MAGISTRATES COURT OF QUEENSLAND

CITATION:	*Police v Joseph* [2018] QMC 12
PARTIES:	**COMMISSIONER OF THE QUEENSLAND POLICE SERVICE** (witness) **v** **JOSEPH Paul Desmond Wayne** (applicant/defendant)
FILE NO/S:	SOUT MAG – 00024851/17
DIVISION:	Magistrates Courts
PROCEEDING:	Application for production of documents
ORIGINATING COURT:	Magistrates Court at Southport
DELIVERED ON:	8 August 2018
DELIVERED AT:	Southport
HEARING DATE:	3 August 2018
MAGISTRATE:	Magistrate MacKenzie
ORDER:	**1. I dismiss the application for disclosure directing the Commissioner of the Queensland Police to produce items 1 to 25, save for Items 13, 19 and 22 on Table 1** **2. I direct that the Commissioner of the Queensland Police Service disclose to the Applicant the following items by 4.00 pm 29 August, 2018:** **(a) Items 13, 19 and 22 on Table 1.** **(b) The irregularity between Items 3, 7, 10, 14 and 18.**
CATCHWORDS:	CRIMINAL LAW – PRACTICE AND PROCEDURE – COMMITTAL PROCEEDINGS – APPLICATION FOR PRODUCTION OF DOCUMENTS SUBJECT OF SUMMONS OF A WITNESS - production of documents - public interest immunity – legitimate forensic purpose *Justices Act 1886 (Qld)*, s 83A (5)(aa), s 83A (5) (a)(ii) *Criminal Code (Qld) s590AJ (2)(e) and (f), s590AQ* *Police Powers and Responsibilities Act 2000 (Qld)*, s803

COUNSEL: J. Nyst (sol) for the applicant
Const J. Merchant for the prosecution
M. Capper for the Commissioner of Police, Qld

SOLICITORS: Nyst Legal for the applicant
Queensland Police Service Prosecutions
Queensland Police Service Solicitor for the witness

[1] The applicant Paul Desmond Wayne Joseph ("the Applicant") is charged with one count of production of dangerous drugs. Put generally, I understand it is alleged that he provided equipment and generally assisted Vietnamese gardeners to produce commercial scale cannabis crops through a business Hyalite Super Grow stores. He seeks production of documents pursuant to s 590AJ (2) (e) and (f) of the *Criminal Code (Qld)* ("QCC") and s83A (5) (aa) and s 83A (5) (a) (ii) of the *Justices Act (Qld)*.

[2] The Commissioner of Police (Qld) ("the Commissioner") was directed to attend this Magistrates Court on 3 August, 2018. On that date a legal representative appeared on behalf of the Commissioner and objected to production of certain requested documents. An affidavit under the hand of Jon Harold Wacker, a Detective Superintendent of Police, sworn 2 August, 2018, was produced to support this objection.

[3] The hearing of this application is authorised under s 83A of the *Justices Act 1886* which provides the process by which a magistrate may hear an application for a direction about the conduct of a proceeding. Any direction made will be binding unless leave is given to reopen.[1]

[4] Initially, the applicant objected to the reception of the affidavit under the hand of Jon Harold Wacker, in support of the Commissioner's public interest objection. This was primarily because the Applicant had not seen the affidavit. However, the procedure proposed by the Commissioner is not unusual. Common sense dictates that a claim for secrecy must be heard without disclosure to the very party sought to be excluded.
There is high authority to support this disposition of such matters. Mason J said in *Sankey v Whitlam* (1978) 142 CLR 1 at 96, that the objecting party should file a confidential affidavit *"with precision the grounds on which it is contended that documents or information should not be disclosed so as to enable the court to evaluate the competing interests".*[2] I also note Section 590AQ (5) of the *Criminal Code (Qld)* which provides that the court may inform itself in any way it considers appropriate in deciding whether to make a public interest direction.

The Subject Documents

1. Particularly, the Applicant has sought the following:

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[1] Section 83A Justices Act (Qld)
[2]See also *National Crime Authority v Gould* (1989) 90 ALR 489 at 497; *Yooyen, Tait and Poompiriyapinte v R* (1991) 57 A Crim R 226 at 233; *The Commissioner Australian Federal Police v Poompiriyapinte* NSWSC [23 August, 1990] unreported per Badgery-Parker, J, *R v Meissner* (1994) 76 A Crim R 81 at 84-85; *Director of Public Prosecutions v Smith* (1996) 86 A Crim R 308 at 310.

(a) Search warrant of Hyalite Super Grow Sore situated in a commercial/industrial estate at a Varsity Lakes address, Queensland 4227, also known as Lot 5 SP178548;
(b) Search warrant of Highset timer dwelling house partially built in underneath situated at **a Salisbury address** also known as Lot 35 RP71389 LS: Brisbane, Yeerongpilly;
(c) Search warrant of Lowset dwelling house, carport, yard and vehicles situated at **an Inala address** also known as Lot 426 RP111289 LA: Brisbane – Yeerongpilly;
(d) Search warrant of dwelling house, vehicles, Yard, Shed, Garage situated at **an Arundel address, QLD**, also known as Lot 96 RP92786;
(e) **Telecommunications Intercept Warrant** No. Q17053/00; and
(f) **Telecommunications Intercept Warrant** No. Q17054/00.

2. Practically, the Applicant is seeking disclosure of 25 items which are relatively short redactions from a large volume of disclosed material relating to each of the applications for search warrants at the above-mentioned four properties and a statement of Mark Philip Slater in support of the two telecommunications warrants. It is to be noted that a number of these redactions are duplicated in the successive applications. A table marked as "Table 1" itemises these redactions as follows:

Table 1.

Item Number.	Description	Basis for Non- Disclosure
	Varsity Lakes address	
1.	Application for Search Warrant: a Varsity Lakes address Deponent DET SGT J. McCarthy Page 2; paragraph 3	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC
2.	Application for Search Warrant: a Varsity Lakes address Deponent DET SGT J. McCarthy Page 2; paragraph 4	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC
3.	Application for Search Warrant: a Varsity Lakes address Deponent DET SGT J. McCarthy Page 2; paragraph 6	Disclosure of an Informer's Identity (by inference): s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b)
4.	Application for Search Warrant: a Varsity Lakes address Deponent DET SGT J. McCarthy Page 5; paragraph 16 re: "HUYNH" (NB: Part of this narrative is already disclosed page 2 re: an Inala address (Item10))	Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
5.	Application for Search Warrant: a Varsity Lakes address Deponent DET SGT J. McCarthy Page 6; paragraphs 24 and 25	Disclosure of an Informer's Identity (by inference): s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b)
6.	Application for Search Warrant: a Varsity Lakes address	Disclosure of another ongoing investigation s590AQ(2)(a)(iv)

	Deponent DET SGT J. McCarthy Page 7; paragraphs 30, 31 and 32	QCC
	a Salisbury address	
7.	Application for Search Warrant: a Salisbury address Deponent: DET SNR CONST J. O'Hara Page 2 "*Background …Vietnamese producers" & "Forrest Lake … On Tuesday 31 January, 2017*"	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b)
8.	Application for Search Warrant: a Salisbury address Deponent: DET SNR CONST J. O'Hara Page 3 *"(ACT) … On 29.06.2017*"	(Identical Information to Item 4) Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
9.	Application for Search Warrant: a Salisbury address Deponent: DET SNR CONST J. O'Hara Page 4 Third Paragraph	Disclosure of Methodologies s 803(1)(c) & (2)(d)

	an Inala address	
10.	Application for Search Warrant: an Inala address Deponent: DET SNR CONST J. O'Hara Page 2 "*Background …Vietnamese producers" & "within the vehicle … On Tuesday 31 January, 2017*"	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b)
11.	Application for Search Warrant: an Inala address Deponent: DET SNR CONST J. O'Hara Page 3 Sixth Paragraph Re: "Huynh"	(Identical Information to Item 4) Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
12.	Application for Search Warrant: an Inala address Deponent: DET SNR CONST J. O'Hara Page 4 Third Paragraph	(Identical information to Item 9) Disclosure of Methodologies s 803(1)(c) & (2)(d)
13.	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 1 (last sentence)	Disclosure of Methodologies s 803(1)(c) & (2)(d) **
	an Arundel address	
14.	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 2 three redactions	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC
15	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 3 - first three redactions	Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
16.	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 3 - second three redactions	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC
17.	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 4 - single redaction	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC

18.	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 5 - first redaction	Disclosure of an Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b)
19.	Application for Search Warrant: an Arundel address Deponent: DET SNR CONST T. Surman Page 5 - second redaction (Items 19 and 22 are identical)	Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
	Telecommunications Warrants	
20.	Application for Telecommunications Warrant: Statement of Mark Philip Slater Pages 4, 5 and 6 redactions	Disclosure of one Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC
21	Application for Telecommunications Warrant: Statement of Mark Philip Slater Pages 8,9 and 10 redactions	Disclosure of another confidential source of information s590AQ(2)(a)(vi) QCC Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
22	Application for Telecommunications Warrant: Statement of Mark Philip Slater Page 14 paragraph 75 re: THACH (Items 19 and 22 are identical)	Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
23	Application for Telecommunications Warrant: Statement of Mark Philip Slater Page 15 paragraphs 84 & 85	Disclosure of one Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC
24	Application for Telecommunications Warrant: Statement of Mark Philip Slater Page 19 paragraph 107	Disclosure of another confidential source of information s590AQ(2)(a)(vi) QCC Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC
25	Application for Telecommunications Warrant: Statement of Mark Philip Slater Pages 26paragraph 152, 154 & 156	Disclosure of one Informer's Identity: s119 & s 120 Drugs Misuse Act ("DMA") & s 590AQ(2)(b) QCC Disclosure of another ongoing investigation s590AQ(2)(a)(iv) QCC

The public interest objection

[5] The Commissioner objects to the disclosure of the redactions in Table 1 on the grounds of public interest immunity. The onus is initially upon the Applicant to establish a prima facie basis for disclosure. This of course is not without difficulty given the secrecy. Martin, J, in *R v Moti* [2009] QSC 293 at [8] to [10], noted that in any application for disclosure, this common law position is clear in the decisions in *Alister v R* (1983) 154 CLR 404 and, latterly, in *Attorney-General (NSW) v Chidgey* (2008) 182A Crim R 536. He noted that the relevant "public interest" test to be that set out in the reasons of Beasley JA in *Chidgey as*:

> *"The test for determining whether a party is required to produce documents pursuant to a subpoena was stated by Simpson J (Spigelman CJ and Studdert J agreeing) in R v Saleam [1999] NSWCCA 86 at [11], in the following terms:*
> *'The principles governing applications [for an order that documents not be produced] are no different from those governing applications for access to documents produced in answer to a subpoena. Before access is granted (or an order to produce made) the applicant must*
> *(i) identify a legitimate forensic purpose for which access is sought; and*
> *(ii) establish that it is "on the cards" that the documents will materially assist his case.'"*

[6] Further, Martin, J noted in *R v Moti* that the introduction of changes in 2003 to Chapter 62, Divisions 2 and 3 in sections 590AA to 590AX of the *Criminal Code (Qld)* broadened the common law test. He particularly relied upon the decision of *R v Rollason; ex parte Attorney-General (Qld)* [2008] 1 Qd R 85 when he said:

> *"[40] The statement of the court* (viz: in *R v Rollasson*) *that 'no narrow, technical or 'prosecution-centric' view should be taken of the language which the legislature has used in s 590AJ (2) (e) and (f)' is particularly relevant in this application. The test under this part of the Criminal Code is much less stringent than the 'on the cards' test applied with respect to the subpoenas.'"*

[7] Accordingly, *R v Rollasson* casts a broad net. I regard the identification of evidence or information potentially probative of the defence case to quite elastic and beyond the scope of prosecution understanding. For example, a statement by a crown witness describing some act by a Defendant which is totally irrelevant to the prosecution case might have critical value to a defence case if the witness was untruthful or mistaken about that act. The reliability or credibility of that witness then might be significantly undermined unbeknown to the prosecution. More relevantly, the evidence of a police informer who provides material information to the prosecution could not normally be considered "irrelevant". This broad view of disclosure is exposed in a well-developed set of principles set out in *R v Spizziri* [2001] 2 Qd R 433.

[8] There has been understandably little argument between the parties that the applicant has identified and established a legitimate forensic purpose for obtaining the documents. Obviously the evidence of police informers is highly relevant. That the

Commissioner has provided all of the supporting applications short of some limited redactions is a manifestation of that agreement. I have proceeded on this basis.

[9] The next issue is whether or not the Commissioner has established a legitimate basis for a public interest objection and, if so, why that public interest objection should be paramount to the Applicant's right to disclosure. The foundational common law statement of principle on public interest immunity in Australia is found in the seminal decision of *Stankey v Whitlam* (1978) 142 CLR 1, where Gibbs ACJ said at 38:

> *"The general rule is that the court will not order the production of a document, although relevant and otherwise admissible, if it would be injurious to the public interest to disclose it. However, the public interest has two aspects which may conflict. These were described by Lord Reid in Conway v Rimmer, as follows:*
>
> *'There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done.'"*

[10] The common law has been largely adopted in Queensland statute since the passing into law of Section 803 of the *Police Powers and Responsibilities Act (Qld)*:

803 Protection of methodologies

1. In a proceeding, a police officer cannot be required to disclose information mentioned in subsection (2), unless the court is satisfied disclosure of the information is necessary—

(a) for the fair trial of the defendant; or
(b) to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or
(c) in the public interest

2. The information is information that could, if disclosed, reasonably be expected—
(a) to prejudice the investigation of a contravention or possible contravention of the law; or
(b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, 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 the law; or
(e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or to facilitate a person's escape from lawful custody."

[11] This section has not been the subject of any significant judicial interpretation. However, the explanatory memorandum to the *Police Powers and Responsibilities*

Bill 2000[3] is instructive. It which formulated Section 366 of the *Police Powers and Responsibilities and Other Amendments Act* 2000, effective 23 June, 2006. (Section 366 was later renumbered as s 803 of the *Police Powers and Responsibilities Act.*) The examples provided in the Bill are apposite to a number of the Commissioner's bases of objection in this matter (relevantly):

POLICE POWERS AND RESPONSIBILITIES BILL 2000: EXPLANATORY NOTE 5 of 2000

Protection of methodologies Clause 366 identifies those matters which a court should take into account in considering public interest immunity and crown privilege. … Subclause (2) provides the information for subclause (1) is information that could, if disclosed, reasonably be expected to—

(a) prejudice an investigation of a contravention or possible contravention of the law; or
Example— Where the disclosure would alert suspects to an ongoing covert investigation such as drug dealing.

(b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
Examples—
1. Where the name of an informant may be revealed.
2. Where an informant may be identified because information was revealed to the informant by the offender either alone or in the presence of a very limited number of the offender's associates.

(c) endanger a person's life or physical safety; or
Examples—
1. Where the information would lead to the identification of an informant and place the informant in physical danger through retribution.
2. Where the information would disclose the location of a safe house where a witness whose life may be in danger from the offender is kept.
3. Where the information may lead to an offender or his or her associates learning the true home address of an undercover police officer or his or her family and therefore place that officer or his or her family in danger.

(d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
Examples—
1. Where the information would reveal the procedures adopting in conducting covert surveillance activities. …"

[12] The objection of the Commissioner to the disclosure of the redacted evidence has been outlined generally in Table 1. I have read the affidavit of Jon Harold Wacker closely and with reference to each of the redactions sought to be disclosed. Where the redacted material relates to the identity of an informer, the Commissioner has relied upon Sections 119 and 120 of the Drugs Misuse Act (Qld) read with Section 590AQ (2) (b):

[3] See pp 138-139

*"**DRUGS MISUSE ACT 1986 - SECT 119***
119 Protection of informers

(a) Where an informer supplies information to a police officer in respect of the commission of an offence defined in part 2 the informer's identity at all times shall be kept confidential.

(b) A person who discloses the name of an informer, or any other particular that may be likely to lead to the informer's identification, is guilty of a crime.
Penalty: Maximum penalty—5 years imprisonment.

(c) A person is not criminally responsible for an offence defined in subsection (2) if the person proves that the disclosure was made in good faith for the protection of the interests of the informer or for the public good."

DRUGS MISUSE ACT 1986 - SECT 120
120 Source of information not to be disclosed

(1) Where an informer supplies information to a police officer in respect of the commission of an offence defined in part 2 then in any proceedings whether under this Act or otherwise—

(a) the prosecutor; or

(b) a person who appears as a witness for the prosecution; or

(c) where a police officer appears as a witness for the defence, that police officer*;*

"shall not be asked and if asked shall not be compelled to disclose the name of an informer, or other particular that may be likely to lead to the informer's identification, or the fact that in respect of the offence he or she received information from an informer or he or she furnished information to an informer or the nature of the information."

(2) In any proceedings arising out of a charge of having committed an offence defined in part 2 a police officer appearing as a prosecutor or witness shall not be compelled to produce any reports or documents, made or received by the police officer in the police officer's official capacity or containing confidential information in relation to such offence, or to make any statement in relation to such reports, documents or information.

590AQ LIMIT ON DISCLOSURE CONTRARY TO THE PUBLIC INTEREST

(1) The prosecution is not, for a relevant proceeding, required under this chapter division to disclose to the accused person a thing, other than as required under this section, if the prosecution—

(a) considers the disclosure would be contrary to the public interest; and

(b) gives the accused person a written notice stating that the prosecution—

(i) considers the disclosure would be contrary to the public interest; and

(ii) is not required to disclose the thing to the accused person other than as is required in this section.

(2) Without limiting subsection (1) (a), the prosecution is not required to disclose the thing to the accused person if—

(a) there are reasonable grounds for considering disclosure of the thing would—

(i) prejudice the security, defence or international relations of Australia; or

(ii) damage relations between the Commonwealth and a State or between 2

(iii) facilitate the commission of another offence; or

(iv) prejudice the prevention, investigation or prosecution of an offence; or

(v) prejudice the usefulness of surveillance or other detection methods; or

(vi) disclose, or enable a person to find out, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the Commonwealth or a State; or

(vii) cause unlawful or dishonest interference with potential witnesses;

(viii) prejudice the proper functioning of the government of the Commonwealth or a State; or

(b) disclosure of the thing to the accused person is prohibited by law.

***Example for paragraph (b)*—Disclosure of an informer's identity under the *Drugs Misuse Act 1986*, section 119**

(3) However, unless disclosure to the accused person of the thing is prohibited by law, the court may direct that the thing be disclosed to the accused person.

(4) The court may make a direction only if the court is satisfied, on balance that disclosing the thing to the accused person is not contrary to the public interest.

(5) In deciding whether to make a direction, the court may inform itself in any way it considers appropriate.

(6) Without limiting the matters the court may take into account in deciding whether to make a direction, the court must take into account the following matters—

(a) the importance of the thing in the relevant proceeding, including, for example, whether the thing is an exculpatory thing;

(b) the nature of the offence;

(c) the likely effect of disclosing the thing and how publication of the thing may be limited;

(d) whether the substance of the thing has already been published. …"

(my embolded emphasis)

[13] It was held in *R v Demir* [1990] 2 Qd R 433 at 435, that the s119 and s120 of the Drugs Misuse Act (Qld) prohibition against a witness being asked the name of an informer or if asked being "compelled to disclose the name" operated so that it did "not require that the Crown or the witness claim the benefit of the section before it comes into operation.[4] Nor can the operation of the section be waived by either of

[4] See also *Commissioner of the Police Service v Cornack* [2004] 1 Qd R 627 at [47] and at footnote 5.

them." In other words, it operated as an absolute prohibition against the disclosure. If Sections 119 and 120 of the Drugs Misuse Act (Qld) are operative then the discretion vested in this court to direct the Commissioner to disclose the redacted sections relating to informers is fettered by Section 590AQ (3).

[14] Who or what is an "informer"? None of the *Criminal Code (Qld)*, *Drugs Misuse Act (Qld)* or *Police Powers and Responsibilities Act (Qld)* contain a definition of an "informer". However, the "informer" has been known to the common law for centuries. In the trial of Hardy in 1794 for treason (24 State Tr 199) Lord Chief Justice Eyre at 816 said the law did not enforce "discovery of the channels by which the disclosure was made to the officers of justice." In the same case Buller J at 818 said: "... discovery is necessary for the purpose of obtaining public justice, and if you call for the name of the informer in such a case no man will make discovery and public justice would be defeated." The Full Court of the Queensland Court of Appeal in *R v The Stipendiary Magistrate at Southport, ex parte Gibson* [1993] 2 Qd R 687 and The *Commissioner of Police (Qld) v Cornack, Magistrate & Anor* [2004] 1 Qd R 627 at [1] to [6] are useful sources of that history. However, what is abundantly clear is that an "informer" has an element of confidentiality which distinguishes the "informer" from other persons who simply provide information to police officers.

[15] Further, the Commissioner has relied on "an exposure of methodologies" public interest objection pursuant to Section 803 of the *Police Powers and Responsibilities Act (Qld)* where the redacted material does not refer to informers. The Affidavit of Jon Harold Wacker provides direct and expert opinion evidence of the methodologies not disclosed in the redactions which are not commonly known.

Disposition

[16] Many of the subject redactions are obviously references to named informers and are duplicated in the several applications. However, in some of the items, inferences have had to draw, that should the redacted information be released, there would be a probable exposure of the identity of the informer. I had little trouble drawing that inference based on the direct evidence and expert opinion of Jon Harold Wacker and common sense. Further, even if Section 590AQ(2)(b) did not operate as a statute bar, common law principles would uphold the public interest objection in my view. Accordingly, I dismiss the application to direct the Commissioner to disclose Items 1, 2, 3, 5, 7, 10, 14, 16, 17, 18, 20, 23 and 25 on the basis that they would reveal the identity of an informer.

[17] Section 590AQ(2)(a)(iv) of the *Criminal Code (Qld)* provides for non-disclosure if the redaction(s) would "prejudice the prevention, investigation or prosecution of an offence". I find that Items 4, 6, 8, 11, 15, 19, 21, 24 and 25 based on the direct evidence and expert opinion of Jon Harold Wacker would so prejudice ongoing current investigations and prosecutions. Accordingly, I dismiss the application to direct the Commissioner to disclose Items 4, 6, 8, 11, 19, 21, 24, and 25 on that basis.

[18] Pursuant to Section 590AB of the *Criminal Code (Qld)* recognises a fundament prosecution obligation to disclose material in accordance with long-standing common law principles of fairness and candour: see *Mallard v The Queen* (2005) 224 CLR 125 at [16]. If these current investigations and prosecutions redacted as

items 4, 6, 8, 11, 19, 21, 24 and 25 evolve into "open" proceedings or are completed, this disclosure objection should be revisited.

[19] Section 590AQ(2)(a)(vi) of the *Criminal Code (Qld)* provides for non-disclosure if the redaction(s) would "disclose, or enable a person to find out, the existence or identity of a confidential source of information relating to the enforcement or administration of a law of the Commonwealth or a State". I find that the redacted Items 21 and 24, based on the direct evidence and expert opinion of Jon Harold Wacker, should remain confidential in the public interest. Accordingly, I dismiss the application to direct the Commissioner to disclose Items 21 and 24.

[20] Sections 803 of the *Police Powers and Responsibilities Act (Qld)* and Section 590AQ(2)(a)(v) of the *Criminal Code (Qld)* provides for non-disclosure if the redaction(s) would (inter alia) "prejudice the effectiveness of surveillance methods". Based on the direct evidence and expert opinion of Jon Harold Wacker and common sense, I have had little trouble in finding that the redacted items 9 and 12 should remain confidential in the public interest. Accordingly, I dismiss the application to direct the Commissioner to disclose Items 9 and 12.

[21] In relation to Item 13, the Commissioner claims a "methodologies disclosure" objection over some very generalised, commonly used, non-specific words which also describe already disclosed methods in this investigation. This redaction does not meet the descriptor of 'methodologies" pursuant to Sections 803 of the *Police Powers and Responsibilities Act (Qld)* and Section 590AQ(2)(a)(v) of the *Criminal Code (Qld)*. I direct that Item 13 be disclosed.

[22] In relation to Items 19 and 22, which are identical, the Commissioner claims an "ongoing investigation disclosure" objection over a statement that is flagrantly obvious. This redaction does not meet the descriptor of "prejudice the prevention, investigation or prosecution of an offence 'methodologies" Section 590AQ(2)(a)(iv) of the *Criminal Code (Qld)*. I direct that Items 19 and 22 be disclosed.

[23] Unfortunately, there appears to be an irregularity amongst Items 3, 7, 10, 14 and 18 concerning surveillance at 56 Laricina Circuit, Forest Lake. The following information was openly disclosed in Item 10 (Application for Search Warrant: an Inala address; Deponent: DET SNR CONST J. O'Hara, at Page 2): *"The white Honda Civic Qld Registration 415TQH was observed on a further two occasions at the HYALITE premises on the 19 January, 2017 at 1229 hours and 23 January, 2017 at 1130 hours. On each occasion there were multiple people in the vehicle."*

ORDERS

1. **I dismiss the application for disclosure by the Commissioner of the Queensland Police (Qld) of items 1 to 25, save for Items 13, 19 and 22 on Table**

2. **I direct that the Commissioner of the Queensland Police Service disclose to the Applicant the following items by 4.00 pm 29 August, 2018:**

    (a) Items 13, 19 and 22 on Table 1.
    (b) The irregularity between Items 3, 7, 10, 14 and 18.

3. **I order that the affidavit of affidavit under the hand of Jon Harold Wacker, a Detective Superintendent of Police, sworn 2 August, 2018 be sealed and only opened by a judicial officer holding the rank of Magistrate or above.**

4. **I make no order as to costs pursuant to Section 83A(8) of the *Justices Act (Qld)*.**