



Decision and Reasons for Decision

Citation: *67IEWN and Queensland Health* [2016] QICmr 40
(7 October 2016)

Application Number: 312776

Applicant: 67IEWN

Respondent: Queensland Health

Decision Date: 7 October 2016

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - documents relating to investigation of alleged drug theft from hospital workplace - whether documents obtained, used or prepared for an investigation by a prescribed crime body or another agency performing the prescribed functions of the prescribed crime body - whether information is exempt - sections 47(3)(a), 48 and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - where applicant was complainant - whether information is 'about' the applicant - whether information is not exempt on basis of schedule 3, section 10(6) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant is a registered nurse. The applicant lodged a grievance with Queensland Health (**QH**) containing allegations of drug theft at her workplace (**Grievance**). QH subsequently conducted an investigation into the allegations raised in the Grievance (**QH Investigation**).
2. The applicant applied to QH under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the QH Investigation findings and recommendations and relevant internal memos, emails etc. and the outcomes implemented as a result of the investigation (for the time-period February 2011 to December 2011) (**access application**).
3. QH refused access to the information sought in the access application.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QH's decision on 6 March 2016.
5. For the reasons set out below, I affirm QH's decision.

Background

6. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

7. The decision under review is QH's decision on the access application, made on 29 February 2016, refusing access to the information sought.¹

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).

Information in Issue

9. The Information in Issue in this review comprises the 87 page investigation file for the QH Investigation.² The file includes emails and assessment documentation relevant to the investigation and a report on the investigation (**Investigation Report**).

Relevant law

10. The RTI Act is to be administered with a pro-disclosure bias.³ A person has a right to be given access to documents of an agency under the RTI Act.⁴ However, this right is subject to other provisions of the RTI Act, including the grounds for refusing access.

¹ Under sections 47(3)(a), 48 and schedule 3, section 10(4) of the RTI Act. In its Prescribed Written Notice, QH also relied on section 40 of the RTI Act. Section 40 permits an agency to refuse to deal with an access application if the requirements of the section are satisfied. The Information Commissioner (or their delegate) can decide any matter in relation to the access application that could, under the Act, have been decided by the agency dealing with the application: section 105(1)(b) of the RTI Act. I have decided to deal with this matter as a refusal of access under section 47(3)(a), 48 and schedule 3, section 10(4) of the RTI Act.

² During the external review, and in an effort to resolve the review informally, (in accordance with section 90 of the RTI Act which encourages early resolution and informal settlement of external reviews), QH agreed to disclose to the applicant a small amount of information about the outcome and recommendations of the Investigation. QH had consulted a relevant Hospital and Health Service (**HHS**) under section 37 of the RTI Act. The HHS did not object to disclosure.

³ Section 44 of the RTI Act.

⁴ Section 23 of the RTI Act.

11. An agency may refuse access to exempt information.⁵ Exempt information is information which the Queensland Parliament has considered would, on balance, be contrary to the public interest to disclose. Schedule 3 of the RTI Act sets out the various types of exempt information.⁶
12. Relevantly, schedule 3, section 10(4) of the RTI Act provides that information is exempt information if it was obtained, used or prepared for an investigation by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body. However, schedule 3, section 10(6) of the RTI Act will exclude the operation of schedule 3, section 10(4) if the investigation has been finalised and the information under consideration is information 'about' the applicant.⁷

Findings

Was the investigation conducted by an agency performing the prescribed functions of a prescribed crime body?

13. Yes, for the reasons that follow.
14. Under the RTI Act, the Crime and Corruption Commission (**Commission**)⁸ is a prescribed crime body.⁹ The prescribed functions of the Commission include corruption functions.¹⁰ In discharging these functions the Commission must ensure that a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the CC Act principles¹¹ for performing the corruption functions.¹² These principles include the principle of *devolution*—which specifies that action to deal with corruption in a unit of public administration should generally happen within the unit.¹³
15. QH indicated in its decision, and my review of the Information in Issue confirms, that:
 - the Grievance contained allegations that, if proven, would have constituted official misconduct by QH staff
 - QH notified the Commission of the allegations
 - the Commission referred the matter back to QH to deal with and manage, subject to the Commission's monitoring role and the requirement that the Commission be advised of the outcome.

Was the Information in Issue 'obtained, used or prepared' for the QH Investigation?

16. Yes, for the reasons that follow.

⁵ Sections 47(3)(a) of the RTI Act.

⁶ Section 48(2) of the RTI Act.

⁷ Schedule 3, section 10(6) of the RTI Act.

⁸ The Commission was, at the time of the investigation, called the Crime and Misconduct Commission (**CMC**). The *Crime and Misconduct Act 2001* (Qld), which established the CMC, was amended by the *Crime and Misconduct and other Legislation Amendments Act 2014* (Qld) (**CMOLA Act**). Among other things, the CMOLA Act amendments changed the name of the Act to the *Crime and Corruption Act 2001* (Qld) (**CC Act**) and re-named the CMC the Crime and Corruption Commission. For ease of reference these reasons refer to the CC Act and Commission.

⁹ See definition of *prescribed crime body* in schedule 3, section 10(9) of the RTI Act.

¹⁰ Schedule 3, section 10(9) of the RTI Act. See definition of *corruption functions* in schedule 3, section 10(9) of the RTI Act, which refers to the definition in section 33 of the CC Act.

¹¹ Set out in section 34 of the CC Act.

¹² See definition of *corrupt conduct* in section 15 of the CC Act. The amendments effected by the CMOLA Act also replaced what was, at the time of the QH Investigation, referred to as official misconduct with the concept of corrupt conduct (see section 15(1) and section 400(c) of the CC Act). As the QH Investigation involved an allegation, which if proven, would constitute *corrupt conduct* as defined in section 15 of the CC Act, schedule 3, section 10(4) of the RTI Act can apply to the Information in Issue.

¹³ Section 34(c) of the CC Act.

17. The terms '*obtained*', '*used*' and '*prepared*' are not defined in the RTI Act or *Acts Interpretation Act 1954* (Qld) so they must be given their ordinary meaning.
18. I have carefully considered the Information in Issue and am satisfied that each document was obtained,¹⁴ used¹⁵ and/or prepared¹⁶ for the QH Investigation, in accordance with the ordinary meaning of those terms. That is, the documents came into QH's possession, were employed for the purpose of the QH Investigation and/or were prepared (composed) for the QH Investigation.

Does schedule 3, section 10(6) of the RTI Act apply to the Information in Issue?

19. No, for the reasons that follow.
20. Schedule 3, section 10(6) of the RTI Act is the only exception to schedule 3, section 10(4) of the RTI Act. If the former provision applies, the Information in Issue cannot comprise exempt information under schedule 3, section 10(4) of the RTI Act. In other words, if the investigation has been finalised and the information is *about* the applicant, the information cannot be exempt under schedule 3, section 10(4) of the RTI Act.
21. The QH Investigation has been finalised, thereby satisfying the first limb of subsection (6). However, for the exception to apply, the information must also be *about* the applicant.
22. In her external review application, the applicant explained that she disagreed with QH's decision and provided a copy of a Statutory Declaration¹⁷ as well as a copy of a document outlining a formal grievance which she had provided to QH. She also provided a formal submission to OIC on external review, attaching a number of documents for consideration, including information provided by her treating health practitioners.¹⁸
23. The applicant does not contest that the Information in Issue was obtained, used or prepared for the QH Investigation. Her submissions go to whether the exception to schedule 3, section 10(4) of the RTI Act applies. That is, whether the Information in Issue is '*about*' her.
24. I have carefully considered all of the submissions and documentation the applicant has provided to OIC. This information details the applicant's experiences, observations and concerns about a range of issues in relation to her workplace over a significant period of time. The applicant also provided information about the very significant and deleterious impact which she says these issues and her efforts to resolve the matters has had on her health and wellbeing. In her formal submission the applicant also outlines in some detail her reasons for seeking access to the Information in Issue.
25. During the review, I explained to the applicant (in a letter conveying my preliminary view on the issues in this review),¹⁹ that I cannot take into account the effect the workplace issues have had on the applicant or her health or the importance to her of receiving the Information in Issue, because these matters are not relevant to the legal issue to be determined under the RTI Act.

¹⁴ Relevantly – '*come into possession of*': Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

¹⁵ Relevantly – '*to employ for some purpose, put into service*': Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

¹⁶ Relevantly – '*to compose*': Macquarie Dictionary Online, <https://www.macquariedictionary.com.au/> (accessed 26 September 2016).

¹⁷ Executed in 2009.

¹⁸ Dated 9 August 2016.

¹⁹ Dated 26 July 2016.

26. If information is found to be exempt, there is no scope in applying schedule 3, sections 10(4) and 10(6) of the RTI Act to take into account an applicant's reasons for seeking access to information. Exempt information is a category of information which the Queensland Parliament has decided would be contrary to the public interest to disclose and therefore, any public interest factors which may favour disclosure cannot be taken into account.
27. The word '*about*' in schedule 3, section 10(6) of the RTI Act, as a matter of law, is a '*non-technical term defined according to its natural and ordinary meaning*.'²⁰ Previous decisions of the Information Commissioner have found that while an investigation report and/or investigation materials may have come into existence as a result of an applicant's complaint, this does not mean that the investigation information is *about* the applicant. Instead, these decisions have found that the relevant investigation information clearly concerned – was about – those individuals who were the subject of the complaint, and not the applicant.²¹
28. I have carefully considered the Information in Issue to assess whether any information is about the applicant. While there are incidental references to the applicant in some of the material, this information is intertwined with information about others, in such a way that it cannot practicably be separated. I am satisfied that although the QH Investigation resulted from allegations made by the applicant, the Information in Issue substantively concerns QH staff about whom the allegations were made, and is *about* those individuals, not the applicant.

Conclusion

29. For the reasons set out above, I find that the Information in Issue:
- was obtained, used or prepared for an investigation by QH in the performance of one of the prescribed functions of a prescribed crime body
 - is not subject to the exception in schedule 3, section 10(6) of the RTI Act; and
 - is therefore exempt information under schedule 3, section 10(4) of the RTI Act.

DECISION

30. I affirm the decision under review and find that access to the Information in Issue may be refused under sections 47(3)(a), 48 and schedule 3, section 10(4) of the RTI Act.
31. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 7 October 2016

²⁰ *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52]. Relevantly – '*of, concerning, in regard to*': Macquarie Dictionary Online (accessed 26 September 2016).

²¹ *G8KPL2 and the Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) at [32]) (an appeal against this decision was dismissed: See *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) (an appeal against this decision was also dismissed: See *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167; *Cameron and Queensland Police Service* (Unreported, Queensland Information Commissioner, 7 August 2012); *Magin and Department of Environment and Heritage Protection* [2016] QICmr 26 (30 June 2016).

APPENDIX

Significant procedural steps

Date	Event
24 December 2015	QH received the access application.
29 February 2016	QH issued its decision on the access application.
6 March 2016	OIC received the external review application.
7 March 2016	OIC notified QH that the external review application had been received and requested that QH provide a number of procedural documents by 14 March 2016.
8 March 2016	OIC received the requested documents from QH.
14 March 2016	OIC notified QH and the applicant that the external review application had been accepted. OIC asked QH to provide the documents located in response to the access application and a copy of any correspondence with consulted third parties by 30 March 2016.
22 March 2016	OIC received the requested documents from QH, including correspondence with the HHS which QH had consulted when processing the access application.
13 May 2016	QH agreed to disclose a small amount of information from the Investigation Report to the applicant in an effort to informally resolve the external review.
31 May 2016	OIC conveyed to the applicant a preliminary view that the information remaining in issue in the review comprised exempt information, requesting that she consider informally resolving the external review.
9 June 2016	In a telephone discussion with an OIC staff member, the applicant spoke about the importance to her of obtaining access to the Information in Issue and how the issues in her workplace had impacted her. The OIC staff member also confirmed the next steps in the review process.
14 June 2016	In an email, the applicant indicated to OIC that she wished to provide submissions in the external review.
26 July 2016	OIC conveyed to the applicant a further and final preliminary view that the Information in Issue in the review comprised exempt information and therefore access to it could be refused under section 47(3)(a) of the RTI Act. OIC asked the applicant to provide submissions supporting her case by 12 August 2016 if she did not accept the preliminary view.
9 August 2016	OIC received the applicant's submissions.
29 September 2016	OIC provided an update to the applicant regarding the time-frame for issuing a decision to finalise the external review.