



Decision and Reasons for Decision

Citation: *I63 and Queensland Police Service [2024] QICmr 34*
(8 August 2024)

Application Number: 318075

Applicant: I63

Respondent: Queensland Police Service

Decision Date: 8 August 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - request for information about access to applicant's personal information within police databases - whether disclosure 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 - whether access may be refused under section 67(1) of the *Information Privacy Act 2009 (Qld)* and sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - request for emails and other documents about the applicant - information about other individuals - accountability and transparency - personal information and privacy - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009 (Qld)* and sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009 (IP Act)* to access certain documents about him.
2. QPS located 941 pages as relevant to the access application. However, QPS did not make a decision within the required statutory timeframe and was therefore taken to

¹ By email dated 11 March 2024 (access application).

have made a deemed decision refusing access to all the requested information.² QPS nevertheless disclosed 8 pages and parts of 13 pages to the applicant.³

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for review of QPS' decision.⁴
4. For the reasons set out below, I vary QPS' deemed decision and find that access may be refused to the remaining located information as it comprises exempt information and its disclosure would, on balance, be contrary to the public interest.⁵

Background

5. The applicant applied to QPS in the following terms:

I require any and all emails [sent, received and deleted] about me, ever, from 2015 - 2024 [current time] contained within the following Queensland Police Service email inboxes. [nominated email address]@police.qld.gov.au

Sergeant [X]

Sergeant [Y]

all of Brisbane City Police Station

I also require a copy of any and all faxes, letters, cellular texts, messages, pages [including from any pagers], social media communications, personal email messages and emails, documents, notebook notes, dash cam evidence [vehicle], body cam recordings, information, memos, video and audio recordings, about me, that is in the possession of [Office Z], Brisbane City Police Station in Queensland, Sergeant [X], Sergeant [Y]. I also wish to receive a copy of any and all queries that they have ever done on their computers and police record keeping systems about me. I wish to also receive a copy of any and all electronic flags on their computer systems, and the QPS computer systems about me, if any.

6. The significant procedural steps taken during this review are set out in the Appendix.

Reviewable decision

7. The decision under review is the decision QPS is deemed to have made under section 66 of the IP Act.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
9. Generally, it is necessary that decision makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**), as section 11(1) of the HR Act provides that '[a]ll individuals **in Queensland** have human rights' [emphasis added]. The applicant does not reside in

² Under section 66(1) of the IP Act.

³ By way of a purported decision dated 14 May 2024, which refused access to 920 pages and parts of 13 pages, on various grounds. OIC has treated QPS' purported decision as a submission about its disclosure position in this external review. For completeness, I note that although the applicant sought internal review of QPS' purported decision (by an email dated 14 May 2024, as noted in QPS' subsequent correspondence dated 12 June 2024), a deemed decision is not a reviewable decision for the purpose of internal review (pursuant to sections 66(1) and 95(b) of the IP Act). Accordingly, QPS did not have power to conduct an internal review in respect of its deemed decision. In any event, QPS notified the applicant on 12 June 2024 that it had not made an internal review decision within the required statutory timeframe.

⁴ By email dated 12 June 2024 (**External Review Application**).

⁵ Under section 67(1) of the IP Act and sections 47(3)(a) and 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

Queensland. However, at times relevant to the information requested in the access application he did reside in Queensland. On the basis of this nexus to Queensland, I have also had regard to the HR Act, particularly the right to seek and receive information.⁶ I consider a decision-maker will be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the RTI Act.⁷ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.⁸

Issues for determination

10. As the External Review Application did not identify any specific issues the applicant wished OIC to consider on external review,⁹ I confirmed to the applicant that the only issue to be considered in this external review was his entitlement under the IP Act to access the located information which QPS had not disclosed to him (**Information in Issue**).¹⁰
11. Accordingly, the issues for determination are whether:
 - access to some of the Information in Issue may be refused on the basis it comprises exempt information; and
 - access to the remaining Information in Issue may be refused because its disclosure would, on balance, be contrary to the public interest.

Information in Issue

12. The Information in Issue appears on 933 pages—namely, 920 full pages and parts of 13 pages. QPS described the Information in Issue¹¹ as:
 - QPRIME records (**Report**);¹² and
 - the personal information of individuals other than the applicant (**Third Party Information**).

Relevant law

13. 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.¹³ However, this right is subject to limitations, including the grounds for refusal of access.¹⁴

⁶ Section 21(2) of the HR Act.

⁷ *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]. I note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from OIC's position).

⁸ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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.*'

⁹ The External Review Application simply requested that QPS' decision be accepted for review.

¹⁰ By letter dated 15 July 2024 (which confirmed a statement about the issue to be considered in an earlier letter dated 21 June 2024). The applicant did not seek to raise any other issue during this external review.

¹¹ In QPS' purported decision dated 14 May 2024. I am unable to describe the content of the Information in Issue in these reasons, as section 121(3) of the IP Act prohibits the Information Commissioner from disclosing information that is claimed to be exempt information or contrary to the public interest information in an external review decision.

¹² QPRIME is the database used to capture and maintain information obtained by QPS in its law enforcement functions.

¹³ Section 40 of the IP Act. '*Personal information*' is 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*'.

¹⁴ The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

14. Access may be refused to information to the extent it comprises exempt information¹⁵ and information will qualify as exempt information where its disclosure 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 (**Exemption**).¹⁶ Schedule 3, section 10(2) of the RTI Act sets out certain circumstances where the Exemption will not apply.
15. Access may also be refused to information if its disclosure would, on balance, be contrary to the public interest.¹⁷ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁸
 - identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
16. On external review, the agency who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.¹⁹

Exempt Information

17. QPS located 920 pages of QPRIME records as responsive to the component of the access application which requested *'all queries that they have ever done on their computers and police record keeping systems about me. I wish to also receive a copy of any and all electronic flags on their computer systems, and the QPS computer systems about me, if any'*.
18. QPS' position is that these 920 pages comprise exempt information pursuant to the Exemption. On the other hand, the applicant submitted that *'[i]t does not compromise [sic] any exempt information, and a person has a right to their own personal information. The public body can mask any exempt information but I should be able to see my information as entitled to me under your privacy legislation'*.²⁰
19. I have examined the 920 pages to assess whether the Exemption applies. As noted above, in these reasons, I am unable to describe this information in any detail,²¹ however, I can confirm that the QPRIME records requested in the access application component referenced in paragraph 17 are known as a QPRIME activity report.²² For ease of reference, and as noted above at paragraph 12, I will refer to these 920 pages as the Report.

¹⁵ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 to the RTI Act identifies the types of exempt information.

¹⁶ Schedule 3, section 10(1)(f) of the RTI Act.

¹⁷ Section 67(1) of the IP Act and 47(3)(b) of the RTI Act. 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 (Refer to Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14). This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests (although there are some recognised public interest considerations that may apply for the benefit of an individual).

¹⁸ Section 49(3) of the RTI Act.

¹⁹ Section 100 of the IP Act.

²⁰ Applicant's email received on 18 July 2024.

²¹ By virtue of section 121(3) of the IP Act.

²² As noted in previous decisions of the Information Commissioner, QPRIME activity reports generally reveal the amount of activity and the number of occasions on which QPS officers have accessed QPRIME in relation to an individual, the badge number of the inquiring officer, and includes a technical log of interactions within the database. Refer, for example, to *Kyriakou and Queensland Police Service* [2017] QICmr 30 (9 August 2017) at [30].

20. In *Commissioner of the Police Service v Shelton & Anor*,²³ the Court of Appeal noted²⁴ that QRIME had been described as a database kept by QPS:

... of the information obtained by QPS in its law enforcement functions. It is a dynamic and constantly updated central record for the QPS. The QPS would describe it as an intelligence tool, which allows police to record information about criminal activity, the circumstances in which criminal activity is likely to occur or has occurred, the identity of those involved or suspected to be involved in criminal activities and the identities of their associates. But it also records information obtained by police officers in the course of their investigations and records criminal intelligence which has been obtained. The QPRIME system also maintains activity reports, whereby a record is kept of the access to particular QPRIME records by, amongst others, serving police officers. footnote omitted

21. In its purported decision,²⁵ QPS also noted that:

When dealing with contraventions, or possible contraventions, of the law, QPS officers record information about individuals on QPRIME, and such information may relate to intelligence or surveillance operations, or other investigations. Further, QPS officers also access information recorded in QPRIME both during and after such activities, for example, to obtain background information and inform decisions.

Revealing the extent of information on such a database and the specific circumstances of each access could reasonably be expected to prejudice these methods and procedures. This prejudice arises in terms of the QPRIME details revealing information (or an absence of information) which enables an individual to deduce the level of surveillance they may (or may not) be under. This reduces the effectiveness of QPRIME as a system for recording and exchanging information within QPS as part of conducting intelligence or surveillance operations, or otherwise dealing with contraventions, or possible contraventions, of the law.

22. I am satisfied that the QPRIME database, and its use by QPS officers, forms an integral part of QPS' lawful methods and procedures for preventing, detecting, investigating or dealing with contraventions, or possible contraventions, of the law. I am also satisfied that disclosing a QPRIME activity report (including the Report), which shows when and how often QPS officers have accessed the QPRIME database in relation to an individual, could reasonably be expected to prejudice these QPS methods and procedures, because it would enable an individual (in this case, the applicant) to deduce the level of surveillance or investigation they may, or may not, be under.
23. It is QPS' position that schedule 3, section 10(2) of the RTI Act does not apply to the Report.²⁶ Having carefully examined the content of the Report and considered the submissions received from the parties, I am satisfied that none of the circumstances listed in schedule 3, section 10(2) of the RTI Act apply to the Report. In particular, I do not consider that the Report consists of matter revealing that the scope of a law enforcement investigation has exceeded imposed legal limits.²⁷
24. For these reasons, I consider QPS has met its review onus in respect of the Report and I find that access may be refused to the Report, as it is comprised of exempt information.²⁸

²³ [2020] QCA 96 (*Shelton*).

²⁴ At [5].

²⁵ Dated 14 May 2024.

²⁶ As noted in QPS' purported decision dated 14 May 2024.

²⁷ Schedule 3, section 10(2)(a) of the RTI Act.

²⁸ Section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the RTI Act.

Remaining Information in Issue

25. As noted above, the Third Party Information comprises portions of information which QPS did not disclose to the applicant on 13 pages. As explained above, I am unable to describe this information in any detail,²⁹ however, I note that the surrounding information which has been disclosed to the applicant confirms that the Third Party Information includes the names of other individuals, email addresses of QPS officers (or parts of them) and the direct telephone numbers of QPS officers. There is also a significant level of duplication within the Third Party Information.
26. The applicant's submissions in this external review (which are quoted in paragraph 18 above) do not specifically address the Third Party Information.

Irrelevant factors

27. I have not taken any irrelevant factors into account in reaching my decision.

Factors favouring disclosure

28. The applicant submitted that '*a person has a right to their own personal information*'.³⁰ While a public interest factor favouring disclosure will arise where information is an applicant's personal information,³¹ the Third Party Information is not the applicant's personal information—instead, it is the personal information of other individuals.³²
29. The RTI Act recognizes that factors favouring disclosure, which concern government accountability and transparency, will arise where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability³³
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;³⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁵
30. I consider the information which QPS has disclosed to the applicant has substantially advanced these factors, by enabling scrutiny of how QPS dealt with the applicant's complaints and providing some contextual information about QPS' complaint responses.³⁶ Given the nature of the Third Party Information, I consider it will, to varying degrees, further advance the government's accountability and transparency, as set out below.
31. The Third Party Information includes the personal information of individual/s who are not public sector officers.³⁷ I do not consider disclosing this type of information would,

²⁹ By virtue of section 121(3) of the IP Act.

³⁰ Applicant's email received on 18 July 2024.

³¹ Schedule 4, part 2, item 7 of the RTI Act.

³² For this reason, I find that the factor in schedule 4, part 2, item 7 of the RTI Act does not apply to favour disclosure of the Third Party Information.

³³ Schedule 4, part 2, item 1 of the RTI Act.

³⁴ Schedule 4, part 2, item 3 of the RTI Act.

³⁵ Schedule 4, part 2, item 11 of the RTI Act.

³⁶ In this regard, I also note that the disclosed information indicates that QPS notified the applicant that it had insufficient information to continue with a criminal investigation of one of the applicant's complaints.

³⁷ Third Party Information on this nature appears on 11 pages.

given its nature, further advance government accountability and transparency in any meaningful way. On this basis, I afford these factors low weight in respect of this component of the Third Party Information.

32. The remaining Third Party Information comprises direct contact details (email and telephone) of public sectors officers³⁸ and the name of an officer which appears at the top of two pages (**Name**). While the contact details of public sector officers may comprise their routine work information, I note that QPS has disclosed to the applicant the names of relevant officers where they appear within these 13 pages. I also note that, in some cases, the direct contact details are of an officer who was the subject of a complaint made by the applicant. Taking the limited nature of this contact information into account, I afford these accountability and transparency factors only low weight.
33. In respect of the Name, I note that it was included at the top of two pages as a result of the administrative processes involved in QPS' processing of the access application—that is, it was the name of the officer who printed or converted these two pages to pdf during the processing of the applicant's access application. This officer was not involved in the substantive QPS processes of addressing the complaints which the applicant had made to police. In these circumstances, I am satisfied that its disclosure would not further advance QPS accountability and transparency and, accordingly, the factors concerning QPS accountability and transparency are deserving of no weight in respect of the Name.
34. Given the limited nature of the Third Party Information, I can identify no other public interest factors which apply to favour its disclosure.³⁹

Factors favouring nondisclosure

35. The RTI Act recognises that there is a public interest harm⁴⁰ in disclosing an individual's personal information to someone else and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁴¹ The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁴² I consider these personal information and privacy considerations apply to the Third Party.
36. To the extent the Third Party Information relates to individual/s who are not public sector officers, I note this information appears in a complaint context. Taking this into account, I consider its disclosure would represent a significant intrusion into the privacy of these individual/s and a high level of harm could be expected to arise from disclosure of their personal information. For these reasons, I afford significant weight to the factors favouring nondisclosure of this component of the Third Party Information.

³⁸ Which appear on 12 pages.

³⁹ For example, there is nothing before me which indicates that its disclosure could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure effective oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); to allow or assist inquiry into agency conduct or administration deficiencies or reveal or substantiate misconduct or negligent, improper or unlawful conduct (schedule 4, part 2, items 5 and 6 of the RTI Act); advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies (schedule 4, part 2, item 10 of the RTI Act); reveal that it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); or contribute to the administration of justice generally including procedural fairness, or for a person (schedule 4, part 2, items 16 and 17 of the RTI Act).

⁴⁰ Schedule 4, part 4, section 6 of the RTI Act.

⁴¹ Schedule 4, part 3, item 3 of the RTI Act.

⁴² 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.

Although some of the Third Party Information appears in correspondence sent to or received by the applicant,⁴³ I do not consider this negates the right to privacy or the harm disclosure of this personal information would cause (noting there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act).

37. The remaining Third Party Information relates to public sector officers and I consider a lower level of harm and prejudice could be expected to arise from its disclosure. Generally, information created in the course of a person's employment is considered to be their routine personal work information and, as such, does not attract a high privacy interest and the harm arising from disclosure is considered to be low.⁴⁴ However, some of this information appears in the context of the applicant's complaint about a public sector officer and some of the undisclosed contact details comprise part only of an officer's email address.⁴⁵ In these circumstances, I afford these nondisclosure factors moderate weight in respect of the remaining Third Party Information.⁴⁶

Balancing the public interest

38. I acknowledge the pro-disclosure bias in deciding access to documents under the IP Act.⁴⁷ Taking into account the nature of the Third Party Information, I afford low to no weight to the public interest factors relating to QPS' transparency and accountability which favour disclosure of the various components of the Third Party Information.⁴⁸
39. On the other hand, for the reasons addressed above, I afford significant weight to the nondisclosure factors relating to personal information and privacy⁴⁹ for some parts of the Third Party Information. It is also my view that the considerations relating to personal information and privacy are deserving of moderate weight in respect of other components of the Third Party Information.
40. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁵⁰

DECISION

41. For the reasons set out above, I vary QPS' deemed decision and find that:
- access can be refused to the Report under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act as it comprises exempt information; and
 - access to the Third Party Information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

⁴³ And, as a result, the applicant may have some awareness of the Third Party Information.

⁴⁴ Routine personal work information can include, for example, a work email address, a work phone number or an opinion given in a professional capacity.

⁴⁵ In most of these instances, the officer's name has been disclosed to the applicant. Given the circumstances in which the Name appears on two pages (as outlined in paragraph 33 above), I consider a moderate level of prejudice and harm would arise from its disclosure under the IP Act.

⁴⁶ I again note that, while the applicant may have some awareness of this Third Party Information, I do not consider this negates the right to privacy or the harm that disclosure could reasonably be expected to cause.

⁴⁷ Section 64 of the IP Act.

⁴⁸ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁵⁰ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

42. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

T Lake
Principal Review Officer

Date: 8 August 2024

APPENDIX**Significant procedural steps**

Date	Event
12 June 2024	OIC received the external review application and the applicant's email submission.
21 June 2024	OIC notified the applicant and QPS that the application for external review had been accepted and requested information from QPS.
10 July 2024	OIC received the requested information from QPS.
15 July 2024	OIC conveyed a preliminary view to the applicant and invited the applicant to provide a submission if he wished to contest that view.
18 July 2024	OIC received the applicant's submission contesting the preliminary view.
30 July 2024	OIC reiterated the preliminary view to the applicant and confirmed that a formal decision would be issued to finalise the external review.