

**CITATION:** *Frazer v Assistant Commissioner Michael James Condon* [2016] QCAT 271

**PARTIES:** Jeffrey Robert Frazer  
(Applicant)  
v  
Assistant Commissioner Michael James Condon  
(Respondent)

**APPLICATION NUMBER:** OCR148-15

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 18 April 2016

**HEARD AT:** Brisbane

**DECISION OF:** **Dr Cullen, Member**

**DELIVERED ON:** 20 July 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The disciplinary sanction imposed by Assistant Commissioner Condon on Senior Constable Frazer, that from 22 July 2015 he be reduced in rank from Senior Constable pay point 2.9 to Senior Constable pay point 2.5, is confirmed.**

**CATCHWORDS:** DISCIPLINARY PROCEEDINGS – POLICE SANCTION – Officer’s argument that the penalty imposed was not proportionate rejected.

*Police Service Administration Act 1990 (Qld), s 10.1, s 10.2*  
*Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 21*

*O’Brien v Assistant Commissioner Stephen Golschewski, Queensland Police Service* [2014] QCATA 148

**APPEARANCES:**

**APPLICANT:** The Applicant was self-represented

**RESPONDENT:** Mr John Merrell, of Counsel, instructed by Ms Belinda Wadley, Legal Services, Public Safety Business Agency

## REASONS FOR DECISION

- [1] Senior Constable Jeffrey Frazer is a long-standing officer with the Queensland Police Service ('QPS'), having completed 28-years of police service in both in Queensland and New South Wales.
- [2] Although he has worked for QPS for a suitably lengthy period to familiarise himself with applicable policies and procedures, Senior Constable Frazer has again found himself subject to disciplinary proceedings arising out of his conduct as an officer. The current proceedings arose after he accessed and released confidential information and misused police resources, without a business purpose. As will be revealed later in this decision, this was not the first time Senior Constable Frazer has been in a predicament in relation to his inability to understand the very clear parameters set by QPS in relation to this sort of conduct.
- [3] The Tribunal's review in this matter is limited to a review of the appropriateness of the sanction imposed by the Respondent, Assistant Commissioner Michael Condon, in relation to Senior Constable Frazer's conduct.<sup>1</sup>

### What was the nature of the substantiated misconduct?

- [4] Following a disciplinary hearing by the respondent, the following matters were substantiated:

#### **Matter One:**

That on a date unknown between 29 June 2012 and 21 December 2012 at the Sunshine Coast your conduct was improper in that you:

- a) accessed and released official and confidential information without an official purpose relating to the performance of your duties.

[Sections 1.4, 10.1 and 10.2 of the *Police Service Administration Act* 1990 and Section 9(1)(f) of the *Police Service (Discipline) Regulations* 1990 and section 16 of the Standard of Practice as contained in the Human Resource Policies]

#### **Further and better particulars**

Investigations have identified that:

#### **In relation to Matter One:**

- Accessed intelligence reports regarding an assault complaint by Wayne Dwyer who is known to you on twelve (12) occasions;
- Accessed QPRIME, Queensland Department of Transport and Main Roads (TRAILS) records relating to Lynda Meyers, Jacqueline

<sup>1</sup> The Directions issued by QCAT on 3 December 2015 constrain the review in this matter to a consideration of the sanction imposed.

Fraser, Tara Caravais, Adam Suter and Phil or Phillippe Sanchez who were known to you on seven (7) occasions;

- Accessed QPRIME, Queensland Department of Transport and Main Roads (Driver's Licence and Traffic Infringement History) records relating to Mia Whiteoak, Paul Woosley and Emma Robinson who were known to you on three (3) occasions;
- Accessed QPRIME records relating to Rachael Partridge, Stephanie Pollock, Megan McInnes, Vanessa Kraut, Rob or Robert Reeves, Angela Orpwood, Shari Bowden, Cherie-Ann Moroney, Shane Riley, Miquela Glass and Jacqueline Fraser who were known to you on twelve (12) occasions;
- The searches of the Queensland Police Service computer systems on these persons who were known to you were conducted without official purpose relating to your duties;
- You admit releasing information you had obtained from the searches of the Queensland Police Service computer systems relating to Jacqueline Fraser, Tara Caravais, Mia Whiteoak, Emma Robinson, Vanessa Kraut, Robert Reeves, Angela Orpwood and Shane Riley and
- Released this information to these persons for personal reasons without any official purpose.

**Matter Two:**

That on a date unknown between 3 April 2010 and 20 November 2010 at the Sunshine Coast you conduct was improper in that you:

- a) Whilst on duty misused police resources without an official purpose relating to the performance of your duties as a member of the Queensland Police Service; and
- b) Were absent from duty without reasonable cause.

[Sections 1.4 and 7.4 of the *Police Service Administration Act 1990* and section 9(1)(e) and 9(1)(f) of the *Police Service (Discipline) Regulations 1990*]

**Further and better particulars**

Investigations have been identified that:

**In relation to Matter Two (a) & (b):**

- On 4 April 2010 while rostered to perform traffic enforcement duties at the Caloundra Police Station you picked up a friend at a residential address in the vicinity of Nicklin Way, Warana;
- This person was then transported in the police vehicle to a vessel moored at the Mooloolaba spit where a party was taking place;
- You boarded the vessel and stayed for approximately 20 minutes;
- You did not have permission or authorisation to attend these locations and transport the male person;
- The events occurred outside the Caloundra Police Division and
- On 19 September 2010 you were rostered to perform general duties at the Caloundra Police Station;

- During the course of your duties you advised your partners Senior Constable Kable and Constable Hamilton that you required them to transport you to a residential address at Kawana Forest;
- You remained at the address whilst Senior Constable Kable and Constable Hamilton assisted another officer with an arrest of a drunken male person in Baldwin Street, Caloundra;
- You transported a female person known to you in her private motor vehicle from Kawana Forest to Alexandra Headlands;
- You were later collected from Alexandra Headlands in the police vehicle by Senior Constable Kable and Constable Hamilton;
- Kawana Forest and Alexandra Headlands are not located in the Caloundra Police Division;
- You did not have permission or authorisation from any other person to attend the residential address in Kawana Forest and transportation of the female person in her private vehicle to the residential address in Alexandra Headlands and
- On 19 November 2010 you were rostered to perform general duties at the Caloundra Police Station;
- During the course of your duties you advised your partner Constable Marker that you were leaving the police station to go out on an inquiry which resulted in your attendance at a residential address on Minyama Island where a party was taking place;
- You stayed at this address on Minyama Island where the party was taking place for approximately twenty minutes;
- You had not sought permission or authorisation from any other person to attend the residential address in Mountain Creek and conduct this transportation of the two civilians to the residential address on Minyama Island;
- The relevant residential address in Mountain Creek and Minyama Island were not located in the Caloundra Police Division and
- Your attendance at the residential address in Mountain Creek and the transportation of the two civilians to Minyama Island was not authorised or part of your official duties.

### **What was the penalty imposed?**

- [5] Following the finding that the misconduct by Senior Constable Frazer was substantiated, the Respondent reduced his rank from Senior Constable pay point 2.9 to Senior Constable pay point 2.5, effective from 22 July 2015.
- [6] The financial impact of the penalty to Senior Constable Frazer is approximately \$7,200.00 in the first year. Thereafter, the quantum is dependent upon whether Senior Constable Frazer gains promotion or successfully completes the industrial and performance requirements required for him to progress back to the rank he held before imposition of the disciplinary penalty.

- [7] In his written and oral submissions, Senior Constable Frazer submits that this penalty is excessive, and not in keeping with sanctions that have been imposed in comparative matters.

### **Senior Constable Frazer's submissions on penalty**

- [8] Whilst he does not dispute the finding of misconduct as set out in paragraph 4 above, Senior Constable Frazer asserts that there was no '*criminality in [his] actions that warrant the level of sanction*'.
- [9] He placed significant emphasis, in his oral submissions, on his desire to merely, '*help other people without any personal gain to [himself]*'. Senior Constable Frazer says that his personal life and police career have been community focussed, as is supported by his supplied references. Additionally, he says that there was no personal gain for him as a consequence of his engagement in the activities which led to the misconduct proceedings.
- [10] The essence of Senior Constable Frazer's case in relation to the confidential information is that he accessed QPRIME and Queensland Department of Transport and Main Roads ('TRAILS') records system at the request of persons who either presented themselves to the counter at the police station he was working from, or contacted him by telephone. These persons requested that Senior Constable Frazer access, and release to them, their own information.
- [11] The second general category of misconduct relates to Senior Constable Frazer using police vehicles to transport friends, and being absent from duty whilst undertaking the transport. He took these actions to (1) prevent a friend '*caught in a potentially dangerous situation*'; (2) prevent drink driving, and (3) as part of his '*networking and organising of a fundraising event involving the Emergency Services on the Sunshine Coast*'.
- [12] In his submissions, Senior Constable Frazer says that he was legitimately outside his patrol area to prevent anyone from drink driving. That is not a submission that the Tribunal can consider, as the review in this matter is limited to penalty and the misconduct has been substantiated as including being absent from duty without reasonable cause.
- [13] In other comparable disciplinary matters, Senior Constable Frazer says that the relevant officer was sanctioned through the issuance of penalty units, as opposed to pay point reductions. He says that this is a '*fairer method of discipline*'.
- [14] Senior Constable Frazer accepts that he was previously cautioned in 2008 and 2009, also for transporting civilians and/or being absent from his division without just cause or approval. In relation to these episodes, he says that they have been mischaracterised in the media. It is not open to this Tribunal to reconsider the nature of Senior Constable Frazer's disciplinary history, and I am obliged to accept those matters as they were established.

## The problems with Senior Constable Frazer's conduct

- [15] Senior Constable Frazer says that he is community minded. This assertion is supported by evidence of a long history of having been involved in organisations that benefit the community, such as a rowing club, P&F committee and Caloundra blue light disco. This service was acknowledged by the Respondent at the time the penalty was imposed:

I acknowledge that you are a police officer whose volunteer community work is valued by the public.<sup>2</sup>

- [16] Whilst this community engagement is positive, in Senior Constable Frazer's role, there are clear professional boundaries that he should not have crossed. This is so even if he does not intend to gain anything from his conduct.
- [17] In accessing and releasing official and confidential information without official purpose, via the QPRIME system, Senior Constable Frazer has breached s 10.1 and 10.2 of the *Police Service Administration Act 1990* (Qld). Section 16 of the applicable *2012/33 Standard of Practice – Professional Conduct* provides that:

### 16. Improper Use of QPS Information

In the performance of official duties, members of the Queensland Police Service are granted lawful access to many sources of information, confidential or otherwise. With this access comes a requisite level of accountability and trust that the information will be used for official purposes. There is no excuse for members to betray the public trust by making any unauthorised, improper or unlawful access or use of any official or confidential information available to them in the performance of their duties.

When dealing with official or confidential information of the Queensland Police Service, members are not to access, use or release information without an official purpose related to the performance of their duties.

Where any member breaches this provision the Queensland Police Service will institute any appropriate disciplinary or criminal proceedings. Members need to be aware that this type of activity is viewed by the Service as misconduct and any members who breach the provisions of this section will be dealt with accordingly.

- [18] It is also the case that each time an officer accesses the system, there is a warning displayed on the computer screen, containing the QPS Badge, which indicates that access is subject to a number of conditions. Those conditions include recognition that the information contained in the database is confidential, and cannot be disclosed to unauthorised persons.<sup>3</sup>
- [19] In assisting the people that Senior Constable Frazer says he was assisting, he has crossed significant boundaries that should have been apparent to him in his role. Officers are not entitled to look up the traffic history of their neighbours, friends and relatives simply because there has been a request

<sup>2</sup> Respondent's material pursuant to *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), s 21(2), p 141.

<sup>3</sup> Respondent's Hearing Exhibit 1.

made. Senior Constable Frazer's actions were no doubt helpful to those persons who wished to avoid the low-level administrative inconveniences (and fee, at that point in time) associated with obtaining their own traffic histories from the Department of Transport.

- [20] However, Senior Constable Frazer placed himself in a position whereby members of the public were giving him instructions, in circumstances where QPS instead should have been making decisions about access to information, where that information was required for a policing purpose. The information obtained by Senior Constable Frazer was not required for a policing purpose – it was required for private, individual purposes.
- [21] Senior Constable Frazer, in both his written and oral submissions, appears to entirely blind to the point that the information held in the QPRIME system is not his to access as an officer when and if it suits him. The information is to be utilised for official purposes only, relating to Senior Constable Frazer's performance of official policing duties.
- [22] The individuals for whom Senior Constable Frazer provided information have an advantage vis-a-vis the rest of the public who do not personally know a police officer they can call upon to access their information. The potential harm occasioned by Senior Constable Frazer's conduct is not necessarily to those persons whose information he accessed.
- [23] Rather, there is disadvantage occasioned to the broader public, which is entitled to expect that all Queensland citizens are treated uniformly, and without favour. The public is entitled to expect that Senior Constable Frazer's neighbours, relatives, and associates are not spared fees and given Rolls Royce treatment in accessing their information, whilst everyone else stands in the relevant queue and pays the required fee. This has the potential to erode public confidence in the neutrality of the policing service.

### **Police officers should not serve as public taxi drivers**

- [24] Self-evidently, it is a generally good idea to prevent people from driving whilst intoxicated. However, Senior Constable Frazer should have sought permission, or made other arrangements, that did not involve him abandoning his sentinel in order to transport an intoxicated acquaintance of his home. Whilst nothing particularly bad happened transpired at the Caloundra station in his absence, it could have, and Senior Constable Frazer would have been unable to respond immediately, as he elsewhere, acting as a taxi service at public expense.
- [25] The same can be said of Senior Constable Frazer's transport, in a police vehicle, of civilians known to him, from a residential address in Mountain Creek to a party on Minyama Island. On another occasion, whilst rostered on traffic duty, Senior Constable Frazer delivered a friend to a party at the Mooloolaba spit.
- [26] The fuel used in these police vehicles, as well as Senior Constable Frazer's time on duty, is funded by tax-payers. It is entirely unreasonable for Senior

Constable Frazer to drive his friends and acquaintances home and to parties at public expense, whilst the rest of the public is expected to locate funds to pay for a public Taxi or Uber vehicle in order to avoid driving whilst intoxicated.

### Comparable penalties

- [27] The Tribunal considers that, in a review about a disciplinary penalty, it is important to maintain consistency and comparability.<sup>4</sup> As the precise nature of misconduct is variable, it can be challenging to compare ‘*apples with apples*’.
- [28] The parties have drawn the following comparators to the Tribunal’s attention.

Reference Number	Rank	Conduct	Sanction(s)	Other Information (i.e. ACDP /mitigation)
1	Constable	Subject officer provided false information to Communications and was subsequently absent from his Division for a non-work related matter.  Officer also failed to provide supervision to FYC.	Reduction in salary from pay point 1.4 to 1.3 for 12 months.  Reprimand.	Hearing
2	Sergeant	Used QPS vehicle while on duty to attend a girlfriend’s address on 20 occasions and was therefore absent from duty.	Demotion (Sergeant to Senior Constable 2.9) suspended for 12 months subject to completion of specific training (internal and external).	
3	Sergeant	1. Absence from duty without valid explanation. 2. Being untruthful during the first interview by fabricating a version relating to being absent from duty and admitting	1. One penalty unit; and 2. Two penalty units.	Administrative Consensual Disciplinary Process (ACDP)

<sup>4</sup> *O’Brien v Assistant Commissioner Stephen Gollschewski, Queensland Police Service* [2014] QCATA 148 at [48].



Reference Number	Rank	Conduct	Sanction(s)	Other Information (i.e. ACDP /mitigation)
		the untruth during a 2 <sup>nd</sup> interview.		
4	Sergeant	3 x Accessed information on QPRIME relating to a vehicle (capabilities and particulars of owner) and disclosed to relative, and investigation report.	One penalty unit for each matter one and two and caution for matter 3.	ACDP – Good work history, various awards including Brett Handran Memorial Shield and finalist in Pride of Australia Emergency Services Category 2009, remorse and sole income provider of family.
5	Constable	Accessed information and statements on QPRIME not related to his duties and disclosed the information to a third party (a relation) for a family court matter.	Reprimand – complete two Online Learning Products – QC1022, QCM010 within 4 weeks, receive managerial guidance for Section 16 (improper use of information).	ACDP
6	Senior Constable	Without official purpose related to duties conducted checks on QPRIME relating to his nephew and a former officer and released that information to his nephew.	Two penalty units deducted from pay.	ACDP
7	Senior Constable	Subject Officer utilised on call vehicle to travel to sunshine coast travelling a total of 453km.	Reduction in pay points from 2.7 to 2.4 for 12 months.	
8	Senior Constable	Misconduct – subject officer whilst drunk and off duty requested use of QPS vehicle to drive her home – unnecessary use of police resources to investigate	Two penalty units.	
9	Sergeant	Subject officer used vehicle overnight to travel	Reprimand.	

Reference Number	Rank	Conduct	Sanction(s)	Other Information (i.e. ACDP /mitigation)
		to residence in between shifts without permission or signing vehicle out.		
10	Constable x 3 Constable	Whilst off duty utilised a police service vehicle for transport from a social function to a place of residence (driven by on duty officer). On duty driver.	Reprimand.  One penalty unit.	
11	Constable	Constable of 7-years, misconduct in twice accessing police records other than for official purposes.	Reduction in pay point from 1.5 to 1.2.	<i>Irving v Aldrich</i> , Misconduct Tribunal TA2 of 1995 – referred to in <i>Crime and Corruption Commission v Acting Deputy Commissioner Barron &amp; Anor</i> [2015] QCAT 96 at [69].

- [29] The Tribunal considers that the cumulative misconduct engaged in by Senior Constable Frazer is of a more serious nature than any of the comparable matters referred to above.

Matter Number Above	Comparison to Senior Constable Frazer's Conduct
1	In Matter 1, the officer was absent once; not on three occasions. There was untruthfulness, but there was no issue with improper use and release of QPS information.
2	In Matter 2, the officer was absent on 20 occasions, which is <del>less</del> <u>more</u> than three. However, there was no issue with improper use and release of QPS information.
3	In Matter 3, the officer was absent once; not on three occasions. There was no issue with improper use and release of QPS information.
4	In Matter 4, the unauthorised access happened three times, not 34 times. There was no issue with absence from duty and related misuse of police resources.

Matter Number Above	Comparison to Senior Constable Frazer's Conduct
5	In Matter 5, the unauthorised access happened once, not 34 times. There was no issue with absence from duty and related misuse of police resources.
6	In Matter 6, the unauthorised access happened twice, not 34 times. There was no issue with absence from duty and related misuse of police resources.
7	In Matter 7, the officer travelled a further distance whilst unauthorised, but on one occasion only, not three occasions. However, there was no issue with improper use and release of QPS information.
8	In Matter 8, there was only one instance of misuse of police resources, not two. There was no issue with improper use and release of QPS information.
9	In Matter 9, the officer was between shifts, not on-duty. The officer was driving to his home; not transporting members of the public. There was no issue with improper use and release of QPS information.
10	In Matter 10, the officer was between shifts, not on-duty. The officer was driving to his home; not transporting members of the public. The conduct happened on one occasion, not three. There was no issue with improper use and release of QPS information.
11	There was no issue with absence from duty and related misuse of police resources.

[30] As demonstrated in the tables above, the overall magnitude and cumulative impact of Senior Constable Frazer's misconduct is greater than in any of the comparable matters referenced. As such, the Tribunal considers that a greater penalty is warranted.

[31] Moreover, Senior Constable Frazer has been involved in disciplinary proceedings on two prior occasions. One occasion involved his consuming alcohol at the Caloundra Police Station, and the other involved him being absent from duty for two hours to engage in a sporting activity.

[32] In 2008 and 2009, Senior Constable Frazer was cautioned in relation to two incidents where he transported civilians and was absent from his division without just cause or approval. On these occasions, the material before the

Tribunal indicates that he provided a '*guarantee*' to his supervisors that this would not happen again.<sup>5</sup>

- [33] One would have thought that his reflection on these episodes would have resulted in his being on '*high alert*' in relation to his employment, such that he did not again find himself in a disciplinary predicament. Yet, it did not. This is remarkable considering that he cannot claim to have a lack of knowledge about the policy in relation to transport of civilians and absence from duty, having had it pointed out to him quite clearly, twice.
- [34] The Tribunal is satisfied that the sanction imposed is proportionate, takes into account Senior Constable Frazer's years of service and standing in the community, and his previous disciplinary history.
- [35] The Tribunal rejects the argument raised by Senior Constable Frazer that imposition of penalty units would be appropriate in these circumstances. There is a clear need to impose a financial penalty on Senior Constable Frazer, to act as both a specific and general deterrent to this sort of behaviour. It is vital that officers employed by the QPS understand that there are boundaries surrounding their conduct, and that these boundaries are essential to maintaining public confidence in the integrity of the policing system.

### **Order**

1. The disciplinary sanction imposed by Assistant Commissioner Condon on Senior Constable Frazer, that from 22 July 2015 he be reduced in rank from Senior Constable pay point 2.9 to Senior Constable pay point 2.5, is confirmed.

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<sup>5</sup> Respondent's, QCAT Act, s 21(2) material, p 144.