



Decision and Reasons for Decision

Application Number: 310724

Applicant: Dacey

Respondent: Department of Education and Training

Decision Date: 3 May 2012

Catchwords: INFORMATION PRIVACY ACT – APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS – applicant sought information about his employment as a teacher from the Department of Education and Training – whether disclosure of the information would, on balance be contrary to the public interest – section 67(1) of the *Information Privacy Act 2009* (Qld) and section 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant, a school teacher, applied to the Department of Education and Training (**Department**) for information relating to his employment since April 1996.
2. The Department located a large number of documents and decided¹ to give full access to some of the documents.² It gave partial access or refused access to the remainder of the documents on the grounds that disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review on 8 August 2011.
4. As a result of informal resolution during the course of the external review, the issue remaining for determination is in relation to 13 documents to which access was fully refused.³
5. For the reasons set out below, I affirm the Department's decision to refuse access to the relevant documents on the grounds that disclosure would, on balance, be contrary to the public interest.

Background

6. Significant procedural steps relating to the application are set out in the appendix to this decision.

Reviewable decision

7. The decision under review is the Department's decision dated 28 July 2011.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Information in issue

9. The documents remaining in issue are 13 pages containing information of third parties mixed with the applicant's personal information (**Information In issue**).

Relevant law

Right to access information

10. Section 67(1) of the *Information Privacy Act 2009* (Qld) (**IP Act**) provides that access to a document may be refused on the same basis upon which access to a document could be refused under section 47 of the RTI Act.

¹ On 28 July 2011.

² 3247 documents were released in full.

³ Confirmed by email dated 28 March 2012.

11. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.
12. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest. In determining whether disclosure of the information sought would, on balance, be contrary to the public interest I must:⁴
 - identify and disregard irrelevant factors
 - identify factors favouring disclosure of the information in the public interest
 - identify factors favouring nondisclosure of the information in the public interest
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to public interest.

Where does the balance of the public interest lie in this matter?

13. I am satisfied that release of the Information in Issue would, on balance, be contrary to the public interest for the reasons that follow.
14. I have examined the irrelevant factors in schedule 4, part 1, of the RTI Act and do not consider that any irrelevant factors arise here.⁵

Factors favouring disclosure and nondisclosure of information in the public interest

15. After carefully considering all of the information before me, I am satisfied that the public interest factors favouring nondisclosure include that disclosure of the Information in Issue could reasonably be expected to:
 - cause a public interest harm by disclosing the personal information of a person, whether living or dead;⁶ and
 - prejudice the protection of an individual's right to privacy.⁷
16. Some of the Information in Issue is the applicant's personal information. This creates a public interest factor favouring disclosure.⁸

Balancing the factors favouring disclosure and nondisclosure in the public interest

17. The Information in Issue comprises the personal information of another teacher and a student, as well as the personal information of the applicant.⁹

⁴ Section 49(3) of the RTI Act.

⁵ The applicant asked in his submission dated 26 March 2012 whether the information in issue may be misunderstood or whether its disclosure may result in embarrassment or a lack of confidence in the Government or a public sector organisation. These are irrelevant factors which I do not consider apply and I have not considered them.

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

⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁸ Schedule 4, part 2, item 7 of the RTI Act.

⁹ I am unable to discuss the content of the information in detail without revealing exempt information – see section 108(3) of the RTI Act.

18. In its decision, the Department stated that the information was the private affairs of the student and the teacher and was not readily available to the public. It went on to say that the individuals concerned have not consented to disclosure of their personal information and they are entitled to a legitimate expectation that personal information which concerns their private affairs would be afforded protection from unreasonable disclosure.¹⁰
19. Some of the information comes from one of the applicant's work colleagues in a workplace context. There is generally minimal or no harm in disclosing routine workplace information of public servants. However, information which is not wholly related to the routine day to day work activities of a public service officer is considered non routine personal work information, including:
 - complaints made by or about a public service officer
 - opinions about another public service officer; and
 - opinions or reports about how well an officer performs their duties.¹¹
20. After carefully considering the Information in Issue, I am satisfied that the information which comes from the applicant's work colleague comprises their non routine personal work information.
21. The balance of the information is from a student and contains sensitive personal information.
22. I am satisfied that the information from both the work colleague and the student contains personal information which could reasonably be expected to cause a public interest harm by revealing the personal information of the relevant person and prejudicing that person's privacy. Given the sensitive nature of the information, I consider that significant weight should be given to these factors favouring nondisclosure.
23. The applicant has relevantly submitted¹² that if the material is the personal information of third parties, he is entitled to access the portions of the information which concern him, with the information about the third parties removed. In this case, a small amount of the information is the applicant's personal information. However, this information is interwoven with that of others in such a way that it cannot be separated and is properly characterised as 'mutual personal information'. As this information cannot be separated, the applicant's personal information cannot be released without also releasing the personal information of others. Therefore this factor favouring disclosure should be given minimal weight.
24. Given the above, I am satisfied that the release of the Information in Issue would not advance the public interest in any significant way and disclosure of the Information in Issue would, on balance, be contrary to the public interest.

¹⁰ Decision dated 28 July 2011.

¹¹ Office of the Information Commissioner Guideline—Routine personal workplace information of public servants.

¹² The applicant has made a large number of submissions throughout this external review which are not directly relevant to the issue of whether the release of the information in issue would be contrary to the public interest. I have therefore not considered them in this decision.

DECISION

25. I affirm the Department's decision to refuse access to the Information in Issue and find that disclosure of the Information in Issue would on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
26. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Acting Assistant Information Commissioner Lynch
3 May 2012

APPENDIX

Significant procedural steps

Date	Event
23 March 2011	The applicant made a right to information application to the Department.
28 July 2011	The Department made its access decision.
8 August 2011	The applicant applied to the OIC for external review.
13 March 2012	The OIC provided a preliminary view to the Department and the applicant that the Department is entitled to refuse access to 1247 part pages and 13 full pages and is not entitled to refuse access to some of the information within 1 part page and 1 full page.
15 March 2012	The OIC sent an email to the applicant confirming our preliminary view and explaining the OIC's jurisdiction.
26 March 2012	The applicant provided submissions in response to OIC's preliminary view indicating that he did not accept the preliminary view in relation to the 13 pages refused in full.
26 March 2012	The Department accepted OIC's preliminary view and provided the relevant information on 2 pages to the applicant, with the exception of the identifying information of a job applicant.
28 March 2012	OIC confirmed with the applicant that he accepted OIC's preliminary view about some of the information contained within 1246 pages. OIC sought confirmation that the issue remaining unresolved was about the personal information in the final 13 pages.
11 April 2012	OIC confirmed with the applicant that he was seeking access to his personal information in the 13 pages, subject to the deletion of personal information of other persons.