



Decision and Reasons for Decision

Citation:	<i>6XY7LE and child of 6XY7LE and Department of Education, Training and Employment [2014] QICmr 1 (15 January 2014)</i>
Application Number:	311789 and 311791
Applicants:	6XY7LE and child of 6XY7LE
Respondent:	Department of Education, Training and Employment
Decision Date:	15 January 2014
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - application for applicant's personal information - access to documents relating to complaints - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) - whether disclosure of the information 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)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY- REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST- application on behalf of child - access to documents relating to complaints - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) - whether disclosure of the information 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)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Education, Training and Employment (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for information about complaints made to school staff in relation to his child and himself (**Applicants**).
2. The Department located 11 pages and decided to grant full access to one page, part access to one page and refuse access to the remaining nine pages on the basis that disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation. In the alternative, the Department found that disclosure of the same information would, on balance, be contrary to the public interest.
3. The Applicants applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access to nine pages.

¹ On his own behalf and on behalf of his child. The definition of 'applicant' in Schedule 5 and section 45(1) of the *Information Privacy Act 2009* (Qld) provide that where an application is made on behalf of a child, the child is taken to be the applicant.

4. I affirm the Department's decision to refuse access to all nine pages under section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) by finding that disclosure would, on balance, be contrary to the public interest.

Background

5. As the applicant made an access application under the IP Act for the personal information of two individuals, the Department effectively processed and made one considered decision and one internal review decision with respect to two access applications.
6. OIC conducted two concurrent external reviews. One in relation to the applicant's personal information² and the other in relation to the personal information of the applicant's child.
7. Significant procedural steps are set out in the Appendix.

Reviewable decision

8. The decision under review is the Department's internal review decision dated 1 October 2013.³

Evidence considered

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

Information in issue

10. On external review, the applicant sought access on his own behalf and on his child's behalf to the nine pages to which full access was refused. The Information in Issue comprises complaint information relating to the Applicants.
11. Of these nine pages:
 - eight pages contain the applicant's personal information; and
 - nine pages contain the personal information of the applicant's child.

Relevant law

12. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain that individual's personal information.⁴ However, this right is subject to other provisions of the IP Act including the grounds on which an agency may refuse access to documents.⁵ Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.⁶

² As defined in section 12 of the IP Act.

³ The Department's internal review decision notice dated 1 October 2013 responds to the applicant's access application, and the application made by the applicant on behalf of his child. The Department decided to refuse access to the Information in Issue on the basis that disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation. In the alternative, the Department found that disclosure of the same information would, on balance, be contrary to the public interest. In this external review I have not considered whether disclosure could reasonably be expected to result in a serious act of harassment or intimidation as I am satisfied that disclosure would, on balance, be contrary to the public interest.

⁴ Section 40 and section 44(1) of the IP Act.

⁵ Section 67 of the IP Act – access may be refused in the same way and to the same extent as under section 47 of the RTI Act.

⁶ Section 47(3)(b) 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 wellbeing of citizens generally. This means that ordinarily, 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.

13. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest. It also explains the steps that a decision-maker must take in deciding the public interest. To decide whether disclosing the information in issue would be contrary to the public interest, I must:⁷
- 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 disclosing the information would, on balance, be contrary to the public interest.

Findings

Where does the balance of the public interest lie in this matter?

14. In balancing the public interest in this case I have carefully considered all of the Applicants' submissions to date. I am satisfied that disclosing the Information in Issue to the Applicants would, on balance, be contrary to the public interest for the reasons that follow.
15. I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied I have not taken into account these or any other irrelevant factors in reaching my decision. I consider that there are a number of factors favouring disclosure and nondisclosure in this case. I discuss these and their relative weight below.

Factors favouring disclosure

Applicants' personal information

16. Having carefully assessed the Information in Issue I acknowledge that all nine pages comprise the Applicants' personal information. Under the RTI Act, this gives rise to a factor favouring disclosure of this information to the Applicants.⁸ I recognise the importance of providing individuals with access to their personal information as held by government. In the circumstances of this review, I am also not able to identify any particular factors that reduce the weight of this public interest factor. I have therefore attributed this factor significant weight.
17. A public interest factor favouring disclosure also arises where disclosure could reasonably be expected to reveal the information was incorrect or misleading.⁹
18. The applicant argues that I should afford this factor significant weight as the information comprises vexatious and untrue complaints and that "*there is a public interest, ... that the information kept on record by government agencies be true and accurate, and not a work of fiction ... an applicant should have access to their personal information in effort to correct the record*".¹⁰
19. In this case, having carefully assessed the Information in Issue and the applicant's submissions, I am not satisfied that disclosure of the Information in Issue could reasonably be expected to reveal information held by the Department is inaccurate or misleading.
20. While I am prohibited from disclosing the Information in Issue in the review,¹¹ it can broadly be described as the opinions of third parties who have raised concerns with the Department

⁷ Section 49(3) of the RTI Act.

⁸ Schedule 4, part 2, item 7 of the RTI Act.

⁹ Schedule 4, part 2, item 12 of the RTI Act.

¹⁰ Applicant's submission to OIC dated 3 December 2013 at page 2.

¹¹ Section 121(3) of the IP Act provides that the Information Commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be exempt information or contrary to the public interest information.

in relation to students and parents at a primary school. On the information available to me, I am not satisfied that the Department's record of these opinions is inaccurate or misleading. I have therefore decided not to give this factor any weight.

Administration of justice

21. If disclosing information could reasonably be expected to contribute to the administration of justice for a person or generally, including procedural fairness, it is relevant to consider these public interest factors favouring disclosure.¹² As the applicant states that he has not been approached by the Department to respond to any complaints, I consider that procedural fairness considerations do not apply in this matter.¹³
22. The applicant contends that the Information in Issue comprises defamatory complaints and that the IP Act should be interpreted in conjunction with defamation laws.¹⁴ As noted in an earlier decision of the Information Commissioner, complaint information is by its very nature, an individual's particular version of events which is shaped by factors including the individual's memory and subjective impressions.¹⁵ This inherent subjectivity does not necessarily mean that the resulting account or statement is defamatory. Rather, it means that complaint information comprises a personal interpretation of relevant events, which the receiving agency must balance against other (often competing) statements and evidence in reaching a conclusion in a particular case.
23. As the applicant considers the Information in Issue to be defamatory, I have considered whether disclosure of the Information in Issue would assist the applicant in pursuing legal action in this regard.
24. In *Willsford and Brisbane City Council*¹⁶ the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor can arise if an applicant demonstrates that:
 - 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
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.¹⁷
25. On the evidence before me, I am not satisfied that the applicant has demonstrated the above elements in this matter. The Information in Issue comprises confidential communications to school staff raising concerns in relation to the Applicants. While I am unable to provide any further description of the Information in Issue, I am not satisfied that disclosure of this information will enable the Applicants to pursue a legal remedy or evaluate whether the remedy is available. I therefore find that the public interest factor in relation to the administration of justice does not arise here.

Transparency and accountability

26. I acknowledge a general public interest in promoting access to government-held information. I also acknowledge that revealing information about the Department's investigative processes could reasonably be expected to enhance its accountability for the outcomes of

¹² Schedule 4, part 2, item 16 and 17 of the RTI Act.

¹³ External review application dated 20 October 2013 at page 5 and submissions to OIC dated 3 December 2013 at page 3.

¹⁴ Applicant's written submissions dated 3 December 2013.

¹⁵ *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at paragraphs 17 and 18. (**Matthews**)

¹⁶ *Willsford and Brisbane City Council* (Unreported, Queensland Information Commissioner, 27 August 1996) (**Willsford**).

¹⁷ *Willsford* at paragraph 17.

those processes,¹⁸ and provide the applicant with the relevant background or contextual information that informed a decision.¹⁹

27. The applicant submits that as he has not been approached by the Department or its officers to answer any complaints, this proves that the relevant complaints were without merit or the Department has been incompetent in investigating a complaint. For this reason, the applicant contends that I should give this factor significant weight.²⁰
28. I do not agree with the applicant's contention. The Information in Issue does not contain any details about whether the Department investigated the relevant complaints. The Applicants sought access to the documents shortly after the relevant concerns were raised with the Department. This may be why limited information was located about how the Department handled the matter. There is no evidence before me to suggest the Department did or did not investigate the relevant complaints or that an investigation was lacking.
29. Because limited information about the Department's handling of relevant complaints has been provided in response to the access applications, I acknowledge that disclosure of the complaint information could inform the Applicants of the nature of the complaints received by school staff and promote the Department's general transparency in this regard. However, as there is limited information about the Department's actions in response, disclosure of the Information in Issue would not promote the accountability and transparency of the Department's actions. I have therefore afforded this factor minor weight.

Factors favouring nondisclosure

Personal information of third parties

30. The RTI Act provides that it is reasonable to expect that disclosing an individual's personal information to someone else will cause public interest harm.²¹ The disclosure of the Information in Issue would cause this harm by intruding on the privacy of other individuals identified by the Information in Issue, being a further factor in favour of nondisclosure.²²
31. The Applicants contend that the information can be disclosed with the deletion of the name and personal details of the third parties.²³ In some cases removing the name and other details from a document may mean that the identity of the relevant third party is not apparent. However, here, I consider that the identity of the relevant third parties can *reasonably be ascertained* from disclosure of any of the content of the Information in Issue given the circumstances of this case.²⁴ I also consider that as the personal information of the third parties is inextricably linked to that of the Applicants in the Information in Issue, the Applicants' personal information cannot be effectively separated from the personal information of the third parties.
32. The applicant contends that the identity of relevant third parties is known to him.²⁵ I cannot confirm this. However, I am satisfied that the fact of raising concerns or making a complaint to a government agency is an aspect of an individual's 'personal sphere'²⁶ and an individual's opinions in this context remains their private information, regardless of whether those complaints may be about other people or incidents that occurred in a public place.

¹⁸ Schedule 4, part 2, item 1 of the RTI Act.

¹⁹ Schedule 4, part 2, item 11 of the RTI Act.

²⁰ Applicant submissions dated 3 December 2013 at page 3.

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

²² Schedule 4, part 3, item 3 of the RTI Act.

²³ Applicant's external review application dated 20 October 2013 and submissions dated 3 December 2013.

²⁴ In the past, the Information Commissioner has decided that a number of factors can be taken into account to consider whether information can be used to ascertain an individual's identity. See *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011).

²⁵ External review application dated 20 October 2013.

²⁶ As recognised by the Right to Information Commissioner in *Matthews* at paragraph 23.

33. Even if the Applicants were aware of the incidents that the complaints relate to, the disclosure of a third party's recollection and opinion of the relevant incidents could reasonably be expected to infringe on the privacy of that individual. For this reason, I consider disclosing the Information in Issue would be an intrusion into the privacy of the relevant third parties and a consequential public interest harm would result. As I am unable to identify any factors which reduce the weight in this public interest factor, I have afforded this factor significant weight.

Prejudice to an agency's ability to obtain confidential information

34. A factor favouring nondisclosure will also arise where disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information and thereby prejudice the flow of such information to the agency.²⁷ This factor is relevant here. I consider that identifying individuals who have provided complaint information about events at a school would prejudice a school's ability to obtain similar information in the future.
35. The applicant contends that '*information is only of value if acted upon*' and as the complaints are inaccurate and vexatious this factor is insignificant.²⁸
36. In assessing this public interest factor, I have considered the Information in Issue carefully to establish the circumstances of its communication and find that it was imparted confidentially. In this regard, while I note the applicant's submission about the veracity of the complaints, this is not relevant to a consideration of whether this public interest factor applies. Accordingly, in this external review, I have not investigated nor have I formed any opinion on the veracity of the relevant complaints.
37. I consider that there is strong public interest in protecting the free flow of information to the Department regarding the operation of its schools even if this may, on occasion, result in the Department investigating unsubstantiated allegations. This issue was discussed in some detail in *McEniery and Medical Board of Queensland*,²⁹ where the Information Commissioner noted that the public policy considerations underlying this factor are arguably insensitive in cases where a person is falsely accused.³⁰
38. While I acknowledge that this public interest factor may, in some instances, provide anonymity to individuals who make false complaints, agencies such as the Department rely on information from the public to be alerted to issues affecting the operations of that agency. Routinely disclosing the type of Information in Issue in this review would discourage individuals, who do not wish to be identified, from approaching the Department with concerns.
39. I am satisfied that disclosure of the Information in Issue could reasonably be expected to identify individuals who raised complaints confidentially to the Department in relation to the operation of its schools. I consider it is important that individuals be able to communicate freely with schools to raise concerns that may affect the care of children and that disclosure of the Information in Issue could reasonably be expected to prejudice the Department's ability to obtain this type of information in the future. Accordingly, I have given this factor significant weight.

Balancing the public interest

40. For the reasons explained above, I attribute:

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

²⁸ Applicant's written submissions dated 3 December 2013.

²⁹ (Unreported, Queensland Information Commissioner, 28 February 1994). This decision considered section 42(1)(b) of the now repealed *Freedom of Information Act 1992* (Qld), which provides that matter is exempt if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.

³⁰ At paragraph 62.

- significant weight to the public interest factor favouring disclosure as the Information in Issue is the personal information of the Applicants; and
 - minor weight to the public interest factor favouring disclosure in relation to the accountability and transparency of the Department.
41. These factors in favour of disclosure must be weighed against factors favouring nondisclosure, specifically:
- the significant weight in the public interest factor favouring nondisclosure with respect to the privacy of third parties; and
 - the significant weight in the public interest factor favouring nondisclosure where disclosure could reasonably be expected to prejudice the ability of the Department to obtain this type of information in the future.
42. While I recognise the importance of the Applicants accessing their personal information, the disclosure of the Applicants' personal information would also result in the disclosure of the personal information of third parties. I consider that the public interest factor in favour of the Applicants being able to access their personal information is evenly balanced against the public interest factor favouring nondisclosure in relation to ensuring the privacy of the relevant third parties.
43. In further balancing the factors above, I consider that the public interest factor concerning the prejudice to the supply of future information tips the balance of the public interest in favour of nondisclosure. This is because I consider that disclosure of the Information in Issue could reasonably be expected to prejudice the Department's ability to obtain similar information in the future and I have attributed this factor significant weight.
44. For this reason, I consider that the factors favouring nondisclosure outweigh the factors favouring disclosure and access to the Information in Issue may be refused on the basis that disclosure would, on balance, be contrary to the public interest.

DECISION

45. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest under section 49 of the RTI Act. Accordingly, I affirm the Department's decision to refuse access to the Information in Issue under section 67 of the IP Act and section 47(3)(b) of the RTI Act.
46. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

L Lynch
Assistant Information Commissioner

Date: 15 January 2014

APPENDIX**Significant procedural steps**

Date	Event
2 August 2013	The Applicants applied to the Department for their personal information under the IP Act.
4 September 2013	The Department issued one decision on the access applications.
4 September 2013	The Applicants applied for internal review of the Department's decision.
1 October 2013	The Department issued its internal review decision.
21 October 2013	OIC received the Applicants' application for external review and sought processing information from the Department.
22 October 2013	The Department provided copies of documents relating to the processing of the access application
30 October 2013	OIC telephoned the applicant and discussed the external review application.
1 November 2013	OIC notified the Applicants and the Department in writing that two external reviews had been commenced. OIC requested the Department provide copies of the nine pages to which access was refused.
4 November 2013	The applicant emailed submissions to OIC.
12 November 2013	The Department provided OIC with copies of the documents to which access was refused.
13 November 2013	OIC contacted the applicant by telephone to provide an oral preliminary view.
19 November 2013	OIC wrote to the Applicants confirming the oral preliminary view and inviting the Applicants to provide further submissions supporting their case by 3 December 2013. The applicant telephoned OIC after receiving the preliminary view to discuss it.
3 December 2013	OIC received the Applicants' submissions.
5 December 2013	OIC telephoned the Department and requested copies of all documents identified by the Department as responding to the terms of the access application.
6 December 2013	OIC wrote to the Department advising it of OIC's preliminary view provided to the applicant in the 19 November 2013 letter.
10 December 2013	The Department provided OIC with the 11 pages located in response to the access applications.