



Decision and Reasons for Decision

Citation:	<i>W38 and Department of Child Safety, Youth and Women [2020] QICmr 71 (27 November 2020)</i>
Application Number:	315264
Applicant:	W38
Respondent:	Department of Child Safety, Youth and Women
Decision Date:	27 November 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - Child Protection Report - whether disclosure prohibited by section 186 or section 187 of the <i>Child Protection Act 1999</i> (Qld) - whether exempt under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 12 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Communities, Child Safety and Disability Services (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documents containing his personal information between 1 January 2013 and 31 December 2019.
2. The Department gave the applicant access to some information and refused access to the remaining information on the basis that it comprises exempt information as its disclosure is prohibited by sections 186-188 of the *Child Protection Act 1999* (Qld) (**Child Protection Act**)¹ and that disclosure would, on balance, be contrary to the public interest.² The Department also refused to deal with some of the requested information on the basis that it had decided a previous application for the same documents.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision with respect to two specific documents.
4. For the reasons given below, I affirm the Department's decision to refuse access to the information in issue on the basis that it comprises exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.

¹ Under section 47(3)(a) and section 48 and schedule 3, section 12 of the *Right to Information Act 2009* (Qld) (**RTI Act**), in conjunction with section 67(1) of the IP Act. Section 67 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.

² Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act. The Department also refused access to 25 pages on the basis that other access is available to that information under sections 47(3)(f) and 53(a) of the RTI Act.

³ Under section 62 of the IP Act.

Background

5. On external review, the applicant sought access to two documents being a Complex Case Advice Practitioners Referral dated 25 January 2017 (**Referral**) and a Child Protection Report dated 14 February 2017 (**Report**).
6. The Department confirmed that the Referral formed part of the information which the Department had refused to deal with on the basis that it had been dealt with in a previous application. After I provided this explanation to the applicant, the applicant confirmed that he only sought access to the Child Protection Report in this review.⁴
7. Significant procedural steps taken in the external review are set out in the Appendix.

Reviewable decision

8. The decision under review is the Department's decision dated 4 March 2020.

Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁵ particularly the right to seek and receive information.⁶ 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 IP Act and RTI Act.⁷ 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:⁸ '*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*'.⁹

Information in Issue

11. The information in issue is the substantial part of a Child Protection Report dated 14 February 2017 (**Report Refusals**). The applicant has been provided with access to some information at the start and at the end of the Report so that he is aware of the context in which the Report was created, that is, for the Family Court in relation to considerations of long term care for the subject children. The disclosed information includes when the Report was signed and the relevant Departmental officer who signed the Report.

Issue for determination

12. The issue for determination is whether the Report Refusals comprise exempt information, being information the disclosure of which is prohibited by sections 186-188 of the Child Protection Act.¹⁰

⁴ Telephone conversation with applicant's representative on 29 September 2020 and applicant's submission dated 19 October 2020.

⁵ The HR Act came into force on 1 January 2020.

⁶ Section 21 of the HR Act.

⁷ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁸ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁹ *XYZ* at [573].

¹⁰ Schedule 3, section 12 of the RTI Act.

Relevant law

13. Under the IP Act an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹¹ However, this right is subject to other provisions of the IP Act and the RTI Act, including the grounds on which an agency may refuse access to documents.¹² Relevantly, an agency may refuse access to a document to the extent the document comprises exempt information.¹³ Schedule 3, section 12 of the RTI Act provides that information is exempt if its disclosure is prohibited by sections 186-188 of the Child Protection Act.
14. Relevantly, disclosure of information is prohibited under the Child Protection Act if the information is about the affairs of another person and was acquired by a person performing particular functions under the Child Protection Act.¹⁴
15. The prohibition on disclosure is subject to the exceptions set out in schedule 3, section 12(2) of the RTI Act and sections 187 and 188 of the Child Protection Act. In particular, section 187(4)(a) of the Child Protection Act provides that access may be given to another person if the information is about that other person. In addition to the Child Protection Act exception, the RTI Act exception to nondisclosure applies if the information is the applicant's personal information alone.¹⁵

Findings

Is the Information in Issue about a person's affairs and received under the Child Protection Act?

16. Yes, for the reasons set out below.
17. The term '*person's affairs*' is not defined in the Child Protection 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*'.¹⁶
18. I have carefully examined the Report Refusals and I am satisfied that they are about matters of personal interest or concern to other persons, including the applicant's children and other individuals.
19. The information was received or obtained by Departmental officers under the Child Protection Act. The Child Protection Act lists a public service employee¹⁷ as a person to whom section 187 applies.
20. I am therefore satisfied that the Report Refusals are:
 - about other persons' affairs and have been given to or received by a person performing functions under or in relation to the administration of the Child Protection Act
 - subject to the prohibition on disclosure in section 187(2) of the Child Protection Act; and
 - subject to the exemption in schedule 3, section 12(1) of the RTI Act.

¹¹ Section 40 of the IP Act.

¹² Section 67(1) of the IP Act and section 47 of the RTI Act.

¹³ Sections 47(3)(a) and 48 of the RTI Act.

¹⁴ Section 187 of the Child Protection Act.

¹⁵ Schedule 3, section 12(2) of the RTI Act.

¹⁶ As established in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at paragraph 30.

¹⁷ Section 187(1)(a) of the Child Protection Act.

Do any of the exceptions apply?

21. The exemption in schedule 3, section 12(1) of the RTI Act will not apply if the relevant information comprises only the applicant's personal information.¹⁸ This means that where information is simultaneously about the applicant and other individuals, or where an applicant's personal information cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.
22. Sections 187 and 188 of the Child Protection Act contain a number of exceptions where information given or received under the Child Protection Act may be disclosed. In this case, section 187(4)(a) is relevant and provides that access may be given to another person if the information is about that other person.
23. The Report Refusals are about other individuals. In some instances, the Report Refusals are about the applicant, but are intertwined with the information of others. After careful assessment, I find that the Report Refusals are not about the applicant solely.¹⁹ Accordingly, I am satisfied that the exceptions in schedule 3, section 12(2) of the RTI Act and section 187(4)(a) of the Child Protection Act do not apply to the Report Refusals because they are not only about the applicant.
24. The applicant also submitted that the Report Refusals will demonstrate that the Department has committed a number of offences, including perjury and fraud²⁰ and privacy and confidentiality is being used as an excuse by the Department to cover up offences.²¹ I have considered whether the applicant's submissions²² raise the application of any other exceptions contained in section 187(3) of the Child Protection Act.²³ On the evidence before me, I am not satisfied that these exceptions are applicable to permit disclosure of the Report Refusals to the applicant.
25. The applicant contends that the rest of the family, whose information the applicant believes is in the Report Refusals, do not object to their personal information being released to the applicant and information about any other individuals is able to be separated from the personal information of the applicant and his family.²⁴
26. Firstly, I am not satisfied that the other individuals who the Report relates to have consented to the disclosure of the information to the applicant. Secondly, having considered the content of the Report, I do not consider that the applicant's personal information can be separated in any meaningful way from that of the other individuals.
27. The applicant also sought to convert the application into a group application which includes all members of the family as applicants. As explained during the review,²⁵ an application under the IP Act is not able to be expanded or converted to a group

¹⁸ Schedule 3, section 12(2) of the RTI Act. 'Personal information' comprises 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion': schedule 5 of the RTI Act, and section 12 of the IP Act.

¹⁹ In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) of the Child Protection Act applies to shared information about the applicant and other persons. She observed at paragraph 26: 'The CP Act exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the CP Act exception will not apply'.

²⁰ Oral submission from the applicant's representative on 25 September 2020 and applicant's written submission dated 19 October 2020.

²¹ Written submission dated 19 October 2020.

²² Particularly his oral submission on 25 September 2020.

²³ Particularly the exception in section 187(3)(b), which allows information subject to the provision to be used or disclosed if the use, disclosure or giving of access is for purposes related to the child's protection or wellbeing.

²⁴ Written submission dated 19 October 2020.

²⁵ During a telephone conversation with the applicant's representative on 25 September 2020.

application.²⁶ Accordingly, I do not accept that the personal information of the applicant's children and other family members can be disclosed on that basis.

Is the information in issue exempt information?

28. As noted above, the applicant submitted that the Report Refusals contain evidence that the Department has committed a number of offences, including perjury and fraud;²⁷ and the Department is seeking to cover up these offences.²⁸ The applicant's submissions raise issues relative to public interest factors that may favour disclosure of the Report Refusals.
29. Where information falls into one of the categories of exempt information which Parliament has set out in schedule 3 of the RTI Act, public interest factors favouring disclosure cannot be taken into account. I am not required to perform a public interest balancing test to determine if, on balance, it would be contrary to the public interest to disclose the Report Refusals if the legal requirements of the exemption provision set out above are met.²⁹ Therefore, if the Report Refusals meet the legal requirements for exempt information, I must affirm the Department's decision to refuse access.³⁰
30. I also acknowledge the applicant's submission that he requires the information in order to have it amended.³¹ This submission does not influence my assessment of whether the Report Refusals comprise exempt information.³² Though I acknowledge my decision may impact the applicant's ability to information within the Report, this is not a relevant consideration for deciding whether the information is exempt from disclosure.
31. As sections 186 and 187 of the Child Protection Act are met and, having considered the applicant's submissions, I consider that no exceptions to the exemption apply, I find that the Report Refusals are exempt information under schedule 3, section 12 of the RTI Act.

DECISION

32. For the reasons set out above, as a delegate of the Information Commissioner,³³ I affirm the Department's decision to refuse access to the Report Refusals on the basis that they comprise exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.

S Martin
Assistant Information Commissioner

Date: 27 November 2020

²⁶ An application under the IP Act can only be made by 'an individual'.

²⁷ Oral submission from the applicant's representative on 25 September 2020 and applicant's written submission dated 19 October 2020.

²⁸ Written submission dated 19 October 2020.

²⁹ As set out in section 47(3)(b) and 49 of the RTI Act.

³⁰ Section 118(2) of the IP Act provides that I do not have discretion to direct that access be given to exempt information.

³¹ Oral submission from the applicant's representative on 25 September 2020 and applicant's written submission dated 19 October 2020.

³² Under schedule 3, section 12 of the RTI Act.

³³ Under section 139 of the IP Act.

APPENDIX**Significant procedural steps**

Date	Event
12 March 2020	OIC received the application for external review.
19 March 2020	OIC requested preliminary documents from the Department.
25 March 2020	OIC received the preliminary documents from the Department.
5 May 2020	OIC advised the applicant and Department that the application for external review had been accepted. OIC requested a copy of the information in issue from the Department.
8 May 2020	The applicant identified the specific documents he sought external review in relation to.
20 May 2020	OIC received a copy of the information in issue from the Department.
22 June 2020	OIC asked the Department to confirm whether the Referral was subject to a previous application.
23 June 2020	OIC provided the applicant with an update.
28 June 2020	The Department confirmed that the Referral was subject to a previous application.
11 September 2020	OIC conveyed a preliminary view to the applicant's representative.
25 September 2020	The applicant's representative provided submissions by phone to OIC.
29 September 2020	OIC confirmed that a formal decision would be issued and invited the applicant to make further submissions.
19 October 2020	OIC received the applicant's written submissions.