



Decision and Reasons for Decision

Citation:	<i>G42 and Department of Children, Youth Justice and Multicultural Affairs</i> [2021] QICmr 62 (22 November 2021)
Application Number:	316214
Applicant:	G42
Respondent:	Department of Children, Youth Justice and Multicultural Affairs
Decision Date:	22 November 2021
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - documents about child safety concerns, assessments and outcomes regarding the applicant as a parent - whether disclosure prohibited by sections 186 - 188 of the <i>Child Protection Act 1999</i> (Qld) - whether exempt under section 67(1) of the <i>Information Privacy Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - IRRELEVANT INFORMATION - information duplicated or repeated in located documents - information ruled out of scope with applicant during processing - whether deleted information was irrelevant to the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Children, Youth Justice and Multicultural Affairs (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to electronic documents regarding child safety concerns, assessments and outcomes about himself as a parent.
2. The Department located 544 pages and decided to refuse access to three full pages and parts of 179 pages on the ground that this information comprised exempt information as its disclosure is prohibited by sections 186 - 188 of the *Child Protection Act 1999* (Qld) (**Child Protection Act**).

¹ Access application dated 20 May 2021.

3. The Department also deleted parts of 136 pages on the basis they were irrelevant to the access application pursuant to section 88 of the IP Act. The deleted information was duplicated or repeated elsewhere in the located pages. During the processing of the application the Department wrote to the applicant to indicate that it would not consider duplicated or repeated information as relevant to the terms of his request, and the Applicant did not object to this approach.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.²
5. For the reasons set out below, I affirm the Department's decision.

Reviewable decision

6. The decision under review is the Department's decision dated 18 June 2021.

Evidence considered

7. Significant procedural steps taken during the external review are set out in the Appendix.
8. Evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
9. The applicant has sent a large volume of email correspondence to OIC prior to and during the review. To the extent that that material contains information that is relevant to the issues for determination in this review, I have taken account of it.
10. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.³ A decision maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act when applying the law prescribed in the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**).⁴ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:⁵ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.⁶

Information in issue

11. The information in issue is contained within:
 - 3 full pages and parts of 179 pages (**Category A information**); and
 - parts of 136 pages⁷ (**Category B information**).

² Email dated 21 July 2021.

³ Section 21 of the HR Act.

⁴ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁵ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁶ *XYZ* at [573].

⁷ Pages 4, 8, 9, 16, 17, 21, 27, 29, 30, 31, 36, 42, 43, 44, 54, 55, 68, 69, 81, 82, 91, 92, 96, 102, 103, 107, 113, 114, 115, 119, 125, 126, 127, 131, 135, 136, 140, 148, 149, 153, 159, 161, 165, 172, 173, 184, 185, 186, 194, 199, 200, 204, 210, 212, 213, 215, 216, 226, 227, 232, 235, 245, 246, 247, 251, 262, 267, 268, 269, 273, 279, 280, 288, 297, 298, 300, 305, 314, 323, 324, 333, 334, 342, 344, 347, 352, 354, 358, 362, 363, 370, 373, 375, 376, 387, 388, 389, 397, 399, 400, 408, 409, 411, 419, 420, 421, 425, 429, 434, 436, 437, 441, 449, 450, 460, 461, 468, 469, 476, 477, 478, 485, 486, 494, 495, 496, 503, 504, 505, 513, 521, 522, 529, 530, 531 and 540.

Issues for determination

12. The issues for determination are whether:

- access to the Category A information can be refused on the ground that it comprises exempt information the disclosure of which is prohibited by sections 186 - 188 of the Child Protection Act; and
- the Category B information can be deleted from copies of the documents disclosed to the applicant on the basis that it is irrelevant to the terms of the access application.

Applicant's submissions

13. Since the commencement of this external review, the applicant has sent voluminous correspondence to OIC.⁸ To ensure that I considered the applicant's relevant submissions, on 10 September 2021, I wrote to the applicant⁹ and directed him to identify the external review reference number in his correspondence and to limit his correspondence to submissions relating to the issues on external review.¹⁰ The applicant continued to provide OIC with voluminous correspondence in relation to his interactions with numerous other government agencies and court processes. To the extent that the applicant's submissions complied with my directions, I have considered them carefully. I have also turned my mind to the other correspondence provided by the applicant and note that much of this correspondence does not relate to the issues for my consideration in this decision.

14. I understand that, in relation to the issues in this review, the applicant submits that:¹¹

- the records held by the Department are '*100% false except a few minor details such as names and dates or reports from me etc.*', and that there is evidence to '*show undeniably that what they state happened or was said was NOT fact and DID NOT happen anything like what they allege*'.
- he does not agree with the actions of the Department and considers them to be unlawful
- his interactions with the Department demonstrate wrongdoing by the Department; and
- OIC and the Department staff had '*falsely alleged that I have not carried out the stated guidelines and that I have no basis or substance for my claims*' without having investigated and analysing the '*evidence provided*'.

15. In the most recent email to OIC in response to an update to the status of this and other external reviews the applicant submitted the following:¹²

Thank you for your response, I look forward to reading the Justice obstructing continually relentlessly Rigidly thinking repeated and fixated Mental Gymnastics and illogical Cognitive Dissonance to support their unlawful Ad Hominem as soon as possible... I will unpack it all and reply in a "Timely Manner". (sic)

16. For the most part it is unclear to me how the applicant's submissions relate to the issues for my consideration on external review. I acknowledge that broadly he raises public interest concerns, particularly with respect to Department actions and decisions and the accuracy of the relevant records. As I have explained in more detail below, such public

⁸ By emails dated 23 July 2021, 24 July 2021, 2 August 2021, 3 August 2021, 1 September 2021, 10 September 2021, 27 September 2021 and 12 November 2021 and in a telephone call on 27 August 2021.

⁹ Pursuant to section 108(2) of the IP Act.

¹⁰ I repeated this direction in my email to the applicant dated 12 November 2021.

¹¹ Emails from applicant dated 10 September 2021 and 27 September 2021.

¹² Applicant email to OIC dated 12 November 2021.

interest arguments do not impact on my assessment of whether the information to which access was refused can be considered exempt information. This is because Parliament has determined that the disclosure of exempt information¹³ is contrary to the public interest, and access may therefore be refused.¹⁴ The applicant's submissions do not provide information that would impact on the application of the exemption, nor do they directly contest the issue of irrelevance.

Category A information

Relevant law

17. Under the IP Act an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.¹⁵ This right is subject to other provisions of the IP Act and the RTI Act, including the grounds on which an agency may refuse access to information.¹⁶ Schedule 3, section 12 of the RTI Act provides that information is exempt information if its disclosure is prohibited by sections 186-188 of the Child Protection Act.
18. Relevantly, disclosure of information is prohibited under the Child Protection Act if the information:
 - identifies a person making a notification of a suspicion that a child has been or is likely to be harmed;¹⁷ or
 - is about the affairs of another person¹⁸ and was acquired by a person performing particular functions under the Child Protection Act.¹⁹
19. The prohibition on disclosure is subject to certain exceptions in the Child Protection Act.²⁰ Further, an exception to information qualifying as exempt information under schedule 3, section 12(1) of the RTI Act is set out in schedule 3, section 12(2) of the RTI Act.

Findings

Would the Category A information identify any person/s who made a notification?

20. Having assessed the Category A information, I am satisfied that *some* parts of it:
 - identify a person/s who made a notification(s) under the Child Protection Act
 - are subject to the prohibition on disclosure in section 186(2) of the Child Protection Act; and
 - therefore qualify as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).

¹³ The categories of exempt information are set out in Schedule 3 to the RTI Act.

¹⁴ Section 48(2) of the RTI Act.

¹⁵ Section 40 of the IP Act.

¹⁶ Section 67(1) of the IP Act and section 47 of the RTI Act.

¹⁷ Section 186(2) of the Child Protection Act.

¹⁸ That is, not the person seeking to access the information.

¹⁹ Section 187(2) of the Child Protection Act.

²⁰ Section 187(3) and (4) and 188 (4) of the Child Protection Act.

Is the *remaining* Category A information about a person's affairs and received under the Child Protection Act?

21. The term '*person's affairs*' is not defined in the Child Protection Act or the *Acts Interpretation Act 1954* (Qld). The relevant dictionary definitions for '*affair/s*' are '*matters of interest or concern*' and '*a private or personal concern*'.²¹
22. Having assessed the *remaining* Category A information, I am satisfied it comprises information about the interests and concerns of individuals other than the applicant. These individuals may be known to the applicant; however, this does not impact on my assessment that it comprises the personal affairs of these other individuals.
23. This information was received or obtained by Departmental officers under the Child Protection Act. Relevantly, the Child Protection Act lists a public service employee²² as a person to whom section 187 applies.
24. On the basis of the above findings, I am satisfied that the remaining Category A information is:
 - about other persons' affairs
 - has been given to, or received by, a person performing functions under or in relation to the administration of the Child Protection Act
 - subject to the prohibition on disclosure in section 187(2) of the Child Protection Act; and
 - therefore qualifies as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).

Do any of the exceptions apply?

25. Sections 187 and 188 of the Child Protection Act contain a number of exceptions to the prohibition on the disclosure of information given or received under the Child Protection Act. Of relevance to this review, section 187(4)(a) provides that access may be given to another person to the extent that the information is about that other person.
26. In addition, schedule 3, section 12(2) of the RTI Act provides that information is not exempt information under schedule 3, section 12(1) if the information is only personal information of the applicant.
27. Where information is not about the applicant, or where the information is about the applicant but is not solely about the applicant,²³ or where an applicant's personal information²⁴ cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.
28. The Category A information is about individuals other than the applicant. In some instances, the Category A information is also about the applicant, but is intertwined with

²¹ As established in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at paragraph 30.

²² Section 187(1)(a) of the Child Protection Act.

²³ In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) of the Child Protection Act applies to shared information about the applicant and other persons. She observed at paragraph 26: '*The Child Protection Act exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the Child Protection Act exception will not apply.*'

²⁴ '*Personal information*' comprises '*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*': schedule 5 of the RTI Act, and section 12 of the IP Act.

the information of others. After careful assessment, I find that the Category A information is not solely about the applicant or only the personal information of the applicant.

29. I am therefore satisfied that the exceptions in section 187(4)(a) of the Child Protection Act and schedule 3, section 12(2) of the RTI Act do not apply to the Category A information because it is not only about the applicant.
30. In seeking an external review, the applicant stated that he was the person who reported the child harm to the Department. The IP Act prohibits me from disclosing the information in issue in these reasons²⁵ and, given the context in which the Category A information appears, I am unable to directly respond to the applicant's submissions in this regard. Having considered all documents identified by the Department, including the released documents, I note that information relating to the applicant only has been disclosed to him. I have considered the applicant's submission that he was the relevant notifier of harm, however, I do not consider this submission impacts on this assessment.
31. The applicant also submitted that the records held by the Department contain incorrect information, which he requires in order to have it amended, and contains false allegations made against him by the Department, which are '*criminally unlawful*'.²⁶ The applicant's submissions raise issues relative to public interest factors that may favour disclosure of the Category A information. However, I cannot take these submissions into account. There is no scope for me to consider public interest arguments once I am satisfied that the information qualifies as exempt information. This is because Parliament has determined that disclosure of the types of information set out in schedule 3 of the RTI Act is contrary to the public interest, and access may therefore be refused.²⁷
32. As I consider the requirements of sections 186 and 187 of the Child Protection Act are met, and no exceptions in the Child Protection Act or schedule 3, section 12(2) of the RTI Act apply, I find that the Category A information is exempt information under schedule 3, section 12(1) of the RTI Act.

Category B information

Relevant law

33. Under the IP Act, an agency may delete information that is irrelevant to the scope of the terms of the original application.²⁸ This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is necessary to consider the scope of the access application, as agreed between the applicant and the relevant agency.

Findings

34. In this case, the deleted information appears, on its face to be information relevant to the access application. However, having considered this information, I note that it comprises duplicates of information appearing elsewhere in the located documents, or repetition of the exact same information in Department records and email chains which, by their nature, incorporate and build on previous versions of those records or email chains.

²⁵ Section 121(3) of the IP Act.

²⁶ Submission dated 10 September 2021.

²⁷ Section 48(2) of the RTI Act.

²⁸ Section 88(2) of the IP Act.

35. In a letter²⁹ to the applicant acknowledging receipt of the access application, the Department stated:³⁰

Duplicates and duplicated information

The IP Act requires an agency to make a decision in relation to all documents which fall within the scope of an application; this includes duplicate documents, documents containing duplicated information and each email in a chain of emails. However, for the purposes of your application, where relevant the following will be excluded unless you advise otherwise:

- *duplicate documents;*
- *information which is duplicated across a number of different documents with no change to the content of the information. In these cases, a decision will be made on only one instance of this information and any subsequent copy of the information will be removed (where this information is contained in a document which is otherwise within scope of your application, the information will be removed as irrelevant); and*
- *where email chains fall within the scope of your application, only the last unique email in the chain will be provided and earlier emails will be excluded.*

36. There is nothing before me to suggest that the applicant objected to the Department's proposed approach to consider any duplicated information as irrelevant to the scope of the access application.

37. In the decision, the Department stated:³¹

Removal of Repetitive Information

The department's electronic database - Integrated Client Management System (ICMS) - is the primary database used for the recording of child safety information. When entering new information, ICMS will automatically regenerate details previously entered which results in multiple copies of the same information.

In this instance only one (1) copy of the information was released and the subsequent repetitive information has been marked 88(2) ...

38. I have examined the Category B information and am satisfied that the Department correctly described this information in its decision. This information comprises copies of information already released to the applicant or Category A information which I have found is exempt from disclosure. There is no change to the content of this information between where it originally appeared in the documents. In the context that this information appears it is clear to me that it has been duplicated or repeated as a result of how the Department maintains its records.
39. As the Department advised the applicant of its intention to remove the Category B information as irrelevant and, given the lack of any objection to this course of action by the applicant, I find that the Category B information may be deleted under section 88 of the IP Act on the basis that it is not relevant to the access application.

DECISION

40. I affirm the Department's decision and find that:

²⁹ Dated 31 May 2021.

³⁰ At page 1.

³¹ At page 1.

- access to the Category A information may be refused on the ground that it comprises exempt information,³² the disclosure of which is prohibited by the Child Protection Act; and
- the Category B information may be deleted on the basis that it is irrelevant to the scope of the access application.³³

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

S Martin
Assistant Information Commissioner

Date: 22 November 2021

³² Under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.

³³ Under section 88 of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
21 July 2021	OIC received the applicant's application for external review. OIC notified the Department and the applicant that the application for external review had been received and requested procedural documents from the Department.
23 July 2021	OIC received three emailed submissions from the applicant.
24 July 2021	OIC received two emailed submissions from the applicant.
28 July 2021	OIC received the requested procedural documents from the Department.
2 August 2021	OIC received emailed submissions from the applicant.
3 August 2021	OIC received emailed submissions from the applicant.
12 August 2021	OIC notified the Department and the applicant that the application for external review had been accepted, and requested a copy of the documents located from the Department.
26 August 2021	OIC received a copy of the located documents from the Department.
27 August 2021	OIC received oral submissions from the applicant.
1 September 2021	OIC received emailed submissions from the applicant.
10 September 2021	OIC conveyed a written preliminary view to the applicant. OIC received emailed submissions from the applicant.
27 September 2021	OIC wrote to the applicant about his submissions received on 10 September 2021. OIC received three emailed submissions from the applicant.
11 November 2021	OIC received emailed submissions from the applicant.
12 November 2021	OIC wrote to the applicant about his submissions received on 11 November 2021. OIC received emailed submissions from the applicant.