

Decision and Reasons for Decision

Citation: *X30 and Department of Families, Seniors, Disability Services and Child Safety; and Other* [2026] QICmr 21 (12 February 2026)

Application Numbers: 317778 and 318115

Applicant: X30

Respondent: Department of Families, Seniors, Disability Services and Child Safety

Third Party: V57

Decision Date: 12 February 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE OF INFORMATION PROHIBITED BY PROVISION - child protection information - information comprising the identity of the notifier, or information from which the identity of the notifier could be deduced - whether disclosure is prohibited by section 186A(1) of the *Child Protection Act 1999* (Qld) - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE OF INFORMATION PROHIBITED BY PROVISION - child protection information - shared personal information - whether disclosure is prohibited by section 187(2) of the *Child Protection Act 1999* (Qld) - whether exception in section 187(4)(a) applies - disclosure not prohibited if disclosure is to another person, to the extent that the information or document is about the other person - whether exception in section 187(3)(a) applies - disclosure not prohibited if disclosure is to the extent necessary to perform the person's under or in relation to the *Child Protection Act 1999* (Qld) - whether exception in section 187(3)(b) applies - disclosure not prohibited if disclosure is for purposes related to a child's wellbeing - whether exception in section 187(3)(c)(iii) applies - disclosure not prohibited if disclosure is otherwise required or permitted under the *Child Protection Act 1999* (Qld) or another law - whether exception in section 187(3)(d) applies - disclosure not prohibited to the extent necessary to protect a person

from a serious and imminent risk to the person's safety or health - whether exception in section 187(3)(e) applies - disclosure not prohibited if the information relates to a person who is an adult and consents in writing - whether exception in schedule 3, section 12(2) of the *Right to Information Act 2009* (Qld) applies - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - child protection information with shared personal information - child protection information solely about individuals other than the applicant - accountability and transparency - personal information of the applicant - justifiable need to know - social and economic wellbeing of the community - equitable treatment of care leavers - disclosure of information prohibited by an Act - privacy and personal information of individuals - fair treatment regarding unsubstantiated allegations - flow of confidential information to agency - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

1. OIC has conducted external reviews of two decision of the Department of Families, Seniors, Disability Services and Child Safety (**Department**) regarding two access applications made by the applicant under the *Information Privacy Act 2009* (Qld) (**IP Act**).¹ For the reasons set out below, I vary the Department's reviewable decisions. I find that some Information in Issue may be refused on the ground it is exempt information or information the disclosure of which would be contrary to the public interest. I find that the remaining Information in Issue is neither exempt information, nor information the disclosure of which would be contrary to the public interest, and in absence of any ground to refuse access to this information under the IP Act, I am satisfied it may be released to the applicant.

Background

2. The applicant was in foster care as a young child and is now an adult. As is common with individuals who have been removed from their biological family and spent time in foster, residential or kinship care, the applicant advises, in summary, that she *'want[s] to understand everything that went on'* and *'need closure and ... everything relating to me and my birth family and my foster one so I can make sense of my life'*.²

¹ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment 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 two applications addressed in this decision were 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 commenced 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.

² Submission from applicant to OIC dated 16 January 2017 and emails from applicant to OIC dated 17 January 2024, 9 February 2024 and 22 March 2024.

Applicant's first access application and Department's decision

3. On 3 March 2017, the applicant made an access application to the Department³ under the IP Act seeking access to 'ALL documents surrounding my childhood' (**2017 access application**).
4. On 24 March 2017, the Department gave access to 203 pages. It refused access to 381 pages and parts of 115 pages on the ground that disclosure of this information was prohibited by section 187 of the CP Act and therefore the information was exempt information (**2017 Decision**).⁴
5. On 16 January 2024, the Office of the Information Commissioner (**OIC**) received an application from the applicant seeking external review of the 2017 Decision.⁵ An application for external review must be made within 20 business days from the date of a decision, or within the longer period the Information Commissioner allows.⁶
6. Taking into account the circumstances of the matter, including submissions made by the applicant⁷ and Department,⁸ the applicant was given a longer period to make her external review application, and her application was accepted.⁹
7. During the review, the Department advised OIC that the scope of the 2017 access application had been narrowed to electronic records about the applicant, removing hardcopy documents from the scope of the request.

Applicant's second access application and Department's decision

8. On 27 May 2024, the applicant made a second access request to the Department¹⁰ under the IP Act seeking access to 'ALL hardcopy documentation' (**2024 access application**).
9. On 3 July 2024, the Department gave access to 19 pages. It refused access to 51 pages and parts of 132 pages on the ground that disclosure of this information was prohibited by section 187 of the CP Act and therefore the information was exempt information (**2024 Decision**).¹¹
10. Also on 3 July 2024, OIC received an application for external review from the applicant seeking review of the 2024 Decision.¹² This application for external review was accepted as well.¹³
11. During the external review, the Department advised¹⁴ that, with the agreement of the applicant, its 2024 Decision only considered certain hardcopy documents, namely:

Specific hardcopy child safety documents relating to the applicant as a subject child:
1. Incidents, notifications and concerns

³ At this time, under the then applicable administrative arrangements order, the Department was the Department of Communities, Child Safety and Disability Services.

⁴ Under section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 12(1) of the RTI Act.

⁵ OIC reference 317778.

⁶ Under section 101(1)(c) of the IP Act.

⁷ As noted at footnote 1 above.

⁸ Email from Department to OIC dated 5 March 2024, in which the Department stated it was a matter for OIC as to whether it exercised its discretion under section 101(1)(c) of the IP Act.

⁹ Letters from OIC to the applicant and Department dated 27 May 2024.

¹⁰ At this time, under the then applicable administrative arrangements order, the Department was the Department of Child Safety, Seniors and Disability Services.

¹¹ Under section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 12(1) of the RTI Act.

¹² OIC reference 318115.

¹³ Letters from OIC to the applicant and Department dated 21 August 2024.

¹⁴ Email from Department to OIC dated 26 May 2025.

2. Investigations, assessments and outcomes
3. All medical documents/medical reports
4. Review reports and Progress reports
5. Photographs.

Reviewable decisions

12. The reviewable decisions are the Department's 2017 and 2024 Decisions.
13. Given these decisions concern documents held on the applicant's child protection file held by the Department, this decision combines my decision and reasons for decision for both external reviews.

Applicant's request to Department's Time In Care Information Access Service

14. The applicant advised OIC that, on 28 May 2024, she made an application to the Department's Time In Care Information Access Service (**TICIAS**) seeking documents in relation her time in care. Further, on 5 November 2024, she received a report containing five pages of information compiled by the Department about her and 109 pages comprising her medical reports, cards and letters, photographs, school reports and certificates.¹⁵ In doing so, the Department referenced section 188C of the CP Act.
15. TICIAS is an administrative release scheme administered by the Department and is not subject to external review under the IP or RTI Acts. Information is released to a person seeking access to documents on an administrative release basis via TICIAS. A decision whether or not to release documents is at the Department's discretion and it is not required to provide reasons for its decision. As such, it is not required to provide information about the nature of the documents and information which comprise the records, or explain why access was not provided to certain information.
16. The person receiving information via TICIAS has no legal right to seek a review, either under the CP Act or the IP or RTI Acts, in relation to a decision made by the Department through this administrative access scheme.

External review process

Information considered

17. In making my decision, I have considered submissions made by the applicant and Department, the IP and RTI Acts and other material referenced in these reasons.
18. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to seek and receive information, to privacy and regarding the protection of families and children.¹⁶ I consider that, in observing and applying the law prescribed in the RTI Act, a decision maker will be '*respecting and acting compatibly with*' these rights and others in the HR Act,¹⁷ and that I have done so in making this decision, as required under section 58(1) of the HR Act.

¹⁵ The applicant provided OIC with a copy of the report and documents on 6 May 2025. On considering the documents, OIC noted that some but not all of the medical reports and photographs were also among the information considered by the 2024 Decision.

¹⁶ Sections 21, 25 and 26 of the HR Act.

¹⁷ *XYZ v Victoria Police* (General) [2010] VCAT 255 at [573]; *Horrocks v Department of Justice* (General) [2012] VCAT 241 at [111]. QCAT has considered and found no reason to differ from this approach in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], *Mokbel v Queensland Police Service* [2023] QCATA 158 at [27] and *Deemal-Hall v Office of the Director of Public Prosecutions* [2024] QCATA 131 at [36].

Information in Issue

19. The documents subject to review comprise the Department's electronic and hardcopy files relating to the exercise of its child safety functions with respect to the applicant. The nature of this information ranges from purely administrative to highly personal, and its level of sensitivity ranges from innocuous to highly sensitive.
20. By its nature, most information on a child protection file is not information about an applicant in isolation. It will often be intertwined with the personal information of other individuals (**third parties**). This is the case in these external reviews.
21. Most documents include the personal information of third parties as well as the applicant. The third parties include members of the applicant's immediate and extended family, her former foster carers' immediate and extended family, other children in care, other school children etc. They also include Department staff¹⁸ and, to a lesser extent, others who interacted with the applicant in a professional capacity (e.g. doctors, psychologists, lawyers and teachers).
22. Some documents, and parts of documents, on the electronic and hardcopy files were disclosed under the 2017 and 2024 Decisions and contain information where the applicant is the only individual referred to in a personal capacity.
23. It should be noted that information about some third parties who interacted with the applicant in a professional capacity (namely, Department staff, doctors etc. as mentioned in paragraph 21) are, at times, mentioned among the *disclosed* documents, and parts of documents.¹⁹ To ensure the Department's approach to disclosing information relating to Department staff, doctors etc. is applied consistently throughout the documents located in response to the two reviews, OIC has removed inconsistent/inadvertent redactions from the information released pursuant to the 2017 and 2024 Decisions. OIC has also taken the same approach to this type of information as it appears among the additional information that, as explained below, I consider may be disclosed.²⁰ For the sake of completeness, however, I have addressed this information below, in my consideration of whether disclosure would, on balance, be contrary to the public interest (starting at paragraph 110 below).
24. While some information in the electronic and hardcopy files was disclosed by the 2017 or 2024 Decisions, the majority was not. The undisclosed information – which comprises the **Information in Issue** in the two reviews – comprises two types of information:
 - a. **Shared Personal Information** about the applicant and third parties referred to in their personal capacities, namely –
 - i. Department officers' observations, conclusions, decisions and actions involving the applicant, her family members and former foster carers
 - ii. the living and care arrangements of the applicant, her siblings and parents
 - iii. the health of the applicant and certain family members

¹⁸ And their counterparts in another jurisdiction who also interacted with the applicant in a professional capacity.

¹⁹ OIC understands the Department's reasoning to be that the exception in section 187(4)(a) of the CP Act applies to such information. Leaving aside whether or not this is correct when section 187(4)(a) does not appear to allow any distinction to be drawn between the shared personal information of different types of third parties, I note the Department's approach achieves a reasonable and appropriate outcome which is consistent with the objects of the IP and RTI Acts generally. I also note the Department's discretion to release exempt information under section 48(5) of the RTI Act provides an alternative basis for such disclosure in any event.

²⁰ A version of the documents marked-up in accordance with my decision will be provided to the Department when this decision is issued. If the Department does not appeal my decision, the Department will release a copy of these documents to the applicant.

- iv. allegations made against certain family members with respect to the applicant; and
 - v. relationships between the applicant, her family members and former foster carers.
- b. **Third Party Information** – that is, information only about third parties, not the applicant, including:
- i. personal details about third parties – including their name, date of birth, date of death, address and telephone number; and
 - ii. sensitive personal information – for example, information about a third party’s circumstances unrelated to the applicant; and opinions offered by one family member about another family member).

Consent provided by third parties

25. During the external reviews, the applicant provided OIC with a number of written consents signed by family members and former foster carers authorising the release of their personal information in the documents subject to review to the applicant.²¹
26. Third party consultation under section 56 of the IP Act is usually conducted by OIC in limited circumstances only, where a preliminary view favours disclosure. In this case, OIC considered that consultation was required regarding a small amount of the Shared Personal Information, to ensure that third parties who had provided their consent were reasonably informed about the context and general nature of any sensitive information.
27. Following consultation,²² the third parties affirmed their consent to their personal information in the documents being released to the applicant.²³ Accordingly, the views of third parties have been taken into account in the external reviews.
28. One of the third parties asked, and OIC agreed, that they be joined as a participant to the reviews²⁴ so that they may be aware of any appeals of this decision to the Queensland Civil and Administrative Tribunal.

Steps involving the applicant and Department

29. On external review, OIC issued a preliminary view to the Department and received a response.²⁵ OIC subsequently issued a preliminary view to the applicant and received her response.²⁶
30. In response to OIC’s enquiries regarding the sufficiency of the Department’s document searches, the Department located and agreed to release two further documents on 6 August 2025.

²¹ On 7 June 2024, 8 July 2024 and 18 July 2024.

²² Letter from OIC to sibling and letter from OIC to stepparent, both dated 22 July 2025.

²³ Emails from the sibling to OIC and from the stepparent to OIC, both dated 23 July 2025.

²⁴ Under section 102(3) of the IP Act.

²⁵ Preliminary view from OIC to the Department dated 14 April 2025 and response from the Department to OIC dated 12 May 2025.

²⁶ Preliminary view from OIC to the applicant dated 6 November 2025 and response confirmed in email from OIC to the applicant dated 12 January 2026.

Issues for determination

31. Taking into account the applicant and Department's responses to OIC's preliminary views issued, the issues for determination are:
 - a. whether disclosure of the Information in Issue may be refused on the ground its disclosure is prohibited by section 186A(1) of the CP Act, and is therefore exempt information²⁷
 - b. whether disclosure of the Information in Issue may be refused on the ground its disclosure is prohibited by section 187(2) of the CP Act, and it is therefore exempt information²⁸ – including consideration of whether the exceptions in section 187(3) or (4) prevent the prohibition in section 187(2) from applying; and
 - c. whether disclosure of the Information in Issue may be refused on ground its disclosure would, on balance, be contrary to the public interest.²⁹

Issue a. Is disclosure prohibited by section 186A(1) of the CP Act?

Relevant law

Information Privacy and Right to Information Acts

32. As stated above, the applicant made both access applications under the IP Act.
33. Section 67(1) of the IP Act provides that, for an access application made under the IP Act, access to documents may be refused in the same way and to the same extent as under section 47 of the RTI Act.
34. Section 47 of the RTI Act sets out the grounds on which access may be refused. Section 47(2) of the RTI Act states that, '[i]t is the Parliament's intention that ... the grounds are to be interpreted narrowly'.
35. Section 47(3)(a) of the RTI Act sets out one of the grounds. It provides that access to a document may be refused to the extent it contains 'exempt information' under section 48 of the RTI Act.
36. Section 48 of the RTI Act states that schedule 3 of the RTI Act sets out the types of information that comprise exempt information. Schedule 3, section 12(1) of the RTI Act states that information is exempt information if its disclosure is prohibited under section 186 to 188 of the CP Act. Schedule 3, section 12(2) of the RTI Act sets out an exception: it provides that information does not qualify as exempt information under section 12(1) 'if it is only personal information of the applicant'.

Child Protection Act

37. The Department's exercise of its child safety functions is governed by the CP Act.
38. The CP Act provides for the protection of children, promotes the safety of children and, to the extent it is appropriate, supports families caring for children.
39. Section 5 requires the CP Act be administered under the principles stated in that Act. Section 5A states the paramount principle for administering the CP Act is '*the safety*,

²⁷ Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

²⁸ Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

²⁹ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount'.

40. Section 186A(1) of the CP Act prohibits disclosure of a notifier's identity, or information from which their identity could be deduced. For section 186A(1) to apply, the following elements must be satisfied:
 - a. a person has notified a specified person³⁰ of harm or suspected harm to a child or unborn child
 - b. release of the information could disclose the identity of the notifier, or information from which their identity could be deduced; and
 - c. none of the exceptions in section 186A(2) apply.
41. If the above three conditions are met, the information will be exempt information under schedule 3, section 12(1) of the RTI Act (unless, as mentioned at paragraph 36 above, the further exception in section 12(2) of the RTI Act applies).

Findings

42. The applicant considers that she is entitled to know who made notifications to the Department in relation to her, and any concerns raised about her safety.
43. Section 186A(1) of the CP Act prohibits the disclosure of a notifier to another person. While the applicant is the subject of the notifications, she is, nevertheless, considered to be another person for the purpose of this section.
44. Having carefully considered the Information in Issue, I am satisfied that a small amount of the Shared Personal Information identifies a person/s who made a notification/s to a specified person under the CP Act about harm or suspected harm to the applicant.³¹ Accordingly, I am satisfied that these parts of the Shared Personal Information are prohibited from disclosure under section 186A(1) of the CP Act and are exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply.
45. Section 186A(2) of the CP Act contains a number of exceptions to the prohibition in section 186A(1). Having carefully considered these, I am satisfied that none are applicable in these reviews, and therefore none preclude the Shared Personal Information in question from being subject to the prohibition.
46. Therefore, the Shared Personal Information may be considered exempt information under schedule 3, section 12(1) of the RTI Act – unless the exception in schedule 3, section 12(2) of the RTI Act applies.
47. This exception applies to information *'if it is only personal information of the applicant'*. While the applicant is the subject of the notifications, the identity of notifier/s is also apparent or could reasonably be deduced. Accordingly, this exception does not apply.
48. Given these considerations, I find that the small amount of Shared Personal Information in question comprises information, the disclosure of which is prohibited by section 186A(1) of the CP Act, and therefore may be refused on ground it is exempt information.

³⁰ That is, the chief executive, an authorised officer, a police officer, a doctor or a nurse – see section 186 of the CP Act.

³¹ The version of the documents marked-up in accordance with my decision which will be provided to the Department when this decision is issued will identify this information.

Issue b. Is disclosure prohibited by section 187(2) of the CP Act?

49. In terms of the remaining Information in Issue – that is, the remaining Shared Personal Information and the entirety of the Third Party Information – I will now consider whether this information may be refused on the ground it is subject to the prohibition on disclosure in section 187(2) of the CP Act and is exempt information under the RTI Act.

Relevant law

50. The provisions of the IP, RTI and CP Acts noted above are again relevant.
51. Section 187(2) of the CP Act prohibits disclosure of certain information acquired by the Department in carrying out its functions under that Act. For this section to apply, the information must:
- be about a person's affairs,³² as required by section 187(1)(b) of the CP Act (**First Condition**)
 - have been acquired by a person performing functions under or relating to the administration of the CP Act, as listed in section 187(1)(a) of the CP Act (**Second Condition**); and
 - not be subject to an exception in section 187(3) or (4) of the CP Act (**Third Condition**).
52. As for section 186A of the CP Act, if the above three conditions are met, the information will be exempt information under schedule 3, section 12(1) of the RTI Act unless section 12(2) applies. Section 12(2) provides that information is not exempt information under section 12(1) *'if it is only personal information of the applicant'*. If this further exception does *not* apply, the information is exempt information and access may be refused.

Findings

53. In terms of the First Condition, having reviewed the remaining Information in Issue, I am satisfied it is *'information about another person's affairs'* for the purpose of section 187(1)(b) of the CP Act. Specifically, I am satisfied that:
- the remaining Shared Personal Information comprises information about the personal affairs of both the applicant and third parties, including the applicant's immediate and extended family, former foster carers' immediate and extended family, other children in care, and/or other school children; and
 - the Third Party Information comprises information about the personal affairs of such third parties only.
54. In terms of the Second Condition, for the purpose of section 187(1)(a) of the CP Act, I am satisfied the remaining Information in Issue was received or created by Department officers under the CP Act in the course of performing its functions under the CP Act.
55. The key issue in these reviews relates to the Third Condition. It is necessary to consider whether the remaining Information in Issue is subject to any of the exceptions in section 187(3) or (4) of the CP Act, such that disclosure of the information is not prohibited under section 187(2). The applicant submits that all of the exceptions apply, while the Department submits that none apply. Each of the exceptions is addressed below.

³² The term 'person's affairs' is not defined in the CP Act or the *Acts Interpretation Act 1954* (Qld) (**Acts Interpretation Act**). Accordingly, the *Macquarie Dictionary* Online (Ninth Edition) definition of 'affair/s' (matters of interest or concern) (a private or personal concern), adopted in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30], is considered relevant.

i. Does the exception in section 187(4)(a) of the CP Act apply?

56. The exception in section 187(4)(a) of the CP Act provides that a person ‘*may disclose the information or give access to the document ... to another person, to the extent that the information or document is about the other person*’.
57. The exception turns on the meaning of the phrase ‘*to the extent that the information or document is **about** the other person*’ – in particular, the word ‘about’. The word ‘about’ is not defined in the CP Act, IP Act, RTI Act or the Acts Interpretation Act.
58. The Department submits that ‘about’ in section 187(4)(a) should be interpreted as meaning ‘only about’, or ‘solely about’ and that the 2018 amendments suggest this intention.
59. This position reflects a 2012 OIC decision in which an OIC decision maker determined that the exception in section 187(4)(a) ‘*only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the CP Act exception will not apply*’.³³
60. On 29 January 2018, amendments were made to the CP Act, including the insertion of a new section 188C and a note at section 187(4).³⁴
61. The note at the bottom of section 187(4) of the CP Act states:

Note—

For the disclosure of information that is about the person and a third party, see section 188C.

62. Section 188C of the CP Act provides:

188C Chief executive may give information about third parties

- (1) *This section applies to information, in the chief executive’s possession or control, that is—*
(a) *about a relevant person; and*
(b) *also about someone else.*

- (2) *Subject to subdivision 1, the chief executive may disclose the information to the relevant person.*

Note—

For the disclosure of information that is only about the relevant person, see section 187(4).

- (3) *However, the chief executive must not disclose the information to the relevant person if—*
(a) *the chief executive reasonably believes the disclosure of the information is likely to adversely affect the safety or psychological or emotional wellbeing of any person; or*
(b) *the information—*
(i) *is the subject of legal professional privilege; or*
(ii) *identifies, or is likely to identify, its source and the identification of the source is likely to prejudice the achievement of the purposes of this Act; or*
(iii) *is a record of confidential therapeutic counselling, and the person to whom it relates does not consent to its disclosure; or*
(c) *the disclosure of the information could reasonably be expected to—*
(i) *prejudice the investigation of a contravention or possible contravention of a law in a particular case; or*
(ii) *prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law; or*
(iii) *enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained.*

³³ *Hughes and Department of Communities, Child Safety and Disability Services* (Queensland Information Commissioner, 17 July 2012) (**Hughes**).

³⁴ By clauses 68 and 71 of the *Child Protection Reform Amendment Act 2017* (No. 44) (Qld).

(4) *The chief executive may authorise the relevant person to use or disclose the information, or give access to the information, to someone else.*

Note—

Under section 188, the person must not use, disclose or give access to the information unless it is authorised by the chief executive under this section.

(5) *The chief executive may disclose the information subject to any other conditions the chief executive considers appropriate.*

(6) *In this section—*

relevant person means—

(a) *a child in care; or*

(b) *a person who was in care under this Act or the repealed Children’s Services Act 1965; or*

(c) *a person who was a State child under the repealed State Children Act 1911.*

63. As can be seen in the provision quoted above, Parliament included a note at the end of section 188C(2) which states:

Note—

For the disclosure of information that is only about the relevant person, see section 187(4).

64. Section 14(4) of the Acts Interpretation Act provides that a note in legislation is given the status of part of the relevant Act.

65. Having carefully reviewed and considered the relevant provisions in the CP Act and the 2018 amendments made to that Act by Parliament, I am satisfied that, as currently drafted, section 187(4)(a) of the CP Act operates to provide an exception to the prohibition on disclosure of personal information acquired by the Department under the CP Act to a person in care or care leaver if the information is only about or solely about that person. Section 187(4)(a) cannot, in my opinion, apply to the personal information of a third party (such as the Third Party Information in these reviews), or information containing the personal information of both a person in care or care leaver and a third party (such as the remaining Shared Personal Information). This finding is consistent with OIC’s 2012 *Hughes* decision and submissions made by the Department on external review which submit the exception in section 187(4)(a) of the CP Act is limited to the applicant’s information only.

66. While I consider this interpretation to be correct in law, based on the current drafting of the CP Act, in my view it does not sit comfortably with the principles of the CP Act, which are directed to the best interests of a person in care or a care leaver. Further, it does not sit comfortably with the pro-disclosure bias under the IP and RTI Acts. Given the nature of child protection matters and their associated files, it will rarely be the case that documents on a child protection file will concern the person in care or care leaver only. In some cases, information concerning other individuals may be sensitive in nature; however in others the information may not be particularly sensitive at all. As currently drafted, section 187(4)(a) of the CP Act operates to limit the information that can be released to a person to information that concerns them only, and does not provide a decision maker with any discretion as to whether personal information about a third party can be disclosed to them.

67. In relation to section 188C of the CP Act, I am satisfied that, as currently drafted, this provision was inserted by Parliament in 2018 to provide for where information and documents on a child protection file relate to a third party, as well as the person in care or care leaver. I accept section 188C is intended to apply to the shared personal information of both the person in care or care leaver and third party. It provides the chief executive officer of the Department with a discretion to determine whether to release this

information, including outside a request made under the IP or RTI Act – for example, under the TICIAS administrative access scheme established by the Department.

68. A decision under section 188C of the CP Act comprises the exercise of a discretionary power by the chief executive officer of the Department (or a person authorised or delegated by them). Accordingly, such a decision is not a ‘reviewable decision’³⁵ that is subject to external review by the Information Commissioner under the IP or RTI Act. The absence of a right of merits review of a decision made under section 188C is significant given the context of a person seeking to access their child protection records.
69. As stated above, this position does not sit comfortably with the principles of the CP Act nor the IP and RTI Acts’ pro-disclosure bias. It also is contrary to the rights of persons in care and care leavers exercisable in other Australian jurisdictions who are able to apply for their child protection files under access to information legislation and receive a decision made on all documents, not just those that are about the person in care or care leaver only and amenable to a right of review under the relevant access to information legislation.
70. Nevertheless, for the reasons set out above, I find that the exception in section 187(4)(a) of the CP Act does not apply to the remaining Shared Personal Information or the Third Party Information.

ii. Does the exception in section 187(3)(a) of the CP Act apply?

71. The exception in section 187(3)(a) of the CP Act provides that a ‘person’ may ‘*use or disclose the information or give access to the document ... to the extent necessary to perform the person’s functions under or in relation to the Act*’.
72. In terms of the ‘person’ referred to in this exception, I note that:
 - a. for the purposes of the IP Act, an agency is defined to include a department³⁶
 - b. an access application made to an agency must be dealt with by the agency’s principal officer or their delegate³⁷
 - c. a department’s principal officer is its chief executive³⁸
 - d. a chief executive is a public service employee; and³⁹
 - e. the obligation of confidentiality in section 187(2) of the CP Act applies to persons including a public service employee⁴⁰ and accordingly applies to the chief executive.
73. Therefore, for the purpose of section 187(3)(a) of the CP Act, I am satisfied that a relevant ‘person’ is the Department’s chief executive and relevant ‘functions’ include the chief executive’s functions under or in relation to the CP Act.
74. The Department submits:

... it is important to note that the full functions of the Child Protection Act do not extend to the functions of the RTI Team and, given the discrete role of information access decision makers, as opposed to critical life or death child protection decision makers, the RTI Team

³⁵ As defined in schedule 5 of the IP Act.

³⁶ Section 17 of the IP Act.

³⁷ Section 50(1) and (2) of the IP Act.

³⁸ See definition of ‘principal officer’ in schedule 5 of the IP Act.

³⁹ Section 13 of the *Public Sector Act 2022* (Qld).

⁴⁰ Section 187(1)(a) of the CP Act.

does not have the same delegations as front-line officers nor are they sufficiently skilled to perform these functions.

...

RTI decision makers are not performing duties under the CP Act, they are public service employees engaged by the chief executive to perform functions relating to the administration of this Act; RTI decision makers are engaged to perform functions under the information access legislation. The exception in 187(3)(a) of the CP Act does not apply in the formal information access context.⁴¹

75. In 2009, the Information Commissioner determined⁴² that the exception in section 187(3)(a) of the CP Act applied. In doing so, the Commissioner found that, in order to discharge its role as guardian, the Department has a role in imparting personal and family history; and referred to section 75 of the CP Act, which sets out the chief executive's responsibilities to persons who are or were children in care, in terms of their transition to independence.
76. At the time of the 2009 OKP decision, section 75 of the CP Act stated, '[a]s far as practicable, the chief executive must ensure the child or person is provided with help in the transition from being a child in care to independence'.⁴³ The Explanatory Notes for this provision also stated '[t]his assistance may include, for example: providing information about identity and personal history'.⁴⁴
77. On 29 October 2018,⁴⁵ section 75 of the CP Act was amended to provide that the chief executive must 'ensure the help is available to the person for the period starting when the person turns 15 and ending when the person turns 25'.⁴⁶ The Explanatory Notes stated that 'as far as reasonably practicable, the chief executive must ensure help is available to assist a child or person in their transition and ensure the help is available from at least when the child is 15 years of age until they are 25'.⁴⁷
78. The amended version of section 75 of the CP Act sets out a non-exhaustive list of types of help, including 'help in accessing information, including information in the chief executive's possession or control, about the person and his or her time in care' and includes a note referring to section 188C of the CP Act,⁴⁸ which is discussed above.
79. The Department submits in relation to the chief executive's functions under the CP Act:

Although, the agency does have responsibilities that relate to transition from independence, the prescriptive and rigid formal access environment is not the place for discharge of these responsibilities. The provision specifically relates to information and not documents; a trauma informed approach relies on delivery with empathy and support as opposed to mere document release. Any suggestion that the department's obligations under this section are to met by document release under an access application undermine the purpose of the provisions of the Act to require that the department facilitate and provide life information in a way that is consistent with the best interests of the individual.

For more modern matters, the responsibility to discharge the obligation to help access information, is provided by after care support services, leaving care reports and copies of critical documents to assist individuals on their journey to independence.

⁴¹ Submission dated 12 May 2025 at pages 4-5.

⁴² *OKP and Department of Communities*, Unreported, Queensland Information Commissioner, 9 July 2009) (**OKP**) at [144]. *OKP* was made in the context of an access application made under the repealed *Freedom of Information Act 1992* (Qld) and considered that Act's predecessor to schedule 3, section 12 of the RTI Act.

⁴³ At section 75(2) of the CP Act.

⁴⁴ Explanatory Notes to the *Child Protection Bill 1998* (Qld) at page 30.

⁴⁵ When clause 41 of the *Child Protection Reform Amendment Act 2017* (No. 44) (Qld) commenced.

⁴⁶ At section 75(2)(b) of the CP Act.

⁴⁷ Explanatory Notes to the *Child Protection Reform Amendment Bill 2017* (Qld) at page 38.

⁴⁸ At section 75(3)(h) of the CP Act.

For less contemporary matters, including individuals that are more established on their journey to independence but seek further information, the Time in Care Information Access Service (TICIAS) is available. Additionally, for those that qualify, support from the transition from care teams is available. In this specific instance, the applicant has availed herself of the administrative release service and information was provided in November 2024.

The information access context and any consideration as to whether the department has discharged its obligations to a former child in care regarding transition to independence is beyond the remit of the OIC and the scope of this review.⁴⁹

80. I accept that release of documents via TICIAS provides a mechanism for the chief executive's functions, as referred to in the section 187(3)(a) exception, and noting the operation of sections 187(4)(a) and 188C, as discussed above. While, as set out above regarding the section 187(4)(a) exception, I have some reservations regarding the application of section 188C and TICIAS, I do not consider it is necessary for the Department's chief executive to disclose the remaining Information in Issue to the applicant in order to perform the function of ensuring 'help'⁵⁰ is available to care leavers as contemplated by section 75 of the CP Act in its amended, more prescriptive form.
81. Further, taking into account the specific functions of the chief executive addressed in the CP Act, including in sections 75 and 188C, I cannot conclude that the chief executive has broader functions extending beyond those identified and addressed in the CP Act, and it follows that disclosure of the remaining Information in Issue is necessary to perform any such unidentified functions.
82. Accordingly, for reasons similar to those set out above in relation the exception in section 187(4)(a) of that Act, I am satisfied the exception in section 187(3)(a) of the CP Act does not apply to the remaining Information in Issue.

iii. Does the exception in section 187(3)(b) of the CP Act apply?

83. The exception in section 187(3)(b) of the CP Act provides that a person may 'use or disclose the information or give access to the document ... if the use, disclosure or giving of access is for purposes related to a child's wellbeing'.
84. Section 187(3)(b) expressly refers to a 'child's' protection or wellbeing. 'Child' is defined as an individual under 18 years.⁵¹ Given the applicant is not a child, I am satisfied this exception does not apply to the remaining Information in Issue.

iv. Does the exception in section 187(3)(c)(iii) of the CP Act apply?

85. The exception in section 187(3)(c)(iii) of the CP Act provides that a person may 'use or disclose the information or give access to the document ... if the use, disclosure or giving of access is otherwise required or permitted under this Act ... or another law'.

⁴⁹ Submission dated 12 May 2025 at page 4. The Department's submission subsequently makes reference to section 5D of the CP Act. It was considered more appropriate to address this particular comment in the context of the section 187(3)(e) exception below – accordingly, see paragraphs 99 and 100 below.

⁵⁰ The definition of 'help' in the Macquarie Dictionary Online (Ninth Edition) includes 'to cooperate effectively with a person; aid; assist'.

⁵¹ Section 8 of the CP Act.

86. In terms of this exception, I have considered whether access via section 188C may be viewed as access 'permitted' under the CP Act. However, the fact that disclosure of information may occur under section 188C does not, in my opinion, enliven section 187(3)(c)(iii). Disclosure is not permitted unless and until the chief executive exercises their discretion under section 188C, or under similar provisions such as sections 188B and 188D.
87. In these circumstances, I am unable to conclude that disclosure of the Information in Issue is required or permitted under the CP Act. I find that this exception does not apply to the remaining Information in Issue.

v. Does the exception in section 187(3)(d) of the CP Act apply?

88. The exception in section 187(3)(d) of the CP Act provides that a person may 'use or disclose the information or give access to the document ... to the extent necessary to protect a person from a serious and imminent risk to the person's safety or health'.
89. The following submissions made by the applicant relate to her health and wellbeing:
- a. *My file is 90% redacted and it's very hard to understand anything. I am trying to heal this part of my life and I need to have this fully unredacted. I have a right to know what happened to me. I know who was involved...*⁵²
 - b. *This also makes me absolutely crazy that I am not entitled to MY history. So I'm not allowed to know the things I said, what happened to me, how I was treated... whether I was raped or anything. I just have to live with the fact I have ptsd and depression and anxiety and am not allowed to know the full reason why. This is absolutely heart breaking.... What could I possibly do from knowing this information.... I just want to know for my own self healing.*⁵³
 - c. *... this is just taking my rights away as a human to know what has happened to me and who and why. If I don't get my full file I will be absolutely devastated, broken.*⁵⁴
90. The applicant's submissions explain the importance of accessing more information regarding her childhood. However, I do not have any evidence before me to show that disclosure of the remaining Information in Issue is 'required' to protect her from a serious and imminent risk to her safety or health. On this basis, I cannot be satisfied that the exception in section 187(3)(d) of the CP Act applies.

vi. Does the exception in section 187(3)(e) of the CP Act apply?

91. The exception in section 187(3)(e) of the CP Act provides that a person may 'use or disclose the information or give access to the document ... if the person to whom the information relates is, or becomes, an adult and consents in writing to the use, disclosure or giving of access'.

Can this exception apply in external review 317778?

92. This exception was introduced in late 2022.⁵⁵ The Department submits:

... The initial decision on external review 317778 was made in March 2017 and predates the insertion of 187(3)(e) into the CP Act. Consideration must be given to whether a review

⁵² External review application regarding 2017 Decision dated 16 January 2024.

⁵³ Email from applicant to OIC dated 9 February 2024.

⁵⁴ Email from applicant to OIC dated 22 March 2024.

⁵⁵ By clause 62 of the *Child Protection Reform and Other Legislation Amendment Act (No. 7) (Qld)*.

*of the decision must be made in accordance with the law of the relevant time. It is the agency's view that the consent provision does not apply retrospectively to external review 317778.*⁵⁶

93. External reviews involve a merits review.⁵⁷ Generally, merits review requires application of the law that is in force at the date the merits reviewer makes its decision.⁵⁸ This general position is subject to two exclusions – where a statute expressly or impliedly requires the application of law in force at an earlier date, and where the matter involves accrued rights or liabilities which survive the change in law. I am satisfied that neither exclusion applies in these reviews, and therefore conclude that section 187(3)(e) may be considered regarding external review 317778 and 318115.

How consent was provided

94. As discussed above, OIC received written consent from a number of third parties consenting to their personal information in the documents subject to review on the applicant's child protection file being disclosed to the applicant.
95. The applicant provided authorities consenting to the release of personal information signed by three siblings, including one who was the eligible family member⁵⁹ for one of their deceased parents; a stepparent who was the eligible family member for the other of their deceased parents; and two former foster carers.⁶⁰
96. I am satisfied that each of these third parties are adults for the purpose section 187(3)(e)(i) of the CP Act. Further, for the sibling and stepparent acting as the parents' eligible family members, it is relevant to note that section 56(2) of the IP Act provides:

If disclosure of information may reasonably be expected to be of concern to a person but for the fact that the person is deceased, subsection (1) applies as if the person's representative were a relevant third party.

97. On the basis of the written consents, OIC determined that consultation with the relevant third parties was not required regarding most of the Shared Personal Information and Third Party Information relating to them, as it was relatively innocuous and uncontroversial in nature. However, OIC considered that consultation was required for a relatively small amount of information, even though the written consents had been provided. The information was relatively sensitive in nature, including some information where it was unclear, based on the material before OIC, whether the third parties were aware of such information (**sensitive information**). The consultation was undertaken to ensure consent had been provided regarding such information in order to be satisfied that the requirement of section 187(3)(e)(ii) of the CP Act had been met.
98. I confirm that, when conducting consultation, copies of the documents containing the sensitive information the subject of OIC's engagement were not provided to the relevant persons. Rather, high level descriptions and summaries of the relevant information were given to ensure the person understood the gist of the information.

⁵⁶ Submission dated 12 May 2025 at page 5.

⁵⁷ External reviews are conducted de novo (*Millar v Right to Information and Privacy Unit, Public Service Business Agency* [2016] QCS 206 and [46] and *Purrer v Office of the Information Commissioner* [2021] QCATA 92 at [74]) as merits review (*Mokbel v Queensland Police Service* [2023] QCATA 158 at [12], *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 and [2]), and therefore the information Commissioner stands in the shoes of the Department when conducting a review.

⁵⁸ *Kavvadias v Ombudsman (No. 1)* (1984) 1 FCR 80 at [3]; *Esber v Commonwealth* (1992) 174 CLR 430 at 449; and *Woodyatt and Minister for Corrective Services* (1995) 2 QAR 383 at [35].

⁵⁹ As defined in schedule 5 of the IP Act.

⁶⁰ Authorities provided by emails from applicant to OIC dated 7 June 2024, and 8 and 18 July 2024. The sibling who was the eligible family member for one of the applicant's parents also provided a letter of support.

99. The Department raised section 5D of the CP Act, which sets out principles about making decisions in the CP Act.⁶¹ Section 5D(1)(b) requires that, when making a decision under the CP Act, *‘to the extent that it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made under this Act’*.
100. I accept section 5D(1)(b) is of relevance, given determining whether information is exempt information may require consideration of the CP Act’s exception provisions. However, to the extent section 5D(1)(b) applies to my decision, I am satisfied that obtaining and taking into account views was not appropriate or necessary regarding shared personal information that is uncontroversial in nature; and that the written consent provided and confirmation of that consent through further consultation with the third parties satisfies the principle regarding the sensitive information.
101. OIC received responses from both relevant persons consenting to the release of the sensitive information and stating that this would be what the applicant’s deceased parents would have wanted.

Validity of consent

102. In its submission, the Department submitted it, *‘does not accept that consent provided by the relevant parties is valid’* and raised concerns as to whether the written consent provided by the third parties was *‘even possible, in the current context given that the individuals identified have not reviewed the materials, are not entitled to do so and will not be fully aware of the extent of the information recorded about them’*.
103. The Department more broadly expressed concerns about, *‘the concerning precedent that an acceptance of the consent of the individuals listed, might set for future matters involving child protection materials’*, namely:

In the child protection environment, an environment fraught with often untested allegations relating to the safety of children and allegations of parental shortcomings received from members of the community, it is foreseeable that information exists within departmental files that is not known by the individuals about whom the information relates.

104. I will first address the Department’s concern about the third parties not being fully aware of the extent of the information recorded about them in the documents such that their consent is not valid. The inserted section requires only that the person consent to disclosure of information – not that they view or inspect that information. While I acknowledge the Department’s concern, in this particular matter, I am satisfied the further third party consultation undertaken by OIC and the provision of descriptions and summaries conveying the general nature of their personal information under consideration is sufficient to satisfy me that the consent provided is informed, voluntary, and provided by parties with capacity for the purposes of section 56 of the IP Act and section 187(3)(e) of the CP Act.
105. In relation to the Department’s concern about setting a ‘concerning precedent’ for future matters involving child protection materials, I have given limited weight to this concern. In the particular circumstances of this matter, and in order to give proper consideration to the object and principles of the CP Act and the IP and RTI Acts, I consider the exercise of discretion as to whether written consent should be sought or is appropriate is an issue requiring consideration on a case by case basis. To approach the issue of consent as a blanket assumption that it cannot be validly provided and/or will never be appropriate

⁶¹ Submission dated 12 May 2025 at page 4 regarding the previously discussed section 187(3)(a) exception.

due to the impact on future access requests for personal information is, in my view, not consistent with the object and principles of the CP Act and the IP and RTI Acts. Rather, the exception and the issue of consent needs to be considered taking into account the particular circumstances of a matter.

106. Taking into account the content of the high level descriptions / summaries provided to relevant third parties as noted at paragraph 98 above, I am satisfied the sensitive information does not go beyond what the relevant persons could reasonably understand in the context of documents on a child protection file. I consider the information provided identifies the nature and extent of the sensitive information with sufficient accuracy and meaning to enable the third parties to provide their informed consent.
107. Accordingly, in this particular case, where third parties provided their written consent and consulted, as necessary, I find the exception in section 187(3)(e) of the CP Act is satisfied in relation to:
 - a. Shared Personal Information involving the applicant and those third parties (but no other third parties who did not provide written consent); and
 - b. Third Party Information only about those parties.

Conclusion about whether disclosure is prohibited by section 187(2) of the CP Act

108. Given the exception in section 187(3)(e) of the CP Act applies to the information noted in the preceding paragraph, that particular information does not satisfy the Third Condition noted at paragraph 51 above and is not subject to the prohibition in section 187(2). Accordingly, it is not exempt information under schedule 3, section 12(1) of the RTI Act. Given this conclusion, it is necessary to consider the question of whether disclosure of this particular information would, on balance, be contrary to the public interest (see Issue c. below).
109. However, for the rest of the information – that is, both:
 - a. Shared Personal Information relating to third parties who have not provided written consent (as well as the applicant); and
 - b. Third Party Information only about third parties who have not provided written consent,

no exceptions to the section 187(2) of the CP Act prohibition apply. Accordingly, this information satisfies the Third Condition noted at paragraph 51 above. As a result, this information is exempt information under schedule 3, section 12(1) of the RTI Act – unless the exception in section 12(2) applies. However, this exception cannot apply, given it relates to information that is *‘only personal information of the applicant’*. Therefore, I am satisfied this information may be refused on the ground it is exempt information under section 187 of the CP Act.⁶²

⁶² The version of the documents marked-up in accordance with my decision which will be provided to the Department when this decision is issued will identify this information.

Issue c. Is disclosure contrary to the public interest?

110. I now consider the question of whether disclosure of the remaining information noted at paragraph 107 and 108 – that is, the Shared Personal Information and the Third Party Information where third parties have provided written consent (**Written Consent Information**) – would, on balance, be contrary to the public interest. In doing so, I acknowledge that, depending on the particular nature of information relating to child protection functions under the CP Act, there may be circumstances where it is against the public interest to release some shared personal information; and the public interest balancing test provides a basis for the refusal of such information.

Relevant law

111. The provisions of the IP, RTI and CP Acts noted at above are again relevant.

112. A further ground for refusing access is set out in section 47(3)(b) of the RTI Act. Section 47(3)(b) provides that access to a document may be refused to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.⁶³

113. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest⁶⁴ and explains steps a decision-maker must take in deciding the public interest as follows:⁶⁵

- a. identify any irrelevant factors and disregard them⁶⁶
- b. identify relevant public interest factors favouring disclosure and nondisclosure
- c. balance the relevant factors favouring disclosure and nondisclosure; and
- d. decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

114. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case.

115. Each of the factors contains the phrase ‘could reasonably be expected to’. This phrase means that the relevant expectation must be reasonably based: that is, there must be real and substantial grounds for expecting the relevant occurrence, which can be supported by evidence or cogent reasoning. There cannot be merely an assumption or allegation that the occurrence will take place, nor an expectation of an occurrence that is merely a possibility or that is speculative, conjectural, hypothetical or remote.⁶⁷ Whether the expected consequence is reasonable requires an objective examination of

⁶³ The ‘public interest’ ‘...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals’: *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, ‘The Public Interest: We Know It’s Important, But Do We Know What It Means’ (2006) 48 *AIAL Forum* 12, 14.

⁶⁴ Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest. This list is not exhaustive and, therefore, other factors may also be relevant in a particular case.

⁶⁵ Section 49(3) of the RTI Act.

⁶⁶ No irrelevant factors arise in this case, and I have not taken any into account in making this decision.

⁶⁷ *Murphy and Treasury Department* (1995) 2 QAR 744 at [44] (**Murphy**), citing *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160]. See also *Attorney-General’s Department and Australian Iron and Steel Pty Ltd v Cockcroft* (1986) 10 FCR 180.

the relevant evidence.⁶⁸ Importantly, the expectation must arise as a result of disclosure of the specific information in issue, rather than from other circumstances.⁶⁹

116. In its submissions, the Department advised that it disagreed with OIC's preliminary view regarding the public interest balancing test,⁷⁰ but did not engage specifically with the application of this test, or the relevance or weighting of particular factors in schedule 4 of the RTI Act. Rather, the Department's submissions focussed on addressing the prohibition against disclosure in section 187(2) of the CP Act, and the associated exceptions. Within this context, the Department commented on public interest considerations. In the absence of a specific response regarding the public interest test, these comments have been taken into account in the below reasons.⁷¹

Findings

117. I have considered the public interest factors in schedule 4 of the RTI Act, and public interest factors more generally.⁷² I have identified the following public interest factors that I consider may weigh in favour of disclosure of the Written Consent Information:

- a. enhancing the government's accountability and transparency;⁷³
- b. the information is the applicant's personal information;⁷⁴
- c. the applicant's need to know the information sought;
- d. enhancing social and economic well-being of the community; and
- e. promoting the equitable treatment of care leavers.

118. I have also identified the following public interest factors that I consider may weigh in favour of nondisclosure of the Written Consent Information:

- a. any prohibition on disclosure under the CP Act⁷⁵
- b. prejudicing the privacy of other individuals⁷⁶
- c. the information is the personal information of other individuals⁷⁷
- d. prejudicing fair treatment regarding unsubstantiated allegations;⁷⁸ and
- e. prejudicing the flow of confidential information to the Department.⁷⁹

Factors favouring disclosure

Accountability and transparency of government

119. In summary, the applicant advises that she has had a disrupted upbringing, particularly in early childhood, and seeks to understand the reasons for this and to piece together her childhood.
120. The Department undertakes important work to promote and ensure the protection of children.

⁶⁸ *Murphy* at [45]-[47].

⁶⁹ *Murphy* at [54].

⁷⁰ Submission dated 12 May 2025 at page 3.

⁷¹ The Department was given 4 weeks to respond to OIC's preliminary view and did not request an extension of time. In the circumstances, I consider that the Department was afforded procedural fairness regarding the opportunity for it to address the public interest balancing test.

⁷² Given the wording of section 49(3) of the RTI Act indicates that the factors in schedule 4 of the RTI Act are non-exhaustive.

⁷³ Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

⁷⁴ Schedule 4, part 2, item 7 of the RTI Act.

⁷⁵ Schedule 4, part 3, item 22 of the RTI Act.

⁷⁶ Schedule 4, part 3, items 3 and 5 of the RTI Act.

⁷⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

⁷⁸ Schedule 4, part 3, item 6 of the RTI Act.

⁷⁹ Schedule 4, part 3, items 13 and 16 and part 4, section 8(1) of the RTI Act.

121. The Department has an important responsibility to ensure that the protection, safety, health and fundamental rights of children in its care are protected and that its decisions are made in their best interests. This responsibility invokes a strong public interest in the Department being accountable for its care of and statutory obligations to children under its control and care in the absence of their own family.
122. During the last 20 years or so, there have been a number of inquiries and reviews which have advanced accountability to the community, including the following Queensland inquiries:
- a. the review of institutional abuse in the Commission of Inquiry into Child Abuse in Queensland Institutions led by Hon. Leneen Forde AC which concluded in 1999
 - b. an Audit of Foster Carers subject to child protection notifications by the then Department of Families in 2003
 - c. the Protecting Children: Inquiry into the abuse of children in foster care by the former Crime and Misconduct Commission in 2004
 - d. the Child Protection Commission of Inquiry led by Hon. Tim Carmody QC which concluded in 2013
 - e. the Review of the Blue Card and Foster Care Systems by the Queensland Family and Child Commission in 2017; and
 - f. the current Child Safety Commission of Inquiry led by Hon. Paul Anastassiou QC.
123. Generally, I am satisfied that substantial weight should be afforded to the public interest in ensuring the Department is accountable for its management, care and decision-making in relation to children in its care and control in accordance with the CP Act.
124. In terms of the applicant specifically, I note her submission that she spent most of her childhood in care. As such, I have given significant weight to the public interest in accountability regarding the Department's decisions made in relation to the health and wellbeing of the applicant, as for accountability to be possible, sufficient transparency of government decision-making and actions is also necessary.

Applicant's personal information and justifiable need to know

125. The RTI Act recognises a public interest in an applicant obtaining access to their own personal information. The Information Commissioner has also recognised that in certain cases there may be a public interest in an applicant having access to information which affects or concerns them to such a degree as to give rise to a justifiable 'need to know' the information which is greater than for other applicants.⁸⁰ This public interest can be of determinative weight, depending on the relative weight of competing public interest considerations.⁸¹
126. In relation to these public interest factors, I have taken into consideration the applicant's submissions in which she articulates the reasons why she seeks to access information about the circumstances which led to and surrounded her ongoing placement in care.
127. The documents subject to review include information about the applicant – specifically about her identity, personal history and time spent in care and such circumstances give rise to a justifiable need to know the information the Department holds about her childhood. Further, I do not consider the passage of time since the applicant left care has diminished her need to know, nor the Department's capacity to assist her through the

⁸⁰ *Pemberton and the University of Queensland* (1994) 2 QAR 293 (*Pemberton*) at [164] to [193].

⁸¹ *Pemberton* at [172].

provision of her child protection file. I have afforded both factors favouring disclosure significant weight.

Enhancing the social and economic well-being of the community

128. The Information Commissioner has previously recognised social and economic well-being as a factor favouring disclosure in circumstances such as these.⁸² The primary objectives of social development include the promotion of productive community members and social inclusion.⁸³
129. The applicant was a young child when she was placed in care. The release of information about her childhood may assist her to fill in gaps she has from this time which may support her current and future life. To the extent the information may assist the applicant in this regard, and any consequent improvement to her health and wellbeing, the disclosure of the information is in the interests of the social and economic wellbeing of the community. I have afforded this factor significant weight.

Promoting the equitable treatment of care leavers

130. The main principle for administering the CP Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.⁸⁴ This principle reflects the government's responsibility in relation to the domestic implementation of the *United Nations Convention on the Rights of the Child*⁸⁵ and the *International Covenant on Economic, Social and Cultural Rights*⁸⁶ and is consistent with Queensland's HR Act.
131. Relevantly, section 26 of the HR Act includes the following civil and political rights regarding the protection of families and children:⁸⁷
- (1) *Families are the fundamental group unit of society and are entitled to be protected by society and the State.*
 - (2) *Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.*
132. In the *Forgotten Australians Report* into children in institutional and out-of-home care,⁸⁸ persons in care and care leavers reported that accessing information about their family history and background is often difficult and complex in relation to prohibitions on certain information being released, redacted documents with what appears to be hidden information that concerns them, and the balance between accessing information that concerns their childhood and the privacy of third parties ranging from their parents, foster carers, siblings, Department staff and others.
133. The *Forgotten Australians Report* recommended that all government agencies agree on guidelines for care leavers accessing records which incorporate a '*commitment to the*

⁸² See *OKP* at [82]-[84]. This factor has also been considered in other contexts, including with respect to a deceased family member's medical records (see for example *Keogh and Department of Health* (Unreported, Queensland Information Commissioner, 31 August 2010)) and information about the investigation of a family member's death (see for example *M96 and Queensland Police Service* [2021] QICmr 48).

⁸³ Part II (Objectives) of the *Declaration on Social Progress and Development*, adopted by United Nations General Assembly Resolution 2542 (XXIV) on 10 December 1969.

⁸⁴ Section 5A of the CP Act.

⁸⁵ Adopted by United Nations General Assembly Resolution 44/25 on 20 November 1989; ratified by Australia on 17 December 1990.

⁸⁶ Adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966. See *OKP* at [85]-[89] and [99].

⁸⁷ Depending on the background of the care leaver sections 27 and 28 of the HR Act may also be relevant.

⁸⁸ A Report by the Senate Community Affairs Reference Committee in 2004 – '*Forgotten Australians: A report on Australians who experienced institutional or out-of-home care*' (**Forgotten Australians Report**) – see chapter 9.

*flexible and compassionate interpretation of privacy legislation to allow a care leaver to identify their family and background’.*⁸⁹

134. I acknowledge that in response to the applicant’s TICIAS request, the Department provided her with copies of documents including school reports and photographs. However, I also note that this release was in response to the applicant’s third of three requests seeking information about her childhood as mentioned above.
135. I am satisfied there is a strong public interest in ensuring that persons who are in care or who are care leavers are treated equitably with children who are raised within a family. An aspect of equitable treatment is ensuring that, to the greatest extent possible, such individuals have access to the kind of information about their families that they would have gained through living with them. For these reasons, I afford significant weight to this factor.

Factors favouring nondisclosure

136. Neither the IP or RTI Act contemplate any restriction or limitation on what use an applicant can make of information disclosed to them, including further dissemination.⁹⁰ It is therefore necessary to look to the particular circumstances when considering the likelihood of further dissemination.
137. In this case, the information sought is of personal significance to the applicant. In her submission, she states that she is seeking access to her child safety records to understand her story and wants to know this information for her ‘own self-healing’. On the basis of the information available to me, it is my view that the likelihood of the applicant disseminating the information beyond other members of her family is relatively low given the personal nature of her interest in the information. I have taken this into account in arriving at my weighting of applicable nondisclosure factors, as set out below.

Disclosure is prohibited by an Act

138. As is evident from my above discussion of sections 186A and 187 of the CP Act and exempt information, I have considered the ‘prohibited by an Act’ nondisclosure factor.⁹¹ I am satisfied the prohibition in section 187(2) of the CP Act does not apply, due to the operation of the exception at section 187(3)(e). Given this, I am satisfied that the ‘prohibited by an Act’ nondisclosure factor does not apply.

Privacy and personal information

139. The Written Consent Information is dated between 1999 and 2013. It comprises personal information of third parties – specifically, members of the applicant’s family and former foster carers – who provided written consent to disclosure of their information.⁹² It also includes information relating to Department staff⁹³ and, to a lesser degree, others who interacted with the applicant in a professional capacity (eg, doctors, psychologists, lawyers and teachers).
140. Accordingly, the Written Consent Information raises privacy nondisclosure factors⁹⁴ and the harm factor regarding the disclosure of other individuals’ personal information.⁹⁵

⁸⁹ Forgotten Australians Report at [9.117].

⁹⁰ *FLK v Information Commissioner* [2021] QCATA 46 at [17].

⁹¹ Schedule 4, part 3, item 22 of the RTI Act.

⁹² As mentioned at paragraphs 25 to 27 and my discussion of section 187(3)(e) of the CP Act starting at paragraph 91 above.

⁹³ And their counterparts in another jurisdiction who also interacted with the applicant in a professional capacity.

⁹⁴ Schedule 4, part 3, item 3 of the RTI Act and, for deceased individuals, schedule 3, part 3, item 5 of the RTI Act.

⁹⁵ Schedule 4, part 4, section 6(1) of the RTI Act.

i. Information of Department staff, doctors etc.

141. In terms of the latter – that is, the information relating to Department staff, doctors etc., as noted at paragraph 23 above, pursuant to the 2017 and 2024 Decisions, information of this type was generally released, except for what appear to be some inconsistent or inadvertent redactions, and also except for such information as it appears among other Written Consent Information, which the Department considered could be refused on the ground exempt information, but this decision finds may be disclosed.
142. On reviewing this information, I am satisfied it relates to individuals who were either public servants or others providing services to or on behalf of the Department in exercising its child safety functions with respect to the applicant. The relevant information records these individuals interacting with the applicant in routine, professional contexts, and there is no information before me to suggest any interactions were in a private capacity, or any non-routine professional interactions. Consistent with the Department's general approach to such information, I consider the relevant privacy nondisclosure factors and personal information harm factor warrant low weight.

ii. Information of family members and foster carers who provided written consent

143. Ordinarily, for information that is as highly personal as the rest of the Written Consent Information, the privacy nondisclosure factors and personal information harm factor are afforded significant weight, and the age of the information and fact that some of it relates to deceased family members only slightly reduce this weight, but not by any significant degree.⁹⁶ The particular context of the information in this review, however, where the information in question is that of family members and former foster carers of the applicant who have provided written consent to the release of information relating to them, leads to a different weighting.
144. Generally, privacy is a human right under section 25 of the HR Act and the protection of an individual's right to privacy is reflected in the IP and RTI Acts.⁹⁷
145. As noted in *OKP*:

... in the context of a family, it is difficult for personal information to be kept private or 'secret' for a range of reasons. There is some information that cannot be kept 'secret'. Individuals growing up in families, by virtue of living together, have a 'living' and often 'unspoken' history of shared personal information. ...

...

This shared personal information goes to the identity of the child and is critical to their wellbeing. Parents are responsible for making judgements about what information children will be given and when, ideally with attention to whether or not the provision of information is in their best interests. Some information may be shared as the child grows older or it becomes clear to them without being told. Had the applicant lived longer with his family or relatives, he would have seen with his own eyes and developed greater living memories of his family. The applicant was separated from his family at the age of eight and it is clear from his application that already by that age he understood that all was not well. The information on the Department's file will not be a total surprise to him.⁹⁸

⁹⁶ *Fotheringham and Department of Health* (1995) 2 QAR 799 at [31].

⁹⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁹⁸ At [111]-[113].

146. Consistent with the above comments in *OKP*, and in this review, I consider it reasonably likely the information to which the applicant seeks access from her child protection file will not be a complete surprise and she can be expected to know or least understand the context of the information that concerns how she came to be in care.
147. *OKP* was decided with reference to the repealed FOI Act, which included a concept of 'personal affairs' rather than 'personal information'. Further, it was decided soon after the commencement of the IP Act, and before enactment of the HR Act, which recognises the right of an individual not to have their privacy 'unlawfully or arbitrarily interfered with'.⁹⁹
148. When considering the privacy and personal information of other family members, I have considered the relevant privacy nondisclosure factors and personal information harm factors which were introduced in the RTI Act. Notwithstanding the different legislative context, I consider the currency of the above observations in *OKP* remain.
149. Having reviewed the Written Consent Information, I am satisfied, had the applicant lived with her family throughout her childhood, she would have been aware of most, if not all, of the relevant information by virtue of her presence during, and involvement in, events and discourse which, over time, would become her 'living history'. Whether spoken, or unspoken but experienced, this information would have comprised shared personal information. However, this was not the case, and instead knowledge of the information is now necessary to assist the applicant in understanding her childhood. Also, the disclosure of some aspects of the Written Consent Information is consistent with the accepted notion that another person's health information can be the applicant's personal information by virtue of the fact that it relates to the health of a biological parent.
150. For these reasons, I consider the relevant privacy nondisclosure factors warrant low weight regarding the Written Consent Information which is relatively benign and uncontroversial in nature, and moderate weight regarding *nearly all* of the sensitive information.
151. For a *small amount* of information comprising the most personal, sensitive Third Party Information – e.g. about serious, sensitive circumstances experienced by particular third party/ies which did not involve the applicant, or recording particularly heightened personal opinions of one third party another third party – I am satisfied that significant weight is warranted for the privacy nondisclosure factors. I have considered this very carefully and concluded that the highly personal nature of the information in question warrants this weighting, despite the written consents provided to me.
152. I also find that the weight of the harm arising from disclosure of the family members' personal information is diminished somewhat relative to information of a similar nature outside the family context, and therefore attribute the harm factor low weight regarding the relatively benign and uncontroversial information, and moderate to significant weight regarding *nearly all* of the sensitive information. I give very significant weight regarding the small amount of the most personal, sensitive Third Party Information mentioned in the preceding paragraph.
153. In terms of these weightings, my consideration has been strengthened by the written consents provided by the relevant third parties to the applicant to support their RTI application, and the further consultation undertaken by with the applicant's relevant family members.

⁹⁹ Section 25(a) of the HR Act.

Prejudice fair treatment regarding unsubstantiated allegations

154. The Department's involvement with the applicant commenced with allegations made concerning her wellbeing. At various times, further allegations were raised with the Department. Insofar as the Written Consent Information records allegations that were not substantiated by a court or Departmental investigation, the nondisclosure factor regarding prejudice to fair treatment arises for consideration.¹⁰⁰
155. I consider that the range of behaviour referenced in the allegations raises a range of concerns, from serious to relatively minor. The significant weight that could apply with respect to serious allegations, however, is somewhat diminished, taking into account the authorities and written consent provided by third parties against whom some of the allegations were made. It is also reduced by the age of the allegations, the applicant now being an adult and the passage of time in relation to the parties concerned. Accordingly, I consider this factor warrants moderate to low weight respectively for the serious through to relatively minor concerns respectively.

Prejudice the flow of confidential information to Department

156. I have also considered the nondisclosure factors regarding the flow of information to the Department in its role and functions under the CP Act, and prejudice to its ability to obtain confidential information in relation to the safety and wellbeing of children.¹⁰¹
157. The Written Consent Information does not include notifier information provided to the Department. As noted above, starting at paragraph 32, notifier information is exempt information as its disclosure is prohibited by section 186A(1) of the CP Act.
158. The Written Consent Information generally records interactions between Department staff and the applicant's family members and foster carers. Mostly, interactions occurred as part of ongoing identification, discussion, organisation and confirmation of options and arrangements regarding the applicant. In some instances, the interactions occurred as part of investigating and responding to allegations made the Department. Of course, the relevant persons were necessarily aware of them, and the issues they related to, at the time they occurred; however, the applicant and other relevant individuals may have been unaware of the interactions, or only aware of them in general terms.
159. In terms of third parties whose conduct led to Departmental involvement, it is reasonable to expect that their interactions with the Department and the information it recorded about those interactions, would be likely to occur in the same manner, regardless of the prospect of future release of the records. Similarly, I consider that third parties who voiced opinions or concerns to the Department would mostly continue to do so, even if they knew that documents recording their comments could, in the future, be released to the applicant. In this regard, I reiterate that these comments do not comprise notifier information and confirm that the opinions or concerns expressed are generally offered as part of advocating for the applicant's best interests when a child. I do acknowledge, however, that in some instances, family members or foster carers may be somewhat more hesitant or more circumspect, for fear of the subjects of their comments later becoming aware of them. Given this, I consider moderate weight should attach to the two nondisclosure factors.

¹⁰⁰ Schedule 4, part 3, item 6 of the RTI Act.

¹⁰¹ Schedule 4, part 3, items 13 and 16 and part 4, section 8(1) of the RTI Act.

Balancing the public interest factors

160. I have carefully considered the remaining factors listed in schedule 4, parts 2, 3 and 4 of the RTI, and factors favouring both disclosure and nondisclosure more generally, given the factors listed in schedule 4 are not exhaustive. Having carefully considered all material available to me, I can identify no further factors favouring disclosure or nondisclosure of the Written Consent Information.
161. I have considered and weighed the public interest considerations favouring non-disclosure against the public interest considerations favouring disclosure of the Written Consent Information. In doing so, I have had regard to the HR Act, particularly, the rights noted at paragraph 18 above.
162. On the basis of the matters discussed above, I consider significant weight should be given to the following public interest factors favouring disclosure:
- a. enhancing the government's accountability and transparency
 - b. the information is the applicant's personal information
 - c. the applicant's justifiable need to know the information sought
 - d. enhancing social and economic well-being of the community; and
 - e. promoting the equitable treatment of care leavers.
163. On the other hand, I consider:
- a. the privacy nondisclosure factors warrant –
 - i. for information of Department staff, doctors etc. – low weight
 - ii. for information of family members and foster carers who provided written consent –
 - low weight regarding information which is relatively benign and uncontroversial in nature
 - moderate weight regarding nearly all of the sensitive information
 - significant weight regarding a small amount of Third Party Information
 - b. the personal information harm factor deserves –
 - i. for information of Department staff, doctors etc – low weight.
 - ii. for information of family members and foster carers who provided written consent –
 - low weight regarding information which is relatively benign and uncontroversial in nature
 - moderate to significant weight regarding nearly all of the sensitive information
 - very significant weight regarding a small amount of Third Party Information
 - c. the factor about prejudice to fair treatment regarding unsubstantiated allegations should be given –
 - i. moderate weight regarding information about serious unsubstantiated concerns, through to
 - ii. low weight for information about relatively minor concerns; and
 - d. finally, the nondisclosure factors regarding prejudice to the flow of confidential information to the Department both warrant moderate weight.

164. On balance, weighing the factors favouring disclosure and favouring nondisclosure against one another, I find there is significant public interest in enhancing accountability and disclosing the applicant's personal information consistent with her justifiable need to know, so as to enhance social and economic well-being of the community and promote equitable treatment of care leavers. Further, I consider these factors outweigh the public interest in protecting the privacy and personal information of other individuals, fair treatment regarding unsubstantiated allegations, and the flow of confidential information to the Department regarding all of the Written Consent Information, except for the most personal, sensitive Third Party Information mentioned at paragraphs 151 to 152 above.
165. In terms of this limited amount of Third Party Information, I find that disclosure would, on balance, be contrary to the public interest, and this information may be refused.¹⁰²
166. Otherwise, I find that disclosure of the Written Consent Information would not, on balance, be contrary to the public interest.

DECISION

167. For the reasons set out above, I vary the reviewable decisions made by the Department and find that:
- a. a small amount of Shared Personal Information¹⁰³ may be refused on ground it is exempt information under section 186A of the CP Act, namely information from which the identity of an individual who made a child protection notification could be deduced;
 - b. for the remaining Information in Issue (other than that addressed at a.), where third parties did not provide written consent, the Shared Personal Information and Third Party Information¹⁰⁴ may be refused on the ground it is exempt information under section 187 of the CP Act;
 - c. for the remaining Written Consent Information¹⁰⁵ (that is, the information other than that addressed at a. and b.), where third parties provided written consent¹⁰⁶ and were, as necessary, consulted –
 - i. the Shared Personal Information and Third Party Information are not exempt information under section 187 of the CP Act
 - ii. further, disclosure of the Shared Personal Information and most Third Party Information would not, on balance, be contrary to the public interest; and
 - iii. however, a small amount of information comprising the most personal, sensitive Third Party Information may be refused on the ground its disclosure would, on balance, be contrary to the public interest.

¹⁰² The version of the documents marked-up in accordance with my decision which will be provided to the Department when this decision is issued will identify this information.

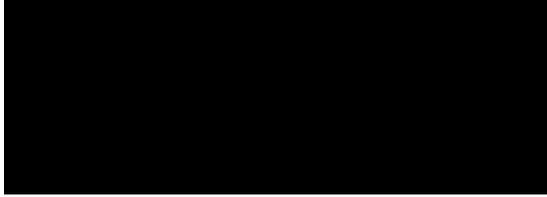
¹⁰³ As described at paragraph 24 of this decision.

¹⁰⁴ Again, as described at paragraph 24 of this decision.

¹⁰⁵ As described at paragraph 110 of this decision.

¹⁰⁶ Raising the exception in section 187(3)(e) of the CP Act.

168. Given my finding that the information at c.ii. of the preceding paragraph is not exempt information, nor information the disclosure of which would be contrary to the public interest, I am satisfied there are no grounds to refuse access to this information under the IP Act, and it may therefore be released to the applicant.



Joanne Kummrow
Information Commissioner

Date: 12 February 2026