



Decision and Reasons for Decision

Citation: *Foot and Valuers Registration Board of Queensland [2017] QICmr 59 (19 December 2017)*

Application Number: 313399

Applicant: Foot

Respondent: Valuers Registration Board of Queensland

Decision Date: 19 December 2017

Catchwords: ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - response by valuer to registration board in the context of a complaint - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Valuers Registration Board of Queensland (**Board**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a document provided to the Board by a valuer (**Valuer**), responding to the applicant's complaint about the Valuer in undertaking a property valuation.¹
2. The Board located two pages relevant to the access application comprising a letter from the Valuer to the Board, in response to the applicant's complaint. The Board consulted with the Valuer who objected to the disclosure of the two pages.²
3. The Board decided³ to grant access to parts of the two pages and to refuse access to the remaining information on the basis that its disclosure would, on balance, be contrary to the public interest.⁴
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Board's decision.⁵

¹ Access application dated 5 May 2017.

² In accordance with section 37 of the *Right to Information Act 2009* (Qld) (**RTI Act**); section 56 IP Act.

³ Decision dated 27 June 2017.

⁴ Under sections 47(3)(b) and 49 of the RTI Act.

⁵ External review application dated 6 July 2017.

5. For the reasons set out below, I affirm the Board's decision to refuse access to information on the basis that its disclosure would, on balance, be contrary to the public interest.⁶

Background

6. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix.
7. The applicant made a complaint to the Board about the professional conduct of the Valuer.⁷ In response to the applicant's complaint, the Board sent an outcome letter to the applicant.⁸ In the letter, the Board advised that based on the evidence before it, which included the applicant's complaint and the response from the Valuer, the Board did not consider there has been misconduct in a professional respect or negligence on the part of the Valuer in carrying out this valuation, and there had been no breach of the Australian Property Code of Professional Conduct (**Code**). As a consequence, the Board advised it would not be taking any further action in the matter.
8. The applicant requested a copy of Valuer's response to the Board (among other things).⁹ The Board wrote to the applicant¹⁰ refusing the applicant's request and advised the applicant to contact OIC. The applicant then applied to the Board for access to the documents under the IP Act.¹¹

Reviewable decision

9. The decision under review is the Board's decision dated 27 June 2017, refusing access to information under section 47(3)(b) of the RTI Act.

Evidence considered

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

Information in issue

11. The information in issue in this review (**Information in Issue**) is contained in the two page letter from the Valuer to the Board responding to the applicant's complaint comprising:
 - opinions, observations and reasoning of the Valuer expressed to the Board in the context of addressing a complaint about his work performance; and
 - the Valuer's signature and mobile phone number.

⁶ Sections 47(3)(b) and 49 of the RTI Act.

⁷ Letter dated 26 August 2016.

⁸ Letter dated 23 January 2017.

⁹ Letter dated 20 February 2017.

¹⁰ Letter dated 29 March 2017.

¹¹ Access application dated 5 May 2017.

Issue for determination

12. The issue for determination in this review is whether access to the Information in Issue may be refused on the basis that disclosure is, on balance, contrary to the public interest.¹²

Relevant law

13. Under the IP Act an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information.¹³ However, the right is subject to some limitations, including grounds for refusing access under the RTI Act.¹⁴
14. The RTI Act is administered with a pro-disclosure bias, meaning that an agency should decide to give access to information, unless giving access would, on balance, be contrary to the public interest.¹⁵
15. 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.
16. The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of public interest¹⁶ and explains the steps that a decision-maker must take¹⁷ in deciding the public interest as follows:
- 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 disclosure would, on balance, be contrary to the public interest.

Findings

17. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons that follow.

Irrelevant factors

18. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

¹² Under sections 47(3)(b) and 49 of the RTI Act.

¹³ Section 40 of the IP Act.

¹⁴ Section 67 of the IP Act provides that an agency may refuse access to a document of an agency in the same way and to the same extent the agency could refuse access to the document under the RTI Act, section 47 were the document to be the subject of an access application under that Act.

¹⁵ Section 44(1) of the RTI Act.

¹⁶ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these lists of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

¹⁷ Section 49(3) of the RTI Act.

Factors favouring disclosure

19. The applicant submits that he should be given access to the Valuer's response to the Board regarding his complaint in the interests of '*transparency in government*'.¹⁸ The applicant raised serious allegations about the conduct of the Valuer in his complaint to the Board and expressed concern that his complaint was dismissed by [the Board] '*without explanation to myself of the basis for dismissal, or providing copies of any response material or other documents to myself*'.¹⁹
20. The applicant also submits that he sought access to the Valuer's response in '*an attempt to understand [the Board's] decision*'²⁰ and to assist the applicant to determine if any further action should be taken regarding the Board's conduct, which the applicant considered to be a lack of transparency/process in the handling of his complaint.²¹
21. The RTI Act recognises factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability;²² and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²³
22. The Board is responsible for the registration and discipline of real estate property valuers in Queensland²⁴ and must be accountable for the conduct of its investigations and transparent in how it makes its decisions. In particular, it has power to investigate complaints about whether a valuer has engaged in professional misconduct or has been incompetent or negligent in performing their duties. If the complaint is substantiated, the Board has a range of powers, including taking disciplinary action against a valuer.²⁵
23. I acknowledge the general public interest in disclosing information which would enhance the transparency of government—in this case, the Board—in performing its functions. I accept that disclosure of the Information in Issue would provide the applicant with a greater understanding of information taken into account by the Board in reaching its decision about the conduct of the Valuer. In determining the weight to be afforded to these factors I have considered the particular nature of the Information in Issue, the information already conveyed to the applicant by the Board regarding the outcome of his complaint and the parts of the letter already released. Relevantly, the Board, in response to the applicant's complaint:
 - informed the applicant that the Board had considered his complaint and the Valuer's response at '*some length*' in deciding whether to initiate an investigation
 - provided the applicant with a general description of the information the Board considered when making its decision, being, relevant legislative provisions, the applicant's complaint, and the Valuer's letter responding to the complaint
 - conveyed the outcome of its decision to the applicant;²⁶ and
 - stated that, as a consequence, the Board would not be taking any further action.

¹⁸ Submission to OIC dated 16 October 2017.

¹⁹ Submission to OIC dated 16 October 2017.

²⁰ Submission to OIC dated 16 October 2017.

²¹ Submission to OIC dated 16 October 2017.

²² Schedule 4, part 2, item 1 of the RTI Act.

²³ Schedule 4, part 2, item 11 of the RTI Act.

²⁴ See part 4 of the *Valuers Registration Act 1992* (Qld) (**VR Act**)/see VR Act generally.

²⁵ See part 4 of the VR Act.

²⁶ Letter dated 23 January 2017

24. I consider that the information provided to the applicant, as outlined above, has already considerably advanced the Board's accountability and transparency in how it handles complaints under the legislation and reveals the background/contextual basis for its decision not to proceed further. I accept that disclosing the totality of the Valuer's response to the applicant's complaint would provide the applicant with a more comprehensive understanding of the information available to the Board in making its decision and the evidence the Board relied on in deciding not to take any further action against the Valuer. I acknowledge that the applicant is dissatisfied with the Board's decision and would like as much information as possible to allow the applicant to assess whether he should pursue further complaint avenues.²⁷
25. I afford the factors favouring disclosure at paragraph 21 moderate weight in relation to the content of the letter. However, these public interest factors must be weighed against considerations favouring nondisclosure.
26. I also find that disclosure of the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant as it would provide him with access to additional information that may form relevant evidence in any further complaint avenues that he wishes to pursue.²⁸ However, I attribute limited weight to this factor as pursuing further complaint processes is not entirely dependent on the applicant having access to the Information in Issue. Further, it is likely that any complaint bodies would have broad powers to otherwise access relevant evidence to assess the merits of the applicant's case.
27. In relation to the mobile phone number and signature, I have been unable to identify any factors favouring disclosure in the circumstances, and the applicant's submissions do not address how having access to the mobile phone number and signature of the Valuer would advance the Board's accountability and transparency in the performance of its complaint functions.

Factors favouring nondisclosure

Prejudice the fair treatment of individuals

28. A factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.²⁹
29. I consider that the Information in Issue concerns unsubstantiated allegations of negligent or professional misconduct made by the applicant against the Valuer. Following assessment of the applicant's complaint, the Board did not consider there had been misconduct in a professional respect or negligence on the part of the Valuer in carrying out the valuation. The Board also determined that there had been no breach of the Code. On that basis, I am satisfied that the allegations in this case are unsubstantiated.³⁰
30. I have carefully considered the Information in Issue and the serious nature of the allegations about the Valuer's conduct which the Board found not to be established. I find that disclosure of the Information in Issue could reasonably be expected to adversely affect the reputation of the Valuer and would prejudice his fair treatment.³¹

²⁷ Submission to OIC dated 16 October 2017.

²⁸ Schedule 4, part 2, item 17 of the RTI Act.

²⁹ Schedule 4, part 3, item 6 of the RTI Act.

³⁰ See also, *F60XCX and Queensland Ombudsman* [2014] QICmr 28 (13 June 2014).

³¹ Schedule 4, part 3, item 6 of the RTI Act.

31. For these reasons, I afford this factor moderate weight.

Personal information and privacy

32. The RTI Act recognises that:

- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;³² and
- disclosing the information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.³³

33. The Information in Issue comprises the Valuer's response to the applicant's complaint about the Valuer's professional conduct in undertaking a particular valuation. That response is the Valuer's personal information.³⁴ While that response appears in a workplace context, it comprises the Valuer's opinions, observations and reasoning in order to address a complaint about his work performance. The response is not in the nature of his routine or day-to-day work activities. It occurs in the context of the Board's preliminary investigation into the Valuer's conduct in undertaking a valuation. As a result, I am satisfied such information is the Valuer's personal information.³⁵

34. Disclosure of the Information in Issue could reasonably be expected to prejudice the Valuer's right to privacy. The concept of '*privacy*' is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their personal sphere free from interference from others.³⁶ I consider the Information in Issue - the Valuer's response to the complaint - is essentially information falling within the Valuer's '*personal sphere*'. The Valuer would have a reasonable expectation that the Board would use his response only for the purpose of dealing within the complaint. Accordingly, I am satisfied that disclosure of the Information in Issue would be a considerable intrusion into the Valuer's right to privacy.³⁷

35. I consider that the Information in Issue is personal and sensitive in nature. Disclosure of this information under the IP Act would be a significant intrusion into the privacy of the Valuer and the extent of the public interest harm that could be anticipated from disclosure is significant.

36. The Information in Issue also contains the signature and mobile phone number of the Valuer. The signature of an individual is clearly the Valuer's personal information.³⁸ I am satisfied that the Valuer's mobile phone number comprises his personal information³⁹ even though it appears in an employment context. A mobile phone number cannot be equated with other contact details of an individual, such as an email address or office phone number. It enables the individual to be contacted directly and potentially outside of working hours during their private time.⁴⁰

³² Schedule 4, part 3, item 3 of the RTI Act.

³³ Schedule 4, part 4, section 6(1) of the RTI Act.

³⁴ Section 12 of the IP Act defines '*personal information*' as *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.*

³⁵ Schedule 4, part 4, section 6 of the RTI Act.

³⁶ 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.

³⁷ Schedule 4, part 3, item 3 of the RTI Act.

³⁸ As defined in Section 12 of the IP Act (see footnote 34).

³⁹ Section 12 of the IP Act.

⁴⁰ *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [20].

37. For these reasons, I afford each of these factors favouring nondisclosure significant weight.

Balancing the relevant public interest factors

38. I accept there is a general public interest in furthering access to information held by government agencies and enhancing the transparency and accountability of agencies in how they handle complaints and afford this factor favouring disclosure moderate weight. I afford limited weight to the factor favouring disclosure factor relating to the administration of justice.
39. However, balanced against this is the significant weight I have afforded to the nondisclosure factors which seek to protect the privacy and personal information of the Valuer. As the complaint against the Valuer was unsubstantiated, I have afforded the nondisclosure factor relating to the prejudice to the fair treatment of individuals moderate weight.
40. On balance, I find that the factors favouring nondisclosure outweigh the factors favouring disclosure of the Information in Issue. Accordingly, I am satisfied that the access to the Information in Issue can be refused under section 67 of the IP Act and section 47(3)(b) of the RTI Act.

DECISION

41. For the reasons set out above, I affirm the Board's decision and find that access to the Information in Issue can be refused on the basis that its disclosure would, on balance, be contrary to the public interest.⁴¹
42. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Shanley
Acting Assistant Information Commissioner

Date: 19 December 2017

⁴¹ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
6 July 2017	OIC received the application for external review of the decision of the Board.
6 July 2017	OIC notified the applicant that it had received his application for external review. OIC notified the Board that the external review application had been received and requested relevant procedural documents.
13 July 2017	OIC received the procedural documents from the Board.
18 July 2017	OIC notified the applicant and the Board that it had accepted the external review application. OIC also requested that the Board provide a copy of its letter to the applicant dated 23 January 2017 to assist in the conduct of the external review.
19 July 2017	OIC received the requested letter from the Board.
15 September 2017	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 13 October 2017.
29 September 2017	The applicant requested an extension of time to provide submissions supporting his case.
3 October 2017	OIC granted the applicant an extension of time to provide submissions until 23 October 2017.
16 October 2017	OIC received submissions from the applicant.