

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *ELS V QPS – WEAPONS LICENSING* [2022] QCAT 118

PARTIES: **ELS**  
(applicant)

**v**

**QUEENSLAND POLICE SERVICE- WEAPONS  
LICENSING**  
(respondent)

APPLICATION NO/S: GAR109-21  
GAR110-21  
GAR112-21

MATTER TYPE: General administrative review matters

DELIVERED ON: 5 April 2022

HEARING DATE: 25 March 2022

HEARD AT: Brisbane

DECISION OF: Member Lee

ORDERS: **IT IS THE DECISION OF THE TRIBUNAL THAT:**

- 1. Information provided to the Tribunal in the review proceedings has been correctly categorised as ‘criminal intelligence’ for the purposes of s 142A of the Weapons Act 1990 (Qld).**
- 2. Pursuant to section 66 of the Queensland Civil and Administrative Tribunal Act 2009 (Qld), publication of the following is prohibited:**
  - (a) the content of the information found to be ‘criminal intelligence’ to any person other than the respondent decision- maker; and**
  - (b) any information that will enable ELS to be identified.**

**THE TRIBUNAL DIRECTS THAT:**

- 1. The applicant must file in the Tribunal two (2) copies and give to the Queensland Police Service- Weapons Licensing one (1) copy of any further material including statements of evidence to be relied upon at the hearing of the review proceeding by:**

**4:00pm on 22 April**

**2022**

- 2. Queensland Police Service-Weapons Licensing must file in the Tribunal two (2) copies and give to the applicant one (1) copy of any further material to be relied upon at the hearing of the review proceeding, if any, by:**

**4:00pm on 6 May**

**2022**

- 3. In the event Queensland Police Service-Weapons Licensing gives further material as a result of direction numbered 2 above, the applicant must file in the Tribunal two (2) copies and give one (1) copy to Queensland Police Service-Weapons Licensing of any evidence in reply, if any, by:**

**4:00pm on 20 May**

**2022**

- 4. The proceeding is to be listed for a one (1) day oral hearing in Brisbane not before 20 May 2022.**

**CATCHWORDS:**

FIRE, EXPLOSIVES AND FIREARMS – FIREARMS – LICENCES AND RELATED MATTERS LICENCES AND REGISTRATION – LICENCE OR PERMIT – REVOCATION, CANCELLATION SUSPENSION OR SURRENDER – ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – WEAPONS – CRIMINAL INTELLIGENCE – where applicant’s firearms licences revoked and rejected – where applicant filed an application to review – where decision-maker filed material in the review proceeding – where decision-maker identified information filed in the review proceeding as ‘criminal intelligence’ – whether information has been correctly categorised as ‘criminal intelligence’ for the purposes of s 142A of the *Weapons Act 1990* (Qld)

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 17, s 19, s 20, s 21, s 28, s 66, s 90  
*Weapons Act 1990* (Qld), s 10B, s 29, s 142A

*DT & Anor v Department of Justice and AttorneyGeneral-Industry Licensing Unit & Anor* [2015] QCAT 228  
*Stretton v Queensland Police Service* [2018] QCATA 37

*QXH v Queensland Police Service-Weapons Licensing* [2018] QCAT 288

**APPEARANCES &  
REPRESENTATION:**

This matter was heard and determined on the papers pursuant to sections 32 and 90 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and section 142A

of the *Weapons Act* 1990 (Qld).

## REASONS FOR DECISION

### Background

- [1] The applicant seeks review of three decisions (collectively, the licence decisions) made by the Queensland Police Service – Weapons Licensing (QPS) on 15 January 2021 regarding the following:
- (a) Revocation of Firearms Licence, number [redacted];
  - (b) Rejection of Security Licence (Guard) – Employee renewal application, number [redacted]; and
  - (c) Rejection of Concealable License renewal application, number [redacted].

(collectively, the licenses)

- [2] Before these matters can proceed to a substantive review hearing, it is necessary to determine a preliminary issue, namely whether certain information filed by the QPS in the review proceedings<sup>1</sup> have been correctly categorised as ‘*criminal intelligence*’.

### Legal Framework

- [3] In order to ascertain the context in which ‘*criminal intelligence*’ arises, it is necessary to understand the relevant legal framework of weapons licensing.
- [4] The underlining principles of the *Weapons Act* 1990 (Qld) (the Act) are that weapon possession and use are subordinate to the need to ensure public and individual safety, and that public and individual safety is improved by the imposition of strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons. The object of the Act is to prevent misuse of weapons.<sup>2</sup>
- [5] The Act provides for an authorised officer to revoke or reject a licensee’s licence if satisfied, amongst other things, that the licensee is no longer a fit and proper person to hold such licence.<sup>3</sup>
- [6] In assessing whether a licensee is a fit and proper person, the authorised officer is required to have regard to a number of considerations in section 10B of the Act, as follows:

#### 10B Fit and proper person-licensees

- (1) In deciding or considering, for the issue, renewal, suspension or revocation of a license, whether a person is, or is no longer, a fit and proper person to hold a license, an authorised officer must consider, among other things-
  - a. the mental and physical fitness of the person; and

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<sup>1</sup> Consequent upon Application for miscellaneous matters filed in the Tribunal on 8 July 2021, and directions made on 11 August 2021.

<sup>2</sup> Section 3 of the Act.

<sup>3</sup> Section 29 of the Act.

- b. whether a domestic violence order has been made, police protection notice issued or release conditions imposed against the person; and
- c. whether the person has stated anything in or in connection with an application for a license, or an application for the renewal of a licence, the person knows is false and misleading in a material particular; and
- ca. whether there is any criminal intelligence or other information to which the authorised officer has access that indicates-
  - (i) the person is a risk to public safety; or
  - (ii) that authorising the person to possess a weapon would be contrary to the public interest; and
- d. the public interest.

- [7] Relevantly, section 29(3) of the Act requires the Commissioner or Deputy Commissioner acting personally, to approve the revocation of a licence if the authorised officer is acting on the basis of ‘*criminal intelligence*’ or other information of the kind mentioned in section 10B(1)(ca) of the Act.
- [8] The Act confers jurisdiction on the Tribunal to review certain decisions, giving a person aggrieved by the decision to apply to the Tribunal for review of such decision.<sup>4</sup>
- [9] In reviewing decisions, the Tribunal must decide the review proceedings in accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) and the enabling Act (the Act) with all of the functions of the decision maker for the reviewable decision.<sup>5</sup>
- [10] In so doing, the Tribunal conducts a fresh hearing on the merits to produce the correct and preferable decision.<sup>6</sup> The decision-maker is required to assist the tribunal in reaching its decision in this respect, including providing to the Tribunal ‘*any document or thing*’ in the decision maker’s possession or control that may be relevant to the review of the decision.<sup>7</sup>
- [11] In exercising its review function, the Tribunal can assess information sought to be relied upon by the QPS of ‘*criminal intelligence*’ but is not bound to act on it, or to give notice to the applicant of the QPS’s application pursuant to section 142A of the Act.<sup>8</sup>
- [12] The Act provides a mechanism upon which to assess whether such information is categorised as ‘*criminal intelligence*’ for example by conducting a closed hearing in the absence of the applicant.<sup>9</sup>
- [13] If the Tribunal determines that the information filed by the QPS in the review proceeding has been correctly categorised as ‘*criminal intelligence*’, then the

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<sup>4</sup> Section 142 of the Act.

<sup>5</sup> Section 19 of the QCAT Act.

<sup>6</sup> Ibid, s 20.

<sup>7</sup> Ibid, s 21.

<sup>8</sup> *Stretton v Queensland Police Service* [2018] QCATA 37.

<sup>9</sup> Section 142A of the Act.

Tribunal must ensure that that it does not disclose the content of the criminal intelligence. If the Tribunal finds to the contrary, then the commissioner of the QPS may withdraw the information from consideration by the Tribunal.

**Is the information correctly categorised as ‘criminal intelligence’?**

- [14] The basis for the revocation and rejection of the licence decisions was that the applicant was not a fit and proper person on public interest grounds. Reference was made to five criminal and traffic offences which occurred on 9 June 2010 and 16 September 2016.
- [15] The reasons given to the applicant for the revocation and rejection decisions was because of the following charges:
  - (a) Dangerous conduct with weapon; and
  - (b) Secure storage of weapons.
- [16] Information about ‘*criminal intelligence*’ was subsequently produced to the Tribunal in accordance with the decision maker’s duty to assist the Tribunal to reach the correct and preferable decision, when the applicant sought review of the license decisions.
- [17] The QPS submits that the ‘*criminal intelligence*’ obtained further supports that the applicant is not a fit and proper person to hold a licence given the serious concerns about his [redacted].
- [18] Section 142A defines ‘*criminal intelligence*’ to mean:
  - criminal intelligence** or other information of the kind mentioned in section 10B(1) (ca) or 10C(1) that could, if disclosed, reasonably be expected-
    - (a) to prejudice the investigation of a contravention or possible contravention of this Act; or
    - (b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of this Act, to be ascertained; or
    - (c) to endanger a person’s life or physical safety; or
    - (d) to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of this Act; or
    - (e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety.
- [19] Schedule 2 of the Act defines ‘*criminal intelligence*’ in relation to a person as meaning:
  - any information about the person’s connection with or involvement in criminal activity.<sup>10</sup>
- [20] In its submissions, the QPS identified the following material as ‘*criminal intelligence*’:

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<sup>10</sup> Ibid, Schedule 2.

- (a) [redacted];
- (b) [redacted];
- (c) [redacted];
- (d) [redacted]; and
- (e) [redacted].

[21] The QPS submits that:

- (a) the criminal intelligence could, if disclosed, be reasonably expected to significantly prejudice the investigation of a contravention or possible contravention of the Act; and
- (b) there are serious concerns that the applicant's [redacted] sufficient to satisfy the test that he is not a fit and proper person to hold a licence.

[22] Having carefully considered the information supplied by the QPS in support of its application, I accept the evidence and am satisfied that the information identified by the QPS as '*criminal intelligence*' is '*criminal intelligence*' for the purposes of section 142A of the Act.

[23] In doing so, I adopt the broad approach taken in *DT & Anor v Department of Justice and Attorney General- Industry Licensing Unit & Anor* [2015] QCAT 228 and *QXH v Queensland Police Service-Weapons Licencing* [2018] QCAT 288 in finding that the information contained in the QPS's submissions (detailed at paragraph 20 above) is '*criminal intelligence*' for the purposes of section 142A of the Act.

[24] In my view, this information satisfies the criteria under section 142A(3)(a),(b),(d) and (e) of the Act in that, if disclosed, the information would prejudice the investigation of a contravention of the Act, enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the Act, to be ascertained, prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of this Act or prejudicing the maintenance or enforcement of a lawful method or procedure for protecting public safety.

### **Human Rights**

[25] No submissions were made by either party addressing the *Human Rights Act* 2009 (Qld) (HRA).

[26] I acknowledge the HRA and consider that section 31 HRA is potentially engaged and limited by the above decision, namely the right to a fair hearing on this preliminary issue.

[27] However, I am satisfied that the limitation placed on the applicant's human right because of this decision is lawful, proportionate to the circumstances and reasonably justifiable because:

- (a) It has been determined that the criteria in the Act have been met, therefore protection from disclosure of the '*criminal intelligence*' is lawful and within the jurisdiction of the Tribunal;

- (b) It is proportionate to the circumstances given the potential consequences if the information is disclosed;<sup>11</sup>
- (c) The overriding object of the Act is to prevent misuse of weapons and the principles are that weapon possession and use are subordinate to the need to ensure public and individual safety;
- (d) The information arising from '*criminal intelligence*' is only one factor relied upon by the QPS in assisting the Tribunal to reach the correct and preferable decision in the review hearing. The grounds upon which the decisions were made by the QPS were as a result of charges of dangerous conduct with a weapon and secure storage of weapons;
- (e) The substantive review hearing has yet to take place. The applicant will be afforded an opportunity to file any further material he wishes to rely upon at the hearing, beforehand; and
- (f) The human right engaged has been balanced against the risk to the community if the '*criminal intelligence*' is disclosed.

### **Conclusion**

- [28] I have found that the identified information to be relied upon by the QPS in the review proceedings is '*criminal intelligence*'. Consequently, the applicant does not know of the nature or extent of this information because it is protected pursuant to section 142A of the Act.
- [29] The next step is the hearing of the substantive issue, namely the review hearing of the licence decisions to revoke and reject the weapons licences. Both parties should now be given an opportunity to file any further material to be relied upon at the review hearing. I will make directions accordingly.

### **Non-Publication orders**

- [30] Further to the preliminary direction made on 11 August 2021 and in view of the above findings, it is appropriate that I now make a definitive order pursuant to section 66 of the QCAT Act prohibiting the publication of:
  - (a) the contents of those identified documents to any person other than the respondent decision-maker; and
  - (b) any information that may enable SEL to be identified.
- [31] These orders are appropriate to avoid the publication of confidential information which must not be disclosed. For this purpose, the Tribunal will deliver two sets of reasons; one set to the respondent decision maker and a redacted set to ELS and for publication.

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<sup>11</sup> Section 142A of the Act.