

Decision and Reasons for Decision

Citation:	L37 and Department of Families, Seniors, Disability Services and Child Safety [2025] QICmr 97 (12 December 2025)
Application Number:	318657
Applicant:	L37
Respondent:	Department of Families, Seniors, Disability Services and Child Safety
Decision Date:	12 December 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO CHILD'S BEST INTERESTS - application on behalf of child for electronic child safety documents relating to that child - whether disclosure would not be in the child's best interests - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(c) and 50 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. A parent applied¹ on behalf of their child to the Department of Families, Seniors, Disability Services and Child Safety (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)² for access to electronic child safety documents relating to that child (**child applicant**).³
2. The Department located 37 pages and refused access to all information on the ground that disclosure would be contrary to the child's best interests.⁴
3. The parent applied on behalf of the child to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.⁵
4. For the reasons set out below, I affirm the Department's decision refusing access to the information on the ground that disclosure would be contrary to the child's best interests.

¹ Access application lodged 15 April 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the child applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**. These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> respectively.

³ Where an application is made for a child, the applicant is the child rather than the parent – see section 45(1) of the IP Act and the definition of 'applicant' in schedule 5 of the IP Act.

⁴ Decision dated 26 May 2025.

⁵ External review application dated 26 May 2025. The decision under review is the Department's decision dated 26 May 2025.

Relevant law

5. Under the IP Act, an individual has a right to be given access to documents to the extent they contain the individual's personal information.⁶ However, this right is subject to the provisions of the IP Act and the RTI Act.⁷ Relevantly, an agency may refuse access where:
 - a) information is sought under an application made by or for a child
 - b) the information sought comprises the child's personal information; and
 - c) disclosure of that information would not be in the child's best interests.⁸
6. Personal information is defined 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*'.⁹
7. The principle 'best interests of the child' is set out in the *United Nations Convention on the Rights of the Child* (1989) (**Convention**),¹⁰ and has since been applied in Australia in a number of legal contexts, particularly in family law and administrative law.
8. The IP Act and RTI Act provide limited guidance as to what factors are to be considered in deciding whether disclosure of information would not be in the child's best interests.¹¹ In *FLK v Information Commissioner*¹² Judicial Member McGill made the following general observations regarding this ground for refusing access:

... The question of whether disclosure of the information would or would not be in the best interests of the child is I consider under s 50(2) to be decided objectively, by reference to identifiable objective factors either advancing or damaging the interests of the child.
9. Courts have also recognised that 'best interests' is a multi-faceted test and incorporates the wellbeing of the child, all factors which will affect the future of the child, the happiness of the child, immediate welfare as well as matters relevant to the child's healthy development. The concept includes not only material wealth or advantage but also emotional, spiritual and mental wellbeing.¹³
10. In *Re Bradford and Director of Family Services; Commissioner, Australian Federal Police*¹⁴ the applicant sought access under the *Freedom of Information Act 1982* (Cth) to various documents about herself and her four children that were held by the Director of Family Services. In that case, President Curtis noted that where there are child protection issues, disclosure may undermine the relationship between the child and the

⁶ Section 40 of the IP Act.

⁷ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under that Act.

⁸ Sections 47(3)(c) and 50 of the RTI Act.

⁹ Section 12 of the IP Act.

¹⁰ Ratified by Australia in December 1990. The Convention provides that the best interests of the child shall be a '*primary consideration*' in all actions concerning children and '*a child means every human being below the age of eighteen years*'.

¹¹ Noting that section 50(3) of the RTI Act sets out that an agency must have regard to whether the child has the capacity to understand the information and the context in which it was recorded and make a mature judgement as to what might be in his or her best interests, unless the access application was made for the child, as is the case in this review.

¹² [2021] QCATA 46 at [8] (**FLK**).

¹³ United Nations Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 29 May 2013, available at <<https://digitallibrary.un.org/record/778523?ln=en>> at I.A.5; see also Q95 and Legal Aid Queensland [2019] QICmr 38 (6 September 2019) at [48].

¹⁴ (1998) 52 ALD 455 (**Re Bradford**).

agency charged with the protection of children and as such may not be in the child's best interests.¹⁵

11. Similarly, the Information Commissioner has also previously recognised that it would not be in a child's best interests to disclose information where that disclosure may impact the child's trust in a child protection agency, or which may result in damage to the relationship between the child and the agency.¹⁶
12. A child's right to privacy is also recognised in the *Convention*. Australian courts accept that children reach varying levels of autonomy and independence prior to turning 18 and that a right to privacy, whilst generally low for a young child in relation to their parent, will strengthen as the child's understanding and maturity grows.¹⁷
13. In making this decision, I have had regard to the *Human Rights Act 2019 (Qld)* (**HR Act**), particularly the right to seek and receive information.¹⁸ I consider a decision-maker will be '*respecting and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP and RTI Act.¹⁹ I have acted in this way in reaching my decision, in accordance with section 58(1) of the HR Act.

Findings

14. I am satisfied that this access application has been made on behalf of a child and that the refused documents²⁰ contain the child's personal information.
15. I have carefully considered the material before OIC, including the contents of the refused documents, the decision under review and submissions received from the parent on behalf of the child applicant.²¹
16. The parent has explained concern for the child's wellbeing and opinion that the release of this information would enable the parent to address matters of concern relating to the child, including in parenting proceedings in the Federal Circuit and Family Court.
17. The parent has also explained that:
 - They have been actively involved in the child's upbringing and have an obligation to advocate for the child's safety and wellbeing.
 - They, as a parent, are entitled to understand concerns raised about the child.
 - When they made a report to the Department about the child, they were not given a further opportunity to explain their version of events and as a result, they have concerns about the Department's handling of the report.
 - The release of information to the parent through court proceedings does not enable the parent to review, correct or respond to the information relied upon by the Court to determine the child's care arrangement.²²

¹⁵ *Re Bradford* at 458-459.

¹⁶ *2YSV6N and the Department of Communities, Child Safety and Disability Services* [2014] QICmr 25 (5 June 2014) at [45].

¹⁷ *Marion's case (Secretary, Department of Health and Community Services v JWB and another* (1992) 175 CLR 218 at [19] referring to *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 112; see also *AZ4Z4W and the Department of Communities, Child Safety and Disability Services* [2014] QICmr 26 (5 June 2014) at [34].

¹⁸ Section 21(2) of the HR Act.

¹⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. The Information Commissioner's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw 'no reason to differ' from our position: at [23].

²⁰ 37 pages.

²¹ Dated 26 May 2025, 2 June 2025, 11 June 2025 and 11 August 2025.

²² In the submission dated 11 August 2025, the parent explained that they consider the information within these records may be incomplete, one-sided or inaccurate.

- They are concerned that the child's other parent:
 - has previously been involved with the Department regarding care for other children; and
 - has withheld the child from the parent, as part of a broader pattern of coercive and controlling behaviour.

18. The submissions detailed at paragraphs 16 to 17 refer to the entitlement of the parent, rather than the child applicant, to receive information relating to the child's welfare. While I recognise the parent's desire to access this information, I am not aware of any general right or entitlement of a parent, that would provide an exemption from, or ability to override the provisions of the IP Act or RTI Act.

19. The parent has explained that they require this information to support Federal Circuit and Family Court proceedings regarding care for the child. I acknowledge that disclosing this information could provide the parent with more comprehensive details of the information gathered by the Department while exercising its child safety functions. However, the access right under the IP Act is not meant to replicate, or serve as an adjunct to, court disclosure processes, where disclosure and discovery processes may be utilised.

20. Determining the best interests of a child is a multi-faceted test and includes consideration of the factors that will affect the future and immediate welfare and happiness of the child—in some cases, this will not align with the views of the parent.²³ I also note that QCAT has confirmed that '*...the legislation does not in terms attribute any special significance to the opinion of the child's parent as to what is in the best interests of the child.*'²⁴

21. In this case, while the child is the applicant,²⁵ the practical effect of disclosure is that the requested documents would be released to the parent on behalf of the child applicant. The child applicant is of primary school age which means that the child's privacy and ability to control the personal information provided by them to the Department is a somewhat low, but a gradually increasing consideration. Relevantly, I recognise that the child has privacy interests separate to those of the parent.

22. The parent contests the Department's finding in relation to circumstances of family conflict, including that disclosure of this information may adversely affect the child's relationship with family members.²⁶ However, the parent's concern about the child's safety and the existence of parenting proceedings in the Federal Circuit and Family Court support the Department's position that the parenting arrangements are not harmonious, and there is a level of family conflict.

23. Taking this into account, I consider that disclosure of the requested documents could impact the child's willingness to speak freely with the Department in the future, should that be required, out of fear that any information disclosed with the Department may be shared. This in turn could prejudice the Department's ability to perform its child protection functions, and I consider the reasons the parent has identified as to why they consider disclosure would be in the child's best interests are not sufficient to overcome this potential consequence of disclosure. I am therefore satisfied that disclosure of the requested documents would not be in the child's best interests.

24. The material before me shows that the parent cares for the child applicant and is motivated to ensure their protection and address matters of concern. However, I have

²³ P64 and Queensland Police Service [2019] QICmr 56 (6 December 2019).

²⁴ FLK at [7].

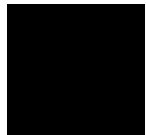
²⁵ Section 45(1) of the IP Act.

²⁶ External review application dated 26 May 2025.

also taken into account the Department's view that '*release of the information may adversely affect the child's relationship with family members*'.²⁷ The requested documents contain sensitive personal information of the child. Given this and the context of family conflict observed by the Department, I am satisfied that disclosure of information gathered by the Department while exercising its child safety functions would not be in the best interests of the child applicant.

DECISION

25. For the reasons set out above, I affirm the Department's decision to refuse access to 37 pages on the ground that disclosure would be contrary to the child's best interests.
26. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.



Brianna Luhrs
Manager, Right to Information

Date: 12 December 2025

²⁷ Decision dated 26 May 2025.