



## Decision and Reasons for Decision

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Citation:	<b>9X5DUG and Queensland Corrective Services [2017] QICmr 26 (1 August 2017)</b>
Application Number:	<b>313294</b>
Applicant:	<b>9X5DUG</b>
Respondent:	<b>Queensland Corrective Services</b>
Decision Date:	<b>1 August 2017</b>
Catchwords:	<b>ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – EXEMPT INFORMATION – LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION – case notes and CCTV footage of an incident involving the applicant – whether disclosure could reasonably be expected to endanger a person’s life or physical safety – section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> – section 47(3)(a) and 48 and schedule 3 section 10(1)(c) of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied to Queensland Corrective Services under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to CCTV footage and case notes about an incident involving himself.<sup>1</sup>
2. The Department of Justice and Attorney-General (**Department**), acting on behalf of Queensland Corrective Services, located 28 pages and CCTV footage and decided<sup>2</sup> to refuse access in full on the basis that the information was exempt from disclosure under section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 10(1)(c) of the *Right to Information Act 2009 (Qld)* (**RTI Act**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department’s refusal of access decision.<sup>3</sup>
4. For the reasons set out below, I affirm the Department’s decision.

#### Background

5. The Appendix to these reasons for decision sets out the significant procedural steps taken during the external review.

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<sup>1</sup> Access application dated 28 December 2016.

<sup>2</sup> Decision dated 5 April 2017.

<sup>3</sup> External review application received 18 April 2017.

## Reviewable decision

6. The decision under review is the Department's decision dated 5 April 2017.

## Evidence considered

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

## Issue for determination

8. The issue for determination is whether the Department was entitled to refuse access to 28 pages of case notes and CCTV footage (**Information in Issue**).
9. The Information in Issue comprises the applicant's Integrated Offender Management System case notes including an incident report and CCTV footage of the applicant's attempted suicide. Thus the Information in Issue is highly sensitive personal information of the applicant. I acknowledge that to explain my analysis about the legal issues raised by this review, I must discuss events that may be distressful for the applicant and other individuals.<sup>4</sup>

## Relevant law

10. Under the IP Act a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information. However, this right is subject to limitations,<sup>5</sup> including grounds on which access may be refused.<sup>6</sup> One ground for refusal is where information is exempt.<sup>7</sup>
11. Schedule 3, section 10(1)(c) of the RTI Act provides that information will be exempt if its disclosure could reasonably be expected to endanger a person's life or physical safety.
12. The term '*could reasonably be expected to*' requires an expectation that is reasonably based, that is, neither absurd, irrational or ridiculous,<sup>8</sup> nor merely a possibility.<sup>9</sup> Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.<sup>10</sup> It is not necessary for a decision-maker to be satisfied upon the balance of probabilities that disclosing the document will produce the anticipated harm.<sup>11</sup> The expectation must arise as a result of the disclosure, rather than from other circumstances.<sup>12</sup>
13. Accordingly, to determine whether information is exempt from disclosure for the purposes of schedule 3, section 10(1)(c) of the RTI Act there must be real and substantial grounds for believing that disclosing the Information in Issue will endanger a person's life or physical safety.

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<sup>4</sup> If reading this decision raises concerns, please seek support from available services. I note that national helplines and websites for people experiencing a range of life issues are accessible through the following link: <https://www.beyondblue.org.au/get-support/national-help-lines-and-websites>.

<sup>5</sup> Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

<sup>6</sup> As set out in section 47 of the RTI Act.

<sup>7</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>8</sup> *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

<sup>9</sup> *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**).

<sup>10</sup> *Murphy* at [45-47].

<sup>11</sup> *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009).

<sup>12</sup> *Murphy* at [54].

## Findings

14. The applicant submits<sup>13</sup> that he seeks access to the Information in Issue for legal reasons only and that he is doing so for the safety of others so that the same does not happen to them in the future. The applicant also submits<sup>14</sup> that when he requested the same type of information from another agency, that agency disclosed 251 pages of information to him.
15. I acknowledge the applicant's submission that another agency released similar information to him. I make no comment about this except to say that each access application must be considered on its own particular merits. I also accept the importance to the applicant of gaining access to the Information in Issue. Unfortunately, an applicant's reasons for seeking access to information is not something OIC can consider when deciding whether access is to be refused to information on the basis it is exempt.
16. Where the legal requirements for the exemption are made out, OIC must refuse access to the information, irrespective of the applicant's reasons for seeking it.<sup>15</sup> I emphasise that this is not to say that the applicant's concerns are not valid, only that they are not relevant (in a legal sense) when considering the applicable provisions of the legislation.
17. From my analysis of the Information in Issue, I am satisfied that disclosing it may encourage people who find themselves in a similar circumstance to attempt acts which would endanger their life or physical safety as the information demonstrates how the applicant, despite being under high observation in custody, found means and opportunity to attempt suicide. On that basis, I find that the Department is entitled to refuse access to the Information in Issue as disclosing it could reasonably be expected to lead to other inmates identifying means and opportunity to attempt suicide while in custody. For these reasons, I find that:
  - disclosing the Information in Issue could reasonably be expected to endanger the lives or physical safety of individuals; and
  - the Information in Issue comprises exempt information under schedule 3, section 10(1)(c) of the RTI Act.<sup>16</sup>

## DECISION

18. I affirm the decision under review.
19. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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L Lynch  
**Assistant Information Commissioner**

**Date: 1 August 2017**

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<sup>13</sup> Received by OIC on 18 April 2017.

<sup>14</sup> Submission received by OIC on 19 July 2017.

<sup>15</sup> Section 118(2) of the IP Act.

<sup>16</sup> As I find the Information in Issue is exempt from disclosure, I am not required to undertake a public interest balancing test and accordingly, consideration of schedule 4, part 4, section 5(1)(b)(iii) of the RTI Act is not necessary.

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

<b>Date</b>	<b>Event</b>
18 April 2017	OIC received the external review application.
3 May 2017	OIC notified the applicant and the Department that it had accepted the external review application and asked the Department to provide the Information in Issue.
4 May 2017	OIC received the Information in Issue from the Department.
25 May 2017	OIC conveyed its preliminary view to the applicant and invited the applicant to provide submissions in response by 15 June 2017.
22 June 2017	OIC notified the applicant and the Department that the external review had been resolved informally as no response was received from the applicant to OIC's preliminary view.
23 June 2017	OIC received submissions from the applicant in response to its preliminary view.
29 June 2017	OIC notified the applicant that the external review had been re-opened.
19 July 2017	OIC received a further submission from the applicant.