



Decision and Reasons for Decision

Citation:	<i>Malfliet and Department of Education, Training and Employment</i> [2014] QICmr 31 (17 July 2014)
Application Number:	311871
Applicant:	Malfliet
Respondent:	Department of Education, Training and Employment
Decision Date:	17 July 2014
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to an investigation conducted by the agency and subsequent action taken by the agency - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Education, Training and Employment (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a range of information generally relating to:
 - an investigation by the Department into allegations that officers from a regional office failed to appropriately address complaints received from staff at a school
 - findings, recommendations and action taken to address any shortcomings identified during that investigation; and
 - a show cause process concerning a particular officer.
2. The Department located 1156 pages relevant to the access application and refused access to 1089 pages on the basis that they comprised exempt information and 67 pages on the basis that their disclosure would on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access to the relevant information.
4. For the reasons set out below, the Department's decision is affirmed and access to the information in issue can be refused on the basis that its disclosure would, on balance, be contrary to the public interest.

Background

5. The applicant's partner passed away in 2011. At the time of his death, the deceased was an employee of the Department. The death and a number of related issues have been the subject of investigations by the Department's Ethical Standards Unit, Workplace Health and Safety Queensland, the former Crime and Misconduct Commission and the Queensland Coroner although the scope of each inquiry may have varied to some degree. The coronial inquiry considered a range of issues including the work conditions of the deceased as an employee of the Department.
6. Significant procedural steps relating to the external review are set out in the appendix to these reasons.

Reviewable decision

7. The decision under review is the Department's decision dated 11 December 2013.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Information in issue

9. The information in issue (**Information in Issue**)¹ comprises 60 pages and parts of 7 pages and can generally be described as internal briefing notes and correspondence sent to individuals who were the subject of the Department's investigation and show cause process. The Information in Issue relates to the Department's management of particular issues, some of which relate to the employment of the applicant's partner.

Relevant law

10. Under the RTI Act, an individual has a right to be given access to documents of an agency subject to certain limitations, including grounds for refusal of access. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.²
11. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest³ and explains the steps that a decision-maker must take⁴ in deciding the public interest as follows:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

¹ The applicant accepted OIC's preliminary view that access to 1089 pages could be refused on the basis that they comprised exempt information under sections 47(3)(a), 49 and schedule 3, section 10(4) of the RTI Act. OIC formed the view that a small amount of additional information in 7 pages could be released to the applicant. The Department accepted OIC's view and released this information to the applicant.

² Section 47(3)(b) and 49 of the RTI Act. The term '*public interest*' 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

³ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

⁴ Section 49(3) of the RTI Act.

Findings

12. No irrelevant factors arise in the circumstances of this case. I will address below the relevant factors favouring disclosure and nondisclosure of the Information in Issue.

Accountability and transparency of the Department

13. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing the Information in Issue could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability⁵
- contribute to positive and informed debate on important issues or matters of serious interest;⁶ and
- reveal the reason for a government decision and any background or contextual information that informed the decision.⁷

14. In relation to these factors, the Department explained that:⁸

- public sector management is a matter of serious public interest and there is a strong public interest in ensuring the Department and its officers are accountable for its management of staff and their handling of complaints management processes
- in this case, matters concerning the Department's management of its officers arose and led to the suspension of a number of officers and considerable public criticism and concern from the media and parents
- the information reveals how the Department responded to managerial issues including the allegations made about officers and shows what was considered at the time the decision was made to suspend certain officers; and
- the investigation by the former Crime and Misconduct Commission and coronial inquiry are other accountability measures which have examined deficiencies in the administration by the Department and individual officers.

15. The applicant relevantly submits that:⁹

- she participated in the relevant investigations and her concerns were investigated and ultimately substantiated
- she has had access to the coronial brief of evidence and very little information addressing the other investigation outcomes and, to her knowledge, no action was taken as a result of the investigations by the Department or Workplace Health and Safety Queensland
- as a result of the Department's investigation, a number of officers were disciplined for what is a wider systemic problem but there is no evidence that the systemic issues have been thoroughly investigated, shortcomings identified and appropriate action taken to address workplace bullying authentically in the future; and
- if the Information in Issue does reveal that the matter has been investigated, shortcomings identified and appropriate action taken to address workplace bullying authentically, it would go a long way to restoring a degree of confidence in the Department's management of workplace bullying and increase disclosures which would lead to safer workplaces.

⁵ Schedule 4, part 2, item 1 of the RTI Act.

⁶ Schedule 4, part 2, item 2 of the RTI Act.

⁷ Schedule 4, part 2, item 11 of the RTI Act.

⁸ At pages 10, 12 and 13 of its decision dated 11 December 2013.

⁹ Submissions to OIC dated 31 December 2013 and 26 May 2014.

16. The Information in Issue reveals how the Department responded to relevant managerial issues including allegations made about its officers. It includes information provided by witnesses, complainants and the subject officers. Disclosing the Information in Issue would identify:
- the scope of the Department's inquiry and the nature of the issues it considered
 - the information it took into account in reaching its decision with respect to whether the particular allegations were substantiated or unsubstantiated; and
 - how the Department dealt with the investigation and show cause process.
17. I agree with the Department's comments that public sector management is a matter of serious public interest and importance. There is a strong public interest in ensuring that the Department and its officers are accountable for their conduct including conduct connected to the management of staff and handling of complaints management processes. I am satisfied that disclosing the Information in Issue would further accountability and transparency and would provide the applicant with a more detailed understanding of how the Department managed the relevant issues.
18. As noted above, several related issues have been investigated by a number of entities, although the scope of each inquiry may have varied to some degree. The applicant was invited to participate and give evidence in some of the relevant investigations and had access to the coronial brief of evidence. As a result, information has been made available to her about the matters addressed. I consider the applicant has been informed of the relevant outcome in each case, even if she contends that some outcome information was limited, and this goes some way to addressing the issues of accountability and transparency. Although I have taken outcome information known to the applicant into account, I do not consider it reduces the weight of these public interest factors in the circumstances of this case. The Department's handling of the issues (as reflected in the Information in Issue) is a matter of serious public interest affecting its functioning and the well-being of its staff and students. I am satisfied that these public interest considerations apply, not just for the benefit of the applicant, but also for the broader community. I afford each of them significant weight.

Deficiencies in the conduct or administration of an agency of official

19. The RTI Act gives rise to factors favouring disclosure where disclosing information could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;¹⁰ and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.¹¹
20. The Information in Issue directly relates to the Department's investigation into the management of particular issues and allegations about Departmental officers engaging in misconduct or negligent, improper or unlawful conduct. Some of these allegations were substantiated. I consider these factors are relevant to the extent the Information in Issue relates to the allegations which were substantiated. I afford these factors significant weight in relation to that particular information.

¹⁰ Schedule 4, part 2, item 5 of the RTI Act.

¹¹ Schedule 4, part 2, item 6 of the RTI Act.

Advance the applicant's fair treatment

21. The RTI Act gives rise to a factor favouring disclosure where disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.¹²

22. The Information Commissioner considered this factor in *Pemberton and The University of Queensland*¹³ and relevantly explained that:

This [public interest factor] was based on the recognition by the courts that: "The public interest necessarily comprehends an element of justice to the individual" ... It is also self-evident from the development by the courts of common law of a set of principles for judicial review of the legality and procedural fairness of administrative action taken by governments, that compliance with the law by those acting under statutory powers is itself a matter of public interest... It is an interest common to all members of the community, and for their benefit. In an appropriate case, it means that a particular applicant's interest in obtaining access to particular documents is capable of being recognised as a facet of the public interest, which may justify giving a particular applicant access to documents that will enable the applicant to assess whether or not fair treatment has been received and, if not, to pursue any available means of redress, including any available legal remedy.

23. This factor arises for consideration given the applicant's involvement in the Department's investigation and other accountability measures previously identified and also due to the fact that she raised allegations which were ultimately substantiated.

24. The Department relevantly explained that:¹⁴

- the applicant was invited to participate in and give evidence in investigations undertaken by and for the Department during which she raised allegations of improper or inappropriate conduct by an officer of the Department
- these allegations were investigated and substantiated
- the applicant is aware of the investigation findings to which her concerns relate and disclosing the Information in Issue would not further her fair treatment in accordance with the law in any demonstrable way; and
- much of the Information in Issue relates to allegations made by other individuals.

25. The applicant acknowledges that she participated in relevant investigations and her concerns were investigated and ultimately substantiated.¹⁵

26. The Coroner identified a number of factors which contributed to the death of the applicant's partner – some of these related to his employment with the Department. Given her relationship to the deceased, I consider the applicant has a particular interest in the action taken by the Department in response to the issues identified by the Coroner which relate to the deceased. However, as noted previously, only some of the Information in Issue relates to allegations made by the applicant and the deceased. The remainder of the Information in Issue relates to other individuals.

27. I accept that this factor applies to the small part of the Information in Issue which relates to the applicant and the deceased. However I afford this factor only moderate weight because the applicant has participated in relevant investigations and was

¹² Schedule 4, part 2, item 10 of the RTI Act.

¹³ (1994) 2 QAR 293 at paragraph 190. The Information Commissioner's comments were made in the context of the repealed *Freedom of Information Act 1992* (Qld) but provide guidance on the interpretation of this factor under the RTI Act. In its decision, the Department identified the applicant's 'justifiable need to know' as an additional factor favoring disclosure. This is a facet of the public interest factor at schedule 4, part 2, item 10 of the RTI Act.

¹⁴ At pages 11, 12 and 13 of its decision dated 11 December 2013.

¹⁵ Submissions to OIC dated 26 May 2014.

notified that her concerns were substantiated. I do not consider that the notion of fair treatment in this case entitles the applicant to *all* information about these allegations including the information provided by other witnesses and the subject officers or information about the nature of the disciplinary action that resulted.

28. The applicant submits that she has an interest in the '*wider systemic problem*' and that '*there is no evidence that the systemic issues have been thoroughly investigated, shortcomings identified and appropriate action taken to address workplace bullying authentically in the future*'.¹⁶ This submission goes to the factors of accountability, transparency and deficiencies in conduct that I have addressed previously and to which I afforded significant weight. I do not consider that the public interest in advancing the applicant's fair treatment applies to that part of the Information in Issue which does not directly relate to the applicant or the deceased. Accordingly, I afford this factor of fair treatment no weight in relation to that information.

Personal information of the deceased and the applicant

29. The RTI Act gives rise to factors favouring disclosure where the Information in Issue is:
- the applicant's personal information;¹⁷ and
 - the personal information of a deceased person and the applicant is an eligible family member of the deceased.¹⁸
30. An '*eligible family member*' of a deceased person includes a spouse of the deceased person. I am satisfied that the applicant is an eligible family member of the deceased for the purpose of this factor under the RTI Act.
31. A small part of the Information in Issue comprises the personal information of the applicant and the deceased. It specifically comprises information about the deceased in the context of allegations relating to an officer. The information was provided to the Department by the applicant, other witnesses and the subject officer in response to the allegations. The Department indicates that this information is known to the applicant¹⁹ and I consider this reduces the weight of these factors to some degree. As a result, I afford minimal weight to these factors in relation to the small part of the Information in Issue which comprises the personal information of the applicant and the deceased.

Personal information and privacy of other individuals

32. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;²⁰ and
 - disclosing the information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.²¹
33. The applicant submits that:²²

¹⁶ Submissions to OIC dated 26 May 2014.

¹⁷ Schedule 4, part 2, item 7 of the RTI Act. Section 12 of the *Information Privacy Act 2009 (Qld)* defines '*personal information*' as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

¹⁸ Schedule 4, part 2, item 9 of the RTI Act.

¹⁹ At page 11 of its decision dated 11 December 2013.

²⁰ Schedule 4, part 3, item 3 of the RTI Act.

²¹ Schedule 4, part 4, item 6(1) of the RTI Act.

²² Submissions to OIC dated 31 December 2013.

As acknowledged I have had the benefit of substantial information through the Coronial brief of evidence. There has been no complaints that I am aware of that I have breached anyone's privacy. I am motivated in an attempt to improve systemic processes to authentically address workplace bullying rather than attribute blame or violate an individual's privacy. On the contrary, I am concerned that two staff members may have been unfairly scapegoated to accept responsibility for what is a far more complex, cultural problem. Since I am more concerned about the recommendations to address shortcomings identified so that schools are safer work environments, I will accept redacted documents that remove staff identity to address any concerns regarding their privacy.

34. I have considered the applicant's submissions in relation to the weight to be afforded to these factors. I note that it is not possible to place restrictions on the use, dissemination or republication of information released under the RTI Act. In *OKP and Department of Communities*²³ the Information Commissioner explained that a decision-maker should not assume that disclosure of information to an applicant is disclosure to the 'world at large' but should not exclude from consideration evidence about the intended or likely extent of dissemination of information by the applicant. While I have taken into account the applicant's submission at paragraph 33, I have not excluded the possibility that the Information in Issue could be disseminated further as permitted under the RTI Act.
35. As noted above, a small part of the Information in Issue comprises the personal information of the applicant and the deceased in the context of allegations about an officer. The information was provided to the Department by the applicant, other witnesses and the subject officer in response to the allegations. Given the nature of this information and the context in which it appears, the personal information of the applicant and the deceased is intertwined with the personal information of other individuals and it cannot be excised from the documents. Also, having carefully reviewed the way in which the information is presented, it is not possible to de-identify the Information in Issue by deleting the names of the relevant individuals. This is due to publicly available information which could be used to easily ascertain the identity of the individuals referred to in the Information in Issue.
36. Generally, information relating to the day-to-day work duties and responsibilities of a public service officer may be disclosed under the RTI Act, despite it falling within the definition of personal information. However, agency documents can also contain personal information of public servants which is not *routine* work information.²⁴ Although the personal information here appears in a workplace context, it comprises serious allegations about the conduct of the subject officers (some of which were unsubstantiated) and information provided by witnesses and complainants. I consider such information is not related wholly to the routine day-to-day work activities of a public service officer and is not routine personal work information. It is then relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the RTI Act.
37. I have taken into account the fact that a small part of the Information in Issue will be generally known to the applicant and accept that this reduces the weight of these factors to some degree. I afford these factors moderate weight in relation to that information.
38. The remaining Information in Issue is sensitive and personal in nature. I consider its disclosure under the RTI Act would be a significant intrusion into the privacy of the

²³ (Unreported, Queensland Information Commissioner, 9 July 2009) at paragraphs 119-131 referring to the Victorian Court of Appeal decision in *Victoria Police v Marke* [2008] VSCA 218.

²⁴ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at paragraph 60.

subject officers, witnesses and complainants. Further, I find that the extent of the public interest harm that could be anticipated from disclosure is significant. In relation to the remaining information, I afford these factors significant weight.

Prejudice fair treatment of individuals

39. A factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.²⁵
40. As noted above, some of the allegations which form part of the Information in Issue are unsubstantiated. I have considered the serious nature of the allegations and am satisfied they relate to misconduct or unlawful, negligent or improper conduct. I consider that disclosing information relating to these allegations, which are serious in nature and have not been substantiated, could reasonably be expected to adversely affect the reputations of the subject officers which in turn would prejudice their fair treatment. For these reasons, I afford significant weight to this factor in relation to the part of the Information in Issue which relates to unsubstantiated allegations.
41. The applicant submits that:²⁶

This relates to the unfair inference of blame on a particular officer ... and the adverse impact on the person should [their] identity be revealed. I am concerned that any individual should not be scapegoated to accept responsibility for a cultural issue. Apart from the distressing impact of this action on the individual concerned, it limits the potential learning opportunity. Many levels of the Department were aware of [the officer's] behaviour but still it continued. Considering the complexity of this example and finding sustainable solutions could potentially improve the workplace safety for all Queensland schools. Once workplace bullying is authentically addressed in schools, then I believe a bullying free future for students is possible.

42. I have considered the applicant's submission. It does not go directly to the application of this factor and raises issues which I am unable to address. To the extent the submission relates to factors favouring disclosure of the Information in Issue, I have addressed these above.

Prejudice the flow of information to the Department

43. I have considered whether disclosing the Information in Issue could reasonably be expected to:
- prejudice an agency's ability to obtain confidential information²⁷
 - prejudice the management function of an agency;²⁸ and
 - cause a public interest harm if disclosure could have a substantial adverse effect on the management or assessment by an agency of the agency's staff.²⁹
44. The Information in Issue reveals the identity of the subject officers, complainants and witnesses together with information they have provided in relation to the allegations. I consider these three nondisclosure factors are relevant for the reasons that follow.
45. The Department relevantly explained that:³⁰

²⁵ Schedule 4, part 3, item 6 of the RTI Act.

²⁶ Submissions to OIC dated 31 December 2013.

²⁷ Schedule 4, part 3, item 16 of the RTI Act.

²⁸ Schedule 4, part 3, item 19 of the RTI Act.

²⁹ Schedule 4, part 4, item 3(c) of the RTI Act.

³⁰ At pages 15 and 16 of its decision dated 11 December 2013.

- complaints are received by the Department on the understanding they will be treated confidentially except to the extent that procedural fairness or statutory disclosure provisions require otherwise
 - in this matter, it was not necessary to disclose the Information in Issue to satisfy any requirements of procedural fairness or statutory provisions and, as a result, the information has not been disclosed and retains the necessary quality of confidence
 - there is a continuing mutual understanding of confidence between the Department and the individuals who provided the information
 - although it is reasonable to expect staff to cooperate with investigation processes in the course of their employment, disclosing confidential complaint information could reasonably be expected to prejudice the Department's management function in relation to employee complaint processes as it would:
 - discourage individuals from raising concerns about colleagues with management personnel and volunteering information about alleged wrongdoing by colleagues in future
 - make staff reluctant to fully participate in workplace investigations as they would provide a less detailed account of their experience and observations
 - compromise workplace relationships because many of the officers identified in the Information in Issue are still employed by the Department; and
 - conflict with the confidentiality considerations placed on all participants in employee complaint processes and the requirement that employee complaints be managed in a manner that protects privacy.
46. I accept the Department's explanation that it receives complaints on the understanding that they will be treated confidentially (except to the extent that procedural fairness or statutory disclosure provisions require otherwise) and that the Information in Issue retains the necessary quality of confidence. I am satisfied that disclosing confidential information under the RTI Act in the context of a workplace investigation could reasonably be expected to prejudice the Department's ability to obtain confidential information in future as individuals would be less likely to provide confidential information in subsequent investigations and I afford this nondisclosure factor significant weight.
47. I also agree with the Departments' view that disclosing the Information in Issue could reasonably be expected to prejudice its management function by compromising workplace relationships and by discouraging individuals from raising concerns or participating in workplace investigations in the future. While I consider it reasonable to expect officers of the Department to cooperate with an investigative process, I am satisfied that, in most cases, individuals supply information to workplace investigators on the understanding that it will only be used for the investigation or any subsequent disciplinary action.
48. The applicant relevantly submits that:³¹
- *'I strenuously disagree that releasing [the Information in Issue] would discourage individuals from raising concerns with the Department about serious issues and participating in workplace investigations in the future. I believe that the 'unseen' disciplinary action under the guise of confidentiality erodes confidence in the process. In my view, it is the fear of reprisals, impact on future career opportunities, lack of alternative employment locations available and concern for work colleagues that every day prevents disclosure rather than confidentiality concerns.'*

³¹ Submissions to OIC dated 31 December 2013 and 26 May 2014.

- *'I believe that repeated regional office inaction despite staff complaints to Departmental staff at various levels has already adversely affected the Department's ability to fulfil its management function.'*
- *'Essentially ignoring Ethical Standards Review recommendations to ensure the well-being of staff ... has damaged the Department's credibility. The best way to repair the damage already done is to acknowledge error and creatively problem solve for a better future. Rather than hiding behind confidentiality, the Department should be providing leadership through clear guidelines to school communities on [workplace bullying].'*
- *'I submit the Commissioner find that releasing the documents would not adversely prejudice the Department's management function more than past inaction has already. In fact it is likely to improve its complaints management ability in the future.'*

49. I have considered the applicant's submissions. However, these submissions deal with other issues which the applicant considers have had a detrimental impact on the Department's complaint management process. The applicant also identifies the steps the Department should, in her view, take to *'repair the damage already done'*. It is not necessary nor appropriate for me to consider these other issues or comment on how the Department could improve any aspects of its management. The relevant question in relation to these factors is whether disclosing the Information in Issue could reasonably be expected to have the adverse effects identified in paragraph 43. To the extent the applicant's submissions relate to factors *favouring* disclosure of the Information in Issue, I have addressed them above.

50. I consider disclosing confidential information provided by individuals who participated in a workplace investigation to a third party under the RTI Act could reasonably be expected to erode confidence in the process and prejudice the flow of information from individuals who would otherwise provide relevant information. This is particularly so given that there is no requirement for the Department to disclose the Information in Issue to the applicant in accordance with procedural fairness or statutory disclosure provisions. I afford these nondisclosure factors significant weight in the circumstances.

Balancing the relevant factors

51. The RTI Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.³² I have taken into account the pro-disclosure bias in balancing the relevant factors.

52. I afford significant weight to the three factors favouring disclosure identified at paragraph 13 as disclosing the Information in Issue would further the Department's accountability and transparency and provide a more detailed understanding of how the Department managed the relevant issues and the information it took into account in reaching its decision with respect to whether the particular allegations were substantiated or unsubstantiated. However, I also afford significant weight to the three factors favouring nondisclosure identified at paragraph 43 and consider that there is a strong public interest in protecting the Department's management function and the flow of confidential information in the context of workplace investigations. I afford equal weight to the three factors favouring disclosure and the three factors favouring nondisclosure of the Information in Issue.

53. A small part of the Information in Issue relates directly to the deceased and the applicant and gives rise to three additional factors favouring disclosure (identified at paragraphs 21 and 29). I afford only minimal weight to the factors relating to the personal information of the deceased and the applicant given that the applicant is

³² Section 44 of the RTI Act.

generally aware of this information due to her involvement in the investigation processes. As the applicant has a particular interest in the action taken by the Department in response to the allegations relating to the deceased, I consider the factor relating to the fair treatment of the applicant arises for consideration. I afford this factor moderate weight but only in relation to the small amount of information which relates directly to the deceased and the applicant.

54. The Information in Issue comprises the personal information of other individuals. This information is sensitive and personal in nature and its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals. I afford significant weight to the two factors favouring nondisclosure identified at paragraph 32. A small part of this information relates directly to the deceased and the applicant but this information cannot be separated from the personal information of other individuals. As this information will be generally known to the applicant, this reduces the weight of these factors to some degree. I afford moderate weight to these two factors in relation to that information.
55. I afford significant weight to the two factors identified at paragraph 19 to the part of the Information in Issue which relates to substantiated allegations. To the extent the Information in Issue relates to unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct, I afford significant weight to the factor identified at paragraph 39 relating to the fair treatment of individuals.
56. The public interest considerations are finely balanced in this case. However, I am satisfied that disclosing the Information in Issue under the RTI Act would, on balance, be contrary to the public interest and access is refused on this basis.

DECISION

57. I affirm the Department's decision and find that access to the Information in Issue can be refused under sections 47(3)(b) and 49 of the RTI Act.
58. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

L Lynch
Assistant Information Commissioner

Date: 17 July 2014

APPENDIX

Significant procedural steps

Date	Event
1 October 2013	The Department received the access application under the RTI Act.
11 December 2013	The Department issued its decision to the applicant refusing access to the requested information.
31 December 2013	The applicant applied to OIC for external review of the Department's decision.
17 January 2014	OIC notified the applicant and the Department that the external review application had been accepted and asked the Department to provide the documents in issue to OIC by 3 February 2014.
31 January 2014	OIC received the documents in issue from the Department.
19 February 2014	OIC conveyed a preliminary view to the applicant on the information which the Department had decided comprised exempt information. The applicant accepted OIC's preliminary view.
9 April 2014	OIC conveyed a preliminary view to the Department that there was no basis to refuse access to a small amount of information and invited the Department to provide submissions supporting its case by 28 April 2014.
15 April 2014	The Department accepted OIC's preliminary view and agreed to release the additional information to the applicant.
1 May 2014	OIC conveyed a preliminary view to the applicant on the remaining information. The applicant requested the preliminary view in writing.
2 May 2014	OIC asked the Department to release the additional information to the applicant by 9 May 2014.
12 May 2014	OIC conveyed its preliminary view to the applicant in writing and invited her to provide submissions supporting her case by 27 May 2014.
27 May 2014	The applicant notified OIC she did not accept the preliminary view and provided submissions supporting her case.