



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>S62 and Queensland Police Service [2024] QICmr 39 (20 August 2024)</i></b>
<b>Application Number:</b>	<b>317683</b>
<b>Applicant:</b>	<b>S62</b>
<b>Respondent:</b>	<b>Queensland Police Service</b>
<b>Decision Date:</b>	<b>20 August 2024</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - access sought to QPRIME reports concerning the applicant - whether information is exempt - whether disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> - sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for QPRIME<sup>2</sup> files responding to 14 report numbers.
2. In response to the access application, QPS located 15 reports (50 pages) and four body worn camera (**BWC**) recordings. QPS<sup>3</sup> refused access to 45 full pages, parts of four pages and the BWC footage on the basis that:
  - disclosure of some information contained in the first 4 pages would be exempt from disclosure as its release could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law<sup>4</sup> and / or its disclosure would be contrary to the public interest;<sup>5</sup> and
  - disclosure of all the information on the remaining 45 pages and the BWC recordings would be contrary to the public interest.<sup>6</sup>

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<sup>1</sup> Application dated 9 September 2023.

<sup>2</sup> QPRIME is the Queensland Police Records Information Management Exchange, which is QPS's information and records management system.

<sup>3</sup> Decision notice dated 16 November 2023.

<sup>4</sup> Section 47(3)(a), section 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009 (Qld)* (**RTI Act**).

<sup>5</sup> Section 47(3)(b) and section 49 of the RTI Act.

<sup>6</sup> Section 47(3)(b) and section 49 of the RTI Act.

3. The applicant applied to the Information Commissioner for external review of QPS's decision.<sup>7</sup> During the review, the applicant advised that he no longer sought access to the BWC footage.
4. For the reasons set out below, I vary QPS's decision, and refuse access to the information contained in 45 pages and parts of four pages to the extent it comprises exempt information under section 67(1) of the IP Act<sup>8</sup> and sections 47(3)(a), section 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

## Background

5. Significant procedural steps in the review are set out in the Appendix to this decision.

## Reviewable decision

6. The decision under review is QPS's decision dated 16 November 2023.

## Evidence considered

7. 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).
8. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>9</sup> particularly the right to seek and receive information as recognised in section 21 of the HR Act. I consider that a decision maker, when observing and applying the law prescribed in the IP Act and the RTI Act, '*will also be respecting, and acting compatibly with, the applicant's right to freedom of expression*' under the equivalent provisions of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).<sup>10</sup> I also note the observations made by Bell J on the interaction between the Victorian equivalents of the Queensland IP and RTI Acts and HR Act:<sup>11</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*'.

## Information in issue

9. The applicant initially applied for all QPS reports naming him, but subsequently clarified that he seeks all QPRIME files relating to 14 report numbers. Fifteen relevant reports<sup>12</sup> and four pieces of BWC footage were located and considered by QPS.
10. The applicant accepts<sup>13</sup> that access to the BWC footage may be refused on the basis that disclosure would be contrary to the public interest but maintains that the QPRIME Reports may not be refused.

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<sup>7</sup> External review application received 27 November 2023.

<sup>8</sup> Under this section, an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

<sup>9</sup> Relevant provisions of which commenced on 1 January 2020.

<sup>10</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (YZ) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, [23] noting that he saw '*no reason to differ*' from this position.'

<sup>11</sup> XYZ at [573].

<sup>12</sup> Two different reports share the same QPRIME reference number.

11. Therefore, the information remaining in issue in this review is 45 full pages and four part pages to which QPS refused access (**QPRIME Reports**).

### Issue for determination

12. The issue for determination is whether disclosure of the QPRIME Reports could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law).<sup>14</sup>
13. As I have determined that the information is exempt, no further consideration of whether disclosure would, on balance, be contrary to the public interest is permitted.<sup>15</sup>

### Relevant law

14. Under the IP Act an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>16</sup> This right is subject to other provisions of the IP Act and the RTI Act, including the grounds on which an agency may refuse access to information.<sup>17</sup> Relevantly, access to information may be refused to the extent it comprises exempt information.<sup>18</sup>
15. Schedule 3 to the RTI Act identifies the types of information which will comprise exempt information for the purposes of the IP Act.<sup>19</sup>
16. Information will be exempt if its disclosure could reasonably be expected to<sup>20</sup> prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law). This exemption applies if the following requirements are met:<sup>21</sup>
  - a) there must exist a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
  - b) disclosure of the information would create a reasonably based expectation of prejudice to the method or procedure at (a); and
  - c) the information must not be a type of information described in schedule 3, section 10(2) of the RTI Act.

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<sup>14</sup> Sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the RTI Act.

<sup>15</sup> *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60, [15]-[17].

<sup>16</sup> Section 40 of the IP Act.

<sup>17</sup> Section 67(1) of the IP Act and section 47 of the RTI Act.

<sup>18</sup> Section 47(3)(a) of the RTI Act.

<sup>19</sup> Section 48(2) of the RTI Act defines 'exempt information' as the information described in the categories of information contained in schedule 3, the disclosure of which Parliament has deemed to be contrary to the public interest.

<sup>20</sup> The phrase 'could reasonably be expected' requires a decision-maker to distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* [1994] QICmr 1, [154]-[160] (a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1982* (Qld)). Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*': See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21, [34], citing *Commissioner of Police, NSW Police Force v Camilleri* (GD) [2012] NSWADTAP 19, [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180, [190].

<sup>21</sup> As set out in *Harris and Queensland Police Service* [2014] QICmr 10 (18 March 2014), [11].

## Applicant submissions

17. The applicant submits:<sup>22</sup>

- the requested information is up to 10 years old and procedures would have changed over that time
- the primary object of the RTI Act is to give access to government information, and the legislation must be applied and interpreted to further this object
- the reasoning set out in the Information Commissioner's preliminary view is flawed as the prior decisions of the Information Commissioner referred to within deal with QPRIME activity reports and are therefore irrelevant to the information he seeks
- the refusals are inconsistent and illogical as one report has been partially released, but the others fully refused
- the relevant exemption applies to allow effective policing of contraventions of the law, but he did not knowingly contravene the law in the relevant period 'method' or 'procedure' refers to processes that are systematic, organised and multistep, whereas he believes the QPRIME Reports likely comprise records of interactions between QPS and himself and people known to him, which are not a 'method' or 'procedure'
- information obtained from covert police technology or registered human source information may be exempt, however, as he did not commit any offences within the period covered by the request, it is unlikely that he has been the target of any such operations
- even if conversations could be classed as a 'system' or 'procedure', it is not reasonable to expect that disclosure of records of such conversations would prejudice any future conversations between QPS and the applicant, or others known to him, particularly given the age of the information
- he does not wish to know who may have made statements, how QPS obtained statements or any other secret information known to police, but wants to know what has been said so he is afforded the chance to clear his name; and
- he is concerned that this information may impact his ability to travel.

## Findings

18. The applicant correctly observes that the primary object of the RTI Act (and the IP Act) is to provide a right to access government information,<sup>23</sup> and the provisions should be interpreted and applied to further this primary object.<sup>24</sup> However, the right of access is not absolute. The RTI Act also sets out the circumstances where it will be contrary to the public interest to disclose information.<sup>25</sup> Agencies have discretion to give access to a document even if a ground on which access may be refused applies,<sup>26</sup> but the Information Commissioner has no such discretion.<sup>27</sup> If information is found to be exempt, I must refuse access.

19. I acknowledge the applicant's submission that he did not knowingly contravene any laws in the relevant period. However, this does not mean the requested reports would not contain information about policing activities for investigating or otherwise monitoring

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<sup>22</sup> Application for external review received on 27 November 2023, and emails dated 3 March 2024 and 8 August 2024.

<sup>23</sup> Section 3 of the RTI Act and section 3 of the IP Act.

<sup>24</sup> Including interpreting grounds of refusal narrowly, as set out in section 67(2)(a) of the IP Act.

<sup>25</sup> Section 67(1) of the IP Act states that an agency may refuse access to a document in the same way and to the same extent access could be refused under section 47 of the RTI Act, were the document to be the subject of an application under the RTI Act.

<sup>26</sup> Section 67(2)(b) of the IP Act.

<sup>27</sup> Section 118(2) of the IP Act.

criminal activities. The exemption is expressed to relate to contraventions or investigations of *possible* contraventions of the law, and further, may relate to investigations involving individuals other than applicant.

20. The applicant may believe that the information merely captures conversations he and others had with police (a fact that I cannot confirm or deny in these reasons as I am prevented from disclosing in these reasons any information that is claimed to be exempt or contrary to the public interest<sup>28</sup>) and this would not amount to a 'method' or 'procedure'. I acknowledge that in many cases it may be appropriate to give access to information that merely records an applicant's own interactions with police. However, having considered the QPRIME Reports in this case, I am satisfied that the information relates to the collection of information by QPS which forms part of QPS's methods and procedures for gathering, assessing and organising intelligence and evidence, and it is employed by QPS for the purpose for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
21. I also acknowledge the applicant's submission that disclosure of the QPRIME Reports would not cause any prejudice because he believes the information may be up to ten years old, and its disclosure would not prejudice further conversations between police and himself or people known to him. Even if the QPRIME Reports contain old information that was provided by the applicant, I am satisfied that disclosure would reveal the details that QPS has assessed and identified as relevant to its monitoring activities, and revealing this to the applicant would allow the applicant to understand the details that are known and considered to be important in any such investigation activities (or, conversely, *not* known by QPS or not considered to be important enough to note). On that basis, I am satisfied that disclosure would prejudice the ongoing effectiveness of QPS's method for the preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
22. Turning to the circumstances in which the information would not be exempt, I am satisfied that the QPRIME Reports are not:
  - matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law
  - matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law
  - a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law
  - a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law; or
  - a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.
23. As disclosure of the QPRIME Reports could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law<sup>29</sup> and are not information of the type set out in schedule 3, section 10(2), I am satisfied that these documents are exempt.<sup>30</sup>
24. For completeness, I acknowledge the applicant's public interest arguments including the administration of justice and fair treatment, however I am unable to take these into

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<sup>28</sup> Section 121(3) of the IP Act.

<sup>29</sup> Schedule 3, section 10(1)(f) of the RTI Act.

<sup>30</sup> Section 48 of the RTI Act.

account when determining whether information is exempt. Parliament has decided that information falling within the categories set out in schedule 3 are contrary to the public interest to disclose<sup>31</sup> and no further consideration of public interest arguments is permitted on external review.<sup>32</sup>

## **DECISION**

25. For the reasons set out above, I vary QPS's decision and find that access to the information in issue may be refused under section 67(1) of the IP Act, as it comprises exempt information under section 47(3)(a), section 48 and schedule 3, section 10(1)(f) of the RTI Act.
26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Jane Williams**  
**Assistant Information Commissioner**

**Date: 20 August 2024**

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<sup>31</sup> Section 64(2)(a) of the IP Act.

<sup>32</sup> Noting that section 118(2) of the IP Act sets out that the Information Commissioner does not have the same discretion that is available to agencies to release documents found to be exempt or contrary to the public interest to disclose.

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

<b>Date</b>	<b>Event</b>
27 November 2023	<p>OIC received the external review application.</p> <p>OIC notified the applicant and QPS that the application for review had been received and requested processing documents from QPS.</p>
28 November 2023	OIC received the processing documents from QPS.
13 December 2023	OIC notified the applicant and QPS that the external review had been accepted and requested the information in issue from QPS.
10 January 2024	OIC received the information in issue from QPS.
19 February 2024	OIC conveyed a preliminary view to the applicant.
3 March 2024	OIC received a submission from the applicant.