



Decision and Reasons for Decision

Citation:	<i>Y16 and Residential Tenancies Authority [2023] QICmr 19 (23 May 2023)</i>
Application Number:	316958
Applicant:	Y16
Respondent:	Residential Tenancies Authority
Decision Date:	23 May 2023
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information of other individuals – complaint information - personal information and privacy - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Residential Tenancies Authority (**RTA**)² under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for access to information about her that had been supplied to the RTA in connection with investigations into complaints made by tenants.
2. The RTA located 241 responsive pages. By decision dated 10 October 2022, it refused access to all pages on the basis that disclosure would, on balance, be contrary to the public interest.
3. By application dated 19 October 2022, the applicant applied to the Office of the Information Commissioner (**OIC**) for external review of RTA's decision.
4. For the reasons explained below, I decide to affirm RTA's decision.

Reviewable decision

5. The decision under review is the decision of the RTA dated 10 October 2022.

¹ Application dated 31 August 2022.

² The RTA is a Queensland government statutory authority that provides a range of residential tenancy services, including tenancy information and support, dispute resolution, investigations and prosecutions, and education services.

Evidence considered

6. Significant procedural steps relating to the external review are set out in the Appendix.
7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.³
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁴ I consider 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 the *Right to Information Act 2009* (Qld) (**RTI Act**).⁵ 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:⁶ '*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.*'⁷

Information in issue

9. The information in issue comprises 241 pages held by the RTA that relate to two specified matter numbers/investigations regarding complaints made by tenants about a property at which the applicant was the property manager/landlady (**Information in Issue**).

Issue for determination

10. The issue for determination is whether access to the Information in Issue may be refused because disclosure would, on balance, be contrary to the public interest.

Contrary to the public interest information

Relevant law

11. Under the IP Act, a person has a right to be given access to documents of an agency.⁸ However, this right is subject to provisions of the IP Act and RTI Act including the grounds on which an agency may refuse access to documents.⁹ An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹⁰
12. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹¹

³ Including the external review application and the applicant's email of 10 May 2023.

⁴ Section 21 of the HR Act.

⁵ *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].

⁶ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

⁷ **XYZ** at [573].

⁸ Section 40 of the IP Act.

⁹ Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

¹⁰ Section 67(1) of the IP Act and section 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.

¹¹ Section 49(3) of the RTI Act.

- identify factors irrelevant to the public interest and disregard them
- identify factors in favour of disclosure of information
- identify factors in favour of nondisclosure of information; and
- decide whether, on balance, disclosure of the information would be contrary to the public interest.

13. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,¹² together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias¹³ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.¹⁴

Discussion

Public interest factors favouring disclosure

14. The applicant has submitted that she requires access to the Information in issue because:
- she has been told that the RTA collected information about her from various sources in connection with the complaints: if the information is about her, she is entitled to access it
 - she has never received any information from the RTA about the outcome of the complaints
 - the fact that a complaint by a tenant is dismissed by the RTA does not excuse the RTA from providing all information that it holds relating to that tenant; and
 - she has made a complaint about a tenant to the National Disability Insurance Agency (**NDIA**) and requires access to all of her personal information in connection with that tenant in order to be able to properly deal with her complaint.
15. These submissions give rise to the following public interest factors favouring disclosure:
- a) enhance the RTA's accountability and transparency¹⁵
 - b) inform the community of the RTA's operations¹⁶
 - c) the information is the applicant's personal information¹⁷
 - d) disclosure could reasonably be expected to reveal the reasons for decisions made by RTA and any background or contextual information that informed the decision,¹⁸ and
 - e) disclosure could reasonably be expected to contribute to the administration of justice generally (including procedural fairness), or for a person.¹⁹

¹² I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below (in relation to each category of documents).

¹³ Section 64 of the IP Act.

¹⁴ Section 67(2) of the IP Act and section 47(2) of the RTI Act. In deciding whether disclosure of the information in issue would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

¹⁵ Schedule 4, part 2, item 1 of the RTI Act.

¹⁶ Schedule 4, part 2, item 3 of the RTI Act.

¹⁷ Schedule 4, part 2, item 7 of the RTI Act. 'Personal information' is defined in section 12 of the IP Act: *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.*

¹⁸ Schedule 4, part 2, item 11 of the RTI Act.

¹⁹ Schedule 4, part 2, items 16 and 17 of the RTI Act.

16. In respect of factors a), b), d) and e), I afford them low weight in the public interest balancing test. I do not consider that disclosure of the Information in Issue would provide significant insight into the processes and procedures of the RTA, including its decision-making processes. The bulk of the Information in Issue was provided to the RTA by third parties and I am not satisfied that its disclosure would significantly enhance the RTA's accountability or transparency regarding its complaint-handling processes, any decision that it made, or its dealings with the applicant more generally. While the applicant states that she has received no information from the RTA about its investigation of the complaints, she states in her application for external review that she is aware that one of the complaints was dismissed by the RTA. I also note that in its decision, the RTA stated that *'the investigation cases are complete, the recommendations are finalised, and you have previously received considerable information about the investigation.'* I am not aware from the material before me that the RTA made any decisions adverse to the applicant in connection with the complaints. As such, and given that the matters have been finalised, I do not consider that the requirements of procedural fairness require the disclosure of the Information in Issue to the applicant.
17. The applicant also submits that she requires access to her personal information so as to enable her to deal with a complaint she has apparently made about a tenant to the NDIA. I am not aware of the nature of the complaint. But I am not satisfied in any event that the applicant requires access to the Information in Issue in order to enable her to deal with or progress the complaint. The applicant has presumably made the complaint based on her own knowledge of, or dealings with, the tenant. Once a complaint is made, the complainant's involvement in the complaint is naturally limited, as it is then a matter about which the NDIA will liaise with the subject of the complaint. The NDIA will gather the information it considers necessary in order to deal with the complaint.²⁰ I am not satisfied that disclosure of the Information in Issue in that complaint-handling context would contribute to the administration of justice either generally, or for the applicant as the complainant.
18. In respect of factor c), I accept that some of the Information in Issue contains the applicant's personal information. This gives rise to a public interest factor favouring disclosure to which I would afford significant weight. However, I consider that much of the applicant's personal information is inextricably intertwined with the personal information of other individuals. Disclosing the personal information of other individuals gives rise to strong public interest factors favouring nondisclosure, which I will discuss below.

Public interest factors favouring nondisclosure

19. As noted, the Information in Issue contains the personal information of a number of individuals other than the applicant. This gives rise to the following nondisclosure/harm factors:
- a) disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;²¹ and
 - b) disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.²²

²⁰ There are no formal requirements when making a report or complaint to NDIA and there are wide ranging powers under the *National Disability Insurance Scheme Act 2013* (Cth), including the power for to require a person to give the Commissioner information or produce a document in specific circumstances

²¹ Schedule 4, part 3, item 3 of the RTI Act.

²² Schedule 4, part 4, section 6 of the RTI Act.

20. I afford both of these factors significant weight in the public interest balancing test in recognition of the complaint context in which the Information in Issue was provided, as well as its sensitive nature. The Information in Issue includes information about the personal circumstances of other individuals, including their interactions with others, and their expressions of thoughts, feelings, emotions, reactions etc., in that context. In affording these factors significant weight, I have taken into account the fact that there are no restrictions under the IP Act upon what a person may do with information that is released to them, including the possibility of further disclosure.²³
21. I also recognise the public interest in protecting the flow of information to regulatory authorities such as the RTA. This gives rise to the following nondisclosure factor:
- c) disclosure could reasonably be expected to prejudice the flow of information to a regulatory agency.²⁴
22. I afford significant weight to this nondisclosure factor. The RTA relies on complaints in order to be alerted to, and to investigate, allegations of breaches of the *Residential Tenancies and Rooming Act 2008* (Qld).²⁵ Disclosing complaint information under the IP Act or RTI Act could reasonably be expected to discourage individuals and entities from making complaints or raising issues of concern, or engaging freely in the complaint-handling process, thereby impeding the free flow of information to the RTA and prejudicing the RTA's ability to discharge its regulatory functions effectively and efficiently.

Balancing the public interest

23. For the reasons discussed, I afford low weight to factors a), b), d) and e) that favour disclosure of the Information in Issue.²⁶ I afford significant weight to the public interest in the applicant obtaining access to her own personal information, however, as I have noted, the applicant's personal information is inextricably intertwined with sensitive personal information of other individuals.
24. I give significant weight to the three public interest factors favouring nondisclosure, including the significant harm that I consider disclosure could reasonably be expected to cause to the protection of the relevant individuals' right to privacy.
25. After balancing the various factors that weigh both for and against disclosure of the Information in Issue, I find that, on balance, the factors favouring nondisclosure outweigh those favouring disclosure.

DECISION

26. I affirm the decision under review by finding that disclosure of the Information in Issue would, on balance, be contrary to the public interest. Access under the IP Act may therefore be refused.

²³ As Judicial Member McGill SC of the Queensland Civil and Administrative Tribunal (**QCAT**) observed '*... the effect of the... [Information Privacy Act 2009 (Qld)] is that, once information has been disclosed, it comes under the control of the person to whom it has been disclosed. There is no provision of that Act which contemplates any restriction or limitation on the use which that person can make of that information, including by way of further dissemination.*': *FLK v Information Commissioner* [2021] QCATA 46 at [17].

²⁴ Schedule 4, part 3, item 13 of the RTI Act.

²⁵ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [29].

²⁶ In terms of the complaint that the applicant has apparently made to NDIA about a former tenant, I do not consider that factor d) has any application in that context.

27. 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: 23 May 2023

APPENDIX**Significant procedural steps**

Date	Event
19 October 2022	OIC received the application for external review OIC requested preliminary documents from the RTA
27 October 2022	OIC received the preliminary documents
7 November 2022	OIC advised the parties that the application had been accepted
15 November 2022	OIC received copies of the information in issue
14 March 2023	OIC communicated a preliminary view to the applicant
6 April 2023	OIC advised the parties that the review was finalised following a lack of response from the applicant
18 April 2023	OIC was contacted by the applicant to advise that she had not received the preliminary view letter
8 May 2023	OIC agreed to re-open the review and re-sent the preliminary view letter to the applicant
10 May 2023	OIC received an email submission from the applicant