



## Decision and Reasons for Decision

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**Citation:** *G31 and Queensland Police Service [2024] QICmr 20 (22 May 2024)*

**Application Number:** 317273

**Applicant:** G31

**Respondent:** Queensland Police Service

**Decision Date:** 22 May 2024

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - police officer seeking access to documents regarding an investigation of complaints against him - whether documents were obtained, used or prepared for an investigation by another agency in the performance of the prescribed functions of the prescribed crime body - whether the information is exempt under section 67(1) of the *Information Privacy Act 2009 (Qld)* and section 47(3)(a) and schedule 3, section 10(4) of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - applicant was the subject officer of a finalised misconduct investigation - whether information is 'about' the applicant - whether exception applies to prescribed crime body exemption in schedule 3, section 10(6) of the *Right to Information Act 2009 (Qld)*

## REASONS FOR DECISION

### Summary

1. The applicant originally applied<sup>1</sup> to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to a range of information relating to a complaint made against him, including any investigation report, correspondence, and emails. QPS did not make a decision on that application within the timeframe prescribed by the IP Act and was therefore deemed to have made a decision refusing access to the requested information.<sup>2</sup>
2. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the deemed decision.<sup>3</sup> After being notified of the external review application,

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<sup>1</sup> On 13 September 2022. QPS validated the application on 4 November 2022 having received the required identity documents from the applicant.

<sup>2</sup> Under section 66 of the IP Act; confirmed in correspondence sent to the applicant by QPS dated 23 February 2023.

<sup>3</sup> On 27 February 2023.

QPS applied to OIC for further time to deal with the access application and OIC allowed QPS the requested further period of time.<sup>4</sup> Unfortunately, QPS did not make a considered decision within the further time allowed by OIC and was therefore taken to have made a decision affirming the deemed decision.<sup>5</sup> This enabled the applicant to make a fresh external review application to OIC.<sup>6</sup>

3. On external review, QPS located documents responding to the application and agreed to release some of that information to the applicant.<sup>7</sup> However, QPS also claimed that certain information was exempt information under schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld) (**RTI Act**) (**Prescribed Crime Body Exemption**) and submitted that access to it should be refused on that basis.<sup>8</sup>
4. During the review, the applicant narrowed the scope of his request,<sup>9</sup> and also accepted OIC's view on certain categories of information.<sup>10</sup> However, he made submissions contesting the application of the Prescribed Crime Body Exemption.<sup>11</sup> The applicant argues that the requirements of the Prescribed Crime Body Exemption are not made out and, in any event, he submits that as the investigations have been finalised and the information relates to him, the exception in schedule 3, section 10(6) of the RTI Act should apply to allow him access to the remaining information.
5. For the reasons outlined below, I find that the remaining information is exempt under the Prescribed Crime Body Exemption, and in the circumstances of this case, the exception to that exemption does not apply. Accordingly, I find that access to the remaining information may be refused.<sup>12</sup>

## Background

6. At the time of the relevant events the applicant was a serving police officer with QPS. In 2021, he was the subject of a complaint in relation to his conduct which gave rise to an investigation. In 2022, while that investigation was being conducted, further allegations were made against the applicant in relation to separate conduct. The information released to the applicant and available to OIC demonstrates that investigation of the initial and subsequent allegations were considered concurrently by QPS.

## Evidence considered

7. Significant procedural steps taken in 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 as disclosed in these reasons (including in footnotes and Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld),<sup>13</sup> particularly the right to seek and receive information.<sup>14</sup> I consider a decision-maker will be '*respecting and*

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<sup>4</sup> On 14 March 2023, under section 106 of the IP Act.

<sup>5</sup> Section 106(3) of the IP Act.

<sup>6</sup> External review application dated 3 May 2023.

<sup>7</sup> 42 full pages and 121 part pages, on 23 November 2023 and 29 January 2024.

<sup>8</sup> QPS submissions received on 2 July 2023.

<sup>9</sup> On 31 August 2023.

<sup>10</sup> The applicant did not contest OIC's preliminary view regarding information that would, on balance, be contrary to the public interest to disclose, and information deleted by QPS as irrelevant to the scope of the access application.

<sup>11</sup> Submissions received on 15 February 2024.

<sup>12</sup> Under section 67(1) of the IP Act in conjunction with section 47(3)(a) of the RTI Act.

<sup>13</sup> Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

<sup>14</sup> Section 21 of the HR Act.

*acting compatibly with* that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and IP Act.<sup>15</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>16</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>17</sup>

## Reviewable decision

10. The reviewable decision is the decision QPS is taken to have made<sup>18</sup> affirming the deemed decision<sup>19</sup> refusing access to all documents sought by the applicant.

## Information in issue

11. As noted above, the applicant narrowed the scope of his request during the review by excluding certain categories of information, including documents already in his possession, copies of his recorded interviews, records of interviews with other QPS members, QPS policy documents, and duplicate documents.<sup>20</sup> QPS identified 250 pages responding to the narrowed scope and disclosed some of those pages to the applicant,<sup>21</sup> but maintained its position that certain information was exempt or could otherwise be refused.<sup>22</sup>
12. In view of the above, the information that remains in issue<sup>23</sup> pertains to QPS's investigation of the complaint against the applicant (**Information in Issue**). The extent to which I can describe the Information in Issue is limited by the IP Act<sup>24</sup> but generally it comprises information obtained by QPS in investigating the complaint, including information obtained from the complainant, witness statements and internal QPS email communications. Some of the documents have been released to the applicant in part, and therefore, to the extent I can describe those partially released documents, they are listed below:

- Matters Assessed Report
- Ethical Standards Command (**ESC**) investigation report
- internal QPS briefings and emails
- applicant's interview synopsis
- applicant's local management resolution plans
- applicant's member summary report.

<sup>15</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]. 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, noting at [23], that he saw 'no reason to differ' from our position.

<sup>16</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>17</sup> *XYZ* at [573].

<sup>18</sup> 21 April 2023, under section 106(3) of the IP Act. QPS notified the applicant of the deemed decision in a letter dated 27 April 2023.

<sup>19</sup> See footnote 2 above.

<sup>20</sup> By email on 31 August 2023.

<sup>21</sup> 42 full pages and 121 part pages, on 23 November 2023 and 29 January 2024.

<sup>22</sup> 87 full pages and 121 part pages. QPS claimed that some information was contrary to the public interest information or irrelevant information (31 pages), however, the applicant has elected not to contest those refusals and therefore, those pages are not dealt with in this decision.

<sup>23</sup> In 177 pages: 87 full pages (pages 40-41, 60, 82, 102-1-3, 105-110, 112-114, 116-120, 123-126, 130-139, 141-142, 159-163, 166-170, 172, 174, 176, 178, 186-187, 191-207, 212-222, 224-225, 228-230 and 233-234 of 250) and 90 part pages (pages 1, 4, 5, 7-22, 28, 31-33, 35-38, 42-43, 49-50, 52, 55, 57-59, 61-62, 65-68, 77-78, 80-81, 83-88, 91, 94, 97, 100-101, 104, 111, 115, 121-122, 127-129, 140, 145, 153-154, 171, 173, 175, 177, 179, 181, 184-185, 188-190, 208, 210-211, 223, 226, 231, 235-236, 240 and 244 of 250).

<sup>24</sup> Section 121(3) of the IP Act.

## Issue for determination

13. The issue for determination is whether access to the Information in Issue may be refused under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act on the basis that it comprises exempt information under the Prescribed Crime Body Exemption.<sup>25</sup>

## Relevant law

14. A person has a right, under the IP Act, to be given access to documents of an agency to the extent the documents contain the individual's personal information.<sup>26</sup> This right of access is not an absolute right but is subject to the IP Act itself, including grounds of refusal.<sup>27</sup> It is Parliament's intention that the IP Act is to be administered with a pro-disclosure bias<sup>28</sup> and that the grounds for refusing access to information are to be interpreted narrowly.<sup>29</sup>
15. Access may be refused to exempt information.<sup>30</sup> Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is always contrary to the public interest.<sup>31</sup> Relevantly, the Prescribed Crime Body Exemption provides:

### 10 **Law enforcement or public safety information**

...

(4) Also, information is exempt information if it consists of information obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body.

...

(6) However, information is not exempt information under subsection (4) or (5) in relation to a particular applicant if—

- (a) it consists of information about the applicant; and
- (b) the investigation has been finalised.

...

(9) In this section—

**corruption functions** see the *Crime and Corruption Act 2001*, section 33.

...

**prescribed crime body** means—

- (a) the *Crime and Corruption Commission*; or

...

**prescribed functions** means—

- (a) in relation to the *Crime and Corruption Commission*—the crime function, the intelligence functions and the corruption functions...

16. Information will be subject to the Prescribed Crime Body Exemption if:

- the information was *obtained, used or prepared* for an investigation
- the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; **and**
- the exception to the exemption does not apply.

<sup>25</sup> Schedule 3, section 10(4) of the RTI Act.

<sup>26</sup> Section 40 of the IP Act.

<sup>27</sup> Per section 40(1) of the IP Act which notes the right of access is '[s]ubject to this Act'. 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 the agency could refuse access to the document under the RTI Act.

<sup>28</sup> Section 64 of the IP Act.

<sup>29</sup> Section 67(2)(a) of the IP Act and section 47(2)(a) of the RTI Act.

<sup>30</sup> Section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

<sup>31</sup> Section 48(2) of the RTI Act.

17. The ambit of the Prescribed Crime Body Exemption is well-settled.<sup>32</sup> Relevantly for this matter, the Information Commissioner has previously held that the Crime and Corruption Commission's (CCC) misconduct function is triggered by its receipt and consideration of a complaint, notification and/or relevant material, and not determined retrospectively by the outcome of an assessment or investigation<sup>33</sup> either by the CCC or other agency;<sup>34</sup> and 'dealing with' or 'assessing' a complaint, notification or other material falls within the broad meaning of 'investigation' by the CCC or other agency.<sup>35</sup>
18. The exception to the Prescribed Crime Body Exemption has consistently been found to apply to information 'about' the subject officer in the investigation, as distinguished from a complainant.<sup>36</sup>

## Submissions

19. The applicant submits that QPS was not entitled to rely on the Prescribed Crime Body Exemption when refusing access to the Information in Issue.<sup>37</sup> In this regard the applicant argued as follows:

*I note the QPS submission claiming that certain information is exempt under schedule 3, section 10(4) of the RTI Act. I refute this submission in its entirety.*

*The QPS cannot claim the information is exempt under schedule 3, section 10(4) of the RTI Act as it is incorrect at law.*

...

*This internal investigation stemmed from a complaint made directly to the Ethical Standards Command of the Queensland Police Service (QPS) and was investigated internally by the QPS. The QPS is NOT a 'prescribed crime body' as defined under the RTI Act and therefore NO exemption can be claimed under schedule 3, section 10(4) of the RTI Act.*

...

*Page 100, page 144 and page 231 of the released QPS documents reveal NO FURTHER ACTION REQUIRED/ NO OUTCOME REQUIRED by the Crime and Corruption Commission for either complaint, therefore the CCC was not exercising its overseeing function. The document/s therefore are not exempt documents. I reiterate – the Queensland Police Service and the Ethical Standards Command are not a 'prescribed crime body' as defined in Schedule 3, section 10(9) of the RTI Act. The term 'other agency' is not further defined in the RTI Act.*

*The investigation was initially wrongly reported as misconduct however was finalised and resolved as a breach of discipline for which local managerial resolution was deemed appropriate. Pursuant to the RTI Act schedule 3, section 10(6), the information is not exempt information under section 4 as it consists of information about me and all matters are finalised.*

*Regardless of whatever view is arrived at concerning the overseeing functions of the CCC, neither complaint was found to be misconduct, and both complaints are now finalised and relate to me.*

<sup>32</sup> *Springborg and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**) at [44]. *Springborg* analysed provisions in the repealed *Freedom of Information Act 1992* (Qld) which are the material equivalents of those contained in the *Crime and Corruption Act 2001* (Qld) (**CC Act**).

<sup>33</sup> *Springborg* at [44].

<sup>34</sup> Schedule 3, section 10(4) of the RTI Act.

<sup>35</sup> *Springborg* at [55]-[59].

<sup>36</sup> *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [25]-[33]; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) at [18]-[22] and *W52 and Crime and Corruption Commission* [2021] QICmr 57 (28 October 2021) at [44]-[48].

<sup>37</sup> Submissions received on 31 October 2023 and 15 February 2024.

20. The applicant also raised general concerns about the approach taken by QPS to disclosure of information in response to his application:

*The QPS is deliberately withholding information (and has done so since September 2022) contrary to the provisions of the RTI Act, which may constitute misconduct in and of itself, and potentially concealing corrupt conduct.*

*The refusal to provide the documents is not consistent with other RTI releases which raises significant suspicion about the content.*

21. QPS provided submissions to OIC<sup>38</sup> as follows:

*This application relates to an Ethical Standards Command investigation in which the applicant is one of the subject members. The conduct alleged was categorised by the Crime and Corruption Commission as Police Misconduct and referred back to the QPS. The investigation is finalised.*

## Findings

### **Was the Information in Issue obtained, used or prepared for the investigations?**

22. Yes. The terms ‘obtained, used or prepared’ are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld), and so are to be given their ordinary meaning in accordance with the principles of statutory interpretation.<sup>39</sup> The term ‘investigation’ as used in the Prescribed Crime Body Exemption has been defined expansively, and includes the mere examination or consideration of information.<sup>40</sup>
23. The Information in Issue comprises investigation documents including direct enquiries via emails, interview summaries with individuals other than the applicant, reports and memos in which the applicant was the subject of two investigations.<sup>41</sup> It also includes the identities of the complainant<sup>42</sup> in each investigation. I am satisfied that the entirety of the Information in Issue comprises information that was obtained, used and prepared for the investigations by the ESC into alleged police misconduct<sup>43</sup> by the applicant.

### **Were the investigations conducted by a prescribed crime body, or another agency, in the performance of a prescribed function of the prescribed crime body?**

24. Yes. Having closely examined the located documents and taking into account QPS’s submissions at paragraph 21 above,<sup>44</sup> I am satisfied that:
- at the time the allegations were made about the applicant, they were categorised by QPS as police misconduct<sup>45</sup>

<sup>38</sup> Received by OIC 2 July 2023.

<sup>39</sup> In *Springborg* the Information Commissioner noted that the term ‘prepared’ was defined as “compose and write out, draw up (a text or document) ... produce or form ... manufacture, make” – at [27].

<sup>40</sup> *Springborg* contains a detailed analysis of the concept of an ‘investigation’ as used in the provision of the repealed *Freedom of Information Act 1992* (Qld) that was the material equivalent of schedule 3, section 10(4) of the RTI Act. The Information Commissioner, in that decision, determined that it can encompass the process of examining, considering, ‘dealing with’ and ‘assessing’ a complaint, at [55]-[59]. Schedule 2 of the CC Act provides a non-exhaustive definition of ‘investigate’ as including ‘examine and consider’ – see *Frecklington MP and Premier and Minister for Trade* [2020] QICmr 15 (18 March 2020) at [47].

<sup>41</sup> See paragraph 6 above.

<sup>42</sup> Referred to as the ‘concerned person’ or CP in the documents.

<sup>43</sup> Schedule 2 of the CC Act defines police misconduct as: *conduct, other than corrupt conduct, of a police officer that—*  
 (a) *is disgraceful, improper or unbecoming a police officer; or*  
 (b) *shows unfitness to be or continue as a police officer; or*  
 (c) *does not meet the standard of conduct the community reasonably expects of a police officer.*

<sup>44</sup> QPS submissions received on 2 July 2023.

- the investigations were devolved<sup>46</sup> to QPS by the CCC
  - outcome notifications were not required to be provided to the CCC in relation to either complaint<sup>47</sup> but the investigations remained subject to CCC's monitoring role<sup>48</sup>; and
  - in assessing the allegations and undertaking the investigations, the QPS, through the ESC was performing the CCC's corruption function.<sup>49</sup>
25. The applicant submits that the Prescribed Crime Body Exemption does not apply because the *'investigation was initially wrongly reported as misconduct'*, whereas the matter was *'resolved as a breach of discipline for which local managerial resolution was deemed appropriate'*.<sup>50</sup> The located documents demonstrate that the two allegations against the applicant were considered to constitute similar conduct and were accordingly both investigated by the one prescribed officer.<sup>51</sup> There is no evidence available to indicate that there was a finding of misconduct in relation to either allegation and ultimately, the matters appear to have been dealt with through Local Managerial Resolution.<sup>52</sup> However, the final outcomes of the investigations are not relevant when determining the application of the Prescribed Crime Body Exemption. As set out above, the documents demonstrate that at the time the allegations were made, they were categorised by QPS and the CCC as police misconduct and dealt with in accordance with relevant legislative requirements, including those set out under the CC Act.
26. As set out by the Information Commissioner in *Springborg*, a prescribed crime body (or agency such as QPS ESC in this case) can be performing prescribed crime body functions following receipt of the information about the allegations, and in the course of assessing *whether* misconduct has occurred.<sup>53</sup> I am satisfied that at the time the allegations were made, they were raised/classified under the category of misconduct and in investigating those allegations, the ESC was performing the corruption functions of the CCC. While I accept that the outcome of the investigations ultimately occurred within a disciplinary context, I am satisfied that this is not relevant in determining the application of the Prescribed Crime Body Exemption in accordance with the position expressed by the Information Commissioner in *Springborg*.
27. The applicant submits that the CCC was not exercising its *'overviewing function'* as it did not require an outcome about the investigations into his conduct. The CCC's monitoring role for police misconduct allows it to issue guidelines to the police commissioner about the conduct of investigations into police misconduct; review or audit the way the police commissioner has dealt with police misconduct; or assume responsibility for and complete an investigation into police misconduct.<sup>54</sup> The CCC's monitoring role does not end when it refers a matter to, or back to, an agency to complete an investigation and perform the CCC's corruption function, or other prescribed function as the case may be. Its monitoring role regarding police misconduct continues while the QPS ESC performs the CCC's corruption function by

<sup>45</sup> The partially released Executive Summary at page 80 and partially released Matters Assessed Report at page 231 confirms this categorisation of the first allegation and that it was made under section 40 of the CC Act. The QPS ESC Investigation Report confirms the second allegation was subject to a *'classification of Misconduct'*.

<sup>46</sup> The principle of devolution is set out in section 34(c) of the CC Act and in practice, occurs under section 45(2) of the CC Act.

<sup>47</sup> Page 153 of 250, a State Discipline Office Referred File report, confirms the CCC interest in the matter was "NOR", ie. no outcome required.

<sup>48</sup> Sections 45 and 46 of the CC Act set out the responsibility of the CCC to **monitor** how the commissioner of QPS deals with police misconduct, and how the CCC deals with complaints, including by way of devolution.

<sup>49</sup> Section 33 to 35 of the CC Act set out how the corruption functions are performed. *Corruption* is defined in schedule 2 of the CC Act to mean *'corrupt conduct or police misconduct'*.

<sup>50</sup> Submission received on 15 February 2024.

<sup>51</sup> Pages 67-68, and 153-154 of 250.

<sup>52</sup> Pages 246-250.

<sup>53</sup> *Springborg* at [44].

<sup>54</sup> Section 47 of the CC Act. See also *Lee v Crime and Corruption Commission & Anor* [2016] QCA 145 at [62]-[72].

investigating the alleged police misconduct,<sup>55</sup> including in matters where it does not require notification of the investigation outcome.

28. The applicant also submits that QPS ESC is not a prescribed crime body. I accept that the RTI Act does not define the QPS ESC as such.<sup>56</sup> However, the wording 'or other agency' within the Prescribed Crime Body Exemption clearly contemplates another agency performing the prescribed functions of a prescribed crime body, and this is consistent with the relevant provisions of the CC Act pertaining to devolution of investigative functions. The Information Commissioner has consistently interpreted the exemption as encompassing investigations conducted by other agencies, under the CCC's monitoring role.<sup>57</sup>
29. Based on my analysis set out in the preceding paragraphs, I find that the QPS, through its ESC, was performing the corruption function of the CCC in investigating the allegations, which at the time were assessed as police misconduct, against the applicant. Accordingly, I find that schedule 3, section 10(4) of the RTI Act applies to the Information in Issue.

### **Exception to the Prescribed Crime Body Exemption**

30. Notwithstanding that I have found that the elements of the Prescribed Crime Body exemption are met, the RTI Act requires me to also consider whether the exception in schedule 3, section 10(6) of the RTI Act applies to the Information in Issue. The exception is a two-limbed test, as set out below.

#### ***Are the investigations finalised?***

31. Yes. Both investigations are finalised.

#### ***Is the Information in Issue 'about' the applicant?***

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<sup>55</sup> As per schedule 2 and chapter 2, part 3 of the CC Act.

<sup>56</sup> See the definition at paragraph 15 above.

<sup>57</sup> For example, *GM31AM and Queensland Police Service* [2015] QICmr 6 (25 March 2015) at [20]-[27], *T5Q2EE and Department of Police* (Unreported, Queensland Information Commissioner, 7 August 2012) at [24]-[31], *A88 and Queensland Police Service* [2020] QICmr 2 (30 January 2020) at [23]-[25], *67IEWN and Queensland Health* [2016] QICmr 40 (7 October 2016) at [13]-[15], *H22 and Queensland Building and Construction Commission* [2022] QICmr 52 at [24]-[35], and *0AW6AW and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 5 March 2013) at [25]-[30].



32. No, for the reasons that follow.
33. The Information Commissioner has previously recognised that the purpose of the exception is to allow individuals who are the subject of a prescribed crime body investigation to obtain access to information regarding a finalised investigation, to the extent that information is 'about' them.<sup>58</sup> In accordance with this well-settled position, during the review, information 'about' the applicant was identified as being subject to the exception and was disclosed to the applicant by QPS.<sup>59</sup>
34. Whether information is 'about' a given applicant is a question of fact, to be resolved by reference to the information itself.<sup>60</sup> The word 'about' in this provision has previously been referred to as '*a non-technical term defined according to its natural and ordinary meaning.*'<sup>61</sup>
35. I am satisfied that some of the Information in Issue, while appearing in the context of documents pertaining to the investigations into the applicant, is also 'about' other individuals, including identities of complainants and witnesses, and their communications with the investigator. Other information also describes actions taken in the course of the investigatory processes, including deliberations and communications between QPS officers. The Information Commissioner has previously recognised that such information is not 'about' an applicant (who is the subject of the complaint)<sup>62</sup> and I am satisfied that reasoning applies here. Accordingly, I find the exception does not apply to the Information in Issue as described in this paragraph.
36. There are also portions of the remaining Information in Issue which identify/relate to other individuals (including complainants and concerned persons) but which are intertwined with information concerning the applicant. In considering whether this category of information<sup>63</sup> is captured by the exception, I have had regard to the ordinary meaning of 'about' and previous decisions of the Information Commissioner which have interpreted the term.<sup>64</sup>

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<sup>58</sup> G8KPL2 at [28]-[30].

<sup>59</sup> On 23 November 2023 and 29 January 2024.

<sup>60</sup> Cronin and Crime and Corruption Commission [2017] QICmr 13 (6 April 2017) (*Cronin*) at [21].

<sup>61</sup> *Darlington v Office Of The Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52] per His Honour Carmody J (*Darlington*). The Macquarie Dictionary defines 'about' as '*of; concerning; in regard to ... connected with*'.

<sup>62</sup> *JA 14YM and Crime and Misconduct Commission* [2014] QICmr 13 (10 April 2014) at [32] and *Cronin* at [21].

<sup>63</sup> Section 121 of the IP Act requires the information commissioner to ensure nondisclosure of certain information including exempt information.

<sup>64</sup> I acknowledge that the question of the exception more commonly arises in the context of a *complainant* seeking access to information about an investigation, eg. G8KPL2 and *Darlington*.

37. The applicant is the *subject officer* and as recognised by the Information Commissioner in *G8KPL2*,<sup>65</sup> Parliament's rationale for including the exception was to allow the subject of an investigation access to information such as '*allegations made against them ... and conclusions made about them in a report*'.<sup>66</sup> As set out in paragraph 33 above, the applicant has been given access to information which is subject to the exception, including the allegations against him and conclusions in reports to the extent that information is '*about*' the applicant.<sup>67</sup> However, I am not persuaded the exception extends to information appearing throughout the investigation documents that is about other individuals, even where that information is intertwined with information pertaining to the applicant.<sup>68</sup> Accordingly, I find that the intertwined information within the Information in Issue is not subject to the exception.
38. In summary, I find that the exception in schedule 3, section 10(6) of the RTI Act, does not apply to any of the remaining Information in Issue.

### **Other submissions**

39. As noted above at paragraph 20, the applicant identified possible misconduct and corrupt conduct by QPS as favouring disclosure of the Information in Issue. These submissions identify public interest grounds for disclosure of the Information in Issue. The exemptions in schedule 3 of the RTI Act set out the types of information which Parliament has decided, would, on balance, be contrary to the public interest to disclose. Once the requirements of an exemption have been established, I am precluded from considering any public interest factors.<sup>69</sup> On this basis, I have not taken into account the applicant's public interest submissions.
40. The applicant also submitted that he considered QPS was refusing access to information in breach of the RTI Act. There is no information available to me to indicate any such breach, nor to enliven the offence provisions under the RTI Act. I consider QPS complied with the provisions of the RTI Act and IP Act in its dealings with OIC and the applicant on external review, and disclosed documents to the applicant in accordance with the legislation. As a review participant, QPS was entitled to maintain a position in support of its case for nondisclosure of information. The applicant similarly maintained his position regarding his right of access to information under the RTI Act. As a resolution could not be reached informally, issuance of this decision was required to finalise this matter under the legislation.

### **Conclusion**

41. I find the Information in Issue comprises information obtained, used or prepared for an investigation by QPS in the performance of the corruption function of the CCC, a prescribed crime body, and the exception to the Prescribed Crime Body Exemption does not apply because the remaining Information in Issue is not '*about*' the applicant. Accordingly, access to the Information in Issue may be refused under the IP Act.

<sup>65</sup> At [28]-[33].

<sup>66</sup> *G8KPL2* at [29] referring to the Explanatory Memorandum to the relevant Bill.

<sup>67</sup> For example the Findings and Recommendations on pages 87-88, and the summary and recommendations dated 25 May 2022 at pages 93-94.

<sup>68</sup> During the review, I relayed an alternative preliminary view to the applicant on this category of information. That view set out that on balance, disclosure of the intertwined information would in any event, be contrary to the public interest to disclose under section 47(3)(b) of the RTI Act. I conveyed that view as part of OIC's informal resolution process and in an effort to afford procedural fairness to the applicant by considering the broader public interest considerations he had raised in support of his case. The applicant, however, did not seek to contest that view and those provisions therefore do not form part of these reasons.

<sup>69</sup> Section 118(2) of the IP Act.

## DECISION

42. For the reasons set out above, I vary QPS's deemed decision. I find that access may be refused to the Information in Issue under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act as it is exempt information under schedule 3, section 10(4) of the RTI Act, and to which the exception in schedule 3, section 10(6) of the RTI Act does not apply.
43. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 22 May 2024**

## APPENDIX

### Significant procedural steps

Date	Event
3 May 2023	OIC received the external review application. OIC requested procedural documents and information from QPS.
19 May 2023	OIC advised the applicant and QPS the external review was accepted. OIC requested the responsive documents from QPS and a submission regarding its position on any refused information.
2 and 4 July 2023	OIC received submissions and the responsive documents from QPS.
31 August 2023	OIC invited the applicant to narrow the scope of the external review to which he agreed. OIC advised QPS of the narrowed scope.
3 October 2023	OIC received marked up documents from QPS identifying information it proposed to disclose or refuse.
31 October 2023	OIC asked QPS to disclose the information to the applicant it had identified for disclosure and requested further information regarding certain information in the responsive documents. OIC provided an update to the applicant and advised QPS would disclose certain information to him while we assessed the proposed information it proposed to refuse. OIC received a submission from the applicant regarding the prescribed crime body exemption.
23 November 2023	OIC received confirmation from QPS that it had disclosed the documents to the applicant.
24 and 27 November 2023	OIC received correspondence from the applicant seeking further information about the information refused by QPS. OIC provided the applicant with clarifying information and outlined the next steps in the external review process.
30 November 2023	OIC issued QPS with a preliminary view regarding disclosure of further information.
24 January 2024	QPS advised OIC it accepted our preliminary view.
25 January 2024	OIC issued a preliminary view to the applicant. OIC asked QPS to disclose further information to the applicant.
29 January 2024	QPS disclosed further information to the applicant.
15 February 2024	OIC received submissions from the applicant contesting the preliminary view.
4 March 2024	OIC issued a further preliminary view to the applicant and confirmed a formal decision would be required to finalise the external review.