes to the accommodation unit number in which the prisoners who attended the relevant PAC meetings were housed (**Information in Issue**).<sup>10</sup>

### Issue for determination

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

### Relevant law

12. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the

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<sup>5</sup> Prisoners are identified in the meeting minutes by their name and their accommodation block and unit number. The relevant block is identified by a letter, and the unit within that block, by a number.

<sup>6</sup> Section 21(2) of the HR Act.

<sup>7</sup> *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].

<sup>8</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>9</sup> *XYZ* at [573].

<sup>10</sup> Contained on pages 6, 13, 20, 25, 30, 35, 40, 51, 58, 63, 69, 75, 103, 114, 121, 125, 133, 150, 156, 187, 200, 207, 213, 225, 241, 261, 290, 296, 313, 322, 335, 339 and 346.

public interest to give access.<sup>11</sup> The Act must be applied and interpreted to further this primary object,<sup>12</sup> and is to be administered with a pro-disclosure bias.<sup>13</sup>

13. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,<sup>14</sup> including grounds on which access may be refused.<sup>15</sup> One of these grounds (which are to be interpreted narrowly)<sup>16</sup> permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.<sup>17</sup>
14. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest,<sup>18</sup> are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
  - 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 in issue would, on balance, be contrary to the public interest.
15. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have had regard to these factors,<sup>19</sup> and the applicant's submissions,<sup>20</sup> in reaching my decision.

### Submissions of the parties

16. In its submission of 15 September 2022, QCS argued as follows:

*QCS maintains that the block information of prisoners who attended the PAC meetings is considered to be their personal information for the following reasons:*

- *where a prisoner is accommodated whilst incarcerated is personal to that individual.*
- *Prisoners are assessed and allocated to accommodation compatible with their assessed risks and needs to ensure their safety and security and good order of the facility.*
- *Specific units (block information) identify prisoners who have been assessed as vulnerable such as: prisoners with mental health issues, transgender, protection, sex offenders.*

*Therefore, the release of the block accommodation would identify these prisoners as being accommodated from a particular unit.*

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<sup>11</sup> Section 3(1) of the RTI Act.

<sup>12</sup> Section 3(2) of the RTI Act.

<sup>13</sup> Section 44 of the RTI Act.

<sup>14</sup> Section 23(1) of the RTI Act.

<sup>15</sup> Section 47 of the RTI Act.

<sup>16</sup> Section 47(2)(a) of the RTI Act.

<sup>17</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>18</sup> The 'public interest' '...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

<sup>19</sup> Taking care to disregard irrelevant factors.

<sup>20</sup> Contained in his external review application and in correspondence of 28 June 2022 and 21 December 2022.

QCS considers the accommodation of a prisoner whilst in custody to be unique to a particular individual and therefore may establish a link to a particular person, therefore, they could be identified from this information. Further, QCS considers that as the applicant was incarcerated during the time period relating to his application, he would have knowledge of other prisoners who were incarcerated at the same time, and potentially the prisoners who attended these meetings, thereby being able to identify the individual prisoners who attended the PAC meetings. You will also note that on many occasions the same prisoners attended multiple PAC meetings.

Notwithstanding the above, it is QCS's view that as the applicant has been released from prison, his reasoning for wanting access to this information is more for his own personal interests rather than the broader public interest. I refer to:

- the comment in *Re in Re Eccleston* that "... a matter which is of interest to the public does not necessarily equate to a matter of public interest". ...
- the comment made regarding public interest in the OIC decision 310227 – *Seven Network & Redland City Council – 30 June 2011* .... "The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests".

It is an accepted fact that matter relating to personal information has a very strong public interest bias in favour of maintaining the privacy of individuals and this was the decision taken and still held by QCS. In this review, the onus is on the applicant to establish why it is in the public interest for private information about other persons to be disclosed to him. QCS, however, has not been provided with any reasons why the release of this information is in the public interest.

17. In his email of 28 June 2022, the applicant had submitted:

*... I originally requested if these prisoners from PAC where accommodated in high or low B block units and residential [sic] meaning units from 10 to 14 are high B block units and units below unit 10 are low B block units  
so therefore by providing me the information I've requested if these PAC prisoners were from low or high B block units does not disclose their personal information of which unit they were accommodated at and does not prejudice their right to it to privacy*

18. The terms of the access application are set out in paragraph 1 above. They indicate that the applicant requested access to accommodation information for prisoners attending PAC meetings with management. As noted, each prisoner who attended the PAC meeting is identified in the meeting minutes by their accommodation block letter and individual unit number, and not simply by whether the unit number is high or low. Information in that latter format does not exist in QCS's records. Furthermore, an agency is not required to create a document under the RTI Act in order to respond to an access application, and nor is it required to answer questions asked by an applicant. The purpose of the RTI Act is to give a right of access to documents that exist in the agency's possession or under its control at the time the application is made.<sup>21</sup> Accordingly, while the applicant indicates that he would be satisfied with knowing simply whether each prisoner was accommodated in a high (10 or above) or low (below 10) unit number, that information does not exist in that format in the responsive documents.

19. Subsequent to these submissions, OIC requested that QCS consider the disclosure of the accommodation block letter for each prisoner on the grounds that disclosure of that

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<sup>21</sup> Sections 23, 24 and 27 of the RTI Act.

information alone could not reasonably be expected to identify an individual prisoner. QCS agreed, and this information was released to the applicant. However, QCS maintained that disclosing the accommodation unit number (in conjunction with the block number and other contextual information available to the applicant) could reasonably be expected to identify an individual prisoner. The applicant continued to pursue access to this information, submitting as follows:<sup>22</sup>

*...I am providing further submissions to be provided the original information I requested dated the 28<sup>th</sup> of June 2022 stating I originally requested in my rights [sic] to information application of these prisoners from PAC, where [sic] accommodated in high or low B block units and residential meaning units from 10 to 14 are high B block units below unit 10 are low B block units*

*so therefore Queensland corrective services rights to information legal and privacy have not provided the information oh [sic] I have originally requested that would not breach the privacy of the prisoners in PAC if they were from High or low units from b block*

*I also originally requested a list of what units did the prisoners from PAC attend the preliminary PAC meetings at C block to discuss the issues of concerns [sic] before the mane [sic] PAC meetings with management, so therefore if these prisoners came from high or low B block or from C block that attended these preliminary meetings at C block before the mane [sic] PAC meetings with management*

*So therefore I have not received this information I originally requested ... so therefore I'm entitled to receive this information that would not breache [sic] the privacy of the prisoners under the I P act 2009 section 24 I paid for [sic]*

20. Once again, I note the terms of the access application set out at paragraph 1 above, and my comments at paragraph 18 above. The PAC meeting minutes do not record whether prisoners attending the meeting were accommodated in high or low unit numbers - they record the unit number itself. In addition, I do not accept that the applicant requested access to accommodation unit information for those prisoners who attended preliminary 'prisoner only' PAC meetings that were ordinarily held a few days before the formal PAC meeting with prison management representatives. His request was for access to minutes for PAC meetings with prison management, and the accommodation information for the prisoners who attended those meetings.

### **Analysis of public interest factors**

21. I am unable to identify any public interest factors favouring disclosure of the Information in Issue beyond the general public interest in accessing government-held information, and nor has the applicant identified any such factors in his submissions. I am not satisfied that disclosure could reasonably be expected to enhance the accountability or transparency of QCS in any meaningful way or, for example, contribute to a better understanding of the role or purpose of the PAC or the manner in which it functions. I have considered whether disclosure could provide some insight into prisoner representation at PAC meetings, however, given that accommodation block letters have been released, any insight, if it existed, would be minimal.
22. The applicant simply contends that disclosure of the Information in Issue would not breach the privacy of the relevant prisoners. I do not agree. I am satisfied that the identity of prisoners could reasonably be ascertained through disclosure of the Information in Issue when considered in conjunction with other contextual information available to the applicant, including information already released in this review. Disclosure may reveal the specific accommodation details of identifiable individuals and,

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<sup>22</sup> Submission received on 21 December 2022.

therefore, their attendance at PAC meetings. This is the personal information<sup>23</sup> of such persons and a public interest harm in disclosure therefore automatically arises.<sup>24</sup> I am satisfied that disclosure could reasonably be expected to prejudice the protection of the relevant individuals' right to privacy.<sup>25</sup> I acknowledge that the Information in Issue may be dated, but there is nothing before me to establish that it is no longer relevant. In those circumstances, I consider that these nondisclosure factors remain deserving of moderate weight when balancing the public interest.

## **Finding**

23. For the reasons discussed, I afford moderate weight to the personal information/privacy nondisclosure factors. I am unable to identify any public interest factors favouring disclosure that would be of sufficient weight to outweigh the moderate weight of the public interest factors favouring nondisclosure. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on that basis.

## **DECISION**

24. I affirm the refusal of access decision under review by finding that disclosure of the Information in Issue would, on balance, be contrary to the public interest.
25. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**S Martin**  
**Assistant Information Commissioner**

**Date: 17 January 2023**

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<sup>23</sup> As defined by section 12 of the *Information Privacy Act 2009* (Qld).

<sup>24</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>25</sup> Schedule 4, part 3, item 3 of the RTI Act.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
23 March 2022	OIC received the applicant's application for external review OIC requested and received preliminary documents from QCS
19 April 2022	OIC advised the parties that the external review application had been accepted and requested further information from QCS regarding responsive documents
9 May 2022	OIC received further information from QCS
16 June 2022	OIC communicated a preliminary view to the applicant
28 June 2022	OIC received submissions from the applicant OIC requested further information from QCS
4 July 2022	QCS provided further information in support of its objection to disclosure
2 August 2022	OIC requested further information from QCS
15 September 2022	OIC received a further submission from QCS
30 September 2022	OIC communicated a preliminary view to QCS
17 October 2022	QCS advised OIC that it agreed to the release of further information
28 October 2022	OIC communicated a preliminary view to the applicant
15 November 2022 and 9 December 2022	The applicant requested extensions of time to provide a submission
21 December 2022	OIC received a submission from the applicant