



## Decision and Reasons for Decision

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Citation:	<i>The Barlow Group Pty Ltd and Department of Housing and Public Works; JM Kelly (Project Builders) Pty Ltd (Third Party) [2014] QICmr 12 (8 April 2014)</i>
Application Number:	311872
Applicant:	The Barlow Group Pty Ltd
Respondent:	Department of Housing and Public Works
Third Party:	JM Kelly (Project Builders) Pty Ltd
Decision Date:	8 April 2014
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - names and position titles of private sector employees making statutory declarations - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant sought access to a range of information from the Department of Housing and Public Works (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) relating to projects involving the third party.
2. The Department located a number of statutory declarations made by two employees of the third party and, within these documents, refused access to the names and position titles of the declarants on the basis that disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to this information.
4. For the reasons set out below, and despite the objections of a third party, the Department's decision is set aside as there is no basis to refuse access to this information under the RTI Act.

#### Background

5. The Department initially refused access to the names and position titles of the two third party employees on the basis that disclosure would, on balance, be contrary to the public interest. On external review, the Department accepted OIC's view and agreed to release this information to the applicant.

6. OIC notified the third party about the likely release of the information under the RTI Act and invited the third party to provide submissions supporting its case if it did not accept OIC's view. The third party advised OIC it did not consent to release of the information but did not provide any basis for its objection or reasons supporting its view.
7. Significant procedural steps are set out in the appendix to these reasons.

### **Reviewable decision**

8. The decision under review is the Department's decision dated 26 September 2013.

### **Evidence considered**

9. 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**

10. The information which is the subject of this decision appears in 29 pages of statutory declarations created by the third party and specifically comprises the names and position titles of the two third party's employees who made the statutory declarations (**Information in Issue**).<sup>1</sup>

### **Relevant law**

11. Under the RTI Act, an individual has a right to be given access to documents of an agency subject to certain limitations, including grounds for refusal of access. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.<sup>2</sup>
12. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>3</sup> and explains the steps that a decision-maker must take<sup>4</sup> 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.

### **Findings**

13. In a telephone conversation with OIC, the third party raised concerns about the applicant's motivation for seeking access to the Information in Issue. A concern that the release of information may result in mischievous conduct by the applicant is an

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<sup>1</sup> A number of issues were informally resolved during the external review and accordingly are not addressed in these reasons for decision.

<sup>2</sup> Sections 47(3)(b) and 49 of the RTI Act. 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.

<sup>3</sup> 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.

<sup>4</sup> Section 49(3) of the RTI Act.

irrelevant consideration under the RTI Act and I have not taken it into account.<sup>5</sup> No other irrelevant factors arise in the circumstances.

14. I have not identified any factors favouring disclosure of the Information in Issue due to the extremely limited nature of the Information in Issue. However, I do acknowledge the general public interest in promoting access to information under the RTI Act and the pro-disclosure bias in deciding access to documents.<sup>6</sup>
15. In relation to the factors favouring nondisclosure of the Information in Issue, I have considered whether disclosure could reasonably be expected to:
  - prejudice the protection of an individual's right to privacy;<sup>7</sup> and
  - cause a public interest harm as it would disclose personal information of a person.<sup>8</sup>
16. I am satisfied the Information in Issue comprises the personal information<sup>9</sup> of two individuals (being their name and position title) and these factors are relevant. However, it is necessary to carefully consider the weight that may attach to these factors given the context in which they appear in the Information in Issue.
17. The Information in Issue does not appear in a highly private or personal context. The individuals are the 'public face' of the company and their names and position titles appear in the public domain. The Information in Issue merely reveals they are employees of the third party and, due to their respective roles in that company, have signed statutory declarations that certain information relevant to a contract is true. The substance of the declarations is not in issue and has been released to the applicant.
18. Disclosing this type of information could not reasonably be expected to infringe upon their privacy to a degree which justifies nondisclosure and the extent of any harm that could result from disclosing this personal information is negligible. Accordingly, I afford no weight to these public interest factors favouring nondisclosure.
19. For the reasons set out above, I attribute no weight to the factors favouring nondisclosure. In accordance with the pro-disclosure bias, I find that disclosing the Information in Issue would not, on balance, be contrary to the public interest.

## DECISION

20. As the Department initially refused access to the Information in Issue, I set aside the Department's decision and find that there is no basis to refuse access under the RTI Act.
21. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**L Lynch**  
**Assistant Information Commissioner**

**Date: 8 April 2014**

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<sup>5</sup> Schedule 4, part 1, item 3 of the RTI Act.

<sup>6</sup> Section 44 of the RTI Act.

<sup>7</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>8</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>9</sup> Section 12 of the *Information Privacy Act 2009* (Qld) 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'.

## APPENDIX

### Significant procedural steps

Date	Event
6 June 2013	The Department received the access application under the RTI Act.
24 July 2013	The Department notified the third party about the likely release of the statutory declarations. However, as the Department did not propose to release the names and position titles of the employees within the statutory declarations, the third party was not consulted on the Information in Issue.
31 July 2013	The third party objected to release of the relevant information.
2 August 2013	The Department issued a decision to the access applicant in relation to some of the relevant documents. The Department deferred access but did not issue a decision in relation to documents which were the subject of the third party objection.
29 August 2013	The Department issued a decision to the third party in relation to the information which was the subject of its objections.
30 August 2013	The access applicant applied for internal review of the decision to refuse access to information.
26 September 2013	The Department issued an internal review decision to the access applicant affirming the initial decision.
9 December 2013	The Department purported to issue another initial decision to the access applicant in relation to documents which were the subject of the third party objection.
4 January 2014	OIC received the access applicant's external review application.
6 January 2014	OIC asked the Department to provide relevant procedural documents by 13 January 2014.
9 January 2014	OIC received the requested documents from the Department.
16 January 2014	<p>OIC notified the Department and the access applicant that the external review application had been accepted and asked the Department to provide the relevant documents to OIC by 31 January 2013. OIC also explained to the Department that:</p> <ul style="list-style-type: none"> <li>the Department's purported decision on 9 December 2013 was invalid and the reviewable decision was the internal review decision dated 26 September 2013; and</li> <li>as a result, the external review application had been made outside the statutory timeframe but had been accepted under section 88(1)(d) of the RTI Act.</li> </ul>
31 January 2013	The Department requested an extension of time to provide the requested information. OIC agreed to extend the timeframe until 5 February 2014.
6 February 2014	OIC received the requested information from the Department.
13 March 2014	<p>In a telephone conversation with OIC, the access applicant agreed to not seek access to the signatures of the third party's employees.</p> <p>In a telephone conversation with the Department, OIC conveyed its preliminary view in relation to the relevant issues. The Department requested that the preliminary view be provided in writing.</p>
14 March 2014	In a telephone conversation with the third party, OIC noted the likely release of the Information in Issue and conveyed the preliminary view that there was no basis to refuse access to the information under the RTI Act. The third party did not accept the preliminary view and requested it in writing.

<b>Date</b>	<b>Event</b>
18 March 2014	OIC conveyed its written preliminary view to the applicant and Department and invited both parties to provide any submissions in response by 2 April 2014.
1 April 2014	The Department notified OIC it accepted the preliminary view in relation to the relevant issues.
3 April 2014	The third party notified OIC that it did not consent to the release of the Information in Issue but did not identify the basis for its objection or provide any submissions supporting its case.