



Decision and Reasons for Decision

Citation: *SH8Z9M & Ors and Department of Child Safety, Youth and Women* [2018] QICmr 40 (27 September 2018)

Application Numbers: 313783, 313784, 313785, 313787 & 313788

Applicants: SH8Z9M (Parent One)
3ET8YJ (Parent Two)
45ZJXT (Child A)
8EM2FO (Child B)
A03ADP (Child C)

Respondent: Department of Child Safety, Youth and Women

Decision Date: 27 September 2018

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION - REFUSAL TO DEAL - applicants seeking access to personal information appearing in records of the Department of Child Safety, Youth and Women - whether applications are expressed to relate to all documents that contain information of a stated kind or subject matter - whether all documents to which the applications relate appear to comprise exempt information - whether agency may refuse to deal with applications - section 59 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - whether exempt - sections 47(3)(a) and 48 and schedule 3, section 12 of the *Right to Information Act 2009* (Qld) - whether disclosure prohibited by section 187 of the *Child Protection Act 1999* (Qld)

REASONS FOR DECISION

Summary

1. The Department of Child Safety, Youth and Women (**Department**) received five separate applications under the *Information Privacy Act 2009* (Qld) (**IP Act**) from five members of the same family. Each applicant sought information about themselves held by the Department for a set date range (**Requested Information**).¹

¹ Parent One, Parent Two and Child A made their own access applications, and Parent One made an access application on behalf of Child B and Child C.

2. In relation to each of the five applications, the Department decided to neither confirm nor deny the existence of documents under section 69 of the IP Act.
3. The applicants applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decisions.
4. On external review, I have decided to vary the Department's decisions, for the reasons set out below. In summary, I find that all documents to which the applications relate appear to be comprised of exempt information and therefore, I have decided to refuse to deal with the applications under section 59 of the IP Act.

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decisions

6. The decisions under review are the Department's decisions dated 23 February 2018 to neither confirm nor deny the existence of the Requested Information under section 69 of the IP Act.

Evidence considered

7. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix).
8. Parent One provided extensive submissions to OIC on behalf of the family setting out arguments in support of disclosure of the Requested Information.² I have carefully reviewed all of Parent One's submissions, and to the extent they are relevant to the issues in this review, I have taken them into account in reaching my decision.
9. Parts of Parent One's submissions concern issues which are beyond OIC's external review jurisdiction under the IP Act. In particular, Parent One raised allegations about the Department's conduct, the potential effects of the information on the employment of some members of the family, compensation claims against the Department and Parent One's status as a power of attorney of a related person. As these matters fall outside OIC's jurisdiction in this external review, they are not addressed in these reasons for decision.

Issue to be determined

10. External review by the Information Commissioner is merits review, i.e. an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to determine what is the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the IP Act.³ After conducting an external review of a decision, the Information Commissioner must make a decision affirming, varying, or setting aside and making a decision in substitution for, the decision under review.⁴

² External review applications dated 2 March 2018, telephone conversations on 26 June 2018 and 27 July 2018 and written submissions dated 29 June 2018 and 31 July 2018.

³ Section 118(1)(b) of the IP Act.

⁴ Section 123(1) of the IP Act.

11. The Department originally decided to neither confirm nor deny the existence of documents responding to the applications.⁵ Generally, that provision will only apply where confirming the very existence of documents is likely to cause the harm that an agency would otherwise seek to avoid by refusing access to the relevant information.⁶ However, the applicants were already aware that information exists within the Department concerning their family. On this basis, during the review, OIC conveyed a view to the Department that section 69 of the IP Act could not apply to the applications.⁷ The Department accepted OIC's alternative view that it was entitled to refuse to deal with the five applications under section 59 of the IP Act.⁸ Accordingly, section 69 of the IP Act is not examined in these reasons for decision. Rather, I consider the issue for determination to be whether the applications may be the subject of a refusal to deal decision under section 59 of the IP Act.

Relevant law

12. If an access application is made to an agency under the IP Act, the agency should deal with the application unless this would not be in the public interest.⁹ Section 59 of the IP Act provides one set of circumstances in which Parliament has considered it would, on balance, be contrary to the public interest to deal with an access application. Section 59 of the IP Act allows an agency to refuse to deal with an application if:
- a) the application requests all documents, or all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter; and
 - b) it appears to the agency that all of the documents to which the application relates are comprised of exempt information.
13. Exempt information is information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest as set out in Schedule 3 of the RTI Act.¹⁰ Relevantly, information is exempt if its disclosure is prohibited by section 187 of the *Child Protection Act 1999* (Qld) (**CP Act**).¹¹
14. Section 187 of the CP Act deals with the confidentiality of information obtained by persons involved in administration of the CP Act and prohibits the disclosure of information acquired by, able to be accessed by, or in the custody of, a public service employee performing functions under or in relation to the administration of the CP Act. Information will be exempt if each of the following requirements is met:¹²
- the information is about another person's affairs, or is in a document that is about another person's affairs
 - the information can be accessed by, has been acquired by or is in the custody of, a public service employee performing functions under or in relation to the administration of the CP Act; and
 - the exceptions listed in section 187 of the CP Act and schedule 3, section 12(2) of the RTI Act do not apply.¹³

⁵ Section 69 of the IP Act.

⁶ *EST and Department of Family Services and Aboriginal and Islander Affairs* (1995) 2 QAR 645 at [11] cited with approval in *Tolone and Department of Police* (Unreported Queensland Information Commissioner, 9 October 2009) at [25].

⁷ On 1 May 2018 and 19 June 2018.

⁸ By email to OIC on 27 July 2018.

⁹ Section 58(1) of the IP Act.

¹⁰ The Dictionary in schedule 5 of the IP Act provides that 'exempt information' means information that is exempt information under the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 48 of the RTI Act provides that exempt information is information set out in Schedule 3 of the RTI Act.

¹¹ Schedule 3, section 12 of the RTI Act.

¹² Section 187 of the CP Act.

¹³ Under schedule 3, section 12(2) of the RTI Act, the exemption will not apply if the information is only personal information of the applicant, and this requires the information to be 'about' the applicant, in accordance with the definition of 'personal information'

Findings

Are the applications expressed to relate to all documents, or to all documents of a stated class, that contain information of a stated kind or relate to a stated subject matter?

15. Yes, for the reasons that follow.
16. Each application is framed as a request to access all information held by the Department relating to each applicant. Having considered the applicants' interactions with the Department, I am satisfied that the applications are designed to capture all documents that contain information of a stated kind, ie. all child safety documents relating to the applicants. Accordingly, I find that the first limb of section 59 of the IP Act is satisfied.

Do all of the documents to which the applications relate appear to be comprised of exempt information?

17. Yes, for the reasons that follow.
18. The term '*person's affairs*' is not defined in the CP Act or the *Acts Interpretation Act 1954* (Qld). The relevant dictionary definitions for '*affair/s*' are '*matters of interest or concern*' and '*a private or personal concern*'.¹⁴ The applicants applied for information about themselves held by the Department, therefore, I am satisfied that the Requested Information would concern their '*personal affairs*'.
19. As this is a decision in relation to a stated kind of document, there is no requirement for me to identify the documents that would be within the scope of the applications.¹⁵ However, I have considered the terms of the applications and the background information provided by both the Department and Parent One about the circumstances in which documents were created. On this basis, I am satisfied that the Requested Information would appear to have been acquired by public service employees¹⁶ in performing functions under, or in relation to, the administration of the CP Act.
20. The exceptions in section 187 of the CP Act and schedule 3, section 12(2) of the RTI Act only apply where the information is solely about the applicant.¹⁷ I have carefully considered the background to the applicants' dealings with the Department, the nature of the information that was acquired by the Department and the context in which information about the applicants appears in the Department's records. The circumstances of the applications are such that the applicants' personal information appears intertwined and in the records of individuals other than the applicants. Accordingly, I am satisfied that the Requested Information is not solely about the applicants and that therefore this exception does not apply.
21. On review, Parent One provided a copy of a Power of Attorney and a Statutory Declaration from a related person which supported Parent One's right to access the Requested Information. However, this is not a relevant consideration for me to take into

in section 12 of the IP Act: '*information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'. Similarly, section 187(4)(a) of the CP Act permits disclosure of information about a person's affairs, to the extent that the information or document is '*about*' the person to whom the information is being disclosed.

¹⁴ *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30] and *Capewell and Department of Communities, Child Safety and Disability Services* [2014] QICmr 9 (18 March 2014) at [22].

¹⁵ Section 59(2) of the IP Act.

¹⁶ Section 187(1)(a) of the CP Act lists a public service employee as a person to whom section 187 applies.

¹⁷ *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012) at [26].

account when assessing whether section 187 of the CP Act prohibits disclosure of information. There is no exception to the exemption where permission is provided by other people whose personal information is present in the Requested Information.

22. In conclusion, I am satisfied that:

- the stated kind of information sought by the applicants concerns their personal affairs
- the information was collected by public service employees in the performance of their functions under or in relation to the CP Act
- the exceptions in schedule 3, section 12(2) of the RTI Act and section 187(4)(a) of the CP Act do not apply to the Requested Information because it is likely to be intertwined with the information of other individuals, rather than being solely about one of the applicants; and therefore
- the information sought by the applicants appears to be comprised of exempt information and the second limb of section 59 of the IP Act is satisfied.

DECISION

23. For the reasons set out above, I vary the Department's decisions neither confirming nor denying the existence of documents sought by the applicants. I find instead that section 59 of the IP Act can be relied on to refuse to deal with the applications on the basis that all documents to which the applications relate appear to comprise exempt information under section 48 and schedule 3, section 12(1) of the RTI Act.

24. I have made this decision under section 123 of the IP Act, as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
A/Assistant Information Commissioner

Date: 27 September 2018

APPENDIX

Significant procedural steps

Date	Event
2 March 2018	OIC received the external review applications from the applicants.
6 March 2018	OIC received an authority for Parent One to act on behalf of Child A and Parent Two.
6-7 March 2018	OIC acknowledged receipt of the external review applications and asked the Department to provide the relevant procedural documents.
22 March 2018	OIC received the requested procedural documents from the Department.
26 March 2018	OIC notified the applicants and Department that the external review had been accepted.
1 May 2018	OIC conveyed a preliminary view to the Department that section 69 of the IP Act does not apply and requested a copy of the responsive documents.
6 June 2018	OIC received a copy of the responsive documents from the Department.
19 June 2018	OIC conveyed a preliminary view to Parent One that the Department was entitled to refuse to deal with all five applications. OIC conveyed, and the Department accepted, a preliminary view that section 69 of the IP Act did not apply, however section 59 of the IP Act does.
26 June 2018	OIC received submissions from Parent One.
29 June 2018	OIC received submissions from Parent One.
24 July 2018	OIC notified Parent One that a formal written decision would be required to finalise the review.
27 July 2018	OIC received submissions from Parent One. The Department confirmed that it did not object to OIC's view that the Department was entitled to refuse to deal with all five applications under section 59 of the IP Act.
31 July 2018	OIC received submissions from Parent One.