



Decision and Reasons for Decision

Application Number: 310288

Applicant: SQD

Respondent: Department of Justice and Attorney-General

Decision Date: 2 September 2010

Catchwords: **INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - applicant seeks access to information relating to justices examination order - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or environment - whether access to information can be refused under section 67 of the *Information Privacy Act***

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REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Justice and Attorney (**Department**) for access to documents about her including an application for a Justices Examination Order (**JEO Application**) under the *Mental Health Act 2000*. Specifically the applicant seeks the name of the person who applied for the JEO and the grounds of the application.
2. The Department refused access to the requested information under section 67 of the *Information Privacy Act (Qld) (IP Act)* and section 47(3)(a) of the *Right to Information Act 2009 (Qld) (RTI Act)*.
3. On external review, the Department's decision is affirmed.

Background

4. The Office (**OIC**) conveyed both an oral and written preliminary view to the applicant and sought written submissions. The applicant disagreed with the preliminary view.

Decision under review

5. The decision under review is the Department's internal review decision to refuse access to 7 folios¹ (**Information in Issue**) on the basis that disclosure would, on balance, be contrary to the public interest.

Evidence relied upon

6. In making this decision, I have taken the following into account:
 - the access application dated 7 May 2010
 - the initial decision and the internal review decision
 - the applicant's internal review application dated 15 June 2010 and external review application dated 8 July 2010
 - information provided by the Department in relation to the views of a third party consulted under section 56 of the IP Act
 - information provided by the applicant by telephone on 19 August 2010 and 25 August 2010 and by letter dated 25 August 2010
 - the Information in Issue
 - previous decisions of the Information Commissioner as referred to below
 - relevant provisions of the IP Act and RTI Act.

The law

7. The Department must decide to give access to a document unless disclosure would, on balance, be contrary to the public interest.² It is the Parliament's intention that the grounds on which access may be refused are to be interpreted narrowly.³ The Parliament considers that the disclosure of following type of information would, on balance, be contrary to the public interest:

information that could reasonably be expected to prejudice a system or procedure for the protection of persons.

¹ The Department has released part of one folio to the applicant with information that would identify the JEO applicant deleted. The Information in Issue is the remaining information.

² Section 64 of the IP Act and section 44 of the RTI Act.

³ Section 67(2) of the IP Act and 47(2) of the RTI Act.

8. This means that if I find that the Information in Issue is this type of information, by intent of the legislation, the applicant will not be entitled to it.

Findings

9. The Department may refuse access to the information if it can establish the following:⁴
- there exists an identifiable system or procedure
 - it is a system or procedure for the protection of persons
 - disclosure of the information in issue could reasonably be expected to prejudice that system or procedure.
10. I will consider each of these requirements below.

Requirement a) – Is there an identifiable system or procedure?

11. The objective of a JEO is to allow a person in the community to request a non-urgent, involuntary mental health assessment for a person they believe may be experiencing mental health problems.⁵
12. The procedure for making a JEO application is set out in Chapter 2, Part 3, Division 2 of the *Mental Health Act 2000* which provides:
- a person may apply to a Magistrate or Justice of the Peace for a JEO for another person⁶
 - the Magistrate or Justice of the Peace may issue a JEO if he/she reasonably believes that the relevant person has a mental illness and should be examined⁷
 - once a JEO has been issued and sent to the administrator of an authorised mental health service, a doctor or authorised mental health practitioner may conduct the examination⁸
 - the JEO authorises a doctor or authorised mental health practitioner to examine the person to decide whether a recommendation for assessment for the person should be made⁹
 - if a recommendation for assessment for the person is not made after the person's examination under the JEO, the examining doctor or authorised mental health practitioner must give notice to the director.¹⁰
13. Having regard to the above, I am satisfied that the *Mental Health Act 2000* establishes 'a system or procedure' for the purpose of schedule 3 section 10(1)(i) of the RTI Act.

Requirement b) – Is the system or procedure for the protection of persons, property or environment?

14. The OIC has previously considered whether the JEO procedure is an identifiable procedure for the protection of persons.¹¹

⁴ *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at paragraphs 27 – 36.

⁵ See http://www.health.qld.gov.au/mha2000/documents/jeo_brochure.pdf for further information.

⁶ Section 27 of the *Mental Health Act 2000*.

⁷ Section 28 of the *Mental Health Act 2000*.

⁸ Section 29 and 30 of the *Mental Health Act 2000*.

⁹ Section 30 of the *Mental Health Act 2000*.

¹⁰ Section 32 of the *Mental Health Act 2000*.

¹¹ See for example *VHL and Department of Health* (Unreported, Queensland Information Commissioner, 20 February 2009) at paragraph 49; *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)* (1996) 3 QAR 393 at paragraphs 13 – 15 and *QPF and Department of Health* (Unreported, Queensland Information Commissioner, 29 June 2009) at paragraphs 21 – 26.

15. In *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)*¹² Information Commissioner Albietz said:

In my view, it is clear that the legislature considered it necessary to establish a system or procedure whereby members of the community who hold a genuine belief that a person is mentally ill, and a danger to himself/herself or to others, can initiate action to protect that person or others from the apprehended danger. This clearly answers the description "a system or procedure for the protection of persons", within the terms of s.42(1)(h) of the FOI Act.

16. I am satisfied that the procedure for making a JEO application is a procedure for the protection of persons.

Requirement c) – Could disclosure of the Information in Issue reasonably be expected to prejudice that system or procedure?

17. Persons applying for a JEO provide information on the understanding that it is confidential and will only be used for the limited purpose of ensuring the proper administration of the *Mental Health Act 2000*.

18. In its internal review decision, the Department referred to previous decisions of the Information Commissioner and provided the following reasons for refusing access to the Information in Issue:

... disclosure of the information in issue could reasonably be expected to prejudice that system or procedure, by deterring potential informants from providing relevant information in the future and greatly reducing the quality of any information provided, so as to render it of little use in the assessment process integral to the JEO procedure.

19. I agree with the view expressed by the Department.

20. The applicant provided submissions to the OIC in support of her case by telephone on 19 August 2010 and 25 August 2010 and by letter dated 25 August 2010. In her submissions, the applicant:

- believes she knows who made the JEO Application and that her relationship with the person has essentially broken down
- provides reasons for her belief that the JEO Application was made maliciously
- explains her great distress at being subject of the experience.

21. I also accept the applicant's submission that the JEO process is a traumatic one. I do not consider that these factors can change my view in relation to requirements (a), (b) or (c) above.

DECISION

22. For the reasons set out above, I affirm the Department's internal review decision by finding that the Information in Issue comprises exempt information under section 47(3)(a) and section 48 of the RTI Act and that the Department was entitled to refuse the applicant access to this information under section 67 of the IP Act.

Julie Kinross
Information Commissioner

Date: 2 September 2010

¹² (1996) 3 QAR 393 at paragraph 15.