



Decision and Reasons for Decision

Application Number: 311234

Applicant: Fendley Consultancy Pty Ltd

Respondent: Queensland Treasury and Trade

Decision Date: 26 April 2013

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – DISCLOSURE PROHIBITED BY ACT – applicant sought access to information held by Office of State Revenue – taxation information – whether access can be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld) – whether disclosure of information is prohibited by schedule 3 section 12(1) of the *Right to Information Act 2009* (Qld) and part 8 of the *Taxation Administration Act 2001* (Qld).

REASONS FOR DECISION

Summary

1. The applicant applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Office of State Revenue (**OSR**) for the period July 2006 to 5 July 2012 for access to:

...all documents and information in the possession of the OSR which support, and do not support, the OSR's views forming the basis on which assessments have been issued for each period assessed.

All documents which relate to the OSR's audit of Fendley including internal memoranda, position papers, research, file notes, emails and letters and all correspondence and documents provided by the OSR to the ATO in relation to Fendley and its contractors.

2. To reduce costs, the applicant subsequently agreed to narrow the scope of its application to exclude any documents provided by the applicant or its solicitors to OSR.
3. Queensland Treasury and Trade (**Treasury**)¹ identified 348 pages in response to the access application and decided to release 297 pages in full and refuse access to 22

¹ OSR forms part of Treasury.

pages in full and 29 pages in part on the grounds that disclosure of the documents would, on balance, be contrary to the public interest (**Information in Issue**).

4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Treasury's decision.
5. Treasury's decision is varied and access to the Information in Issue is refused on the basis that it comprises exempt information as its disclosure is prohibited by part 8 of the *Taxation Administration Act 2001* (**TA Act**).
6. Significant procedural steps relating to the application are set out in the appendix to this decision.

Reviewable decision

7. The decision under review is Treasury's decision dated 3 October 2012.

Evidence considered

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

Information in issue

9. The information in issue is the information identified at paragraph 3 above.

Relevant law

10. Access must be given to a document unless disclosure would, on balance, be contrary to the public interest.² Schedule 3 of the RTI Act sets out information which Parliament considers is exempt from disclosure on the basis that disclosure would, on balance, be contrary to the public interest.³ Schedule 3, section 12(1) of the RTI Act provides that information is exempt if its disclosure is prohibited by a number of listed provisions, including:

Taxation Administration Act 2001, part 8, so far as it applies to personal confidential information under that Act.

11. The main purpose of the TA Act is to make general provision about the administration and enforcement of revenue laws.⁴ Part 8 of the TA Act relates to confidentiality of information. Relevantly, section 111(1) of the TA Act provides that an official⁵ must not disclose confidential information acquired by the official in the official's capacity to anyone else other than under part 8 of the TA Act.
12. Schedule 2 of the TA Act sets out the following definitions used in part 8 of the TA Act:

confidential information means information disclosed to, obtained by, or otherwise held by, an official under or in relation to a tax law.

² Sections 44(1) and 48(1) of the RTI Act.

³ See also section 48(2) of the RTI Act.

⁴ Section 3(1) of the TA Act.

⁵ Defined in schedule 2 of the TA Act as 'a person who is, or has been a public service employee or other person, performing functions under or in relation to the administration or enforcement of a tax law.'

personal confidential information, for a person, means confidential information that—

- (a) identifies, or is likely to identify, the person; or
- (b) discloses matters about the person's affairs.

13. To be exempt under schedule 3, section 12 of the RTI Act, the Information in Issue must:
- (a) be 'personal confidential information' as defined in schedule 2 of the TA Act
 - (b) be prohibited from disclosure under part 8 of the TA Act; and
 - (c) not be subject to the exception listed in schedule 3, section 12(2) of the RTI Act.
14. Schedule 3, section 12(2) of the RTA provides that information is not exempt information under subsection (1) in relation to an access application, if it is personal information for the applicant.

Findings

Is Treasury entitled to refuse access to the Information in Issue?

15. Yes, for the reasons that follow.

Application of part 8 of the TA Act

Is the Information in Issue 'personal confidential information'?

16. Yes. I am satisfied that the Information in Issue comprises information disclosed to, obtained by or otherwise held by officials within the department under, or in relation to a tax law and is therefore 'confidential information' for the purposes of the TA Act.
17. I am also satisfied that the Information in Issue:
- identifies or is likely to identify persons—both individuals and corporations; and/or
 - discloses matters about the affairs of those persons, such as their financial, taxation and business affairs.
18. The *Acts Interpretation Act 1954* (Qld) (**AI Act**) provides that the term 'person' includes an individual and a corporation.⁶ The AI Act further provides that it applies to all Acts⁷ and that its operation may be displaced, wholly or partly, by a contrary intention appearing in any Act.⁸ The operation of the relevant provisions of the AI Act has not been expressly displaced for the purposes of the definition of 'personal confidential information', nor is there any contrary intention in the provisions of the TA Act.
19. Accordingly, I am satisfied that the Information in Issue is 'personal confidential information' for the purposes of Part 8 of the TA Act.

Does part 8 of the TA Act prohibit disclosure?

20. Yes. Section 111(1) of the TA Act prohibits an official from disclosing confidential information acquired by the official in the official's capacity other than under part 8.

⁶ Sections 36 and 32D(1) of the AI Act.

⁷ Section 2 of the AI Act.

⁸ Section 4 of the AI Act.

21. I am satisfied that the Information in Issue was acquired by OSR officials in their official capacity.
22. The Commissioner of State Revenue has the discretion to disclose confidential information under the TA Act in specified circumstances, as set out in sections 111(2)-(4) of the TA Act. However, there is no provision under the TA Act or the RTI Act which allows the Information Commissioner to exercise this discretion on behalf of the Commissioner of State Revenue.
23. I am therefore satisfied that disclosure of the Information in Issue is prohibited by part 8 of the TA Act.

Application of schedule 3, section 12 of the RTI Act

Does the exception in schedule 3, section 12(2) of the RTI Act apply?

24. No. Schedule 3, section 12(2) of the RTI Act permits disclosure of otherwise exempt information, if the information is personal information for the applicant.
25. Personal information is defined in section 12 of the *Information Privacy Act 2009* (Qld)⁹ (**IP Act**) as follows:

*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.*

[emphasis added]

26. Section 36 of the AI Act provides that the term 'individual' means a natural person.
27. Although the applicant accepts, without having seen the Information in Issue, that the Information in Issue is likely to be its 'personal confidential information' for the purposes of the TA Act, the applicant submits that:
 - schedule 3, section 12(2) of the RTI Act cannot be intended to allow natural persons access to their own 'personal confidential information', while denying corporations and other entities access to their 'personal confidential information'
 - the intention of the exception in schedule 3, section 12(2) of the RTI Act is to allow applicants access to their own 'personal confidential information'
 - that intention is sufficient to displace the definition of 'individual' in section 36 of the AI Act¹⁰
 - therefore the term 'individual' contained in the definition of 'personal information' should be construed as meaning any applicant, including a corporation; and
 - therefore the Information in Issue is 'personal information' for the applicant and accordingly the exception in schedule 3, section 12(2) of the RTI Act should apply to the Information in Issue.
28. In *Davis v City North Infrastructure Pty Ltd*¹¹ (**Davis v CNI**) Applegarth J considered the statutory interpretation of section 16(1)(a) of the RTI Act. In that decision, Applegarth J stated that the general principles of statutory interpretation that applied were:

⁹ Schedule 6 of the RTI Act adopts this definition.

¹⁰ Pursuant to sections 4 and 32A of the AI Act.

¹¹ [2012] 2 Qd R 103.

- the principle set out in *Project Blue Sky Inc v Australian Broadcasting Authority*¹² that a statutory provision should be construed so that it is consistent with the language and purpose of all of the provisions of a statute; and
 - the principle set out in section 14A of the AI Act, which provides that in the interpretation of a provision of an Act, an interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.
29. The object of the RTI Act is to give a right of access to information in the government's possession or under its control unless, on balance, it is contrary to the public interest to give access. Reference to the object of the RTI Act is not of particular assistance in this matter as the RTI Act expressly provides that it is contrary to the public interest to give access to information if its disclosure is prohibited by part 8 of the TA Act so far as it applies to personal confidential information under that Act, unless it is personal information for the applicant.
30. As set out above, personal information is defined in the IP Act as information or opinion about an individual and individual is defined in the AI Act as a natural person.
31. In *Saeed v Minister for Immigration and Citizenship*¹³ (***Saeed v MIC***) the majority of the High Court found that the '*presumption is that words are used in a statute for a reason; they should be given their meaning and effect.*' In that case, Heydon J also stated that an argument that the construction of the *Migration Act 1958* (Cth) which leads to offshore visa applicants having better rights than onshore visa applicants is so absurd or unreasonable that it cannot be preferred was unconvincing.¹⁴
32. I am not convinced that a construction of schedule 3, section 12 of RTI Act which allows natural persons access to their own 'personal confidential information', while denying corporations and other entities access to their 'personal confidential information' is so 'absurd or unreasonable' that the definition of 'individual' in section 36 of the AI Act should be displaced.
33. Accordingly, I am satisfied that only individuals can have personal information for the purpose of the RTI Act. As Fendley Consultancy Pty Ltd is a corporation, not a natural person, the exception in schedule 3, section 12(2) of the RTI Act cannot apply.

Is the Information in Issue exempt from release under schedule 3 section 12(1) of the RTI Act?

34. Yes. On the basis of the matters set out above, I am satisfied that the Information in Issue is personal confidential information for the purposes of part 8 of the TA Act, and that its disclosure is prohibited by section 111(1) of the TA Act. The Information in Issue is therefore exempt from disclosure under schedule 3, section 12(1) of the RTI Act.
35. As the Information in Issue is exempt under schedule 3, section 12(1) of the RTI Act, it is not necessary to consider the contrary to public interest claim raised by Treasury.

¹² (1998) 194 CLR 355.

¹³ (2010) 241 CLR 252 at 266.

¹⁴ (2010) 241 CLR 252 at 282

DECISION

36. For the reasons set out above, I vary the decision under review and find that access may be refused on the basis that the Information in Issue comprises exempt information in accordance with schedule 3, section 12 of the RTI Act.
37. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 26 April 2013

APPENDIX

Significant procedural steps

Date	Event
5 July 2012	Treasury received the applicant's access application.
25 July 2012	Treasury issued a Charges Estimate Notice to the applicant.
16 August 2012	The applicant agreed to narrow the scope of the application to exclude documents of information provided by the applicant or their solicitors to the OSR.
20 August 2012	Treasury issued a second Charges Estimate Notice to the applicant.
29 August 2012	The applicant agreed to pay the second Charges Estimate Notice.
31 August 2012	Treasury notified the applicant that it would be necessary to consult with third parties.
3 October 2012	Treasury refused access to the Information in Issue under section 47(3)(b) of the RTI Act (initial decision).
29 October 2012	The applicant applied to OIC for external review of the initial decision.
8 November 2012	OIC notified both parties that the applicant's external review application had been accepted and asked Treasury to provide OIC with a copy of the Information in Issue
16 November 2012	OIC received a copy of the Information in Issue.
22 January 2013	OIC conveyed to the applicant the view that the Information in Issue comprises exempt information under schedule 3, section 12 of the RTI Act and invited the applicant to make submissions if they did not agree with the view.
13 February 2013	The applicant advised OIC that they did not accept OIC's view and provided written submissions.