



Decision and Reasons for Decision

Application Number:	210232
Applicant:	PYT
Respondent:	Department of Education, Training and the Arts
Third Parties:	FHR & TQP
Decision Date:	31 January 2008
Catchwords:	FREEDOM OF INFORMATION – section 44(1) of the <i>Freedom of Information Act 1992</i> (Qld) – whether disclosure of the matter in issue would reveal information concerning a person’s personal affairs - shared personal affairs – whether disclosure of the matter in issue is, on balance, in the public interest

Contents

Summary	2
Background	2
Decision under review	3
Steps taken in the external review process	3
Matter in issue	4
The Original Applicants’ submissions	4
Findings	5
• The Original Applicant’s submissions	5
• Section 44(1) of the FOI Act	5
○ Personal affairs	6
○ Public interest balancing test	9
• Conclusion	11
Decision	11

REASONS FOR DECISION

Summary

1. I am satisfied that the matter in issue is exempt from disclosure in its entirety under section 44(1) of the *Freedom of Information Act 1992* (Qld) (FOI Act).

Background

2. By letter dated 13 November 2006, FHR and TQP (Original Applicants) applied to the Department of Education, Training and the Arts (Department) under the FOI Act for:

... all information, reports, letters, notes and writings concerning us relating to [a child], [two other individuals], held, received or provided by Ashgrove State School, Collingwood Park State School and the Education Dept.

3. By letter dated 30 January 2007, the Department consulted PYT (External Review Applicant) under section 51 of the FOI Act in relation to the release of information responsive to the freedom of information application (FOI Application).
4. By letter dated 2 February 2007, the External Review Applicant advised the Department that they strongly objected to the release of relevant information and provided submissions in support of that case.
5. By letter dated 9 February 2007, Mr Matt Woodforth, Senior Policy Officer of the Department, advised the Original Applicants that the Department had:
 - located 128 folios during the processing of the FOI Application
 - consulted the External Review Applicant under section 51 of the FOI Act in relation to the release of five of the 128 folios but that, in his view, the External Review Applicant's claims for exemption were not persuasive
 - decided:
 - to provide full access to 15 of the 128 folios
 - to provide partial access to 88 of the 128 folios
 - to refuse access to 20 of the 128 folios
 - five of the 128 folios were not responsive to the FOI Application
 - to defer access to the five folios that were the subject of consultation with the External Review Applicant in accordance with section 51(2)(e) of the FOI Act.
6. By letter dated 16 February 2007, Mr Woodforth advised the External Review Applicant that their claims for exemption were not made out and the Department had decided to release the five relevant documents in full.
7. By email dated 26 March 2007, the External Review Applicant applied for internal review of Mr Woodforth's decision.
8. By letter dated 2 May 2007, Ms Stephanie Kalas, Senior Legal Officer of the Department, advised the External Review Applicant and the Original Applicants that she had decided to affirm Mr Woodforth's decision.
9. By letter dated 30 May 2007, the External Review Applicant sought external review of Ms Kalas' internal review decision.

Decision under review

10. The decision under review is the internal review decision of Ms Kalas dated 2 May 2007.

Steps taken in the external review process

11. By email dated 31 May 2007 and letter dated 11 July 2007, this Office requested that the Department provide it with documents relevant to the external review.
12. By emails dated 7 June 2007 and 16 July 2007, the Department provided this Office with the relevant documents.
13. On 14 June 2007, the Original Applicants contacted this Office and advised that they wished to be parties to the external review.
14. By letter dated 19 November 2007, I communicated the preliminary view to the Department that the matter in issue was exempt in its entirety under section 44(1) of the FOI Act. I invited the Department to make written submissions in support of its case by 30 November 2007 if it did not accept the preliminary view.
15. On 21 November 2007, a staff member of this Office telephoned the Original Applicants to:
 - communicate the preliminary view that the matter in issue was exempt in its entirety under section 44(1) of the FOI Act
 - advise that if they wished to contest the preliminary view, they could make written submissions to this Office in support of their case by 30 November 2007.
16. By letter dated 21 November 2007, I confirmed the preliminary view to the Original Applicants in writing and invited them to make submissions by 30 November 2007.
17. On 23 November 2007, the Original Applicants telephoned this Office to advise that they did not accept the preliminary view and intended to make submissions to this Office.
18. By letter dated 11 December 2007, the Department advised that it accepted the preliminary view.
19. By email dated 14 January 2008, the Original Applicants provided their submissions and supporting documentation to this Office.
20. In making this decision, I have taken the following into account:
 - the Original Applicants' FOI Application dated 13 November 2006
 - the External Review Applicant's letter to the Department dated 2 February 2007
 - the Department's initial decision dated 9 February 2007 (to the Original Applicants)
 - the Department's initial decision dated 16 February 2007 (to the External Review Applicant)
 - the External Review Applicant's application for internal review dated 26 March 2007
 - the Department's internal review decision dated 2 May 2007 (to the Original Applicants)

- the Department's internal review decision dated 2 May 2007 (to the External Review Applicant)
- the External Review Applicant's application for external review dated 30 May 2007
- file notes of conversations between members of this Office and the Original Applicants
- the Original Applicants' submissions dated 14 January 2008
- relevant legislation and case law
- the matter in issue.

Matter in issue

21. The Department identified 128 documents during the processing of the FOI Application.
22. The External Review Applicant was consulted under section 51 of the FOI Act in relation to five of those documents, described by the Department as documents 1, 2, 3, 4 and 29 of File A. In its initial decision, the Department decided that large parts of the five folios were exempt under section 44(1) of the FOI Act. The Original Applicants did not seek internal review of that decision.
23. Therefore the matter in issue in this external review is limited to the sections of five folios (documents 1, 2, 3, 4 and 29 of File A) which were the subject of consultation with the External Review Applicant. That is, the five folios which concern the personal affairs of both the Original Applicants and other persons (Matter in Issue).

The Original Applicants' submissions

24. By letter dated 14 January 2008, the Original Applicants made submissions to this Office.
25. Relevant to this external review, the Original Applicants submit that:

*The information that we have asked for is **information concerning us, only us and no other person or organization**. We have not requested access to information concerning personal affairs of any other person such as a child or any other members of that child's family. However I believe it is our right through FOI to receive all information recorded and statements made about us by other persons and agencies including information about us which has been documented on other person's files. In saying this I strongly believe that any information about us and only that information about us which is documented and held on reports, letters, notes and writings relating to other persons ... should be, through FOI, made available to us. I fail to see why any personal details relating to any other person can not be blacked out as has been done by other agencies which then ensures the other persons privacy but permits us to have access to the information on record about us.*

...

Matthew Woodforth from FOI Education Branch has considered certain information which is on record about us and found in favour of same being released to us. Due to an objection by the third person the information was then examined by Ms. Stephanie Kalas who agreed with the decision made by Mr Woodforth and also found in favour of releasing same to us. However some third party has once again objected and it has been with you for your decision since May 2007.

There are a number of other documents that have been withheld as well as those to which you refer.

26. The Original Applicants also submit that:

We are aware that information concerning us has been provided to other persons, entities or organizations without us being asked if we had any objections to such information being provided so obviously it appears that a significant lack of consideration has been given with respect to our personal affairs. If other persons have been given access to this information then we question why we are not entitled to same.

We are in receipt of a letter from a lawyer advising us of information which was requested and received through FOI by other persons, relating to us. The letter from the lawyer also divulged certain delicate information relating to another named person's extremely personal affairs. We were never contacted nor were we offered the chance to object to information being supplied to other persons through FOI.

27. With respect to the issues raised by the Original Applicants in paragraph 26, I note that this Office:
- has no jurisdiction in respect of any previous FOI applications
 - is empowered only to externally review the Matter in Issue.

Findings

The Original Applicant's submissions

28. I acknowledge the Original Applicants' submissions that they seek only information concerning themselves.
29. However, in searching for information concerning the Original Applicants, the Department located five folios which concern both the Original Applicants and others. For this reason, the External Review Applicant was consulted in relation to the release of these five folios and subsequently decided to exercise their right under the FOI Act to apply for external review of the Department's decision to release them.
30. As the five relevant folios concern both the Original Applicants and other people, I must consider whether the information relates to the personal affairs of, not only the Original Applicants, but also those other people.
31. The Original Applicants request that other persons' personal affairs matter be blacked out and the remainder released to them.
32. The Original Applicants also submit that a number of other documents have been withheld from them. I note that the Original Applicants were advised of their rights to seek internal review of Mr Woodforth's decision dated 9 February 2007 but did not do so. Accordingly this Office has no jurisdiction to consider these other documents in this external review.

Section 44(1) of the FOI Act

33. Section 44(1) of the FOI Act relevantly provides that:

44 Matter affecting personal affairs

- (1) *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

34. Section 44(1) of the FOI Act requires consideration of the following issues:

- Would disclosure of the matter in issue reveal information concerning a person's personal affairs?
- If it would, the matter in issue is exempt¹ from disclosure unless there are public interest considerations favouring disclosure, which, on balance, outweigh the public interest considerations against disclosure.

35. I will examine each of these requirements below.

Personal affairs

36. In *Stewart and Department of Transport*², the Information Commissioner found that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:

- family and marital relationships
- health or ill health
- relationships and emotional ties with other people
- domestic responsibilities or financial obligations.

37. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.

38. Section 87(3) of the FOI Act imposes an obligation on the Commissioner to not disclose matter that is claimed to be exempt matter. Therefore, I am not able to reveal the substance of the Matter in Issue in order to explain whether it is properly characterised as information concerning a person's personal affairs.

39. I have, however, carefully considered the Matter in Issue and am satisfied that it relates to family relationships and emotional ties. Information relating to family relationships and emotional ties falls within the well accepted core meaning of 'personal affairs'³ and is properly characterised as the personal affairs of the relevant individuals.

40. On this basis, I am satisfied that disclosure of the Matter in Issue would reveal information concerning personal affairs, more specifically, the personal affairs of:

- the child referred to in the FOI Application (the Child)
- the Original Applicants
- members of the Child's family.

Deletion of exempt matter

41. Section 32 of the FOI Act provides:

32 *Deletion of exempt matter*

Subject to section 35, if—

¹ Though it is not exempt merely because it concerns the personal affairs of the applicant (section 44(2) of the FOI Act).

² (1993) 1 QAR 227 (*Stewart*).

³ *Stewart* at paragraph 79.

- (a) *an application is made for access to a document containing exempt matter (including a document that is the subject of a certificate under section 36, 37, 42 or 42A); and*
 - (b) *it is practicable to give access to a copy of the document from which the exempt matter has been deleted; and*
 - (c) *it appears to the agency or Minister concerned (whether from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to such a copy;*
- the agency or Minister is to give access accordingly.*

42. In some cases, the matter in issue can concern the personal affairs of more than one person. Where this is the case, section 32 of the FOI Act sometimes permits the deletion of information that is exempt from the document, where it is practicable, so that the remainder of the document, that is not exempt, can be released to the applicant. For example, in this case, if section 32 was applicable, it would allow the deletion of information concerning the personal affairs of the Child and members of the Child's family so that the remainder of the information could be released to the Original Applicants.

Section 44(2) of the FOI Act

43. Section 44(2) of the FOI Act provides:

44 Matter affecting personal affairs

...

- (2) *Matter is not exempt under subsection (1) merely because it relates to information concerning the personal affairs of the person by whom, or on whose behalf, an application for access to a document containing the matter is being made.*

44. In summary, section 44(2) means that matter will not be exempt under section 44(1) of the FOI Act purely because it relates to information concerning the personal affairs of the applicant. In other words, if the Matter in Issue in this review concerned only the personal affairs of the Original Applicants, the Matter in Issue would not be exempt under section 44(1) of the FOI Act.

Relationship to the Child

45. I note that the Information Commissioner found in *FMG and Queensland Police Service*⁴ that an applicant's familial relationship to another person does not confer any entitlement to be given access to information concerning the personal affairs of that other person under the FOI Act.
46. Although there is nothing before me to suggest that the Original Applicants are guardians of the Child, I also note that the Information Commissioner has previously decided that the personal affairs of a child are separate from the personal affairs of their parent or guardian.⁵

⁴ (S69/97; 24 April 1998) at paragraph 22.

⁵ *KT and Brisbane North Regional Health Authority* (1998) 4 QAR 287 at paragraph 31 referring with approval to *Haines v Neves and Another* (1987) 8 NSWLR 442 and *Gillick and West Norfolk and Wisebeck Area Health Authority* [1986] 1 AC 112.

Shared personal affairs

47. As set out above, disclosure of the Matter in Issue would reveal information relating to the personal affairs of not only the Original Applicants, but also the Child and members of the Child's family. After careful consideration of relevant information, I am satisfied that the information concerning the personal affairs of the Child and the Child's family cannot be separated from the information concerning the personal affairs of the Original Applicants. This is the case as the Matter in Issue does not comprise discrete segments of information which can be deleted from the documents. Therefore, in my view, it is impossible to separate information concerning the personal affairs of the Original Applicants from the information concerning the personal affairs of the Child and members of the Child's family.
48. Where matter in issue is comprised of information concerning the personal affairs of the applicant which cannot be separated from information concerning the personal affairs of another person, then the information is properly characterised as shared personal affairs.
49. In the decision of *B and Brisbane North Regional Health Authority*⁶ the Information Commissioner said, in relation to shared personal affairs, that:

Where, however, the segment of matter in issue is comprised of information concerning the personal affairs of the applicant which is inextricably interwoven with information concerning the personal affairs of another person, then:

- (a) severance in accordance with s.32 is not practicable;
- (b) the s.44(2) exception does not apply; and
- (c) the matter in issue is *prima facie* exempt from disclosure to the applicant according to the terms of s.44(1), subject to the application of the countervailing public interest test contained within s.44(1).

50. Therefore, as the Matter in Issue involves the shared personal affairs of the Original Applicants, the Child and members of the Child's family:
 - it is not possible to delete exempt matter from the documents under section 32 of the FOI Act and to release the remainder of the information to the Original Applicants
 - the section 44(2) exemption does not apply
 - the Matter in Issue is *prima facie* exempt from disclosure to the Original Applicants under section 44(1) of the FOI Act, subject to the public interest test.

Personal affairs - summary

51. I am satisfied that:
 - The Matter in Issue relates to family relationships and emotional ties.
 - Matter relating to family relationships and emotional ties falls within the well accepted core meaning of 'personal affairs'⁷ and is properly characterised as the personal affairs of the relevant individuals.
 - The Matter in Issue concerns the shared personal affairs of the Child, the Original Applicants and other members of the Child's family.

⁶ (1994) 1 QAR 279 at paragraph 176.

⁷ *Stewart* at paragraph 79.

- These shared personal affairs cannot be separated and the deletion of exempt matter in accordance with section 32 is not practicable in the circumstances.
- The section 44(2) exception does not apply.
- The Original Applicants' relationship to the Child and members of the Child's family does entitle the Original Applicants to access information concerning the personal affairs of the Child or members of the Child's family under the FOI Act.
- The Matter in Issue is *prima facie* exempt from disclosure under section 44(1) of the FOI Act subject to the public interest balancing test.

Public interest balancing test

52. Where matter is *prima facie* exempt from disclosure under section 44(1) of the FOI Act, it is exempt '*unless its disclosure would, on balance, be in the public interest*'.
53. Accordingly, I must:
- consider any public interest considerations favouring disclosure of the Matter in Issue
 - determine whether these public interest considerations outweigh the public interest in the protection of personal privacy⁸ and any other public interest considerations favouring non-disclosure of the matter.

Public interest considerations favouring disclosure

54. I have considered the following public interest considerations in favour of disclosure:
- the public interest in persons having access to information held by government
 - the public interest in persons having access to information regarding their personal affairs.
55. I will examine each of these considerations in turn.

The public interest in persons having access to information held by government

56. The general public interest in information held by government being accessible is a public interest consideration favouring disclosure. However, this general public interest carries less weight when the matter in issue constitutes personal information concerning private individuals (as is the case in this review), rather than information held by the government about the government. Accordingly, I am of the view that this public interest consideration carries less weight than it might in other circumstances.

The public interest in persons having access to information regarding their personal affairs

57. The more specific public interest recognised at section 4(2)(c) of the FOI Act, that is, the public interest '*that, in a free and democratic society ... members of the community*

⁸ Satisfaction of the first limb of the test under section 44(1) of the FOI Act establishes a public interest consideration in protecting the privacy of an identifiable individual. In the absence of any other public interest considerations, satisfaction of the *prima facie* exemption justifies non-disclosure of the matter in issue.

should have access to information held by government in relation to their personal affairs..., is also a public interest consideration favouring disclosure.

58. As to whether the Matter in Issue constitutes the Original Applicants' personal affairs, I have indicated that I am satisfied that the Matter in Issue constitutes the shared personal affairs of the Original Applicants and other individuals.

Public interest considerations favouring non-disclosure

59. Against these public interest considerations favouring disclosure I must balance those favouring non-disclosure.
60. In this regard, I note that disclosure of matter under the FOI Act is considered to be 'disclosure to the world at large' rather than disclosure to a particular applicant, there being no restriction on the use or further dissemination of the information. In this respect I note the strong public interest in protecting third parties' personal affairs information from disclosure to another person and potentially the world at large.⁹

Where does the balance of public interest considerations lie?

61. I have carefully weighed the public interest considerations favouring disclosure and non-disclosure and am satisfied that:
- Disclosure of the Matter in Issue must be considered as release to the world at large rather than only to the Original Applicants.
 - There is a strong public interest in protecting the personal privacy of the other individuals, given that the Matter in Issue is *prima facie* exempt from disclosure. This public interest is a highly significant consideration in the circumstances that should be accorded a very substantial amount of weight.
 - The public interest considerations favouring disclosure of the Matter in Issue should be accorded less weight than they might in circumstances not involving shared personal affairs.
 - On balance, the public interest considerations favouring disclosure of the Matter in Issue do not outweigh the public interest considerations favouring non-disclosure.

Public interest balancing test - summary

62. After carefully considering the public interest considerations for and against disclosure of the Matter in Issue, I am satisfied that the arguments in favour of disclosure do not outweigh the privacy interests favouring non-disclosure.

⁹ *Dwyer and Department Of Finance* (1985) 8 ALD 474 (*Dwyer*) at page 482. The object of the Queensland FOI Act is similar to that of the Commonwealth FOI Act in that it creates a right of the community to have access to information. The proposition in *Dwyer* that disclosure under the FOI Act is disclosure to the world at large has long been accepted in Queensland by the Information Commissioner. Further, in the decisions of *Campillo and Australian Customs Service* [2005] AATA 1196 (2 December 2005) and *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142, it was also considered that the release of a document under the FOI Act amounts to a release to the world at large, not just the applicant and that a request for information does not depend upon the particular nature or motivation of the applicant for disclosure.

Conclusion

63. For the reasons set out above, I am satisfied that:
- a) The Matter in Issue relates to family relationships and emotional ties.
 - b) Matter relating to family relationships and emotional ties falls within the well accepted core meaning of 'personal affairs' and is properly characterised as the personal affairs of the relevant individuals.
 - c) The Matter in Issue concerns the shared personal affairs of the Child, the Original Applicants and other members of the Child's family.
 - d) These shared personal affairs cannot be separated and the deletion of exempt matter in accordance with section 32 is not practicable.
 - e) The section 44(2) exception does not apply.
 - f) The Original Applicants' relationship to the Child and members of the Child's family does entitle the Original Applicants to access information concerning the personal affairs of the Child or members of the Child's family under the FOI Act.
 - g) The Matter in Issue is *prima facie* exempt from disclosure under section 44(1) of the FOI Act subject to the public interest balancing test.
 - h) After carefully considering the public interest considerations for and against disclosure of the Matter in Issue, the arguments in favour of disclosure do not outweigh the privacy interests favouring non-disclosure.
64. In accordance with the matters set out above, I am satisfied that the Matter in Issue is exempt from disclosure in its entirety under section 44(1) of the FOI Act.

DECISION

65. I set aside the internal review decision of Ms Kalas dated 2 May 2007.
66. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

F Henry
Assistant Commissioner

Date: 31 January 2008