



Decision and Reasons for Decision

Citation:	<i>T30 and Department of Children, Youth Justice and Multicultural Affairs</i> [2023] QICmr 14 (16 March 2023)
Application Number:	316824
Applicant:	T30
Respondent:	Department of Children, Youth Justice and Multicultural Affairs
Decision Date:	16 March 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - document about the affairs of a person other than the applicant and was acquired by a person carrying out functions under the <i>Child Protection Act 1999</i> (Qld) - whether disclosure prohibited by sections 186 - 188 of the <i>Child Protection Act 1999</i> (Qld)

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 documents relating to the applicant as a foster carer.²
2. The Department located 118 pages in response to the application and decided to refuse access to parts of 61 pages and 15 full pages on the ground that this information comprised exempt information as its disclosure was prohibited by sections 186 – 188 of the *Child Protection Act 1999* (Qld) (**Child Protection Act**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.³ In his external review application, the applicant also raised concerns about the sufficiency of the Department's searches to locate documents responsive to his access application and in particular a note from a meeting held by a Departmental Practice Panel on a specific date in 2021 (**Panel Note**).

¹ On 30 March 2022.

² Including case notes and emails regarding the care provided by him between 30 March 2020 to 30 March 2022, practice panel notes between late 2021 to 30 March 2022, and handwritten notes from his foster carer files for the period 30 March 2020 to 30 March 2022.

³ On 28 July 2022.

4. On external review, OIC required the Department to conduct further searches. As a result of those searches, the Department located a four-page document, being the Panel Note.
5. As a result of a preliminary view provided to the applicant by OIC on 3 January 2023, the scope of the applicant's external review was subsequently limited to the Panel Note.⁴
6. For the reasons set out below, I affirm the Department's decision and find that access may be refused to the Panel Note.

Reviewable decision

7. The decision under review is the Department's decision dated 27 July 2022.

Evidence considered

8. Significant procedural steps taken during the external review are set out in the Appendix.
9. Evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).
10. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), in particular the right of the applicant to seek and receive information.⁵ I consider that a decision-maker will, when observing and applying the *Right to Information Act 2009* (Qld) (**RTI Act**) and IP Act, be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act.⁶ I further consider that, having done so when reaching my decision, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act.⁷

Information in issue

11. The information in issue is comprised within the four-page Panel Note.⁸

Issue for determination

12. The issue for determination is whether access to the Panel Note 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.

⁴ On 18 January 2023.

⁵ Section 21 of the HR Act.

⁶ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁷ I note the observations by Bell J on the interaction between equivalent pieces of Victorian legislation in *XYZ*, [573]: '*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.*' I also note that OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (noting that Judicial Member McGill saw '*no reason to differ*' from our position).

⁸ OIC conveyed a preliminary view to the access applicant in relation to the information that was refused by the Department in its decision and the Panel Note located by the Department during the external review. In response the applicant submitted that he did not accept OIC's preliminary view regarding access to the Panel Note. The applicant did not raise any objections to OIC's preliminary view in relation to the information initially refused by the Department. On this basis, OIC wrote to the applicant advising that we would proceed to a formal decision in relation to the Panel Note only.

Relevant law

13. The IP Act provides an individual with a general right of access to documents⁹ subject to certain limitations, including that an agency may refuse access to exempt information.¹⁰ Relevantly, information is exempt where disclosure is prohibited by sections 186-188 of the Child Protection Act.¹¹ That is if it is about the affairs of another person¹² and was acquired by a person performing particular functions under the Child Protection Act.¹³
14. The prohibition on disclosure is subject to exceptions set out in schedule 3, section 12(2) of the RTI Act. In particular, that information is not exempt information under schedule 3, section 12(1) if the information is only personal information of the applicant.
15. Sections 187 and 188 of the Child Protection Act also 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 and in view of the applicant's submissions:
 - section 187(3)(c)(iii) provides that access may be given to another person if the Act requires or permits disclosure, for example under chapter 5A, part 4 of the Child Protection Act; and
 - section 187(4)(a) provides that access may be given to another person to the extent that the information is about the other person.

Findings

16. As noted at paragraph 4, during the external review the Department located the Panel Note. In relation to the disclosure of the Panel Note, the Department submitted its contention that the Panel Note:¹⁴

*...be exempt in [its] entirety in accordance with Schedule 3 (12) of the RTI Act as [it is] not solely about the applicant. In context the Practice Panel meetings are an internal, facilitated case discussion forum, that provides an authorising environment for making critical decisions or recommendations about a child's care. Consequently, minutes of the meeting are about the subject child and necessarily, all elements of the document are at a minimum about the subject child but can also be about other people and therefore cannot be characterised as solely about this applicant. Please refer to section 187 of the Child Protection Act 1999 and the Hughes decision for context.*¹⁵
17. In response to OIC's preliminary view, the applicant provided submissions regarding access to the Panel Note, as follows:¹⁶
 - a. he had previously 'obtained redacted practice panel notes from other RTI applications...' and that he was '...surprised at [OIC's] refusal to provide those documents pertaining to [him], given that there are provisions to redact exempt information and that carers are active members of the care team which are told of outcomes of practice panels at the time of occurrence'.

⁹ Section 40 of the IP Act.

¹⁰ Section 67(1) of the IP Act and section 47(3)(a) and section 48 of the RTI Act.

¹¹ Schedule 3, section 12 of the RTI Act.

¹² That is, not the person seeking to access the information.

¹³ Section 187 of the Child Protection Act.

¹⁴ Email to OIC dated 7 October 2022.

¹⁵ The decision referred to by the Department is *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012) (**Hughes**).

¹⁶ Email from the applicant dated 4 January 2023.

- b. he had *'received practice panel notes after the [specific date in 2021] practice panel in the process of a court proceeding he was involved in, in September 2022.*
 - c. he and his wife are the *'legislative recognised parents of the child'* and *'therefore, as the best interest of the child now sits with [his] wife, and [him], [they] request access to that document. And any past public interest is in the best interest of the child'.*
 - d. as he and his wife have a permanent care order for the child, the applicant considers that Chapter 5A, part 4 of the Child Protection Act applies and that section 187 of the Child Protection Act *'now does not apply in this matter as if there were confidential matters pertaining to [him] they should be made available to [him].'*
 - e. he was content for information *'pertaining to others in [the practice panel] notes'* to be redacted under the RTI Act.
18. In regard to a. above, the applicant may have received similar documents in this past, however this does not impact on my consideration of whether the Panel Notes under consideration here can be considered exempt information. I have also turned my mind to whether redaction of information is reasonable in this case. I do not consider that any information can be disclosed to the applicant that can be considered as solely relating to the applicant.
 19. In regard to b. above, I acknowledge that the applicant may have received documents through the court process, however disclosure under the IP Act involves different considerations to disclosure via court processes.
 20. In regard to c. above, the exemptions set out in schedule 3 of the RTI Act, do not require or allow consideration of public interest issues. This is because Parliament has determined that disclosure of these categories of information would be contrary to the public interest.¹⁷ Accordingly, if the information falls within one of the categories of exempt information prescribed in schedule 3, a conclusive presumption exists that its disclosure would be contrary to public interest, and no further consideration is permitted.¹⁸ I have therefore not taken account of the applicant's submissions about the public interest.
 21. The Practice Panel met in 2021 to discuss the care of a child. Having reviewed the Panel Note and also considering the circumstances in which it was created, I am satisfied that the Panel Note is about individuals other than the applicant and the information comprised in the Panel Note was received or obtained by Departmental Officers¹⁹ under the Child Protection Act.²⁰ Accordingly, I am satisfied that the Panel Note is:
 - o subject to the prohibition on disclosure in section 187(2) of the Child Protection Act; and
 - o qualifies as exempt information under schedule 3, section 12(1) of the RTI Act – unless any exceptions to the exemption apply (as discussed below).
 22. As noted at d. of the applicant's submission above, the applicant does not consider that section 187 of the Child Protection Act applies to disclosure of the Panel Note. The applicant refers to chapter 5A, part 4 of the Child Protection Act to support his view. Section 187(3)(c)(iii) provides an exception to the prohibition on disclosure in section 187 of the Child Protection Act, if giving access to the Panel Note is permitted under

¹⁷ Section 48(2) of the RTI Act.

¹⁸ *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17].

¹⁹ The Child Protection Act lists a public service employee as a person to whom section 187 applies – see section 187(1)(a) of the Child Protection Act.

²⁰ Section 187 of the Child Protection Act.

the Child Protection Act, for example chapter 5A, part 4 of the Child Protection Act provides that prescribed entities and certain service providers²¹ can share confidential information about a child, where it is in accordance with the Child Protection Act, for the specific purpose of meeting the protection and care needs of the child to promote their wellbeing.²² It is unclear to me whether the applicant as the permanent guardian of the child would qualify as a prescribed entity or service provider as defined in the Child Protection Act.²³ Even if I were to accept that, I do not consider that disclosure of the Panel Note to the applicant would be for any of the prescribed purposes referred to in chapter 5A, part 4, sections 159A to 159ME of the Child Protection Act. On this basis, I am satisfied that the exception in section 187(3)(c)(iii) of the Child Protection Act does not apply to the Panel Note.

23. In relation to the exceptions to the exemption, referred to at section 187(4)(a) of the Child Protection Act and schedule 3, section 12(2) of the RTI Act, where information is not about the applicant, or where the information is about the applicant, but is not solely about the applicant,²⁴ or where an applicant's personal information²⁵ cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.
24. The Panel Note comprises information about individuals other than the applicant and while it does contain references to the applicant, the applicant's information is intertwined with the information of other individuals. I am therefore not satisfied that the exceptions in section 187(4)(a) of the Child Protection Act and schedule 3, section 12(2) of the RTI Act apply to the Panel Note, on the basis that it is not solely about the applicant.
25. 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 Panel Note is exempt information under schedule 3, section 12(1) of the RTI Act and access may be refused under section 47(3)(a) of the RTI Act.

DECISION

26. For the reasons set out above, I affirm the decision of the Department that access to the Panel Note may be refused on the basis that it comprises exempt information,²⁶ prohibited from disclosure by the Child Protection Act. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Martin
Assistant Information Commissioner

²¹ As defined in chapter 5A, part 4, section 159M of the Child Protection Act.

²² See in particular chapter 5A, part 4, sections 159MA to section 159ME of the Child Protection Act.

²³ At chapter 5A, part 4, section 159M of the Child Protection Act.

²⁴ In *Hughes*, 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 [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'.

²⁵ As set out in schedule 5 of the RTI Act and section 12 of the IP Act, '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'.

²⁶ Under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.

Date: 16 March 2023

APPENDIX

Significant procedural steps

Date	Event
28 July 2022	OIC received the applicant's external review application. OIC requested initial documents from the Department. OIC notified the applicant that it had received the application.
1 & 3 August 2022	OIC received the initial documents from the Department.
31 August 2022	OIC notified the parties it had accepted the application for external review and requested information from the Department.
9 September 2022	OIC received the requested information from the Department.
30 September 2022	OIC requested further information from the Department in relation to the searches conducted by the Department.
7 October 2022	OIC received the Panel Note from the Department in response to further searches.
13 October 2022	OIC corresponded with the Department in relation to the Panel Note.
3 January 2023	OIC conveyed a preliminary view to the applicant.
4 January 2023	OIC received submissions from the applicant contesting the preliminary view in relation to the Panel Note.
18 January 2023	OIC provided an update to the applicant and notified that applicant that the next step would be a formal decision.