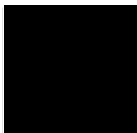


Decision and Reasons for Decision

Citation:	<i>K28 and Department of Education [2026] QICmr 62 (23 April 2026)</i>
Application Number:	318977
Applicant:	K28
Respondent:	Department of Education
Decision Date:	23 April 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - request for internal communications about the applicant - personal information and privacy - nonroutine personal work information - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

1. For the below reasons, I affirm the Department of Education's (**Department**) decision and find that access to information may be refused under section 47(3)(b) of the *Right to Information Act 2009 (Qld)* (**RTI Act**) on the basis that disclosure would, on balance, be contrary to the public interest.
2. This means that no further information is to be released to the applicant.
3. I have made this decision under section 110(1)(a) of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.
4. My reasons for the decision follow.



Brianna Luhrs
Manager, Right to Information

Date: 23 April 2026

Summary

5. The applicant applied¹ to the Department under the RTI Act for access to documents held by a school relating to the closure of toilet facilities, and communications about the applicant held by school employees.
6. The Department refused access to parts of 35 pages on the basis that disclosure would, on balance, be contrary to the public interest.²
7. The applicant requested an internal review of the decision to refuse access to parts of one email, relating to the second part of the application – that is – communications about the applicant by school employees.³ The Department released further information within this document and otherwise affirmed the decision to refuse access to the remainder of the email.⁴
8. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.⁵ On external review, the Department agreed to release a small amount of further information within the email.
9. OIC conveyed a preliminary view to the applicant that following the release of this further information, the remaining information (**Information In Issue**) may be refused, as disclosure would, on balance, be contrary to the public interest.⁶ The applicant did not accept the preliminary view and requested a formal decision on this issue.

Relevant law

10. Under the RTI Act, an individual has a right to be given access to documents held by an agency.⁷ While the legislation is to be administered with a pro-disclosure bias,⁸ the right of access is subject to certain limitations, including grounds for refusing access, as set out in the RTI Act.⁹ Relevantly, access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁰
11. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, 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.
12. The RTI Act explains the steps that the decision-maker must take in deciding the public interest¹¹ and identifies factors in Schedule 4 that may be relevant to deciding the balance of public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.¹²

¹ On 24 July 2025.

² On 29 August 2025.

³ The applicant did not contest the remaining aspects of the Department's decision.

⁴ Internal review decision dated 3 October 2025.

⁵ Within the external review application dated 8 October 2025, the applicant stated that '*The Department... refused complete access...*' to the relevant email. Having reviewed the Department's internal review decision, and the released document, it is apparent that the Department refused access to parts of the document. The internal review decision dated 3 October 2025 is the reviewable decision.

⁶ Letter dated 16 February 2026.

⁷ Section 23 of the RTI Act.

⁸ Section 44 of the RTI Act.

⁹ Section 47 of the RTI Act. Those grounds are, however, to be interpreted narrowly.

¹⁰ Sections 47(3)(b) and 49 of the RTI Act.

¹¹ Section 49(3) of the RTI Act.

¹² No irrelevant factors arise in these circumstances, and I have not taken any into account in making this decision.

13. In reaching my decision in this review, I have taken into account evidence, submissions, legislation and other material as set out in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information¹³ and in doing so, I have acted in accordance with section 58(1) of the HR Act.¹⁴

Applicant submissions

14. The applicant submitted that:¹⁵
- the reviewable decision lacks sufficient reasoning
 - the Department did not follow the required balancing process to determine the public interest
 - access to a document cannot be refused on the basis that it contains the personal opinion of agency staff
 - there are many factors which support the release of information, including that disclosure would reasonably reveal misconduct¹⁶ by the Department or assist inquiry into possible deficiencies in the conduct of the Department
 - the applicant is considering legal action against the Department
 - any action that the applicant intends to take following the release of information is irrelevant to determining the public interest
 - if the Department considered that the release of this information would cause embarrassment, this is irrelevant to determining the public interest; and
 - *'the jurisprudence [should not go] so far as preventing the disclosure of statements of Government staff when those statements are published to third parties and are not "honestly held opinions"'*.

Findings

15. For information to be personal information, an individual must be identifiable or reasonably identifiable.¹⁷ Where a document contains an applicant's personal information, there is recognised public interest in supporting the release of information, to enable an applicant access to their personal information.
16. In this case, the Information in Issue appears within an email between school employees. While the email itself does not expressly identify the applicant (for example, by name), the Department located this email as responsive to the applicant's request for communications about them. In these circumstances, I consider there is an arguable case as to whether the applicant can reasonably be identified from the Information in Issue, and therefore whether the Information in Issue contains the applicant's personal information.
17. Having carefully considered the Information in Issue, I consider that the broader context of this email being identified by the Department in response to the terms of this application,¹⁸ raises a sufficient possibility that the applicant's identity may be

¹³ Section 21 of the HR Act.

¹⁴ OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹⁵ Submissions dated 8 October 2025, 5 March 2026 and 25 March 2026.

¹⁶ Or negligent, improper or unlawful conduct.

¹⁷ Section 12 of the Information Privacy Act 2009 (Qld) described personal information as *'information or an opinion about an identified individual or an individual who is reasonably identifiable from the information or opinion – (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not'*.

¹⁸ That sought communications about the applicant.

ascertained. However, as this is a possibility only, I afford the relevant public interest factor favouring disclosure moderate weight.¹⁹

18. The Information in Issue also contains a small amount of the personal information of the applicant's child. The public interest factor favouring disclosure²⁰ detailed in Schedule 4 of the RTI Act is only enlivened when a parent makes an access application on behalf of a child (which is not the case here). However, in this case, I consider a similar, broader factor favouring disclosure requires assessment—that disclosure of information to a child's parent could reasonably be expected to be in the child's best interests.²¹ For the same reasons detailed above, while the Information in Issue does not expressly identify the child, there is a reasonable possibility that their identity could be ascertained from the broader context of this matter. As such, this factor favouring disclosure does apply to the very small amount of information regarding the applicant's child. However, due to the limited information about the child, it is not apparent that its release would promote the child's best interests to any significant degree. As such, I afford this factor low weight.²²
19. I acknowledge that release of the Information in Issue would enhance the Department's accountability and transparency, by enabling access to a complete record as held by the Department.²³ This in turn, would reveal the information available to the Department when engaging with the applicant.²⁴
20. However, in the circumstances of this matter, I do not consider that the release of the Information in Issue would advance the Department's accountability or transparency to any significant degree. The only information which has been refused is an employee's personal emotional response to an interaction with the applicant. While appearing within an employment setting, I do not consider that the release of this information would meaningfully advance the Department's accountability and transparency, beyond the general public interest in enabling access to government held documents. For this reason, I afford these factors favouring disclosure low weight.
21. A further factor favouring disclosure will apply when the release of information could reasonably be expected to advance the applicant's fair treatment in accordance with the law in their dealings with agencies.²⁵ There is limited information before me about the nature of the applicant's anticipated future involvement with the Department. Due to the nature of the Information in Issue (that is, the employees' personal emotional response), and where there is limited information before me about how the release of this information would assist any future dealings the applicant may have with the Department,²⁶ I afford this factor low weight only.
22. The applicant submitted that the release of this information could reasonably reveal deficiencies in the Department's conduct,²⁷ including misconduct, negligent, improper or unlawful conduct.²⁸ For these factors to apply, it must be *reasonable* to anticipate that disclosure would show deficiencies in the Department's conduct.

¹⁹ Schedule 4, part 2, item 7 of the RTI Act.

²⁰ Schedule 4, part 2, item 8 of the RTI Act.

²¹ As per *Q95 and Legal Aid Queensland* [2019] QICmr 38 (6 September 2019).

²² I have also considered whether the nondisclosure factor in schedule 4, part 3, item 4 of the RTI Act applies. As this application is not made on behalf of the child, I do not consider this is enlivened.

²³ Schedule 4, part 2, items 1 and 3 of the RTI Act.

²⁴ Schedule 4, part 2, item 11 of the RTI Act.

²⁵ Schedule 4, part 2, item 10 of the RTI Act.

²⁶ The applicant indicated an intention to commence legal proceedings against the Department. Apart from this general advice, the applicant has not explained the nature of any anticipated dealings with the Department.

²⁷ Schedule 4, part 2, item 5 of the RTI Act.

²⁸ Schedule 4, part 2, item 6 of the RTI Act.

23. I recognise that the applicant may be dissatisfied with their engagement with the Department. Having independently considered the email in its entirety, there is no objective information which supports the applicant's contention that the release of the Information in Issue would reasonably reveal deficiencies in the Department's conduct. For this reason, I do not consider these factors apply.²⁹
24. The applicant explained that they are considering legal proceedings involving the Department. The contemplated legal proceedings raise further factors favouring disclosure for assessment—whether the release of information may contribute to the administration of justice, including procedural fairness.³⁰
25. Procedural fairness requires a decision maker to act fairly when deciding a matter that will impact a person's rights or interests.³¹ To achieve this, a person subject to a decision must be provided with an impartial decision maker and adequate information to effectively respond to the case against them. There is limited information before me about the circumstances of the applicant's involvement with the Department, including whether they are subject to a decision by the Department, which requires them to be afforded procedural fairness. The applicant was invited to provide further information on this issue,³² however no clarification was received. On the information before me, I do not consider the procedural fairness element applies.
26. When considering whether the general administration of justice would be advanced by the release of the Information in Issue,³³ I must consider whether:³⁴
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the requested information held by the Department would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
27. Beyond the applicant's broad statement that they are considering legal proceedings, the applicant has not explained the nature of any proceedings or the wrong they have suffered which may enliven a remedy under the law. Further, the applicant has not articulated how the release of the Information in Issue would aid any contemplated legal proceedings. On this basis, I am not satisfied that the administration of justice would be advanced by the release of this information and find these factors do not apply.
28. I recognise the applicant's submission that access to statements of other individuals should not be refused, where those statements are made to third parties, and are not '*honestly held opinions*'. I consider this submission aligns with the factor favouring disclosure, where the release of information may reasonably reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subject or irrelevant.³⁵
29. The Information Commissioner has previously found that the inherent subjectivity of another individual's statement does not necessarily mean that the information is incorrect

²⁹ Including unlawful conduct, improper conduct or negligent conduct.

³⁰ Schedule 4, part 2, item 17 of the RTI Act.

³¹ The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 582 per Mason J).

³² Letter dated 16 February 2026.

³³ Schedule 4, part 2, item 16 of the RTI Act.

³⁴ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

³⁵ Schedule 4, part 2, item 12 of the RTI Act.

or unfairly subjective.³⁶ In this case, the Information in Issue is the employee's personal emotional response to an interaction with the applicant, which objectively presents as a contemporaneous account of their recollection of events, and emotional state. There is no information indicating that the emotional response was not a 'honestly held' opinion, or that the information is out of date, misleading, gratuitous or irrelevant. On this basis, I do not consider that this factor favouring disclosure applies.

30. Balanced against the factors favouring disclosure, the RTI Act provides that disclosing personal information of an individual could reasonably be expected to cause a public interest harm.³⁷ A public interest factor favouring nondisclosure also arises where the release of information could reasonably be expected to impact on another individual's privacy.³⁸ The concept of privacy is not defined in the RTI Act, but it can be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.³⁹
31. The applicant submitted that access to information cannot be refused on the basis that it contains the personal opinion of agency staff. I recognise that where an opinion of an agency employee is routine personal work information, this kind of information is generally disclosed under the RTI Act.⁴⁰
32. However, there is a line of precedent decisions by the Information Commissioner distinguishing where opinions of employees are not routine personal work information.⁴¹ In this case, the Information in Issue contains the emotional response of an employee, following an interaction with the applicant. I am satisfied that this information meets the definition of personal information of the author of the email and it is not of a routine work nature. Public sector employees are entitled to a level of privacy, including where their personal information appears within documents created in an employment setting.
33. Having carefully considered the Information in Issue, I am satisfied that disclosure would cause a significant public harm through the release of nonroutine personal work information and impact the author's private sphere. As such, I afford each of these nondisclosure factors significant weight.
34. The applicant correctly identified the following factors to be irrelevant to determining the public interest:
 - that disclosure of the information could reasonably be expected to cause embarrassment to the Government, or a loss of confidence in the Government;⁴² and
 - that disclosure could reasonably be expected to result in mischievous conduct by the applicant.⁴³
35. The applicant submitted that the Department may be concerned about the release of the Information in Issue causing embarrassment, or result in the applicant pursuing legal

³⁶ *Z Toodayan and Metro South Hospital and Health Service* [2017] QICmr 34 (11 August 2017) at [49] – [51].

³⁷ Schedule 4, part 4, section 6 of the RTI Act.

³⁸ Schedule 4, part 3, item 3 of the RTI Act.

³⁹ *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22] paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56. The report is available at https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf.

⁴⁰ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60].

⁴¹ See *Poyton and Metro North Hospital and Health Service* [2016] QICmr 50 (13 December 2016) at [69]-[71].

⁴² Schedule 4, part 1, item 1 of the RTI Act.

⁴³ Schedule 4, part 1, item 3 of the RTI Act.

proceedings against the Department.⁴⁴ Having independently assessed the applicant's entitlement to the refused information in the course of this review, I have not taken either irrelevant factor into account to determine the public interest.

36. Finally, to the extent the applicant raised concerns about the Department's processing of the application, this external review has involved consideration of the Department's decision, the applicant's submissions and completion of the public interest balancing exercise. In making this decision, I am satisfied that the required balancing exercise has been adhered to, so any procedural deficiencies the applicant perceived in the Department's decision making process has been overcome.
37. On balance, I am satisfied that the factors favouring nondisclosure outweigh the pro-disclosure factors. I find that access to the Information in Issue may be refused.⁴⁵

⁴⁴ I understand the applicant considered that the Department viewed any subsequent legal proceedings to be mischievous conduct, as described under schedule 4, part 1, item 3 of the RTI Act.

⁴⁵ Under section 47(3)(b) of the RTI Act.