

The contents of this Commissioner's Circular commence on 1 December 2009.

Circular No. 20/2009

20/11/2009

RELEASE OF INFORMATION RESPONSIBILITIES

On 1 July 2009 the *Right to Information Act 2009* (RTI Act) and the *Information Privacy Act 2009* (IP Act) replaced the *Freedom of Information Act 1992*.

This circular outlines members' responsibilities when releasing information held by the Service. Additionally, policy is provided outlining a number of considerations to be taken into account when releasing information under s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act 1990*.

This circular is to be read in conjunction with Commissioner's Circular 3/2009: 'Right to Information and Information Privacy Acts'.

Release of information generally

Appendix 1.2: 'Release of information index' of the Operational Procedures Manual provides members with a guide as to the location of Service policy authorising the release of information held by the Service.

ORDER

Members are not to release or disclose information held by the Service unless:

- (i) in accordance with a structured scheme;
- (ii) in accordance with Service policy;
- (iii) with the authority in writing of the Commissioner or the relevant Deputy Commissioner under s. 10.2 of the *Police Service Administration Act*, or a member empowered to authorise disclosure of information pursuant to Delegation No. D 15.12;
- (iv) in compliance with s. 623: 'Right to inspect seized documents' or s. 681: 'Person to be given copy of information in register' of the *Police Powers and Responsibilities Act* or s. 38: 'Provision of information relating to a relevant person' of the Police Responsibilities Code;
- (v) in accordance with the legislative requirements of the RTI Act or the IP Act; or
- (vi) in accordance with any other statutory authority.

Accidental release of information

POLICY

Members are to be mindful that they do not inadvertently make information available outside of Service policy.

For example, members should keep their workstations free of information that could be compromised if viewed by another person. Members should also be alert to third parties hearing information transmitted or received on Service radios and telephones.

See also s. 4.1: 'Information security organisation' of the Information Management Manual.

Members are to ensure that information that comes into their possession in the course of their duties is protected commensurately with the consequences of unauthorised disclosure, misuse or compromise.

Information Privacy Principles

The IP Act details the Information Privacy Principles (IPP) that public sector agencies, including the Service, must comply with in relation to the fair collection and handling of personal information.

Section 12: 'Meaning of personal information' of the IP Act defines personal information 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.

Section 165(1): 'Privacy complaint may be made or referred to information commissioner' of the IP Act provides that an individual whose personal information is, or at any time has been, held by a relevant entity may make a privacy complaint to the information commissioner (see ss. 164: 'Meaning of privacy complaint' and 166(3): 'Requirements for privacy complaint' of the IP Act).

A privacy complaint referred to the Queensland Civil and Administrative Tribunal may be dealt with in a number of ways, including the making of an order that the complainant is entitled to compensation of not more than \$100 000 (see s. 178: 'How QCAT may dispose of a complaint' of the IP Act).

Information Privacy Principle 11: 'Limits of disclosure' of the IP Act provides that an agency having control of a document containing an individual's personal information must not disclose the personal information to an entity, other than the individual the subject of the personal information unless in prescribed circumstances (see Schedule 3: 'Information Privacy Principles' of the IP Act).

As a law enforcement agency, the QPS has an exemption from IPP 11 in respect of operational law enforcement activities but not in respect of administrative activities. The discretionary release of information by the Service under s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act* is an example of an administrative activity.

POLICY

Members are not to allow access to, or release of, personal information that will breach the Service's obligations under the IP Act.

Discretionary release of information under s. 10.2 of the Police Service Administration Act

POLICY

Section 10.2(1): 'Authorisation of disclosure' of the *Police Service Administration Act* (PSA Act) is a general exercise of discretion for the Commissioner of Police to disclose information in addition to those specific powers detailed in ss. 10.2A to 10.2R of the PSA Act. It authorises the release of information provided it is not otherwise prohibited by law or statute.

The Commissioner has delegated this power under s. 10.2(1) of the PSA Act to certain members of the Service, see Delegation No. D.15.12.

The restrictions on disclosure of personal information under the IP Act may prevent the disclosure of information under s. 10.2(1) of the PSA Act. Additional Acts that may also prevent disclosure include the *Criminal Law (Rehabilitation of Offenders) Act 1986*; *Criminal Law (Sexual Offences) Act 1978*; *Juvenile Justice Act 1992*; *Child Protection Act 1999* and *Drugs Misuse Act 1986*.

The following sections of Commissioner's Circular 3/2009: 'Right to Information and Information Privacy Acts' provides Service policy in relation to the discretionary release of information under the provisions of s. 10.2(1) of the PSA Act:

- (i) s. 1.10.14: 'Requests for information from other government departments, agencies or instrumentalities';
- (ii) s. 1.10.15: 'Requests for information from other law enforcement agencies'.

POLICY

Commissioner's delegates exercising their discretion under s. 10.2 of the PSA Act to disclose information are to do so reasonably.

When considering the disclosure of information held by the Service in accordance with their delegated power contained in Delegation D 15.12, such member is to take into account the following:

- (i) whether the identity of the requesting party has been confirmed;
- (ii) any release of information is consistent with the functions of the Service set out in s. 2.3: 'Functions of service' of the PSA Act;
- (iii) whether the person or organisation seeking the information has demonstrated they have a legitimate and sufficient interest in obtaining the information. It must be more than mere curiosity by a member of the public;
- (iv) whether the applicant has disclosed the reason for and the purpose of the request for the information sought and the use to which the material is proposed to be put;
- (v) whether the information sought is not already a matter of public record even though it may not be easily accessible;
- (vi) the IPP set out in the IP Act are not breached, particularly protecting the privacy of persons;

- (vii) the general release criteria, including information that is exempt information under Schedule 3: 'Exempt information' of the RTI Act;
- (viii) whether the person about whom the information is sought has given consent to the information being disclosed;
- (ix) whether the person's legitimate interest in the material can be limited to a specific area, i.e. can the material be edited or released in part rather than in whole;
- (x) the need to protect confidential sources and maintain security and methodology in the Service;
- (xi) whether the release would impact otherwise on the functioning on the Service in terms of ongoing matters before the courts, identity of informants, etc;
- (xii) each application is considered on its own merits and on a case-by-case basis. Not all organisations and individuals seeking the same type of release are necessarily entitled to receive the same information;
- (xiii) the member has the appropriate delegation to release the information under s. 10.2: 'Authorisation of disclosure' of the PSA Act (see Delegation D 15.12);
- (xiv) whether conditions should be placed upon release pursuant to s. 10.2(4) of the PSA Act, e.g. as to release to third parties, future use, etc. See also Appendix 1.8: 'Example of caveat when responding to requests for information by external agencies' of the Operational Procedures Manual; and
- (xv) whether alternate avenues for release are available under ss. 10.2A to 10.2R of the PSA Act or under another legislative scheme available to the requesting party.

PROCEDURE

Members receiving requests to the Service for the discretionary release of information under the provisions of s. 10.2 of the PSA Act are to ensure:

- (i) a request is made in writing with sufficient information confirming the identity of the applicant and the information sought; or
- (ii) where no other approved request form is available:
 - (a) the application is made using a QP 850A: 'Application for access or disclosure of QPS Information'; and
 - (b) the decision is made using a QP 850B: 'Decision of the application for access or disclosure of QPS information' (forms available on QPS Forms Select); and
- (iii) the considerations (i) to (xv) above are taken into account prior to releasing any information; and
- (iv) the written request or the form QP 850A: 'Application for access or disclosure of QPS Information' and QP 850B: 'Decision of the application for access or disclosure of QPS information' are filed at the member's station or establishment.

Obtaining information from external bodies

Officers seeking information from external bodies to the Service, e.g. the University of Queensland, may be required to complete a written request on a prescribed form of the external body. The prescribed form may require officers to provide evidence of identification and the purpose for which the information release is sought. The decision maker for the external body will make a decision based on the merits of the request and the relevant information privacy legislation.

See s. 2.17: 'Obtaining information from external bodies' of the Operational Procedures Manual.

Officers who have obtained a search warrant for information from an external body do not have to complete a written request for the information. See s. 2.8.3: 'Obtaining a search warrant' of the Operational Procedures Manual.

ORDER

Officers in charge are to note the contents of this circular and bring them to the notice of all members under their control.

POLICY

The contents of this circular will be incorporated into the relevant Service manuals in due course.

IAN STEWART
DEPUTY COMMISSIONER
(SPECIALIST OPERATIONS)