



Decision and Reasons for Decision

Application Number: 310161

Applicant: IJG

Respondent: Department of Health

Decision Date: 25 August 2010

Catchwords: **INFORMATION PRIVACY – Grounds on which access may be refused – section 67(1) of the *Information Privacy Act 2009* (Qld)**

RIGHT TO INFORMATION – EXEMPT INFORMATION – section 48 of the *Right to Information Act 2009* (Qld)

RIGHT TO INFORMATION – EXEMPT INFORMATION – LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION – whether disclosure of information could reasonably be expected to endanger a person’s life or physical safety under schedule 3, section 10(1)(c) of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. Having considered the parties' submissions and evidence, relevant legislation, case law and decisions, I am satisfied that:
 - the information in issue comprises exempt matter under section 48 of the *Right to Information Act 2009* (Qld) (**RTI Act**), on the basis that its disclosure would reasonably be expected to endanger a person's life or physical safety under schedule 3, section 10(1)(c) of the RTI Act
 - access to the information in issue may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) (**IP Act**).

Background

2. By application dated 19 February 2010, the applicant applied to the Department of Health (**Department**) for access to reports made to the Supreme Court in 1997 and 2001 by various psychiatrists (**Access Application**).
3. In its letter dated 16 March 2010, the Department identified 16 pages responding to the applicant's request. The Department decided to refuse access to all 16 pages under section 67(1) of the IP Act on the basis that the information comprised exempt information under section 48 of the RTI Act pursuant to schedule 3, section 10(1)(c) and schedule 3, section 10(1)(d) of the RTI Act.
4. By letter received on 26 March 2010, the applicant applied to the Office of the Information Commissioner (**the Office**) for an external review of the Department's decision.

Decision under review

5. The decision under review is the decision referred to at paragraph 3 above.

Steps taken in the external review process

6. By letters dated 15 April 2010, Acting Principal Review Officer Peters advised the parties in the review that the Access Application had been accepted for review.
7. By letter dated 9 June 2010, the Department provided the Office with a copy of the information in issue.
8. By letter dated 2 August 2010, Assistant Information Commissioner Corby provided the applicant with a preliminary view in respect of the Department's claim for exemption over the information in issue.
9. By letter received 13 August 2010, the Applicant indicated that he did not accept the preliminary view.
10. In making my decision in this matter, I have taken the following into consideration:
 - the Access Application, decision under review and application for external review

- file notes of third party consultations undertaken by the Department
- the information in issue
- relevant sections of the IP Act and RTI Act
- previous decisions of the Information Commissioner of Queensland and decisions and case law from other Australian jurisdictions or courts as identified in this decision.

Information in issue

11. The information in issue comprises the 16 pages identified by the Department as responding to the Access Application.

Findings

12. In the decision under review, the Department claim that pursuant to section 67 of the IP Act,¹ the information in issue should not be provided to the applicant because it comprises exempt matter under section 48 of the RTI Act.

Section 48 of the RTI Act

13. Section 48 of the RTI Act provides:

48 Exempt information

(1) If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.

(2) Schedule 3 sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.

...

14. The relevant provisions of schedule 3, section 10 of the RTI Act relied on by the Department in the decision under review include:

10 Law enforcement or public safety information

(1) Information is exempt information if its disclosure could reasonably be expected to-

...

(c) endanger a person's life or physical safety; or

(d) result in a person being subjected to a serious act of harassment or intimidation; or

...

15. I will firstly consider the application of schedule 3, section 10(1)(c) of the RTI Act to the information in issue.

Schedule 3, section 10(1)(c) of the RTI Act

16. As noted above this provision requires that disclosure of information 'could reasonably be expected to endanger a person's life or physical safety.' To determine the threshold

¹ This provision allows an agency to refuse access to a document in accordance with the relevant provisions of the RTI Act.

required to be satisfied by this provision, I have considered the meaning attributable to the relevant terms below.

‘Could reasonably be expected to’

17. The phrase ‘could reasonably be expected’ was considered by the Federal Court in *Attorney-General v Cockcroft*,² and found to require a decision maker to determine whether the expectation is reasonable rather than ‘irrational, absurd or ridiculous.’³ This means that there must be real and substantial grounds for expecting that the anticipated consequence will result from disclosure.⁴ However, it is not necessary for an agency to provide that the expected consequences are ‘more probable than not.’
18. Accordingly, to determine whether information is exempt from disclosure for the purposes of Schedule 3, section 10(1)(c) of the RTI Act, I must examine whether there are real and substantial grounds for the expectation that disclosing the information in issue will ‘endanger a person’s life or physical safety.’

‘Endanger a person’s life or physical safety’

19. The Information Commissioner has previously confirmed that these words require:⁵

...an evaluation of the expected consequences of disclosure in terms of endangering (i.e. putting in danger) a person’s life or physical safety, rather than in terms of the actual occurrence of physical harm...

and that:

...a source (or sources) of danger to the life or physical safety or persons must be in contemplation, and there must be evidence of a risk that disclosure of information in issue would endanger a person’s life or physical safety.

The Department’s submissions

20. The Department has indicated that based on clinical advice, disclosure of the information in issue could reasonably be expected to put other persons at risk.

The Applicant’s submissions

21. In submissions to the Department and the Office, the applicant refutes that he would pose a risk to another individual on the following basis:
 - he is 62 years of age
 - whilst he knows the identities of the relevant psychiatrists, they no longer work at the facility where he resides
 - he submits that claims he has threatened to kill or has threatened the public are lies.

² (1986) 64 ALR 97, per Bowen CJ and Beaumont J at paragraph 156.

³ *Attorney-General v Cockcroft* (1986) 64 ALR 97, per Bowen CJ and Beaumont J at paragraph 156.

⁴ See *Searle Australia Pty Ltd v Public Interest Advocacy Centre and Another* (1992) 108 ALR 163 at paragraphs 175-178.

⁵ See *Murphy and Queensland Treasury* (1995) QAR 744 where the Information Commissioner approved extracts of the Justices’ reasoning in *Department of Agriculture and Rural Affairs v Binnie* [1989] VR 836.

22. In addition, the applicant argues that he has a right to access the information in issue because:
- he was not told of the Supreme Court hearing in which the information in issue was presented until 12 years after it had taken place
 - the information in issue will allow him to take steps to get legal aid and present the truth to the Supreme Court in order to get justice.
23. Although the applicant has indicated in paragraph 22 above that the information in issue will enable him to pursue justice, this is not a matter which I can take into account in reaching a decision in this review. If the information in question satisfies schedule 3, section 10(1)(c) of the RTI Act, it will be exempt information. This provision does not require or allow consideration of public interest issues, meaning I cannot consider such interests in this review.

Evidence of the applicant's state of mind and history of violence

24. Although the information in issue provides significant insight into the applicant's illness and evidence relevant to the exemption provisions relied on in this review, section 108 of the RTI Act prevents me from disclosing in this decision or otherwise, any information claimed to be exempt information. Accordingly I am unable to discuss such information in this decision.
25. However, I note a decision of the Supreme Court in 2005 concerning the applicant describes his condition as follows:
- The applicant has been the subject of a forensic order since August 1997, following a finding of unsoundness of mind in relation to charges of possession of a dangerous drug and going armed in public in such a manner as to cause fear. He has been detained as an inpatient of a high security mental health unit since this time, except for the period 2000-2001 when he absconded interstate.
 - The applicant suffers from paranoid schizophrenia, which has resisted all attempts at treatment. He remains without insight, seriously deluded and psychotic.
 - Although he is relatively well behaved in hospital his condition is such that if he were discharged he would probably commit further acts of criminal violence.
 - His illness is characterised by grandiose and persecutory delusions featuring a persistent belief in a vast conspiracy against him which involves all psychiatrists who have treated him.
 - He is psychotic to a dangerous extent with delusional thinking which fuels a psychotic rage.
 - In 2004 he was moved to a more restricted ward after an attempted assault on a female nursing staff member who he believed was mocking and persecuting him. He has also expressed the intention of killing someone to "get respect."

26. Although the above extracts discuss the applicant's state of mind as it was in 2005, I consider the information remains relevant particularly in view of the following:

- further to the statement above concerning conspiracy beliefs about psychiatrists who have treated him, the applicant has indicated in recent submissions to the Office that he believes a psychiatrist committed a crime against him:

The fact of proving a ... psychiatrist perverted the course of justice, committing perjury and committing a conspiracy will damage psychiatry.

I am doomed to die a political prisoner simply because the truth will destroy psychiatry.

- the fact that third party consultations undertaken by the Department have confirmed the applicant's condition remains relatively unchanged.

27. It is my view, having regard to the substance of the concerns raised by the relevant third parties that any discussion of these consultations could result in the endangerment of a person's life or physical safety, the very thing being sought to be protected in this review. I have however considered these consultations in detail and believe that they, in addition to the information in issue and Supreme Court decision discussed above provide reliable evidence about the applicant's mental health and the risk he poses to the lives and physical safety of other persons.

Application of schedule 3, section 10(1)(c) of the RTI Act to the information in issue

28. On the evidence presently before me, I am satisfied that:

- due to the nature and severity of the applicant's illness and previous incidences involving him being violent and making threats, there are real and substantial grounds to expect that disclosure of the information in issue would endanger the lives and physical safety of other persons
- the information in issue comprises exempt information under schedule 3, section 10(1)(c) of the RTI Act.

Schedule 3, section 10(1)(d) of the RTI Act

29. Although the Department has also relied on schedule 3, section 10(1)(d) of the RTI Act in refusing the applicant access to the information in issue, in view of my findings above concerning the application of schedule 3, section 10(1)(c) of the RTI Act, I do not consider it necessary to consider alternative exemption provisions.

30. Accordingly, I have not considered whether the information in issue could also be exempt information under schedule 3, section 10(1)(d) of the RTI Act.

DECISION

31. I affirm the decision under review by finding that the Department was entitled to rely on section 67(1) of the IP Act to refuse the applicant access to the information in issue.

Julie Kinross
Information Commissioner

Date: 25 August 2010