



Decision and Reasons for Decision

Citation:	<i>O65 and Queensland Corrective Services [2023] QICmr 47 (5 September 2023)</i>
Application Number:	317074
Applicant:	O65
Respondent:	Queensland Corrective Services
Decision Date:	5 September 2023
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - prisoner seeking access to case notes - personal information and privacy of third parties - information about monitoring of prisoners - prejudice to security and good order of a corrective services facility - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant, a prisoner, applied to Queensland Corrective Services (**QCS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to case notes and other information regarding the decision to terminate his employment in industry workshops, within a corrective services facility.¹
2. QCS located 18 pages in response to the access application and released six pages in their entirety and parts of 12 pages. With respect to the remaining information in those partially released 12 pages, QCS decided² to refuse access to information about other individuals and to information which QCS considered would '*identify and monitor the behaviour of offenders within a correctional environment*' on the basis that disclosure would, on balance, be contrary to the public interest.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QCS's refusal of access decision.⁴ The applicant submits that he has been the subject of false allegations and requires the redacted information to pursue complaints about his employment termination.

¹ Access application received by QCS on 24 November 2022.

² Decision dated 12 December 2022.

³ Section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

⁴ External review application received by OIC on 5 January 2023.

4. For the reasons set out below, I affirm QCS' decision to refuse access to information in 12 pages on that basis that disclosure would, on balance, be contrary to the public interest.⁵

Background

5. The decision under review is QCS' decision dated 12 December 2022.
6. Significant procedural steps relating to this review are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
7. The applicant made written submissions to OIC during the review.⁶ I have considered the applicant's submissions to the extent they are relevant to the issues for determination. Some of his submissions go to his dissatisfaction with the decision to terminate his industry workshop employment, and he also raised concerns about the conduct of QCS staff, and other prisoners. OIC advised the applicant that it does not have jurisdiction to investigate such matters and provided the applicant with information as to other complaint avenues that may be available to him.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁷ 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 IP Act and the RTI Act.⁸ 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 of Bell J on the interaction between equivalent Victorian legislation,⁹ that '*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*'.¹⁰

Information in issue

9. The refused information appears in Offender Case Notes¹¹ and an Employment Suspension/Termination Report¹² (**Information in Issue**).
10. Some of the Information in Issue¹³ describes methods and procedures that have been used to monitor and gather intelligence on offender behaviour within a correctional facility environment (**Behaviour Monitoring Information**).¹⁴
11. The remaining Information in Issue within the case notes comprises names and details of individuals other than the applicant, including other prisoners (**Third Party Information**) and QCS employees/public servants involved in the applicant's custodial management (**Correctional Officer Information**).

⁵ Under section 67(1) of the IP Act and sections 47(3)(b) of the RTI Act. Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

⁶ In his external review application received by OIC on 5 January 2023, submissions received on 28 February 2023.

⁷ Section 21(2) of the HR Act.

⁸ *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].

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ **XYZ** at [573].

¹¹ 11 pages.

¹² 1 page.

¹³ Within the Case Notes and Employment Suspension/Termination Report.

¹⁴ Decision dated 12 December 2022.

Issue for determination

12. The issue for determination is whether access to the Behaviour Monitoring, Third Party and Correctional Officer Information may be refused under the IP Act on the basis that disclosure would, on balance, be contrary to the public interest.¹⁵

Relevant law

13. An individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁶ However, this right is subject to some limitations. Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹⁷
14. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
15. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹⁸
- identify and disregard any irrelevant factors
 - identify any factors favouring disclosure
 - identify any factors favouring nondisclosure; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
16. Schedule 4 of the RTI Act non-exhaustively lists factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these factors,¹⁹ together with all other relevant information, in reaching my decision. I have also applied the IP Act's pro-disclosure bias²⁰ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²¹
17. In considering whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I have not taken any irrelevant factors into account.

Findings

Factors favouring disclosure

18. I acknowledge that the RTI Act is to be administered with a pro-disclosure bias, and that disclosing the Behaviour Monitoring, Third Party and Correctional Officer Information would provide the applicant with a more complete picture of what is held by QCS in relation to his incarceration. In this regard, I am satisfied that disclosure would enhance

¹⁵ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹⁶ Section 40(1)(a) of the IP Act.

¹⁷ Section 47(3)(b) of the RTI Act.

¹⁸ Section 49(3) of the RTI Act.

¹⁹ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning protection of the environment (schedule 4, part 2, item 13 of the RTI Act).

²⁰ Section 64 of the IP Act.

²¹ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

the accountability and transparency of QCS in terms of disclosing information about how QCS manages prisoners, deals with particular incidents within the custodial system and makes decisions about prisoner employment.²² Given the nature of the Information in Issue I afford these factors moderate weight.

19. The applicant states he is seeking access to the information to understand the reasons for his termination from workshop employment. I am satisfied that there are several relevant public interest factors to take into account here in terms of revealing reasons for a government decision and background/contextual information²³, procedural fairness for the applicant and advancing his fair treatment.²⁴
20. The applicant submits that '*action was taken against him on false allegations, and that these false allegations will be addressed in court*'.²⁵ The applicant's submissions raise for consideration the public interest factors relating to advancing fair treatment, allowing/assisting inquiry into conduct of agencies and administration of justice/procedural fairness.²⁶ I accept that gaining access to the Behaviour Monitoring and Third Party Information would provide the applicant with further information regarding allegations made against him and decisions made by QCS adverse to his interests in relation to his incarceration. I afford these factors moderate weight.
21. It is well accepted that what happens to a prisoner in prison forms part of their personal sphere.²⁷ While the applicant has received access to the majority of the information he requested, inevitably some of his personal information still appears within Information in Issue due to it being held within his offender record, particularly within the Offender Case Notes as these essentially comprise a chronology of events during a particular period of time in relation to custody of the applicant. To this end, I find that the public interest favours disclosure of the Information in Issue to the extent it would reveal the applicant's personal information.²⁸ I afford this factor moderate weight.
22. The applicant also argues that he requires the information to assess the '*accuracy*' of the case notes written by correctional officers.²⁹ The RTI Act does recognise that the public interest will favour disclosing information which could reasonably be expected to reveal that information was incorrect.³⁰ I acknowledge the applicant's concerns about what he considers to be false allegations made against him. However, based on the information available to me, there is no evidence, other than the applicant's assertions, to indicate that what appears within the QCS records is incorrect. Accordingly, I find that this factor does not apply to the Information in Issue.

Factors favouring nondisclosure

23. The RTI Act recognises that the public interest favours nondisclosure of information which could reasonably be expected to prejudice the security or good order of a corrective services facility.³¹ As set out in paragraph 10, the Behaviour Monitoring Information describes methods and procedures used by QCS to monitor and gather

²² Raising the public interest factors at items 1 and 3 in schedule 4, part 2 of the RTI Act.

²³ Schedule 4, part 2, item 11 of the RTI Act.

²⁴ Schedule 4, part 2, item 10 and 16 of the RTI Act.

²⁵ Received by OIC on 5 January 2023.

²⁶ Schedule 4, part 2, items 5, 10 and 16 of the RTI Act.

²⁷ See *Beale and Department of Community Safety* (Unreported, Queensland Information Commissioner, 11 May 2012) at [31] citing *Stewart and Department of Transport* (1993) 1 QAR 227, the Information Commissioner at [80] confirmed the approach taken in *Re Lapidos and Office of Corrections (No.2)* (Unreported, Victorian Administrative Appeals Tribunal, Jones J, 19 February 1990).

²⁸ Schedule 4, part 2, item 7 of the RTI Act.

²⁹ External review application received by OIC on 5 January 2023.

³⁰ Schedule 4, part 2, item 12 of the RTI Act.

³¹ Schedule 4, part 3, item 10 of the RTI Act.

intelligence on offender behaviour within a correctional facility environment. Given the nature of the Behaviour Monitoring Information I consider this factor applies to favour nondisclosure.

24. QCS decided³² that the release of this information could:

... impede on Queensland Corrective Services procedures within the correctional centre or impede on the maintenance of open reporting by custodial staff and/or other offenders which would then impact upon future recordings relating to the behaviour of offenders, which is used to protect the security of the correctional centre as well as offenders, staff, and the community.

25. QCS outlined in its decision that ‘open reporting’ is an important tool ‘used to protect the security of the correctional centre as well as offenders, staff and the community’.³³ The Information Commissioner has previously found that open and effective communication is important to the daily management of prisoners.³⁴ Having assessed the Behaviour Monitoring Information, I am satisfied that the information reveals sensitive circumstances pertaining to the applicant’s incarceration which has been communicated to QCS.

26. The applicant submitted that he is ‘...an outstanding well behaved prisoner’³⁵ and that therefore this nondisclosure factor should not apply. I acknowledge the applicant’s submission in this regard. However, based on the information available to me, I am satisfied that disclosure of the Behaviour Monitoring Information could reasonably be expected to result in QCS staff being reluctant, in future similar circumstances, to record full and frank observations, which could in turn, jeopardise the security or good order of the corrective services facility.³⁶ I afford this factor significant weight.

27. The RTI Act recognises that disclosing an individual’s *personal information*³⁷ to a person other than the individual can reasonably be expected to cause a public interest harm.³⁸ The RTI Act also recognises that the public interest will favour nondisclosure of information that could reasonably be expected to prejudice the protection of an individual’s right to privacy.³⁹ Given the nature of the Third Party and Correctional Officer Information, I am satisfied these factors are relevant to consider.

28. While the concept of privacy is not defined in the IP Act or the RTI Act, it may be viewed as the right of an individual to preserve their ‘*personal sphere*’ free from interference from others.⁴⁰ In ordinary circumstances, low weight is afforded to the public interest in protecting the privacy interests of public sector employees in connection with disclosure of routine employment information.⁴¹ For greater weight to be given to this factor, it must be demonstrated that special circumstances exist.

29. In my view, the correctional services environment may give rise to such special circumstances. As outlined by the Information Commissioner in *F93 and Queensland Corrective Services*:⁴²

³² Decision Notice dated 12 December 2022.

³³ Decision Notice dated 12 December 2022.

³⁴ *F93* at [43].

³⁵ Submissions from the applicant received 28 February 2023.

³⁶ *F93* at [44].

³⁷ Defined in section 12 of the IP Act 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’.

³⁸ Schedule 4, part 4, section 6 of the RTI Act.

³⁹ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁰ 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 12 August 2008, at paragraph 1.56.

⁴¹ *O52 and Queensland Ombudsman* [2020] QICmr 31 (11 June 2020) at [66].

⁴² [2022] QICmr 11 (8 March 2022) (*F93*) at [37].

...the work environment of correctional officers is one where the safety and security of prisoners and prison staff must be carefully monitored and managed, not only for their benefit, but for the benefit of the general community. In this respect, it is significantly different from the work environment of most public servants. I accept the general proposition that privacy and personal information considerations may often be higher for those officers managing day-to-day functions within a prison. It is important to note, however, that the correctional services environment does not, of and by itself, automatically render the public interest in protecting the privacy of correctional officers so weighty that their names in connection with their work duties will never be disclosed. The particular circumstances of each case must be taken into account when considering the application of this factor and the weight to be afforded to it.

30. I am satisfied that the Correctional Officer Information in issue in this review is comparable to what was in issue in F93, to the extent that it:⁴³

...identifies correctional officers in connection with case notes that they generated about the applicant. The case notes record information about the applicant and observations about his day-to-day activities, behaviour and interactions with staff and other prisoners. The notes contain information of a factual nature, but they also record the author's interpretation of observed events and their opinions about those events, behaviours, interactions, etc.

31. Based on the above, I am satisfied that disclosure of the Correctional Officer Information '*...gives rise to a reasonably based expectation that correctional officers may be targeted or subjected to other adverse action where, as in this case, prisoners disagree with, or take exception to, the information, observations and opinions recorded by officers*'.⁴⁴ For these reasons, I afford significant weight to the personal information and privacy nondisclosure factors.
32. Here, in addition to the names of QCS officers, the Third Party Information comprises the names of other professional individuals who have interacted with the applicant. I consider the sensitive context in which this information appears takes the information beyond routine personal work information and into those individuals' private spheres. I afford the personal information and privacy nondisclosure factors significant weight as they apply to those individuals' identities.
33. As acknowledged at paragraph 21 above, what happens to a prisoner while in custody forms part of their personal sphere. The nature of the Offender Case Notes is such that the names of other prisoners are incidentally included. This is inevitable given the communal nature of a custodial environment and the fact that prisoners interact with each other. To the extent other prisoners' names appear, I consider the personal information and privacy nondisclosure factors apply and afford them significant weight given the sensitive context in which they appear.

Balancing the relevant factors

34. In reaching my decision, I have taken into account the pro-disclosure bias as required by the RTI Act. I have also given moderate weight to several public interest factors favouring disclosure of the Behaviour Monitoring, Third Party and Correctional Officer Information as I consider it would provide the applicant with access to more of his personal information, advance his fair treatment and afford him a level of procedural fairness in terms of the decision to terminate his workshop employment. I also consider that providing the applicant with a more complete record of what is held by QCS about the matter would enhance QCS' accountability and transparency in terms of custodial management, reveal reasons for decisions made about the applicant and his employment, and allow inquiry into the conduct of QCS.

⁴³ F93 at [38].

⁴⁴ F93 at [40].

35. However, balanced against these pro-disclosure factors are a number of significant nondisclosure factors. I am satisfied that disclosure of the Behaviour Monitoring Information could reasonably be expected to prejudice the security or good order of a corrective services facility and that this factor is deserving of significant weight. I have also found that the public interest in safeguarding the privacy and personal information of other individuals, including QCS officers, other public servants and other prisoners is significant in the circumstances of this case.
36. On balance, I am satisfied that disclosure of the Behaviour Monitoring, Third Party and Correctional Officer Information would be contrary to the public interest and therefore, access to it may be refused under section 47(3)(b) of the RTI Act.

DECISION

37. I affirm QCS' decision to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
38. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 5 September 2023

APPENDIX**Significant procedural steps**

Date	Event
5 January 2023	OIC received the application for external review, including submissions from the applicant. OIC requested and received preliminary documents from QCS.
19 January 2023	OIC advised the applicant and QCS that the external review application had been accepted and requested further information from QCS.
30 January 2023	OIC received further information from QCS.
15 February 2023	OIC wrote to the applicant to convey a preliminary view that access to the Information in Issue may be refused on the basis that disclosure would, on balance be contrary to the public interest.
28 February 2023	OIC received submissions from the applicant in response to the preliminary view.
25 July 2023	OIC provided the applicant with an update on the status of the external review.