



Decision and Reasons for Decision

Citation:	<i>K88 and Department of Transport and Main Roads [2020] QICmr 67 (4 November 2020)</i>
Application Number:	315007
Applicants:	K88
Respondent:	Department of Transport and Main Roads
Decision Date:	4 November 2020
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – information about transfer of ownership of a boat – administration of justice – personal information and privacy – whether disclosure would, on balance, be contrary to the public interest – whether access can be refused under sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicants applied¹ to the Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information ‘*relating to the change of ownership/transfer documentation for their boat*’.² In their access application, the applicants provided background information about their missing boat, and allegations of fraud against the agents that were engaged to sell it on their behalf.
2. The Department located ten pages and granted the applicants access to a registration history summary for the boat³ and a receipt of sale, subject to the redaction of third parties’ personal information. The Department refused access to the remaining information, comprised of:
 - a Queensland Regulated Ship Registration Application form F3525, with a registration certificate from a previous owner; and
 - an excerpt from the Department’s Individual Customer Hub (**Customer Hub Details**).⁴

¹ Through their legal representatives.

² Application dated 23 July 2019.

³ From the Department’s Transport Integrated Customer Access (**TICA**) database.

⁴ Also from TICA database.

3. The applicants sought internal review⁵ submitting that the Department had failed to consider certain factors favouring disclosure of the information. They also provided further detail concerning the background to the matter. On internal review, the Department affirmed the initial decision that disclosure of the information would, on balance, be contrary to the public interest.⁶
4. The applicants then applied to the Office of the Information Commissioner (**OIC**) for external review.⁷ During the review, the Department released further information excluding the personal information of third parties.⁸
5. For the reasons set out below, I affirm the Department's decision and refuse access to the information remaining in issue under section 47(3)(b) of the RTI Act, because disclosure would, on balance, be contrary to the public interest under section 49.

Background and evidence

6. The applicants' legal representative describes the factual background to the matter as follows:⁹

The boat was allegedly sold in or about April 2018 for the price of \$89,500.00 pursuant to a sales agreement which was signed by our clients and the purported buyer...

Our clients received a deposit of \$30,000 and understood the balance purchase price of \$59,500.00 would be paid by the buyer of the boat by 30 June 2018. In accordance with clause 3 of the Sales Agreement, the buyer was required to pay the balance purchase price directly to our clients. The sum of \$59,500, however, still remains outstanding and has not been received by our clients.

[The selling agent] and others (potentially including the buyer) are currently under investigation for allegations of fraud as a result of their dealings with [the agent company]. We understand that our client's boat has been involved in a fraudulent transaction (and consider that the buyer may have been knowingly involved). Our clients have lodged a Queensland Police complaint in this regard under report number [QP Report number].¹⁰

7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including in the footnotes and the Appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),¹¹ particularly the applicants' right to seek and receive information.¹² 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.¹³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I have had regard to the HR Act to the extent that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with.
9. Significant procedural steps relating to this review are set out in the Appendix.

⁵ On 1 October 2019.

⁶ On 28 October 2019.

⁷ On 25 November 2019.

⁸ Under cover of the Department's letter to the applicants' legal representative on 28 September 2020.

⁹ Internal review application dated 1 October 2019.

¹⁰ The applicants have submitted to OIC that although they have made a complaint, their complaint has not been included in the fraud charges brought by Queensland Police Service against the agents.

¹¹ Which came into force on 1 January 2020.

¹² Section 21 of the HR Act.

¹³ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

Reviewable decision

10. The Department's internal review decision dated 28 October 2019 is under review.

Information in issue

11. The information remaining in issue comprises names, birth dates, signatures, contact details and customer reference numbers, as well as the Customer Hub Details¹⁴ (**Third Party Details**).

Issue for determination

12. The only issue requiring determination is whether access to the Third Party Details may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest, under section 49 of the RTI Act.

Relevant law

13. The RTI Act provides for a right of access to information held by Queensland government agencies. However, this right has limitations, including grounds for refusing access to information. One ground is where disclosure would, on balance, be contrary to the public interest.¹⁵ In deciding where the balance of the public interest lies, the RTI Act requires a decision maker to identify factors for and against disclosure, to identify and disregard irrelevant factors¹⁶ and decide, on balance, whether disclosure would be contrary to the public interest.¹⁷

Findings

14. In making this decision, I have not taken into account any irrelevant factors.

Factors favouring disclosure

15. In relation to the Third Party Details that *do not* contain the name and contact details of the current registered owners of the boat, I am unable to identify any public interest factors favouring disclosure, other than the general public interest in promoting access to government-held information.¹⁸ This information is either administrative¹⁹ or historical.²⁰
16. The applicants' submissions²¹ focus on the current registered owners of the boat, and in relation to the name and contact details of these individuals, they submit that:²²

Our clients wish to identify the buyer (whom they believe is the current registered owner of the boat) and/or the current location of the boat so that our clients can take steps to bring Court proceedings for the payment of the balance purchase price of the boat which has been outstanding for more than one year.

¹⁴ The Customer Hub Details excerpt sets out the customer details of a new registered owner of the boat.

¹⁵ Section 47(3)(b) of the RTI Act.

¹⁶ Including those at schedule 4, part 1 of the RTI Act.

¹⁷ Section 49(3) of the RTI Act.

¹⁸ As evidenced by section 44 of the RTI Act, which sets out the pro-disclosure bias in deciding access to documents.

¹⁹ For example, customer reference numbers.

²⁰ For example, details of individuals who owned the boat prior to the applicants.

²¹ Including in the original access application, the internal review application and the external review application to the OIC.

²² Internal review application dated 1 October 2019, referred to in submissions on external review.

Without full and unfettered access to the Located Documents, our clients are unable to identify the purported buyer of the boat and will not be able to bring Court proceedings for the administration of justice. In any such Court proceedings, the Court will then be able to decide whether the current registered owner was in fact a “bona fide” purchaser or whether the buyer was knowingly involved in a fraudulent transaction.

17. This submission raises the following factors favouring disclosure for consideration:
 - disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness;²³ and
 - disclosure of the information could reasonably be expected to contribute to administration of justice for a person.²⁴
18. The Information Commissioner has previously decided²⁵ that these factors will be established²⁶ where the applicant can demonstrate **all** the following requirements:
 - a) they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - b) they have a reasonable basis for seeking to pursue the remedy; and
 - c) disclosing the information would assist them to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.
19. I note that some of the facts surrounding the transfer of the boat are unknown, and I am not able to investigate allegations of criminal offences on external review under the RTI Act. In particular, it is not known, and nor is it for me to determine or investigate, whether the new registered owners are bona fide purchasers for value without notice, or whether they were somehow involved in the alleged fraud.
20. However, I accept that the applicants have suffered a loss in relation to their boat being transferred, seemingly without their authority. The circumstances of this case indicate that some form of civil remedy may be available in relation to their allegations of fraud or breach of contract (either the sales agreement, or the agency contract). I accept there is a reasonable basis for the applicants seeking to pursue a civil remedy. I am also satisfied that disclosure would assist the applicants to evaluate whether a remedy is available, or worth pursuing. Disclosure of the Third Party Details would enable the applicants to communicate directly with the new registered owners, with a view to gaining information concerning their role in the transaction, how the boat came to be transferred to them, and whether the boat (or purchase price) is recoverable.²⁷ Accordingly, I find that the requirements set out above are met, and the factors concerning administration of justice apply.
21. In terms of the weight to be attributed to these factors, in its internal review decision, the Department states that the applicants can enforce their rights under the sales agreement against the agents, or the purported buyer. The applicants have submitted²⁸ that this is not possible, because the agents are not a party to the sales agreement, and the applicants have been unable to locate or identify the purported buyer under the sales agreement.²⁹ I accept this submission. I also accept that the loss suffered by the

²³ Schedule 4, part 2, item 16 of the RTI Act.

²⁴ Schedule 4, part 2, item 17 of the RTI Act.

²⁵ *Willsford and Brisbane City Council* (1996) 3 QAR 368 (**Willsford**) at [17] affirmed in *10S3KF and the Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

²⁶ Noting that once established, the factors must then be afforded weight according to the particular circumstances of the case and balanced against any factors favouring nondisclosure.

²⁷ This was acknowledged as relevant in the recent decision of *ODNA Group Pty Ltd and Brisbane City Council* [2020] QICmr 47 (13 August 2020), which also involved third party details in the context of the administration of justice factor.

²⁸ In the external review application received 25 November 2020.

²⁹ And contend that, in fact, the ‘buyer’ listed in the sales agreement may not be a real person.

applicants has been significant. However, it is relevant that the applicants are aware of the identity of the individuals directly involved in the alleged fraud (ie. the agents). Hypothetically, if the agents were to defend any action brought by the applicants in relation to their agency agreement (noting that they were not a party to the sales agreement) or in a civil action for fraud, it would be a matter for them to consider whether circumstances necessitated joining the current registered owners of the boat as co-defendants. There are also court processes available to establish the identity of an appropriate party to proceedings, where this information is known to a third party (in this case, the Department or the agents).³⁰ Given these available interlocutory court proceedings, in the circumstances, I consider that the administration of justice factors³¹ carry moderate weight.

22. Many of the remaining public interest factors that I am required to consider under the RTI Act concern the accountability of the Department, or government more generally. For example, public interest factors favouring disclosure will arise where disclosure could reasonably be expected to enhance the Department's accountability, inform the community of the Department's operations or reveal the reason for a decision (including, for example, the decision to register the new owner of a boat in its system).³² I acknowledge that disclosure of the information would enable the applicants to obtain the remaining background information about the transfer of the boat, furthering these factors to a certain extent. However, the nature of the Third Party Details is very limited, and it does not provide insight into the Department's actions. The disclosure of the registration form and the registration history summary (with Third Party Details redacted) has significantly discharged these factors. Accordingly, I afford each of these factors minimal weight.
23. I have also considered whether disclosure could reasonably be expected to assist inquiry into possible deficiencies in Department conduct,³³ given a boat registration was transferred as a result of alleged fraud. As noted above, on external review under the RTI Act, I am not required to make findings in relation to these allegations. However, the threshold for the application of this public interest factor is low. It only requires that disclosure could reasonably be expected to '*allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official*'. I consider that disclosure of the Third Party Details could assist an inquiry into the Department's processes in relation to the relevant boat transfer, and its safeguards generally against fraudulent transactions. However, given the limited nature of the Third Party Details, it would provide marginal insight, if any, and I therefore afford this factor minimal weight.
24. In relation to the remaining factors favouring disclosure raised by the applicants,³⁴ I do not consider the Third Party Details could, in any *direct* way, reasonably be expected to advance the applicants' fair treatment in accordance with the law when dealing with the Department,³⁵ reveal that the information that was lodged with the Department was incorrect,³⁶ contribute to the maintenance of peace and order, or contribute to the enforcement of the criminal law in relation to the transfer of the boat. The information has limited probative value, and does not, in and of itself, reveal any alleged fraud, or provide insight about the third parties' involvement in the transaction. In terms of the maintenance of peace and order or the enforcement of criminal law, a report has been

³⁰ Under rule 229 of the *Uniform Civil Procedure Rules 1999* (Qld), or by seeking disclosure of information pursuant to the principles in *Norwich Pharmacal Co v Customs and Excise Commissioners* [1973] UKHL 6, applied in *Re Pyne* [1996] QSC 128 (16 July 1996).

³¹ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³² Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

³³ Giving rise to the factor under schedule 4, part 2, item 5 of the RTI Act.

³⁴ Schedule 4, part 2, items 10, 12, 15 and 18 of the RTI Act.

³⁵ Or any other agency such as the Queensland Police Service.

³⁶ Or misleading, unfairly subjective, fabricated or fraudulent, as submitted by the applicants.

made to the Queensland Police Service concerning the applicants' boat, and charges have been laid against the agents in relation to their business (albeit not in relation to this transaction). The Queensland Police Service has the power to seek information from the Department where necessary. Once again, I am prepared to accept that disclosure would enable the applicants to obtain a complete picture, which could reasonably be expected to further these factors to a limited extent. Accordingly, I afford each of these factors minimal weight.

25. For completeness, I have considered all factors listed in schedule 4, part 2 of the RTI Act, and I can identify no other public interest considerations favouring the disclosure of the Third Party Details.³⁷

Factors favouring nondisclosure

26. The RTI Act recognises that there is a public interest in protecting the right to privacy of other individuals and safeguarding the personal information of other individuals.³⁸
27. I am satisfied the Third Party Details comprise the personal information³⁹ of individuals as disclosure would reveal their names, birth dates, signatures, contact details and customer reference numbers, as well as information concerning individual appearance such as hair colour and height.
28. The concept of '*privacy*' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to keep their '*personal sphere*' free from interference from others.⁴⁰ I am satisfied that disclosure of the Third Party Details would prejudice the protection of the relevant individuals' right to privacy.
29. In terms of the level of public interest harm⁴¹ that could reasonably be expected to arise from disclosure, some of the Third Party Details are relatively innocuous, such as customer reference numbers, signatures, birth dates and common appearance information such as hair colour. The weight of the factors concerning personal information and privacy in relation to this information is minimal. However, to the extent that the information contains individuals' names and contact details, I have taken into account that disclosure would allow those individuals to be contacted at their home or out of hours. The new registered owners of the boat have indicated that they object to this information being disclosed.⁴² The ability to contact a person at their home or out of hours is at the very heart of an individual's personal sphere. I am satisfied that the harm associated with disclosure of the personal information, and the prejudice to their privacy would be significant. Accordingly, in relation to this information, I afford these factors significant weight.

Balancing the public interest factors

30. To the extent that the Third Party Details do not contain the name and contact details of the current registered owners of the boat, I am unable to identify any factors (other than the general public interest in access to government information) favouring disclosure.

³⁷ In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour nondisclosure of the information in issue.

³⁸ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

³⁹ Schedule 5 of the RTI Act (definition of 'personal information'); section 12 of the IP Act.

⁴⁰ Paraphrasing the Australian Law Reform Commission's definition of the concept in Australian Law Reform Commission, *For your information: Australian Privacy Law and Practice* (Report No 108, May 2008) vol 1, 148 [1.56].

⁴¹ Schedule 4, part 4, section 6 of the RTI Act provides that disclosure of personal information of another person could reasonably be expected to cause a public interest harm. That is, where this factor applies, harm is already established. The question for the decision maker in affording weight to that factor is what level of harm would arise in the particular circumstances of the case.

⁴² In an email to OIC dated 25 June 2020.

Accordingly, even where the information is innocuous (eg. customer reference numbers), I am satisfied that the personal information and privacy factors tip the balance in favour of non-disclosure.

31. In relation to the Third Party Details that identify the current registered owners and contain their contact details (which is the information of greatest concern to the applicants), the public interest is finely balanced. I accept that the public interest factors concerning administration of justice⁴³ apply. However, given the information already available to the applicants (ie. the names of the agents), I consider they carry only moderate weight. There are also a number of other factors favouring disclosure,⁴⁴ but given the limited nature of the Third Party Details, I afford these factors only minimal weight. On the other hand, the factors concerning personal information and privacy⁴⁵ carry significant weight in the circumstances. I am satisfied that the factors favouring nondisclosure outweigh the collective weight of the factors favouring disclosure.
32. Therefore, I find that access to the Third Party Details may be refused under section 47(3)(b) of the RTI Act.

DECISION

33. I affirm the Department's internal review decision and find that access to the Third Party Details may be refused under section 47(3)(b) of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Louisa Lynch
Right to Information Commissioner

4 November 2020

⁴³ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁴⁴ Schedule 4, part 2, items 1, 3, 5, 10, 11, 12, 15 and 18 of the RTI Act.

⁴⁵ Schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
25 November 2019	OIC received the application for external review.
27 November 2019	OIC requested and received preliminary documents from the Department.
14 January 2020	OIC advised the applicants and Department that the application for external review had been accepted. OIC requested a copy of the information in issue from the Department.
3 February 2020	OIC received the information in issue from the Department.
19 June 2020	OIC consulted with the current registered owners.
25 June 2020	OIC received a response from the current registered owners.
3 July 2020	OIC conveyed a preliminary view to the applicants.
17 July 2020	OIC received a submission from the applicants.
28 August 2020	OIC asked the Department to release some further information to the applicants.
18 September 2020	The Department agreed to release further information to the applicants.
22 September 2020	OIC advised the applicants that some further information would be released.
28 September 2020	The Department released some further information to the applicants.