



Decision and Reasons for Decision

Application Number: 311038

Applicant: Lichfield-Bennett

Respondent: Department of Community Safety

Decision Date: 6 March 2013

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – applicant sought access to documents relating to stand down from operational duties – whether there are reasonable grounds to be satisfied that documents do not exist – section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – applicant sought access to documents relating to stand down from operational duties – whether disclosure of information 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 applied¹ to the Department of Community Safety (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information relating to her stand down from operational duties with the Queensland Ambulance Service (**QAS**).
2. The Department located and released to the applicant 260 pages² in response to the access application.³ The Department also refused access to some documents sought by the applicant on the basis that those documents did not exist.
3. The applicant sought internal review of the Department's decision on the basis that additional documents should have been located. Although the Department conducted further searches, no additional documents were located and access was refused on the basis that additional documents were nonexistent or unlocatable.⁴

¹ Application dated 6 January 2012 and received by the Department on 11 January 2012.

² Numbered by the Department as Brisbane Region File IP Document No 1 to 190, Deputy Commissioner File IP Document No 1 to 25, Office of the Medical Director File IP Document No 1 to 34 and Priority One File IP Document No 1 to 11.

³ By Decision dated 1 March 2012.

⁴ By internal review decision dated 26 April 2012.

4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access submitting⁵ that additional documents should have been located.
5. During the external review, the Department located 5 additional pages which responded to the access application. The Department agreed to release 4 pages in full and 1 page in part to the applicant. The Department submitted that disclosure of the remaining part of 1 page would be contrary to the public interest.
6. For the reasons set out below, the Department is entitled to refuse access to:
 - documents which the applicant contends have not been located, on the basis that they do not exist; and
 - the remaining information in 1 page on the basis that its disclosure is, on balance, contrary to the public interest.

Background

7. Significant procedural steps relating to the application and external review are set out in the appendix.

Reviewable decision

8. The decision under review is the Department's internal review decision dated 26 April 2012.

Evidence considered

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

Issues for determination

10. The issues for determination are whether the Department:
 - has taken all reasonable steps to locate documents responding to the access application—**sufficiency of search**; and
 - is entitled to refuse access to part of 1 page⁶ (**Information in Issue**) on the basis that its disclosure would, on balance, be contrary to the public interest—**refusal of access**.

Sufficiency of search

11. Section 67(1) of the IP Act provides that access to a document may be refused on the same basis upon which access to a document could be refused under section 47 of the *Right to Information Act 2009 (Qld)* (**RTI Act**).
12. The RTI Act provides that access to a document may be refused if the document is nonexistent or unlocatable.⁷ A document is nonexistent if there are reasonable

⁵ External review application dated 2 May 2012.

⁶ Numbered ER-1 for the purpose of the external review.

⁷ Sections 47(3)(e) and 52 of the RTI Act.

grounds for the agency or Minister dealing with the access application to be satisfied that the document does not exist.⁸

13. The RTI Act is silent on how an agency or Minister can be satisfied that a document does not exist. However in *PDE and the University of Queensland*⁹ (*PDE*), the Information Commissioner explained that, to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:
 - the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
 - the agency's practices and procedures (including but not exclusive of its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s; and
 - the nature of the government activity the request relates to.
14. Alternatively, an agency may rely on searches to satisfy itself that a document does not exist. In such cases the Information Commissioner indicated in *PDE* that in order to substantiate a conclusion that there are reasonable grounds to be satisfied that the document does not exist, it may be necessary for the agency or Minister to take all reasonable steps to locate the document sought. To ensure all reasonable steps have been taken to locate documents, a decision-maker should make enquiries and undertake searches of all relevant locations, having regard to the key factors listed in *PDE*.¹⁰

Findings

15. In deciding that the Department has taken all reasonable steps to locate any additional documents and that there is a reasonable basis to be satisfied that no additional documents exist, I have had regard to:
 - the information identified by the Department in response to the access application—including both the information released to the applicant and the Information in Issue
 - the Department's recordkeeping practices in relation to the types of documents the applicant sought
 - the nature and extent of the searches conducted by the Department in processing the access application and on external review; and
 - the signed search certifications provided by Departmental officers.

⁸ Section 52(1)(a) of the RTI Act.

⁹ Unreported, Queensland Information Commissioner, 9 February 2009. Note — Although *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

¹⁰ See *PDE* at paragraph 49.

16. The applicant believes that additional documents relevant to her access application exist and submits¹¹ that additional documents should have been located, including:
- details of phone conversations and documents arising from those conversations between staff of the Queensland Police Service (**QPS**), Queensland Health (**QH**) and QAS on particular dates
 - all correspondence between specified staff of QAS, QH and QPS on specified dates
 - an email to QAS on 4 November 2011
 - minutes of a meeting attended by the applicant on 20 December 2011
 - notes by a specified QAS staff member dated 3 November 2011
 - all assessment documents relating to the applicant held by a specified QAS staff member
 - documents held by specified QAS staff members about the applicant's stand down
 - documented evidence or policy to support the direction for supervision of the applicant
 - attachments to, and a spreadsheet mentioned in, emails located and provided to the applicant; and
 - relevant emails from a Department database.
17. On receipt of the application, the Department conducted searches of records and databases of the Department and located documents within the QAS areas of Brisbane Region, Deputy Commissioner, Office of the Medical Director and Priority One Staff Support.
18. On external review, OIC asked the Department¹² to respond to a large number of sufficiency of search submissions raised by the applicant.¹³ The Department undertook further searches within Brisbane Region, the Office of the Medical Director and with the Deputy Commissioner seeking documents which responded to the list of additional documents the applicant submitted should have been located. The Department located two email documents¹⁴ comprising 4 pages and a 1 page spreadsheet.¹⁵ The Department agreed to release the spreadsheet and one email in full and part of the second email.¹⁶
19. The Department submitted¹⁷ that some of the additional documents sought by the applicant had already been released to her as part of the initial decision. For example, the applicant maintained that attachments to an email from page 116 of the Brisbane Region File should have been located. These attachments are pages 117 to 119 of the Brisbane Region File and they have been released to the applicant in full.
20. The Department also submitted¹⁸ that a range of documents which the applicant is seeking in this external review have already been released to her as a result of other

¹¹ Submission received 9 May 2012 and 25 May 2012.

¹² By letter dated 10 July 2012.

¹³ In a letter to OIC received 25 May 2012.

¹⁴ The two email documents were numbered ER-1 to ER-2 and ER-3 to ER-4 for the purpose of the review.

¹⁵ The spreadsheet was numbered ER-5 for the purpose of the review.

¹⁶ By correspondence dated 10 September 2012 and during a telephone discussion with OIC Staff on 24 September 2012.

¹⁷ By correspondence dated 31 July 2012.

¹⁸ By correspondence dated 31 July 2012.

access applications. Following a request¹⁹ from OIC, the Department clarified²⁰ that the applicant had made two other access applications to the Department and that the Department had released a large number of documents in response to those applications, many of which the applicant is continuing to seek access to in this external review process.

21. In her list of additional documents, the applicant submitted that there should be documented evidence or policy to support the direction for supervision of the applicant:

- the Department submitted²¹ that,

no specific written policy has been identified that specifically requires that officers on alternate duties must be supervised by the Officer in Charge... However... workers on return to work programs must be adequately supervised and in [the applicant's] case, the relevant supervisor was at the Officer in Charge level.

- in response, the applicant submitted²² that she was placed on 'non-operation duties' rather than 'suitable duties' and that there should be a policy or operating procedure which governs this practice; and
- following a request²³ for a further submission, the Department provided²⁴ OIC with a copy of an email²⁵ from the Department's Principal Injury Management Advisor who states:

Unfortunately there does not exist any documentation (either current or historical) that explicitly states when a [suitable duties program] can and can't occur. As discussed previously, explicit and definitive statements cannot be given as each case needs to be considered on its own merits and the circumstances/facts relating to it.

22. Following release of the additional information, the applicant made further lengthy submissions²⁶ about why further documents relevant to the access application should exist and should have been located by the Department. The applicant also submitted that the searches undertaken by the Department were not reasonable as a QAS Officer whom the applicant submitted held relevant documents was on leave.
23. The Department was asked to provide²⁷ a signed search certification and record of searches table completed by the relevant QAS officer.
24. As the Department has conducted searches in response to the applicant's submissions that additional documents exist, the issue is whether the Department has taken all reasonable steps to locate the additional documents.
25. The Department has conducted extensive searches for information which responds to the access application in relevant locations. The Department searched its records and databases and on external review conducted more targeted searches referring to information supplied by the applicant.
26. The Department has also supplied explanations of its record keeping processes in response to specific submissions from the applicant. These submissions satisfy me that the Department does not have documented evidence or a policy to support the

¹⁹ By correspondence dated 27 August 2012.

²⁰ Submission dated 10 September 2012.

²¹ Submission dated 10 September 2012.

²² Submission dated 22 October 2012.

²³ By correspondence dated 27 November 2012.

²⁴ By correspondence dated 30 November 2012.

²⁵ Dated 13 August 2012.

²⁶ Submission dated 22 October 2012.

²⁷ During a discussion with staff of the Department on 16 November 2012.

direction for supervision of the applicant and therefore it is entitled to refuse access on the ground that this document is non-existent.

27. As for the balance of the information which the applicant contends should be located, after considering all the information before me—including the information released to the applicant in response to her access application, the Information in Issue, the searches undertaken by the Department and the submissions made by the Department and the applicant—I am satisfied that the Department has taken all reasonable steps to locate relevant documents, and that there is a reasonable basis to be satisfied that no additional documents responding to the access application exist.²⁸

Refusal of access

28. The RTI Act also provides that an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.²⁹
29. 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.
30. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest³⁰ and explains the steps that a decision-maker must take³¹ 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 of the information in issue would, on balance, be contrary to the public interest.³²
31. In providing submissions about the issue of refusal of access, the applicant has made extensive submissions about the application of the public interest balancing test with reference to the repealed *Freedom of Information Act 1992 (Qld)*, the *Freedom of Information Act 1982 (Cth)* (**Commonwealth FOI Act**) and the Office of the Australian Information Commissioner's guideline on the public interest test under the Commonwealth FOI Act.
32. These submissions are not relevant to a consideration of the public interest balancing test under the RTI Act and I have not taken these into account.

Irrelevant factors

33. I do not consider that any irrelevant factors arise in this case.

²⁸ Pursuant to section 47(3)(e) of the RTI Act on the ground set out in section 52(1)(a) of the RTI Act.

²⁹ Sections 47(3)(b) and 49 of the RTI Act.

³⁰ 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, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

³¹ Section 49(3) of the RTI Act.

³² As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

Factors favouring disclosure and nondisclosure of the Information in Issue

34. I have not identified any factors favouring disclosure of the Information in Issue which are relevant in the particular circumstances of this review.
35. The RTI Act recognises factors favouring nondisclosure in circumstances where disclosure could reasonably be expected to:
- prejudice an individual's right to privacy;³³ and
 - cause a public interest harm if disclosure would disclose personal information of a person.³⁴

Balancing the public interest factors favouring disclosure and nondisclosure

36. The Information in Issue comprises leave details of an individual who is a public service officer.
37. The applicant generally submits³⁵ that the Information in Issue is information which is relevant to her access application and that, on this basis, it should be released to her in full.
38. The Department has agreed³⁶ that the Information in Issue is the personal information of the public service officer.
39. Personal information is '*information or an opinion... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.³⁷
40. The Information in Issue arises in the workplace context. Generally, there is minimal or no harm in disclosing routine workplace information of a public service officer. However, information which is not wholly related to the routine day to day work activities of a public service officer is considered non-routine personal work information.
41. I am satisfied that the Information in Issue comprises non-routine personal work information of a public service officer which, if disclosed, could reasonably be expected to cause a public interest harm by revealing the personal information of that officer and prejudicing their privacy. I consider that some weight should be given to these factors in favour of nondisclosure.
42. Given the above, I am satisfied that the release of the Information in Issue would not advance the public interest in any significant way and disclosure of the Information in Issue would, on balance, be contrary to the public interest.

DECISION

43. I vary the internal review decision by finding that the Department of Community Safety is entitled to refuse access to:

³³ Schedule 4, part 3, Factor 3 of the RTI Act.

³⁴ Schedule 4, part 4, section 6(1) of the RTI Act.

³⁵ Submission dated 22 October 2012.

³⁶ During telephone discussion with OIC Staff on 24 September 2012.

³⁷ See section 12 of the *Information Privacy Act 2009* (Qld).

- further documents under section 47(3)(a) of the RTI Act on the ground that they do not exist under section 52(1)(a) of the RTI Act; and
- the Information in Issue under section 47(3)(b) of the RTI Act on the ground that its disclosure would on balance, be contrary to the public interest under section 49 of the RTI Act.

44. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

Lisa Meagher
Acting Assistant Information Commissioner

Date: 6 March 2013

APPENDIX**Significant procedural steps**

Date	Event
11 January 2012	The Department receives the access application dated 6 January 2012.
1 March 2012	The Department locates 260 pages which respond to the access application and releases them in full to the applicant. The Department refuses access to some information sought by the applicant on the basis that those documents do not exist.
26 March 2012	The Department receives the applicant's application for internal review.
26 April 2012	The Department refuses access to additional documents sought on the basis that those documents are either nonexistent or unlocatable.
2 May 2012	OIC receives the applicant's application for external review.
11 May 2012	OIC advises the applicant and the Department that the application has been accepted for review. OIC requests submissions from the applicant about additional documents which should have been located.
25 May 2012	OIC receives a submission from the applicant.
10 July 2012	OIC asks the Department to provide search certifications and a record of the searches undertaken by 24 July 2012.
18 July 2012	The Department seeks an extension of time to provide a submission. OIC grants the Department an extension until 31 July 2012.
31 July 2012	OIC receives a submission from the Department.
14 August 2012	OIC receives a further submission from the Department.
28 August 2012	OIC asks the Department to clarify its submissions.
10 September 2012	OIC receives a further submission from the Department.
25 September 2012	OIC conveys a view to the Department. OIC invites the Department to provide a submission by 5 October 2012 if it wishes to challenge the view. OIC also conveys a view to the applicant on the issues in this review. OIC asks the applicant to provide a submission by 12 October 2012 if she does not accept the view.
5 October 2012	The Department confirms that it has forwarded the additional documents to the applicant subject to deletions in accordance with OIC's view dated 25 September 2012.
10 October 2012	The applicant seeks an extension of time to provide a submission.
11 October 2012	OIC grants the applicant an extension until 19 October 2012.
18 October 2012	The applicant seeks a further extension of time to provide a submission. OIC grants the applicant an extension until 22 October 2012.
22 October 2012	OIC receives a submission from the applicant.
16 November 2012	The Department provides a verbal submission.
26 November 2012	The Department provides a further verbal submission.

27 November 2012	OIC seeks further information from the Department.
30 November 2012	OIC receives a submission from the Department.
12 December 2012	<p>The applicant asks OIC to respond to her submission in writing rather than verbally.</p> <p>OIC writes to the applicant confirming that the next step is to issue a decision finalising the review.</p>