



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>Q84 and Queensland College of Teachers [2021] QICmr 40 (10 August 2021)</i></b>
<b>Application Number:</b>	<b>315755</b>
<b>Applicant:</b>	<b>Q84</b>
<b>Respondent:</b>	<b>Queensland College of Teachers</b>
<b>Decision Date:</b>	<b>10 August 2021</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - personal information of other individuals - safeguarding personal information and the right to privacy of other individuals - flow of information to law enforcement agency - agency's ability to obtain confidential information - fair treatment of individuals - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Queensland College of Teachers (**QCT**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the written responses provided by a named subject teacher in response to complaints made by the applicant and his wife about the subject teacher.
2. While QCT located two statements of the subject teacher (**Statements**), QCT did not make a decision within the relevant processing period<sup>2</sup> and was therefore deemed to have made a decision refusing access to the Statements in full.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QCT's deemed decision.
4. For the reasons set out below, I vary QCT's deemed decision and find that access to the Statements may be refused on the ground that disclosure would, on balance, be contrary to the public interest.

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<sup>1</sup> By access application received on 29 January 2020.

<sup>2</sup> Under section 46(1)(a) of the RTI Act. I note that QCT provided the applicant with a purported decision by letter dated 2 November 2021.

## Background

5. In late 2014, the applicant's son and a small number of other students from the same school participated in an excursion to another country which was supervised by two teachers, one of whom was the subject teacher. During the excursion, the students and teachers were involved in a motor vehicle accident which resulted in the death of the applicant's son as well as the other teacher.
6. In early 2019, the applicant and his wife filed a complaint with QCT<sup>3</sup> about the subject teacher alleging negligence in relation to the excursion.
7. Following an investigation, the applicant was provided with a copy of QCT's Professional Capacity and Teacher Conduct Committee's (**PC&TCC**) Decision and Reasons for Decision regarding the outcome of the complaint.<sup>4</sup>

## Reviewable decision

8. The decision under review is the decision QCT is deemed to have made refusing access to the Statements.

## Evidence considered

9. In reaching my decision, I have had regard to the submissions, evidence, legislation, and other material referred to throughout these reasons (including footnotes and Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>5</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.<sup>6</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>7</sup> '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>8</sup>

## Information in issue

11. The information in issue in this review is the Statements.<sup>9</sup>

## Issue for determination

12. The issue for determination is whether access to the Statements can be refused on the ground that their disclosure would, on balance, be contrary to the public interest.

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<sup>3</sup> Under section 87 of the *Education (Queensland College of Teachers) Act 2005* (**QCT Act**).

<sup>4</sup> As required by section 123(5) of the QCT Act.

<sup>5</sup> Section 21 of the HR Act.

<sup>6</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 at [111].

<sup>7</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>8</sup> *XYZ* at [573].

<sup>9</sup> Comprising the statements made by the subject teacher dated 23 July 2019 and 13 August 2019, as described at page 2 of QCT's decision.

## Relevant law

13. Under the RTI Act, access to information may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>10</sup>
14. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>11</sup>
  - 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 would, on balance, be contrary to the public interest.
15. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision. Additionally, I have kept in mind the RTI Act's pro-disclosure bias<sup>12</sup> and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.<sup>13</sup>

## Findings

### *Irrelevant factors*

16. I am satisfied that no irrelevant factors arise in the circumstances of this case.

### *Factors favouring disclosure*

17. There is a general public interest in advancing public access to government-held information, and the RTI Act is administered with a '*pro-disclosure bias*', meaning that an agency should decide to give access to information, unless giving access would, on balance, be contrary to the public interest.<sup>14</sup>
18. Factors favouring disclosure will arise if disclosure could reasonably be expected to enhance the accountability and transparency of the Queensland government.<sup>15</sup> Here, the relevant government agency is QCT. Accordingly, I must consider the extent to which disclosure of the Statements would enhance the accountability and transparency of disciplinary proceedings conducted by QCT's PC&TCC, for example, by revealing background or contextual information to decisions.<sup>16</sup> The Statements were provided to the investigator assisting QCT's PC&TCC in the context of a disciplinary proceeding arising as a result of the complaint made by the applicant and his wife about the subject teacher. I consider that disclosing the Statements would advance these factors to some degree. However, I consider that the information contained within the PC&TCC's Decision and Reasons, a copy of which was provided to the applicant, provides him with

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<sup>10</sup> 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. See Chris Wheeler, '*The Public Interest: We Know It's Important, But Do We Know What It Means*' AIAL FORUM (48) April 2006; p 12 – 25 AIALF 12.

<sup>11</sup> Section 49(3) of the RTI Act.

<sup>12</sup> Section 44 of the RTI Act.

<sup>13</sup> Section 47(2) of the RTI Act.

<sup>14</sup> Section 44(1) of the RTI Act.

<sup>15</sup> Schedule 4, part 2, items 1 and 3 of the RTI Act.

<sup>16</sup> Schedule 4, part 2, item 11 of the RTI Act.

an understanding of what information was considered relevant by the PC&TCC, sets out background information from the Statements and the oral hearing which informed the PC&TCC's decision, and discharges their accountability obligations and provides transparency to the process.

19. The applicant contends that due to the loss of his son, he and his wife *'have the inalienable right to know all the facts of the circumstances that contributed to the death of our innocent son, rather than a filtered and sanitised version from The Queensland College of Teachers.'*<sup>17</sup> I acknowledge that the applicant and his wife wish to know all information about the circumstances which lead to their son's death. However, the requirement for a government agency to be accountable and transparent in the conduct of disciplinary investigations does not oblige it to provide the complainant/s with access to its entire investigation file nor reveal all of the information it gathered in dealing with the investigation.<sup>18</sup>
20. Accordingly, in these circumstances, I afford the three factors favouring disclosure relating to enhancing accountability and transparency and providing contextual information low weight.
21. A factor favouring disclosure will also arise if disclosure could reasonably be expected to contribute to positive and informed debate on important issues.<sup>19</sup> The standard of behaviour expected of teachers is clearly an important issue for the community. Given the Statements comprise information considered by the relevant disciplinary body in Queensland when it considered the behaviour of a particular teacher, I am satisfied that disclosing the Statements would contribute to community debate on the standard of behaviour expected of teachers to some degree. However, it is the PC&TCC's Decision and Reasons which, by identifying the information considered to be relevant, discussing this information and reaching conclusions, demonstrates the standards being applied by that body. Having carefully considered the content of both the Statements and the PC&TCC's Decision and Reasons, I am satisfied that the Statements themselves would have relatively little further effect on advancing the public debate about teacher behaviour. Consequently, I afford this factor low weight.
22. Small portions of information within one of the Statements comprises the personal information of the applicant's wife or son, which raises factors favouring disclosure relating to access to personal information.<sup>20</sup> I acknowledge that information within the Statement about the applicant's wife and son is a matter at the core of their personal sphere. In these circumstances, these factors deserve high weight with respect to the relevant portions of information within the Statements. This information, however, is intertwined with the personal information of other individuals such that it cannot be separated. The personal information of others is addressed at paragraphs 29 to 31 below.
23. I have also considered the applicant's submission that he is seeking release of the Statements so that *'an independent and thorough investigation'* of the subject teacher's behaviour during the excursion can be undertaken.<sup>21</sup>

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<sup>17</sup> Page 2 of submission to OIC dated 14 May 2021.

<sup>18</sup> *8A3BPQ and Queensland Police Service* [2014] QICmr 42 (30 October 2014) (*8A3BPQ*) at [23]-[24]. In his submissions to OIC dated 14 May 2021, the applicant **'object[s] to the relevance of 8A3BPQ and Queensland Police Service because the death of [his] son whilst participating in the ... Excursion occurred outside the jurisdiction of the Queensland Police Service.'** (Applicant's emphasis) This submission by the applicant is misconceived as my reference to *8A3BPQ* is in relation to the principle that an agency is not obliged to provide a complainant with the entire investigation file nor reveal all of the information gathered. The fact that the agency in *8A3BPQ* is the Queensland Police Service is irrelevant to my application of this principle in this matter.

<sup>19</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>20</sup> Schedule 4, part 2, items 7 and 9 of the RTI Act.

<sup>21</sup> At page 1 of the applicant's submission to OIC dated 14 May 2021.

24. Factors favouring disclosure will arise if disclosure could reasonably be expected to:
- allow or assist inquiry into possible deficiencies in the conduct or administration of an official<sup>22</sup>
  - reveal or substantiate that an agency or official has engaged in misconduct, or negligent, improper or unlawful conduct<sup>23</sup>
  - advance fair treatment in accordance with the law in dealings with agencies;<sup>24</sup> or
  - contribute to the administration of justice generally (including procedural fairness) or for a person.<sup>25</sup>
25. I acknowledge the applicant's submission that the Statements are required '*so that an independent and thorough investigation of [the subject teacher's] behaviour as a field staff member and the second teacher not "just as a number" can take place for the safety of all school children in [the subject teacher's] care on outdoor educational excursions.*'<sup>26</sup>
26. I have considered these submissions, and accept to a certain extent, disclosure of the Statements may allow for greater scrutiny of the subject teacher's alleged wrongdoing. However, in terms of the weight to be afforded to the factors listed at paragraph 24 above, the information already provided to the applicant in the PC&TCC's Decision and Reasons provides him with detailed information about the subject teacher's actions during the excursion. Further, there is no evidence before me to suggest that the PC&TCC did not conduct a thorough independent and unbiased investigation into the allegations arising from the applicant's complaint. While I acknowledge that the applicant does not agree with the outcome of the PC&TCC's investigation, this does not mean that the investigation was inappropriate or that a further investigation needs to be conducted.
27. I consider that the information already available to the applicant assists the applicant's inquiry into his allegations about the subject teacher's conduct during the excursion, and provides insight into QCT's handling of his complaint, thereby advancing his fair treatment in his dealings with QCT. In terms of the factors concerning the administration of justice, assuming that the applicant has a reasonable basis for pursuing a remedy, my view is that he would already have the information needed to do so. Accordingly, in the circumstances, I afford each of the factors at paragraph 24 above low weight.

### **Factors favouring nondisclosure**

28. QCT identified factors favouring nondisclosure where disclosure could reasonably be expected to prejudice the flow of information to police or another law enforcement or regulatory agency<sup>27</sup> and an agency's ability to obtain confidential information.<sup>28</sup> I consider that these factors apply in relation to the Statements, but only attract low weight, given it is in a subject officers' best interests to respond to allegations made against them when involved in disciplinary proceedings.

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<sup>22</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>23</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>24</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>25</sup> Schedule 4, part 2, item 16 and item 17 of the RTI Act.

<sup>26</sup> Page 1 of submissions to OIC dated 14 May 2021. Applicant's emphasis.

<sup>27</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>28</sup> Schedule 4, part 3, item 16 of the RTI Act.

29. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm.<sup>29</sup> The term '*personal information*' is defined as follows in the RTI Act:<sup>30</sup>

*...information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

30. While the Statements were provided to the PC&TCC in the context of an investigation arising as a result of complaints made by the applicant, I am satisfied that they comprise the personal information of the subject teacher and other individuals mentioned by the subject teacher within the Statements. Noting the sensitive nature of the information and the circumstances of its provision, I afford this factor significant weight.
31. A further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>31</sup> The concept of 'privacy' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>32</sup> For the reasons stated in paragraph 30 above, I am satisfied that disclosure of the Statements would interfere with the personal sphere of the subject officer and other individuals mentioned within the Statements. I acknowledge the applicant's submission<sup>33</sup> that the subject teacher has '*forfeited [their] right of protection and to have [their] statements made to the Professional Practice and Teacher Conduct Committee secreted from scrutiny*'<sup>34</sup> due to the substantiated allegation and the subject teacher's alleged conduct during the excursion. However, I do not consider that the fact that one of the allegations investigated by the PC&TCC arising from the applicant's complaint was substantiated lessens the impact that disclosure of the Statements would have on the interference with the personal sphere of the subject officer and other individuals mentioned within the Statements. Accordingly, I afford this factor significant weight.
32. A further factor favouring nondisclosure arises where disclosure 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.<sup>35</sup> As mentioned above, the Statements were provided to the investigator assisting the PC&TCC in the context of a disciplinary proceeding arising as a result of complaints made by the applicant and his wife. Following the investigation of the allegations, the PC&TCC decided that most of the allegations were not substantiated.<sup>36</sup> Bearing in mind that OIC's functions, in the circumstances of this review, relate only to review of decisions about access to<sup>37</sup> documents and that I must take the PC&TCC's decision on face value, it is my view that disclosure of the Statements, which relate to unsubstantiated allegations, has the potential to prejudice the fair treatment of the subject teacher and other individuals mentioned by the subject teacher within those Statements. In these circumstances, this factor warrants significant weight.

<sup>29</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>30</sup> See schedule 5 of the RTI Act which refers to section 12 of the *Information Privacy Act 2009* (Qld).

<sup>31</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>32</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at [1.56]. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

<sup>33</sup> Page 3 of submissions to OIC dated 14 May 2021.

<sup>34</sup> Applicant's emphasis.

<sup>35</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>36</sup> I note that allegation 1(c)(iii) was substantiated and the PC&TCC decided to '*not take further action against*' the subject teacher.

<sup>37</sup> And amendment of.

### **Conclusion**

33. I have considered the pro-disclosure bias in deciding access to information.<sup>38</sup> On balance, I consider the nondisclosure factors outweigh the disclosure factors in relation to the Statements. Accordingly, I am satisfied that access to the Statements may be refused on the basis that their disclosure would, on balance, be contrary to the public interest.

### **DECISION**

34. I vary QCT's deemed decision and find that access to the Statements may be refused under section 47(3)(b) of the RTI Act as disclosure would, on balance, be contrary to the public interest.
35. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Assistant Information Commissioner Corby**

**Date: 10 August 2021**

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<sup>38</sup> Section 44 of the RTI Act.

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
27 November 2020	OIC received the applicant's application for external review.
1 December 2020	OIC received an emailed submission from the applicant.
2 December 2020	OIC advised QCT and the applicant that the application for external review had been received and requested procedural documents from QCT.
10 December 2020	OIC received the requested procedural documents from QCT.
17 December 2020	OIC advised QCT and the applicant that the application for external review had been accepted and requested a copy of the Statements and a copy of the documents provided to the applicant on 15 June 2020 <sup>39</sup> from QCT.
20 January 2021	OIC received a copy of the requested documents from QCT.
25 March 2021	OIC conveyed a preliminary view to the applicant.
14 May 2021	OIC received submissions from the applicant.

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<sup>39</sup> As referred to on page 1 of QCT's decision.