



Decision and Reasons for Decision

Citation:	<i>E24 and Department of Justice</i> [2025] QICmr 6 (27 February 2025)
Application Number:	317888
Applicant:	E24
Respondent:	Department of Justice
Decision Date:	27 February 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - request for information about agency's handling of applicant's privacy complaint - located documents contained information about other matters involving the applicant - whether information is irrelevant to the terms of the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information of public sector employees - subject of applicant's privacy complaint and employees involved in handling the complaint - routine personal work information - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Justice (**Department**)² under the *Information Privacy Act 2009* (Qld) (**IP Act**) for documents relating to the Department's handling of a privacy complaint the applicant had made to the Office of the Information Commissioner (**OIC**).
2. The Department granted the applicant access to some of the information it located in response to the application³ and with respect to the remainder, decided⁴ to:

¹ Application became compliant on 22 January 2024.

² At the time of the application, the respondent agency was the then Department of Justice and Attorney-General. Following machinery of government changes in November 2024, the respondent agency became known as the Department of Justice, in accordance with the *Administrative Arrangements Order (No. 2) 2024*.

³ 156 pages were located, with access being granted to 32 full and five part pages.

⁴ Decision sent under cover of email dated 23 February 2024.

- refuse access to information that would, on balance, be contrary to the public interest to disclose; and
 - exclude information that fell outside the scope of the request.
3. The applicant sought internal review⁵ of the Department's decision. On internal review, the Department varied its original decision, and decided⁶ to:
- release some information
 - refuse access to information⁷ that would, on balance, be contrary to the public interest to disclose; and
 - delete information because it was irrelevant to the terms of the application.
4. The applicant applied⁸ to OIC for external review of the Department's internal review decision.
5. During the external review, the Department disclosed to the applicant a further part of one page which had previously been deleted as irrelevant.⁹ OIC's attempts to resolve the review¹⁰ with the applicant, based on the additional released information, and conveying a description of the remaining irrelevant information, were unsuccessful.
6. For the reasons set out below, I vary¹¹ the decision under review by finding that:
- certain information may be deleted under section 88 of the IP Act because it is irrelevant to the terms of the access application; and
 - access to other information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest.

Background

7. Significant procedural steps are set out in the Appendix to this decision.

Reviewable decision

8. The reviewable decision is the Department's internal review decision dated 15 March 2024.

Evidence considered

9. Significant procedural steps relating to the external review are set out in the appendix to this decision. The evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹² I consider a decision maker will be '*respecting and acting compatibly with*' these rights, and others prescribed in the HR Act, when

⁵ On 24 February 2024.

⁶ Decision dated 15 March 2024.

⁷ Parts of 94 pages.

⁸ On 18 March 2024.

⁹ On 25 October 2024.

¹⁰ In accordance with section 103 of the IP Act.

¹¹ The basis for varying is because the internal review decision incorrectly relied on section 73 of the *Right to Information Act 2009* (Qld) (**RTI Act**) to delete irrelevant information, rather than the equivalent, and applicable, section 88 of the IP Act.

¹² Section 21(2) of the HR Act.

applying the law prescribed in the IP Act and the RTI Act.¹³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁴ I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁵ *'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'*.¹⁶

Issues for determination

11. The information in issue appears in, or comprises, communications and other documents relating to the applicant's privacy complaint. It can be categorised as follows:

- 31 full pages and parts of two pages which the Department deleted on the basis they comprised information irrelevant to the access application (**Category A Information**); and
- parts of 94 pages comprising names, identifying information, contact details, signatures and other personal information of individuals other than the applicant (**Category B Information**).

12. The issues for determination are whether:

- the Category A Information can be deleted under section 88 of the IP Act on the basis it is irrelevant to the access application; and
- access to the Category B Information may be refused on the basis that its disclosure would, on balance, be contrary to the public interest.¹⁷

Findings

Category A Information

13. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it reasonably considers is not relevant to an application. This is a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
14. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.¹⁸
15. The access application¹⁹ requested *'[a]ll information pertaining to OIC Privacy Complaint No. [reference number]'*. The applicant described the type of documents sought as *'[a]ll documents, including emails, letter, file notes etc.'*

¹³ 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 further 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).

¹⁴ 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'*.

¹⁵ Freedom of Information Act 1982 (Vic) and the Charter of Human Rights and Responsibilities Act 2006 (Vic).

¹⁶ XYZ at [573].

¹⁷ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹⁸ O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at [52] which was a decision made under the equivalent provision in the repealed Freedom of Information Act 1992 (Qld).

¹⁹ Dated 21 January 2024. The access application did not specify a date range.

16. In its decisions,²⁰ the Department processed the scope of the application as: '[a]ll documents including emails, letters and file notes in relation to the OIC Privacy Complaint No. [reference number]'.
17. The applicant made no submission on external review addressing the issue of irrelevant information.
18. I have reviewed the Category A Information²¹ and I am satisfied that it does not relate to the privacy complaint identified by the applicant in his application. Rather, the Category A Information concerns another, separate, matter the Department was considering in connection with the applicant. For these reasons, I find that the Category A Information is irrelevant to the access application and can be deleted under section 88 of the IP Act.

Category B Information

19. 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.²² However, this access right is also subject to limitations, including grounds for refusal of access.²³
20. One ground for refusing access is where disclosure of information would, on balance, be contrary to the public interest.²⁴ 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. 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.²⁵
21. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁶
 - identify factors irrelevant to the public interest and disregard them²⁷
 - 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.
22. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,²⁸ together with all other relevant information, in reaching my decision. I have also applied the pro-disclosure bias²⁹ and considered Parliament's

²⁰ Original decision dated 23 February 2024 and internal review decision dated 15 March 2024.

²¹ This information occurs in File 02 at parts of pages 4 and 77, and on pages 57-76 and 78-89 of 89.

²² 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*'.

²³ 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 under the RTI Act. The grounds on which access can be refused are set out in section 47 of the RTI Act.

²⁴ Sections 47(3)(b) and 49 of the RTI Act.

²⁵ See Wheeler, C. 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²⁶ Section 49(3) of the RTI Act.

²⁷ I have not identified any irrelevant factors that arise in this matter, nor have I taken any into account including those set out in schedule 4, part 1 of the RTI Act.

²⁸ I have considered each of the public interest factors in schedule 4 of the RTI Act, and any relevant factors are discussed below.

²⁹ Section 64 of the IP Act.

intention that grounds for refusing access to information are to be interpreted narrowly.³⁰

23. The applicant made no submission on external review addressing the Category B Information. In the application for internal review,³¹ the applicant stated ‘... *there has obviously been substantial amounts of redaction across the balance of the documents, and I am struggling to see how what is in those documents could be harmful to the community to release*’.

Factors favouring disclosure

24. While the Category B Information is contained in Department correspondence about the applicant’s privacy complaint, it is limited to names, identifying information, contact details, signatures and other personal information of individuals other than the applicant. It does not contain the applicant’s personal information.³²
25. The Department disclosed a significant amount of information to the applicant in response to the access application, including the content and substance of email communications showing the actions taken on the applicant’s privacy complaint. Given the limited nature of the Category B Information, I do not consider that disclosure would provide the applicant with any further information about the Department’s operations³³ or the reasons, background or contextual information for any Department decisions³⁴ and I therefore, find that these factors favouring disclosure do not apply.
26. I also do not consider disclosure of the Category B Information would enhance the Department’s accountability³⁵ to any significant degree. The Department has already disclosed to the applicant the substance of its internal communications and communications with OIC about the privacy complaint, the subject officer’s response to the complaint, and information about the Department’s internal management of the privacy complaint. Disclosing the Category B Information would not reveal anything further about the process undertaken by the Department to handle the privacy complaint. Accordingly, to the extent this factor favouring nondisclosure applies with respect to names and identifying information of Department staff members (including the subject of the applicant’s complaint),³⁶ I afford it very low weight.
27. To the extent that the Category B Information includes the names of OIC staff members who were involved in handling the applicant’s privacy complaint,³⁷ I am satisfied their identities have limited relevance to the substantive issues that were dealt with during the handling of the applicant’s privacy complaint.³⁸ I also note those employees’ roles in dealing with the complaint were administrative in nature, and did not extend to being able to make a decision or exercise a power to determine the outcome for the complaint. For that information, and the balance of the Category B

³⁰ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

³¹ Dated 24 February 2024.

³² Accordingly, the factor favouring disclosure at schedule 4, part 2, item 7 of the RTI Act does not apply.

³³ Schedule 4, part 2, item 3 of the RTI Act.

³⁴ Schedule 4, part 2, item 11 of the RTI Act.

³⁵ Schedule 4, part 2, item 1 of the RTI Act.

³⁶ This information occurs in File 01 at pages 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 24, 25, 26, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 46, 47, 48, 49, 51, 53, 54, 56, 58, 60 and 61 of 67 and in File 02 at pages 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 35, 36, 37, 39, 40, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54 and 55 of 89.

³⁷ This information occurs in File 01 at pages 1, 3, 4, 7, 9, 12, 13, 14, 15, 16, 20, 24, 26, 27, 28, 35, 37, 38, 42, 43, 44, 47, 48, 49, 51, 52, 55, 56, 59 of 67 and in File 02 at pages 5, 7, 8, 12, 14, 15, 18, 20, 23, 24, 25, 26, 27, 29, 30, 31, 36, 38, 39, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54 and 55 of 89.

³⁸ I note that the role descriptions for these individuals have been released.

Information, I find that the accountability factor favouring disclosure applies but only to a very limited degree.

Factors favouring nondisclosure

28. The RTI Act seeks to safeguard an individual's right to privacy and recognises a public interest harm in disclosing the personal information of other individuals.³⁹ 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.⁴⁰ Information relating to the day-to-day work duties and responsibilities of public sector employees may typically be disclosed under the RTI Act, despite being personal information. However, agency documents can also contain personal information of public sector employees which is not routine work information.⁴¹
29. The Category B Information appears in a workplace context because the applicant complained that the conduct of a particular officer of the Department had breached the applicant's privacy. I consider that names and other personal information about Department employees appearing in the context of dealing with a complaint (including the subject of the complaint and colleagues) is not routine personal work information because it does not appear in the context of those employees conducting their routine or day-to-day duties. I consider disclosure of that information would substantially interfere with these individuals' rights to privacy and reveal their sensitive personal information despite it appearing in a work context.⁴²
30. While I acknowledge the applicant knows the identity of the subject of their complaint, I consider releasing this information under the IP Act, where there can be no restriction or conditions on its use, dissemination or republication,⁴³ could reasonably be expected to prejudice the protection of the individual's rights to privacy. I consider the agency officer is entitled to be afforded privacy in relation to their identity in the context of an access application under the IP Act concerning the handling of a complaint made by the applicant about the agency officer's alleged conduct. In these circumstances, I consider the identity of the subject of the applicant's privacy complaint is sensitive personal information. For this information, as well as the information discussed in paragraph 29, I afford these factors significant weight.
31. To the extent the Category B Information includes the names of OIC staff members who dealt with the applicant's privacy complaint, I accept that the names appear in the context of public sector employees performing their day-to-day work duties and therefore, constitute their routine personal work information.
32. The Information Commissioner has previously accepted that the disclosure of routine personal work information of public sector employees is of negligible impact to their privacy and similarly, in terms of harm to the public interest.⁴⁴ As such, this type of information may be disclosed under the RTI and IP Acts. However, it is necessary to consider the particular circumstances of each case.

³⁹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁰ 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.

⁴¹ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60].

⁴² Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

⁴³ *FLK v Information Commissioner* [2021] QCATA 46 at [17].

⁴⁴ See, for example, *O52 and Queensland Ombudsman* [2020] QICmr 31 (11 June 2020) at [66].

33. In this case, I have taken into account the particular duties, context and nature of the work performed by the relevant OIC staff members, whose names appear in the documents in the context of handling the applicant's privacy complaint. I consider these named officers were undertaking administrative functions as part of OIC's process for handling a sensitive privacy complaint. To my mind, some weight (ie. beyond negligible) should be afforded to protecting the personal information and privacy of those individuals, despite their names appearing in the context of their role as a public sector employee.
34. I have also taken into account that there is no limitation on further disclosure of information, including personal information, when it is released under the RTI and IP Acts. In the particular circumstances of this case, I am satisfied that there would at least be some public interest harm arising from dissemination of the names of public sector employees involved in the handling of the privacy complaint.
35. Accordingly, while I consider the prejudice to privacy and the public interest harm resulting from disclosure of this personal information is not at the higher end of the spectrum, I have still decided to afford these factors low to moderate weight in favour of nondisclosure in the particular circumstances of this case.

Balancing the public interest

36. For the Category B Information comprising names and personal information of Department employees, I have afforded low weight to the factors favouring disclosure regarding enhancing the Department's accountability, particularly given the surrounding information that has been released. On the other hand, for this information, I have afforded significant weight to the factors favouring nondisclosure regarding protecting the personal information and privacy of individuals other than the applicant.
37. For the Category B Information comprising names of OIC staff, I acknowledge that the pro-disclosure bias applies and that there is a very limited degree of accountability in disclosing those names. This is due to the administrative and non-decision making nature of the employees' roles, and the minimal relevance of the names to the substance of the applicant's privacy complaint. On the other hand, I am satisfied that low to moderate, and determinative, weight should be afforded to the nondisclosure factors which are intended to protect the personal information and private sphere of public sector employees, particularly when employees are involved in sensitive complaints handling and due to there being no control on further dissemination of information released under the IP Act.
38. In view of the above, I find the factors favouring nondisclosure outweigh the factors favouring disclosure of both types of Category B Information. Accordingly, I find that disclosure of the Category B Information would, on balance, be contrary to the public interest and access may be refused on this basis.⁴⁵

DECISION

39. I vary the decision under review by finding that:
 - the Category A information may be deleted under section 88 of the IP Act because it is not relevant to the access application; and

⁴⁵ Under section 47(3)(b) of the RTI Act.

- access to the Category B information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the ground that its disclosure would, on balance, be contrary to the public interest.

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

Katie Shepherd
Assistant Information Commissioner

Date: 27 February 2025

APPENDIX

Significant procedural steps

Date	Event
18 March 2024	OIC received the application for external review. OIC requested and received preliminary information and documents from the Department.
20 March 2024	OIC received requested information from the Department.
3 April 2024	OIC notified the applicant and the Department that they had accepted the application for external review. OIC asked the Department to provide a copy of the information located in response to the application.
4 April 2024	OIC received information from the Department.
25 September 2024	OIC issued a preliminary view to the Department regarding the release of additional information to the applicant.
30 September 2024	OIC received submissions from the Department advising that they did not agree to release the additional information to the applicant.
2 October 2024	OIC issued a preliminary view to the applicant.
17 October 2024	OIC received a response from the applicant requesting that OIC proceed to formal decision.
21 October 2024	OIC issued a further preliminary view to the Department regarding the release of additional information to the applicant.
23 October 2024	OIC received a response from the Department confirming that they agreed to release additional information to the applicant. OIC wrote to the applicant to confirm the Department would release a small amount of information and that OIC would proceed to a formal decision to finalise the review.
25 October 2024	The Department released additional information to the applicant.