



Decision and Reasons for Decision

Application Number: 310820

Applicant: I6XD0H

Respondent: Department of Community Safety

Decision Date: 26 June 2012

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – QUEENSLAND – REFUSAL OF ACCESS – 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 section 47 of the *Right to Information Act 2009* (Qld) were the document to be the subject of an access application under that Act – section 67(1) of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – QUEENSLAND – REFUSAL OF ACCESS – CONTRARY TO THE PUBLIC INTEREST – application for information relating to a workplace investigation including transcripts of witness interviews – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant made an application to the Department of Community Safety (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information relating to a workplace investigation including transcripts of witness interviews. The investigation related to allegations about the applicant.
2. The Department granted full access to the applicant's transcript of interview¹ and refused access to the following information (**Information in Issue**) on the basis that its disclosure would, on balance, be contrary to the public interest:
 - the transcripts of interviews of other witnesses
 - two letters from individuals to the Department; and
 - two emails with file notes.

¹ Together with one page comprising an email footer and the first pages of the transcripts of other witnesses' interviews.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access to the Information in Issue.
4. As the applicant has received the body of the investigation report (including a summary of the evidence provided, an analysis of the evidence and the findings made) and has participated in the investigation process which is complete, the public interest in ensuring accountability of the Department for properly investigating workplace disputes should be afforded limited weight.
5. The Information in Issue is the personal information of the applicant and significant weight is given to this factor favouring disclosure. However this factor must be balanced against other relevant factors favouring nondisclosure of the Information in Issue. The Information in Issue also comprises the personal information of other individuals. Given the nature of the Information in Issue and the context in which it appears, the extent of the public interest harm that could be anticipated from disclosing the personal information of other individuals is quite significant and would also be a significant intrusion into their privacy, particularly in respect of the witnesses who did not consent to disclosure.
6. It is reasonable to expect that disclosing the details of conversations between management and staff in which staff conveyed concerns of a sensitive nature may make staff reluctant to raise these concerns in the future. Although it is reasonable to expect staff to cooperate with investigation processes in the course of their employment, disclosing the transcripts of interviews of other witnesses when it is not required for the investigation and discipline process and after the matter has been finalised would also make staff reluctant to fully participate in future workplace investigations of this nature. This would likely have a detrimental effect on the Department's management of its staff and significant weight should be attributed to this factor in relation to the emails with file notes and transcripts of interviews.
7. For these reasons, disclosing the Information in Issue would, on balance, be contrary to the public interest.

Background

8. Significant procedural steps relating to the application and external review process are set out in the appendix to this decision.

Reviewable decision

9. The decision under review is the decision the Department was taken to have made refusing access to the Information in Issue.²

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are as disclosed in these reasons (including footnotes and appendix).

Information in issue

11. The Information in Issue is identified at paragraph 2 above.

² The background to this issue is set out in the appendix.

Relevant law

12. 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. However, this right is subject to section 67 of the IP Act, which provides that an agency may refuse access to information in the same way and to the same extent as under section 47 of the *Right to Information Act 2009 (RTI Act)*. Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.³
13. 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 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.
14. 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 determine the balance of the public interest a decision-maker must:⁴
 - identify any irrelevant factors and disregard them
 - identify any relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the relevant information would, on balance, be contrary to the public interest.

Findings

15. No irrelevant factors arise in this matter.⁵

Personal information and privacy

16. If disclosing information could reasonably be expected to⁶ disclose the personal information of the individual applying for that information, a public interest factor favouring disclosure arises.⁷ The Information in Issue includes references to events involving the applicant and is therefore the applicant's personal information. Accordingly, this factor is relevant.
17. The Information in Issue is also the personal information of others. The nature of the Information in Issue is such that it is not possible to separate the applicant's personal

³ Section 47(3)(b) of the RTI Act.

⁴ Section 49(3) of the RTI Act.

⁵ I have examined the irrelevant factors in schedule 4, part 1 of the RTI Act and do not consider that arise here, nor do I consider any additional irrelevant factors arise in this matter.

⁶ The phrase *could reasonably be expected to* requires an objective consideration of all the relevant evidence and consideration of whether the expectation is reasonably based. A reasonable expectation is not irrational, absurd or ridiculous. *Sheridan and South Burnett Regional Council and Others* [2009] QICmr 26 (9 April 2009) at paragraphs 189 – 193 referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97.

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

information from the personal information of others. In other words, the relevant information cannot be disclosed to the applicant without disclosing personal information of other individuals. The RTI Act provides that it is reasonable to expect that disclosing an individual's personal information to another person will cause a public interest harm.⁸ It is therefore relevant to consider the extent of the harm that would flow from disclosing the Information in Issue. The Information in Issue identifies a number of individuals and contains sensitive information about them including their personal accounts of events, emotional reactions to the events they were questioned about and concerns of a sensitive nature which were conveyed to management. Given the nature of this information, I am satisfied that the extent of the public interest harm that could be anticipated from disclosure is quite significant.

18. If disclosing the Information in Issue could reasonably be expected to prejudice⁹ the protection of an individual's right to privacy, a factor favouring nondisclosure arises.¹⁰ Given the sensitive nature of the Information in Issue, it is reasonable to expect that disclosing this information would be a significant intrusion into those individuals' privacy.
19. During the external review, the applicant contacted a number of the individuals interviewed to seek their consent for the Department to disclose their interview transcripts to him and provided OIC with a number of email responses to support his case for releasing the Information in Issue. Although a witnesses' consent to disclosure significantly reduces the privacy interest regarding information about them, the Information in Issue comprises not only the applicant's personal information and that of the interviewee, but also the personal information of other individuals involved in the events being investigated. It is not possible to separate the personal information of the interviewee from the personal information of other individuals. As a result, obtaining consent from individuals who provided witness statements would not entirely alleviate the harm that would result from releasing the Information in Issue. It is noted that only a small number of witnesses consented to disclosure. With respect to the witnesses who did not consent to disclosure, the privacy interest is significant.
20. The applicant submits that he has signed an agreement which prevents him from discussing or divulging certain information and which, in his view, would also prevent him from revealing the Information in Issue. The applicant submits that this mitigates to a great degree the concern that damage may be caused by releasing the Information in Issue to him.
21. In *OKP and Department of Communities*¹¹ the Information Commissioner considered the decision of the Victorian Court of Appeal in *Victoria Police v Marke (Marke)*¹² and relevantly decided that:
 - *Marke* supported the proposition that a decision-maker should not assume that disclosure of information to an applicant is disclosure to the world at large but should not exclude from consideration evidence about the intended or likely extent of dissemination of information by the applicant;¹³ and

⁸ Schedule 4, part 4, section 6 of the RTI Act.

⁹ As the word *prejudice* is not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) it is appropriate to consider its ordinary meaning. The Macquarie Dictionary contains a number of definitions for the word *prejudice*, the most relevant of which are *resulting injury or detriment* and *to affect disadvantageously or detrimentally*.

¹⁰ Schedule 4, part 3, item 3 of the RTI Act.

¹¹ [2009] QICmr 38 (9 July 2009).

¹² [2008] VSCA 218.

¹³ At paragraph 128.

- this proposition correctly stated the position in Queensland and, as a result, the now repealed *Freedom of Information Act 1992* (Qld) did not support the long held and widely utilised assumption that release of documents to an applicant is necessarily release to the world at large.¹⁴

22. I acknowledge the applicant does not intend to disclose the Information in Issue and I consider the likelihood of the applicant disseminating the Information in Issue is relatively low given the personal nature of his interest in the information. Notwithstanding this, the IP Act imposes no restraint on the dissemination of information once it is released. Further, I do not accept the applicant's submission that disclosing the Information in Issue only to him would mitigate the harm that may flow from disclosure. As set out above, disclosing the Information in Issue under the IP Act (including disclosing it to the applicant) would (in respect of most of the Information in Issue) be a significant intrusion into those individuals' privacy and could reasonably be expected to cause a public interest harm. In my view, the obligations imposed on the applicant as a result of the agreement would not significantly lessen the harm that would result from disclosing the Information in Issue.

Administration of justice

23. If disclosing information could reasonably be expected to contribute to the administration of justice generally or to the administration of justice for a person, including procedural fairness, it is relevant to consider this public interest factor favouring disclosure.¹⁵
24. In his external review application, the applicant explained that he required the interview transcripts to fully understand the nature of the allegations against him, and to allow him to respond more adequately and comprehensively. During the external review, the applicant indicated that he was denied access to certain information about the investigation which made it difficult for him to defend himself against the allegations.
25. During the external review, the Department advised OIC that:
- the allegations were put to the applicant during the investigation and the applicant was given an opportunity to respond to the allegations
 - the applicant was provided with the body of the investigation report (excluding the attachments to the report);¹⁶ and
 - the disciplinary process has been finalised.
26. I accept the Department's submissions on this issue. The Department also provided OIC with a copy of the investigation report which was provided to the applicant. The body of the investigation report sets out:
- an executive summary, the terms of reference and background to the investigation and a description of the relevant policy and procedure
 - a list of the individuals interviewed as part of the investigation
 - a summary of the allegations made about the applicant and the evidence provided by the individuals who were interviewed; and
 - an analysis of the evidence, findings and recommendations.

¹⁴ At paragraph 129.

¹⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act.

¹⁶ The applicant confirmed in his submissions of 24 April 2012 that he had received a copy of the investigation report.

27. As the investigation is complete, the disciplinary process finalised and the applicant has received considerable information about the investigation, no procedural fairness issues arise for consideration in the circumstances.
28. The applicant also says that he requires the Information in Issue to make a complaint to the Queensland Ombudsman. There are no formal requirements when making a complaint to the Ombudsman and the Ombudsman has wide ranging powers under the *Ombudsman Act 2001* (Qld), including the power to require a person to give the Ombudsman any document relevant to an investigation.
29. For these reasons, this public interest factor is not relevant in the circumstances of this case.

Accountability of the Department in properly carrying out investigations

30. The applicant submits that:
 - he needs the Information in Issue to show a conspiracy by stakeholders in the investigation to suppress evidence that would have afforded him a much stronger position when stating his case; and
 - one of the witnesses has provided him with a statutory declaration indicating that, in their view, the investigation was flawed and this supports the applicant's view that the investigation was biased.
31. A public interest factor favouring disclosure will arise if disclosing the Information in Issue could reasonably be expected to advance the public interest in government agencies being accountable for properly investigating workplace disputes.¹⁷ In this case, receiving a copy of the Information in Issue would enhance the accountability of the Department's investigation process to some degree, as it would enable the applicant to assess the body of the report against the evidence relied on by the investigator. However, as I noted above, the applicant has already received a significant amount of information about the investigation (including a summary of the evidence provided, an analysis of the evidence and the findings made). The information which remains is predominantly individuals' personal accounts of events.
32. Having considered the Information in Issue, I do not consider that disclosing the Information in Issue to the applicant could reasonably be expected to advance to any significant degree the public interest in ensuring the accountability of the Department for properly investigating workplace disputes.

Prejudice management function

33. In this instance it is reasonable to expect that disclosing the transcripts of interviews of other witnesses and the emails with file notes would have a detrimental effect on the Department's management of its staff.¹⁸
34. The emails with file notes contain records of conversations between staff and management in which staff conveyed concerns of a sensitive nature to management. In my view it is reasonable to expect that disclosing such concerns of a sensitive nature to other individuals may make staff reluctant to raise these concerns in the future. This in turn could reasonably be expected to prejudice the ability of managers to effectively address issues within their work group.

¹⁷ Schedule 4, part 2, item 1 of the RTI Act.

¹⁸ Schedule 4, part 3, item 19 of the RTI Act.

35. In workplace investigations such as this, information is usually provided by witnesses on the understanding that the information will be used for the purposes of the investigation and any subsequent disciplinary action only. Information received is ordinarily treated confidentially, except to the extent that procedural fairness and discipline processes require otherwise. In this instance, witnesses were asked to provide their account of relatively sensitive circumstances. Although it is reasonable to expect staff to cooperate with investigation processes in the course of their employment, I consider that disclosing the transcripts of interviews of other witnesses when this is not required for the investigation and discipline process and after the matter has been finalised would likely make staff reluctant to fully participate in future workplace investigations of this nature. That is, they may provide a less detailed account of their experience and observations. This, in turn, would significantly impact the effectiveness of future investigations.

Balancing the relevant public interest factors

36. As the applicant has received the body of the investigation report (including a summary of the evidence provided, an analysis of the evidence and the findings made) and has participated in the investigation process which is complete, I am satisfied that the public interest in ensuring accountability of the Department for properly investigating workplace disputes should be afforded limited weight.
37. I acknowledge that the Information in Issue is the personal information of the applicant and I give significant weight to this factor favouring disclosure. However this factor must be balanced against other relevant factors favouring nondisclosure of the Information in Issue. The Information in Issue also comprises the personal information of other individuals. Given the nature of the Information in Issue and the context in which it appears, I am satisfied that the extent of the public interest harm that could be anticipated from disclosing the personal information of other individuals is quite significant and would also be a significant intrusion into their privacy, particularly in respect of the witnesses who did not consent to disclosure.
38. It is reasonable to expect that disclosing the details of conversations between management and staff in which staff conveyed concerns of a sensitive nature may make staff reluctant to raise these concerns in the future. Although it is reasonable to expect staff to cooperate with investigation processes in the course of their employment, I consider that disclosing the transcripts of interviews of other witnesses when it is not required for the investigation and discipline process and after the matter has been finalised would also make staff reluctant to fully participate in future workplace investigations of this nature. I am of the view that this would likely have a detrimental effect on the Department's management of its staff and I attribute significant weight to this factor in relation to the emails with file notes and transcripts of interviews.
39. For these reasons, I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest.

DECISION

40. For the reasons set out above, I affirm the decision to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act by finding that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

41. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Suzette Jefferies
Assistant Information Commissioner

Date: 26 June 2012

APPENDIX**Significant procedural steps**

Date	Event
31 August 2011	The Department received the access application.
13 October 2011	It appears that the Department did not issue a decision within the required timeframe and was taken to have made a decision refusing access to the Information in Issue. However, the Department continued to process the access application and issued a decision to the applicant.
8 November 2011	OIC received the external review application.
9 November 2011	OIC requested that the Department provide a number of procedural documents by 14 November 2011.
10 November 2011	The applicant provided further information supporting his application.
17 November 2011	The Department provided the relevant procedural documents.
29 November 2011	OIC notified the applicant and the Department that the external review application had been accepted and asked the Department to provide a copy of the Information in Issue and any details of third party consultation by 13 December 2011. The applicant and the applicant's representative provided further information supporting the application including emails from three individuals.
2 December 2011	OIC received the Information in Issue from the Department.
15 December 2011	The applicant provided further information supporting his application.
7 February 2012	The applicant provided further information supporting his application.
10 February 2012	OIC asked the Department for further information about the investigation and subsequent disciplinary process.
13 February 2012	The Department provided the requested information to OIC.
10 April 2012	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 26 April 2012 if he did not accept the preliminary view.
24 April 2012	OIC received submissions from the applicant. The applicant requested further time to provide final submissions in support of his case. OIC agreed to the requested extension of time. OIC asked the Department for a copy of the investigation report and other correspondence provided to the applicant in the course of the disciplinary process.
16 May 2012	The Department provided the requested information to OIC.
18 May 2012	The Department provided the requested information to OIC.
21 May 2012	OIC received the applicant's final submissions.
25 June 2012	OIC asked the Department to confirm that it provided the applicant with a copy of the investigation report. The Department provided the requested confirmation.

Date	Event
26 June 2012	OIC asked the Department whether it would agree to release additional information (i.e. the names of the interviewees as they appear on the first page of each transcript of interview) to the applicant. The Department agreed to release the additional information.