



## **Decision and Reasons for Decision**

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**Application Number:** 310313

**Applicant:** The Amanda Flynn Charity Ltd

**Respondent:** Crime and Misconduct Commission

**Third Party:** 7G5BAL

**Decision Date:** 19 October 2011

**Catchwords:** **RIGHT TO INFORMATION – application for access to various documents about a third party’s employment – access refused under section 47(3)(b) and section 49 of the *Right to Information Act 2009* (Qld) – whether documents comprise information the disclosure of which would, on balance, be contrary to the public interest**

**RIGHT TO INFORMATION – access refused under section 47(3)(a) and schedule 3 section 10(1)(d) of the *Right to Information Act 2009* (Qld) – whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation**

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## REASONS FOR DECISION

### Summary

1. The Amanda Flynn Charity Ltd applied to the Crime and Misconduct Commission (**CMC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) seeking access to various documents concerning a third party's employment.
2. The CMC took steps to obtain the views of the third party about possible disclosure of the documents to the access applicant. The third party objected to disclosure of relevant documents under the RTI Act.
3. The CMC decided to:
  - grant full access to 9 documents (comprising 23 pages)
  - grant partial access to 10 documents (comprising 71 pages); and
  - refuse access to 3 documents (comprising 17 pages).
4. The access applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the CMC's decision.
5. For the reasons set out below, I vary the CMC's decision and find that the remaining information is not exempt information<sup>1</sup> and its disclosure would not, on balance, be contrary to the public interest.<sup>2</sup>

### Background

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 the CMC's decision dated 28 June 2011.

### Evidence considered

8. In making this decision, I have considered the following:
  - the access application to the CMC
  - correspondence between the third party and the CMC
  - the CMC's initial decision
  - the external review application to OIC
  - file notes of telephone conversations between the solicitor for the access applicant and a staff member of OIC
  - file notes of telephone conversations between the third party and a staff member of OIC
  - correspondence between the solicitor for the access applicant and OIC
  - correspondence between the third party and OIC
  - the information in issue
  - relevant provisions of the RTI Act; and
  - previous decisions of the Information Commissioner identified in this decision.

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<sup>1</sup> Under schedule 3 section 10(1)(d) of the RTI Act.

<sup>2</sup> Under section 49 of the RTI Act.

### **Information in issue**

9. A number of issues have been informally resolved during the course of this external review.
10. The information remaining in issue (**Information in Issue**) relates to the third party's employment and includes a letter attaching a contract of employment,<sup>3</sup> a statement addressing selection criteria, a curriculum vitae,<sup>4</sup> an application for advertised position,<sup>5</sup> induction checklist, selection endorsement and approval form, confidentiality of information agreement<sup>6</sup> and an email from Acting Chairperson CMC to the third party.<sup>7</sup>

### **Third party's submissions**

11. During the course of the external review, the third party provided extensive submissions including that:
  - the Information in Issue comprises personal information; and
  - this RTI application is part of an extended pattern of harassment.<sup>8</sup>

### **CMC's submissions**

12. The CMC agrees that the Information in Issue can be disclosed in accordance with the RTI Act.

### **Would disclosure of the Information in Issue be contrary to the public interest?**

13. The answer to this question is 'no' for the reasons set out below.

### ***Relevant law***

14. Section 44(1) of the RTI Act provides that if an access application is made to an agency for a document, the agency should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.
15. The term 'public interest' is not defined in the RTI Act. Instead the RTI Act recognises that many factors can be relevant to the concept of the public interest. The public interest refers to considerations affecting the good order and functioning of the community and governmental affairs for the well-being of citizens. The notion of the public interest is usually treated as separate from matters of purely private or personal interest. Usually, a public interest consideration is one that is available to all members or a substantial segment of the community should they choose to access it. Although, in some circumstances public interest considerations can apply for the benefit of particular individuals.
16. In deciding whether disclosure of the Information in Issue would be contrary to the public interest, I must:<sup>9</sup>

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<sup>3</sup> Subject to the deletion of the third party's residential address.

<sup>4</sup> Subject to the deletion of the third party's private telephone numbers and email address.

<sup>5</sup> Subject to the deletion of the third party's residential address and private telephone number.

<sup>6</sup> Subject to the deletion of the third party's residential address

<sup>7</sup> Subject to the deletion of information relating to the third party's reasons for resignation.

<sup>8</sup> While I am unable to set out full details of the third party's submissions, I have carefully considered them in the course of making this decision.

<sup>9</sup> Section 49(3) of the RTI Act.

- 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 of the information would, on balance, be contrary to the public interest.

### **Findings**

17. No irrelevant factors arise on the information currently before me.
18. With respect to the public interest factors favouring disclosure, I am satisfied that they include that disclosure of the Information in Issue could reasonably be expected to enhance the Government's accountability<sup>10</sup> particularly in respect of the CMC's human resource practices and its adherence to merit and equity principles in recruitment.
19. With respect to the public interest factors favouring nondisclosure, I have carefully considered the third party's submissions on this point, including that the Information in Issue comprises personal information, the disclosure of which would, on balance, be contrary to the public interest. In this respect, I note that the RTI Act recognises that:
  - disclosure of information could reasonably be expected to cause a public interest harm if it would disclose personal information about a person, whether living or dead;<sup>11</sup> and
  - a factor favouring nondisclosure will arise if disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>12</sup>
20. *Personal information* is defined 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.<sup>13</sup>
21. I note that the Information in Issue was generated in the context of the third party's employment in the public sector. Accordingly, it is necessary to draw a distinction between the third party's routine personal work information and non routine personal work information.
22. The routine personal work information of public service officers is personal information within the meaning of the RTI Act, however, the potential harm that could be caused by its disclosure is, in most circumstances, minimal or nonexistent. This is due to a number of factors including:
  - the requirement that government departments be open and accountable in their operations
  - that public service officers are employed in the business of government which delivers services to the public and the public is generally entitled to know the identity of the service deliverers, advice givers and decision makers
  - the publication of public service officers' appointments in the Government Gazette; and
  - that a reasonable public service officer would expect that information that is solely their routine personal work information would be made available to the public.

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<sup>10</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>11</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>12</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>13</sup> Section 12 of the *Information Privacy Act 2009* (Qld).

23. Having carefully considered the Information in Issue, I am satisfied that:

- the CMC's role includes the promotion of public sector integrity<sup>14</sup>
- the Information in Issue comprises routine personal work information
- disclosure of the Information in Issue could reasonably be expected to enhance the accountability of the CMC (in respect of its human resource practices and its adherence to merit and equity principles in recruitment) and this factor favouring disclosure should be afforded moderate to significant weight in the circumstances
- given my finding that the Information in Issue comprises routine personal work information, the factors favouring nondisclosure should be afforded little or no weight in the circumstances
- the factor favouring disclosure outweighs those favouring nondisclosure; and
- on balance, disclosure of the Information in Issue is not contrary to the public interest under section 49 of the RTI Act.

### **Does the Information in Issue comprise exempt information?**

24. The answer to this question is 'no' for the reasons set out below.

#### ***Relevant law***

25. Schedule 3 of the RTI Act sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.<sup>15</sup>
26. Schedule 3, section 10(1)(d) of the RTI Act provides that information is exempt information if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.
27. The requirements of schedule 3 section 10(1)(d) of the RTI Act are similar to those of section 42(1)(ca) of the now repealed *Freedom of Information Act 2009* (Qld). The Information Commissioner considered the requirements of this provision in *Sheridan and South Burnett Regional Council and Others*<sup>16</sup> and stated that the question of whether disclosing information could reasonably be expected to result in a serious act of harassment or intimidation should be considered objectively, in light of all relevant information.<sup>17</sup>

#### ***Findings***

28. I have carefully considered the third party's relevant submissions regarding an alleged pattern of harassment and the likely effect of disclosure of the Information in Issue. The nature of these submissions is highly sensitive and cannot be set out in these reasons.
29. However, after taking into account all of the information currently available to me, including the matters set out in *Sheridan* and my finding that the Information in Issue comprises the third party's routine personal work information, I am not satisfied in the circumstances of this review that disclosure of the Information in Issue could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.

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<sup>14</sup> See *cmc.qld.gov.au*.

<sup>15</sup> Section 48(2) of the RTI Act.

<sup>16</sup> (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*).

<sup>17</sup> At paragraph 201.

## **DECISION**

30. For the reasons set out above, I vary the CMC's decision and find that:

- disclosure of the Information in Issue would not, on balance, be contrary to the public interest under section 49 of the RTI Act; and
- the Information in Issue does not comprise exempt information under schedule 3 section 10(1)(d) of the RTI Act.

31. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**F Henry**  
**Assistant Information Commissioner**

**Date: 19 October 2011**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
16 April 2010	The Amanda Flynn Charity Ltd applies to the CMC under the RTI Act for access to various documents concerning a third party's employment with the CMC.
6 May 2010	The CMC seeks the views of the third party in relation to possible disclosure of the relevant documents.
16 May 2010	The third party advises the CMC that they object to disclosure of the relevant documents.
28 June 2010	The CMC provides the access applicant and the third party with written notification of its decision.
27 July 2010	The access applicant applies to OIC for external review of the CMC's decision.
28 July 2010	The CMC provides OIC with a copy of the documents relevant to the review.
6 August 2010	OIC notifies the parties that the external review application has been accepted and asks the CMC to provide a copy of the relevant documents.
19 August 2010	The CMC provides a copy of the relevant documents and submissions in support of its case.
18 October 2010	A staff member of OIC telephones the solicitor for the access applicant and conveys the preliminary view in relation to the relevant documents.
19 October 2010	The access applicant's solicitor requests a copy of the preliminary view in writing.
2 December 2010	The third party applies to be a participant in the external review.
10 August 2011	OIC conveys a written preliminary view to the third party and the CMC and requests submissions in response by 24 August 2011.
11 August 2011	OIC conveys a written preliminary view to the access applicant and requests submissions in response by 25 August 2011.
22 August 2011	The CMC notifies OIC that it accepts the preliminary view.
24 August 2011	The third party notifies OIC that they do not accept the preliminary view and provides submissions in support of their case.