



Decision and Reasons for Decision

Citation:	<i>H95 and Queensland Police Service [2025] QICmr 34 (11 June 2025)</i>
Application Number:	318196
Applicant:	H95
Respondent:	Queensland Police Service
Decision Date:	11 June 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications between lawyer and client - whether communications attract privilege - sections 47(3)(a) and 48 and schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PRESCRIBED CRIME BODY - investigative material - whether obtained, used or prepared for an investigation by a prescribed crime body or another agency - whether investigation is about the applicant - sections 47(3)(a) and 48 and schedule 3, section 10(4) of the <i>Right to Information Act 2009</i> (Qld)</p>

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 certain documents concerning a complaint he had made, and the subsequent investigation of that complaint by QPS.¹
2. In its decision,² QPS:
 - refused to deal with some parts of the application
 - refused access to some information on the grounds that it was nonexistent; and
 - located 144 responsive documents and decided to give the applicant full access to 29 documents, partial access to 15 documents, and to refuse access in full to the remaining 100 documents.

¹ Application received by QPS on 21 May 2024. Negotiated scope agreed on 25 June 2024.

² Dated 29 July 2024.

3. Access to information was refused either because it was exempt information, or because its disclosure would, on balance, be contrary to the public interest.
4. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QPS's decision, and also raised concerns about the sufficiency of QPS's searches for responsive information.
5. During the course of the review, a significant volume of additional information was released to the applicant, and some issues under consideration were resolved or were no longer pursued by the applicant.
6. For the reasons explained below, I decide to affirm QPS's decision insofar as it decided to refuse access to certain information on the ground that it is exempt information under sections 47(3)(a) and 48, and schedule 3, sections 7 and 10(4), of the RTI Act.

Background

7. The applicant made a complaint to QPS in December 2018 alleging fraudulent behaviour by a third party. QPS decided that the complaint was a civil matter, with no evidence of criminality in the conduct of the third party. The applicant remains dissatisfied with the outcome of the investigation, and with the various internal reviews that were subsequently conducted into the matter by QPS between 2021 and 2023. He has made a number of access applications to QPS under the RTI Act, seeking access to documents associated with the matter.

Reviewable decision

8. The decision under review is QPS's decision dated 29 July 2024.

Evidence considered

9. Evidence, submissions,⁴ legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).
10. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁵ I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,⁶ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations 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

Information in issue

11. The information in issue⁸ comprises:

³ On 23 August 2024.

⁴ Including the submissions made by the applicant in his external review application, and in submissions received by OIC on 26 February 2025, 27 February 2025, 5 March 2025, 7 May 2025, 22 May 2025 and 29 May 2025 (to the extent that they are relevant to the two issues remaining for determination).

⁵ As embodied in section 21 of the HR Act.

⁶ *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].

⁷ *XYZ* at [573].

⁸ As identified in the schedule of documents prepared for the applicant by QPS.

- a) an internal memorandum of advice dated 29 September 2023 by a QPS Senior Legal Officer (**category a) information**); and
- b) information received or prepared by QPS's Ethical Standards Command (**ESC**) in the course of an investigation into the conduct of certain police officers who were involved in the initial investigation of the applicant's complaint of fraud (**category b) information**).

Issues for determination

12. The issues remaining for determination in this review are:

- whether access to the category a) information may be refused because it is exempt information under schedule 3, section 7 of the RTI Act; and
- whether access to the category b) information may be refused because it is exempt information under schedule 3, section 10(4) of the RTI Act.

Relevant law - exempt information

13. 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 public interest to give the access.⁹ The Act must be applied and interpreted to further this primary object,¹⁰ and is to be administered with a pro-disclosure bias.¹¹
14. 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,¹² including grounds on which access may be refused.¹³ These grounds are to be interpreted narrowly.¹⁴
15. One of these grounds permits an agency to refuse access to information to the extent that it is exempt information under sections 47(3)(a) and 48, and schedule 3 of the RTI Act.

Application of schedule 3, section 7 of the RTI Act - legal professional privilege

16. An agency may refuse access to information where it would be privileged from production in a legal proceeding on the ground of legal professional privilege.¹⁵ This exemption reflects the requirements for establishing privilege at common law.¹⁶
17. Broadly, for information to be subject to legal professional privilege it must be a confidential communication made:

⁹ Section 3(1) of the RTI Act.

¹⁰ Section 3(2) of the RTI Act.

¹¹ Section 44 of the RTI Act.

¹² Section 23(1) of the RTI Act.

¹³ Section 47 of the RTI Act.

¹⁴ Section 47(2)(a) of the RTI Act.

¹⁵ Schedule 3, section 7 of the RTI Act.

¹⁶ The doctrine of legal professional privilege is both a rule of evidence and a common law right. The High Court in *Daniels Corporation International Pty Ltd v Australian and Consumer Commissioner* (2002) 213 CLR 543 at 552 relevantly noted, 'It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings' (footnotes omitted). See also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49.

- in the course of a lawyer/client relationship for the dominant purpose of seeking or providing legal advice or assistance (advice privilege); or
- for the dominant purpose of use in existing or reasonably anticipated legal proceedings (litigation privilege).

18. If these elements are satisfied, the agency must still consider if:

- the privilege has been waived; or
- the circumstances give rise to the 'improper purpose' exception.

Submissions

19. During the course of the review, I conveyed to the applicant, on a number of occasions, my preliminary view that the category a) information satisfied the requirements for attracting legal professional privilege (**LPP**).¹⁷ However, the applicant did not accept my preliminary view and argued, in a number of submissions in response,¹⁸ that the advice in question did not attract LPP for the following reasons:

- it had not been disclosed who issued the request for the advice, or on what date, or for what reason
- in order to attract LPP, the advice must be shown to be relevant to the substance of the matter under consideration: that is, in this case, relevant to *'an alleged identifiable fraud or frauds capable of investigation'*
- the internal review report by QPS that preceded the preparation of the advice (the applicant has received partial access to that report) failed to consider any actual circumstances of fraud raised in the initial complaint by the applicant and the subsequent advice cannot therefore attract LPP: *'Instances of QPS misdirecting itself on matters outside that scope of the matter as made by the complainants or principal witness are not relevant to any genuine review of the complainant's matter – [the advice] does not fall within the scope of true matter and cannot attract LPP'*
- the advice is wholly irrelevant to the original complaint of frauds: *'Contended eligibility [of the advice] for LPP seeks to stretch the boundaries of the protection to irrelevant communications, unconnected with the actual subject matter. It offends the principle for protection. If you like, chewing the fat on matters unconnected with the actual facts of our complaint or how to exaggerate instances of corrupt conduct are not included within the principle for LPP';* and
- *'LPP does not attach to intentionally misleading materials'.*

Findings

20. I have considered the applicant's various submissions about the category a) information. However, I consider those submissions to be misconceived. I reject the applicant's contention that the advice can only attract privilege if it is shown to be relevant to his complaint. Firstly, the applicant is merely speculating about the contents of the advice. But in any event, absent any evidence of an improper purpose in the circumstances surrounding the seeking or giving of legal advice, the subject matter of an advice and why a client is seeking that advice, are irrelevant to establishing a claim for LPP. In order to attract LPP, it must simply be shown that the communication in question is a confidential communication made in the course of a lawyer/client relationship for the dominant purpose of seeking or providing legal advice or assistance, or for the dominant purpose of use in existing or reasonably anticipated legal proceedings.

¹⁷ See OIC's letters dated 30 April 2025, 8 May 2025, and 23 May 2025.

¹⁸ See the applicant's emails of 7 May 2025, 22 May 2025, and 29 May 2025.

21. I have examined the category a) information and am satisfied that the advice meets the requirements to establish a claim of LPP. It records a confidential communication between lawyer and client made for the dominant purpose of providing legal advice or assistance. There is nothing before OIC to suggest that the QPS legal officer who provided the advice or assistance was not suitably qualified, or not of a sufficiently independent character. There is also nothing in the material before OIC to suggest that privilege in the advice has been waived, or that the improper purpose exception applies to displace the privilege. I reject the applicant's characterisation of the advice as '*intentionally misleading*', as well as his various other assertions about the advice's content or purpose.
22. I therefore find that the category a) information attracts LPP and is exempt information under schedule 3, section 7 of the RTI Act. Access to it may be refused on that basis.

Application of schedule 3, section 10(4) of the RTI Act - prescribed crime body exemption

23. Schedule 3, section 10(4) of the RTI Act provides that information is exempt if it was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in performance of the prescribed functions of the prescribed crime body. A '*prescribed crime body*' is defined in the RTI Act as the Crime and Corruption Commission (CCC).¹⁹ However, if the investigation has been finalised and the information applied for is 'about' the applicant, it will not be exempt under the CCC exemption. This only applies to information that satisfies both requirements.²⁰
24. The terms '*obtained, used or prepared*' are not defined in the RTI Act or in the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning.
25. Section 46 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**) allows the CCC to refer allegations of corrupt conduct back to the relevant agency to deal with (known as the 'devolution principle'), subject to the CCC's monitoring role, and with or without a requirement that the agency advise the CCC of the outcome of the investigation. In these circumstances, information '*obtained, used or prepared*' for the investigation by the agency will be subject to the CCC exemption, because the agency has taken on the role of investigator and is performing the prescribed function of the CCC.
26. In this case, following the outcome in October 2020 of QPS's initial investigation into the applicant's complaint of fraud (which found the complaint raised matters of a civil, rather than criminal, nature), the applicant expressed dissatisfaction with the investigation and its outcome, and wrote to the Commissioner of Police to request that QPS's Financial and Cyber Crime Group (**FCCG**) take carriage of the investigation. An officer within FCCG was of the view that the applicant's request identified potential police misconduct²¹ in the handling of the initial investigation. The matter was therefore referred to ESC.²² ESC, in turn, notified the CCC of the matter pursuant to section 40 of the CC Act. The CCC referred the matter back to QPS for investigation, pursuant to the devolution principle, and therefore subject to CCC oversight.

¹⁹ Schedule 3, section 10(9) of the RTI Act.

²⁰ Schedule 3, section 10(6) of the RTI Act.

²¹ Failure of duty to investigate; failure to keep complainant informed; failure to properly oversee a fraud investigation; Human Rights (Recognition and Equality before the Law).

²² ESC is the QPS unit responsible for managing/investigating allegations of corruption, misconduct and serious breaches of discipline by police officers: <https://www.police.qld.gov.au/organisational-structure/ethical-standards-command> (accessed 10 June 2025).

Submissions

27. During the course of the review, I conveyed to the applicant, on a number of occasions, my preliminary view that the category b) information satisfied the requirements of the CCC exemption.²³ The applicant initially sought clarification about the operation of the exemption²⁴ which I provided in my letter dated 23 May 2025. However, following that clarification, the applicant continued to argue in his submission on 29 May 2025 that the CCC exemption could not apply to the category b) information because he had not made a complaint about the conduct of the officers who had undertaken the initial investigation into his fraud complaint, nor sought disciplinary action against those officers. He submitted that there were therefore no grounds to refer the matter to ESC or the CCC, and that any investigation could not have been in the performance of the CCC's prescribed functions.
28. The applicant had raised a similar argument in his external review application. In response,²⁵ I had advised the applicant that, regardless of whether or not he had intended to make a complaint about police conduct, his dissatisfaction with the initial investigation into his complaint of fraud, and his request that FCCG take carriage of the investigation, had raised potential concerns within FCCG about the initial investigation, and the manner in which the investigating officers had discharged their duties. It was therefore considered necessary to refer the matter to ESC. ESC identified a potential failure of duty by officers and notified the CCC (as it is required to do under the CC Act). The CCC referred the matter back to QPS to investigate. All documents associated with QPS's investigation into the matter therefore fell within the terms of the CCC exemption.
29. The applicant's submission on 29 May 2025 essentially repeated his initial argument and it has not caused me to alter the view I initially expressed to him. Regardless of what he intended, and regardless of his own view about whether it was appropriate or necessary to refer the matter to ESC, the issue for OIC to consider is whether the category b) information satisfies the requirements of the exemption. Having reviewed the category b) information, I am satisfied that:
 - it was obtained, used or prepared for an investigation
 - the investigation was conducted by a prescribed crime body (CCC) or another agency (QPS); and
 - the investigation was in the performance of the prescribed functions of the CCC as the prescribed crime body: that is, the CCC's function of dealing with allegations of police misconduct/corrupt conduct.
30. While the investigation has been finalised, I am satisfied that it was not '*about*' the applicant,²⁶ and the exception in schedule 4, section 10(6) therefore does not apply.
31. I note that, in support of his position, the applicant raised issues that OIC has no jurisdiction to deal with under the RTI Act; specifically, his complaints about the actions of the FCCG officer who decided to refer the matter to ESC; his dissatisfaction with the

²³ See OIC's letters dated 30 April 2025, 8 May 2025, and 23 May 2025.

²⁴ Applicant's email of 22 May 2025.

²⁵ Letter dated 16 December 2024.

²⁶ The Information Commissioner has previously decided that information will be *about* the applicant where they are the *subject* of the relevant investigation: *G8KPL2 and the Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) at [32]. This decision was affirmed on appeal: *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. See also *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014). An appeal against this decision was also dismissed: *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167.

actions of police more generally in the handling of his complaint of fraud; and his allegation that police have never properly addressed or investigated his complaint. As the applicant was advised during the course of the review, when conducting an external review, OIC is not an investigative or complaint-handling body, and has no jurisdiction under the RTI Act to deal with, or respond to, complaints or allegations of this nature. OIC's only role on external review is to decide whether the agency's decision should be affirmed, varied or set aside.²⁷

Findings

32. I find that the requirements of schedule 3, section 10(4) of the RTI Act are satisfied by the category b) information, and that the exception in schedule 3, section 10(6) of the RTI Act does not apply. Access may therefore be refused on that basis.

DECISION

33. For the reasons given above, I decide to affirm the decision under review by finding that that:
- access to the category a) information may be refused under sections 47(3)(a) and 48, and schedule 3, section 7 of the RTI Act; and
 - access to the category b) information may be refused under sections 47(3)(a) and 48, and schedule 3, section 10(4) of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Rachel Moss
Principal Review Officer

Date: 11 June 2025

²⁷ Section 110 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
23 August 2024	OIC received the application for external review
28 August 2024	OIC received preliminary documents from QPS
27 September 2024	OIC advised the parties that the application for external review had been accepted
30 September 2024	OIC received copies of the information in issue and search records from QPS
16 December 2024	OIC requested that QPS provide additional search information OIC conveyed a preliminary view to the applicant
24 December 2024	OIC received additional search information from QPS
22 January 2025	OIC conveyed a further preliminary view to the applicant
7 February 2025	OIC received notification from the applicant of a change of email address and a request to re-send previous correspondence
11 February 2025	OIC re-sent previous correspondence to the applicant
26 February 2025	OIC received a submission from the applicant
27 February 2025	OIC wrote to the applicant to explain OIC's jurisdiction OIC received a submission from the applicant OIC requested further information from QPS
4 March 2025	OIC conveyed a preliminary view to the applicant regarding sufficiency of search
5 March 2025	OIC received an email from the applicant regarding sufficiency of search OIC responded to the applicant's email OIC requested further search information from QPS
1 and 11 April 2025	OIC received submissions from QPS
23 April 2025	OIC requested further information from QPS regarding sufficiency of search
24 April 2025	OIC received a response from QPS and copies of additional located information
30 April 2025	OIC conveyed a preliminary view to the applicant OIC requested that QPS release additional information to the applicant
7 May 2025	OIC received a request from the applicant for information
8 May 2025	OIC received confirmation from QPS that it had released the additional information to the applicant's updated email address OIC responded to the applicant's request for information
22 May 2025	OIC received a submission from the applicant
23 May 2025	OIC conveyed a preliminary view to the applicant
29 May 2025	OIC received a submission from the applicant