



Decision and Reasons for Decision

Application Number: 310159

Applicant: Banks

Respondent: Energex Limited

Decision Date: 15 October 2010

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - application for information disclosing identity of individual who called Energex to report an electrical issue at the applicant's residence - applicant contends call was a hoax - caller objected to their identity being disclosed - Energex refused access to information under section 47(3)(b) *Right to Information Act 2009* (Qld) - whether disclosure of information would, on balance be contrary to the public interest

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REASONS FOR DECISION

Summary

1. On the evening of 5 February 2010, officers of Energex Limited (**Energex**) attended a property rented by the applicant in response to a report of an electrical shock. The report was made by telephone call to Energex's emergency number earlier that night by a person other than the applicant. Following assessment of the property, Energex officers identified that there was no electrical fault. The applicant believes the call to Energex was made fraudulently and unlawfully and suspects a number of individuals may have been responsible.
2. The applicant applied to Energex under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to information relating to the telephone call. Energex granted the applicant access to some information¹ but refused access to the recording of the telephone call (**Audio Recording**) and the name and telephone number of the caller (**Caller Details**) on the basis that disclosure would, on balance, be contrary to the public interest. In processing the application, Energex consulted the caller to seek their views on disclosure—the caller objected to disclosure of any information.
3. On external review, the applicant submitted that he should be given access to the Audio Recording and Caller Details for accountability reasons and because disclosure would enable the applicant to pursue legal action against the caller.
4. In reviewing Energex's decision, I am satisfied that access to the information can be refused under section 47(3)(b) of the RTI Act on the basis that disclosure of the information would, on balance, be contrary to the public interest.

Background

5. Significant procedural steps relating to the application are set out in the Appendix.

Reviewable decision

6. The decision under review is Energex's decision to refuse access to the audio recording and personal details of the caller on the basis that disclosure would, on balance, be contrary to the public interest.

Evidence considered

7. In making this decision, I have considered the following:
 - applications made by the applicant to Energex and the Office of the Information Commissioner (**OIC**)
 - Energex's decision
 - Audio Recording and Caller Details
 - Service Order and Worksite Hazard Management Form
 - submissions made by the applicant to OIC and supporting documents
 - file notes of telephone conversations held between OIC staff members and the applicant and Energex officers during the external review
 - relevant sections of the RTI Act.

¹ A two page Worksite Hazard Management Form and part of the relevant Service Order.

The law

8. Access must be given to a document unless it contains exempt information or its disclosure would, on balance be contrary to the public interest.²
9. In making this decision, I have considered whether disclosure of the Audio Recording and Caller Details would, on balance, be contrary to the public interest.

Findings

10. To decide whether disclosure of the Audio Recording and Caller Details would be contrary to the public interest, I must³:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure
 - decide whether disclosure of the information, on balance, would be contrary to the public interest.
11. No irrelevant factors arise in this case.
12. I accept that there is a public interest favouring disclosure of information which would enhance government transparency and accountability.⁴ In this case, disclosing information which demonstrates that Energex has investigated reports of electrical safety risks in a proper and timely way would serve this interest. The information which Energex released to the applicant⁵ shows that the Energex crew:
 - was dispatched within 12 minutes of receipt of the emergency call
 - attended the applicant's property for 90 minutes, identified potential hazards and implemented corresponding control measures and conducted the necessary electrical tests at the property.
13. I consider that the above information adequately addresses the public interest in relation to accountability and transparency. I do not consider that disclosing the Audio Recording and Caller Details would serve this public interest any further.
14. The applicant submits that access to the information would assist him in pursuing legal action against the caller who he alleges, acted fraudulently and unlawfully. The applicant refers to several court and tribunal proceedings in which he is (or intends to be) involved in.
15. I accept that where information could reasonably be expected to contribute to the administration of justice for a person, that this will raise a factor favouring disclosure.⁶ However, having listened to the Audio Recording, I am satisfied that the call was made in good faith on the basis of the caller's valid concerns as to electrical issues at the applicant's residence. On that basis, there does not appear to be any basis on which the applicant could commence proceedings against the caller.

² Sections 44, 48 and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

³ Under section 49(3) of the RTI Act.

⁴ See also the factor in schedule 4, part 2, item 1 of the RTI Act.

⁵ In the Service Order and Worksite Hazard Management Form.

⁶ Schedule 4, part 2, item 17 of the RTI Act.

16. The RTI Act recognises that where personal information is involved, this gives rise to a factor favouring nondisclosure.⁷ Personal information⁸ is “... *information ... 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.*”
17. The fact that a person makes a call to a government agency is their personal information. Any recording of the call will also capture personal information as it is possible to identify individuals by their voice. I am therefore satisfied that disclosure of the Audio Recording and Caller Details would disclose the caller's personal information.
18. There is also a strong public interest in Energex maintaining its ability to investigate electrical safety issues and reduce any associated risk to public safety. To this end, Energex relies on the information provided to it by members of the public through its emergency hotline. If the names and contact details of people who call the Energex emergency hotline were disclosed, this may reduce the willingness of members of the public to report electrical safety issues that they observe (or have otherwise been made aware of) in relation to private and public property. This may lead to electrical safety issues being overlooked and result in increased safety risks both to individuals and property. This would directly impact on Energex's ability to carry out its functions.
19. In balancing the competing public interests, I consider that the public interest in Energex responding to and investigating electrical safety issues should be strongly weighted. Similarly, the public interest in safeguarding other people's personal information must also be afforded significant weight. I am satisfied that these strong public interests outweigh the public interest in the applicant having access to the information to pursue legal action against the caller.

DECISION

20. I affirm Energex's decision to refuse access to information under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

Julie Kinross
Information Commissioner

Date: 15 October 2010

⁷ Schedule 4, part 3, item 3 and part 4, item 6(1) of the RTI Act.

⁸ See section 12 of the *Information Privacy Act 2009* (Qld).

APPENDIX**Significant procedural steps**

Date	Event
11 February 2010	The applicant applies to Energex for access to information relating to the emergency call made to Energex on 5 February 2009.
19 March 2010	Energex issues its decision to the applicant, granting full access to the Worksite Hazard Management Form, partial access to the Service Order and refusing access to the Audio Recording.
23 March 2010	The applicant applies to Office of the Information Commissioner (OIC) for external review.
26 March 2010	Energex provides OIC with copies of documents relating to the application.
9 April 2010	OIC informs the applicant that his external review application has been accepted for review.
14 April 2010	Energex provides OIC with a copy of the Audio Recording and Service Order (containing the Caller Details).
13 May 2010	OIC conveys to the applicant, by telephone, the preliminary view that access to the Audio Recording and Caller Details can be refused on the basis that disclosure would, on balance, be contrary to the public interest (Preliminary View). The applicant does not accept the Preliminary View and requests OIC provide it to him in writing.
21 June 2010	OIC conveys the Preliminary View to the applicant in writing.
22 June 2010	The applicant informs OIC that he does not accept the Preliminary View and provides written submissions in support of his case.
28 July 2010	OIC informs the applicant that following an assessment of his submissions, the Preliminary View is confirmed.
2 August 2010	The applicant confirms to OIC that he does not accept the Preliminary View and provides further submissions in support of his case. The applicant requests the Information Commissioner make a formal decision to finalise this review.
30 August 2010	The caller confirms to OIC that they object to disclosure of the Audio Recording and Caller Details.