



## Decision and Reasons for Decision

---

**Application Number:** 310458

**Applicant:** 1OS3KF

**Respondent:** Department of Community Safety

**Decision Date:** 16 December 2011

**Catchwords:** RIGHT TO INFORMATION – access applicant sought information about fire – external review applicant sought review of decision to disclose their identifying information to access applicant - whether disclosure of information would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of *the Right to Information Act 2009* (Qld)

### Contents

|   |   |
|---|---|
| Summary .....   | 2 |
| Significant procedural steps.....                                       | 2 |
| Reviewable decision .....   | 2 |
| Information in Issue .....  | 2 |
| Evidence considered .....   | 2 |
| Findings .....  | 2 |
| What is the public interest? .....                                      | 3 |
| How is the balance of the public interest determined? .....             | 3 |
| Where does the balance of the public interest lie in this matter? ..... | 3 |
| Contribute to the administration of justice.....                        | 3 |
| Personal information and privacy.....                                   | 4 |
| Conclusion.....   | 5 |
| DECISION .....  | 5 |

## REASONS FOR DECISION

### Summary

1. The access applicant applied to the Department of Community Safety (**Department**) for access to 'the official investigation report into a [specified] bushfire' (**Report**).<sup>1</sup>
2. The Department decided on internal review to release the Report, bar a small amount of a third party's personal information which was not relevant to the application.<sup>2</sup>
3. A third party (**external review applicant**) applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to disclose to the access applicant information which stated that the most likely cause of the fire was that it was lit by the external review applicant.
4. For the reasons set out below, I affirm the Department's decision to release the information which identifies the external review applicant, as disclosure of this information would not, on balance, be contrary to the public interest.

### Significant procedural steps

5. Significant procedural steps relating to the application and external review are set out in the Appendix.

### Reviewable decision

6. The decision under review is the Department's internal review decision dated 20 October 2010 to release information which identifies the external review applicant, as disclosure of this information would not, on balance, be contrary to the public interest.

### Information in Issue

7. The information in issue in this review is the balance of the Report, bar a small amount of a third party's personal information which is not relevant to the application.

### Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching my decision is disclosed in these reasons (including footnotes and appendix).

### Findings

9. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>3</sup> However, this right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.<sup>4</sup> Relevantly, access may be refused where disclosure would, on balance, be **contrary to the public interest**.<sup>5</sup>

---

<sup>1</sup> Comprising 16 pages.

<sup>2</sup> The irrelevant information is not in issue in this external review.

<sup>3</sup> Section 23 of the RTI Act.

<sup>4</sup> As set out in section 47 of the RTI Act.

<sup>5</sup> Sections 44, 47(3)(b) and 49 of the RTI Act.

### **What is the public interest?**

10. 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 generally. This means that ordinarily, 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.

### **How is the balance of the public interest determined?**

11. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest. It also explains the steps that a decision-maker must take in deciding the public interest. To decide whether disclosure of the information in issue would be contrary to the public interest, I must:<sup>6</sup>
  - 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, on balance, would be contrary to the public interest.

### **Where does the balance of the public interest lie in this matter?**

12. I am satisfied that releasing the information in issue would not, on balance, be contrary to the public interest for the reasons that follow.
13. I have not taken any irrelevant factors, including those identified in schedule 4 of the RTI Act, into account in reaching my decision.
14. I discuss the relevant factors favouring disclosure and nondisclosure and their relative weight below.

### **Contribute to the administration of justice<sup>7</sup>**

15. If disclosing particular information could reasonably be expected<sup>8</sup> to contribute to the administration of justice for a person, it will be relevant to apply this factor in balancing the public interest.
16. In *Willsford and Brisbane City Council*<sup>9</sup> the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor can arise if an applicant demonstrates that:
  - they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - they have a reasonable basis for seeking to pursue the remedy; and

---

<sup>6</sup> Section 49(3) of the RTI Act.

<sup>7</sup> Schedule 4, part 2, section 17 of the RTI Act.

<sup>8</sup> The phrase 'could reasonably be expected to' requires an expectation that is reasonably based, ie. neither absurd, irrational or ridiculous: see *Channel Seven and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at paragraph 20 for a restatement of principles applying to the interpretation of this phrase as it used throughout the RTI Act.

<sup>9</sup> (1996 L0008, 27 August 1996) (**Willsford**).

- disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.<sup>10</sup>
17. In this review I am satisfied that the requirements in Willsford are met for the following reasons.
- The access applicant has suffered significant property loss.<sup>11</sup>
  - While the fire has been ruled accidental, it is open to the access applicant to pursue civil action in negligence and that is their stated aim.<sup>12</sup>
  - The access applicant is not able to pursue civil action, or to consider pursuing such action, without the name of the person who most likely started the fire because legal action cannot be pursued in cases such as these without an identified defendant. Accordingly, disclosure of the information in issue would assist the access applicant to pursue, or consider pursuing a legal remedy.
18. The external review applicant, who objects to disclosure, submits that the information in issue should not be disclosed because the fire is more appropriately viewed as an 'act of God', for which they are not responsible. They also submit<sup>13</sup> that the local Fire Chief has stated:
- ...we worked and contained the fire by 11pm that day but other crews did not watch and the fire got away the next day.*
19. The decision in Willsford provides that the applicant need only have a 'reasonable basis' for seeking to pursue a remedy. It does not require the applicant to present a fully formed claim, cause of action or to prove that they have good prospects of succeeding in any claim.
20. It is not my role to determine questions of legal liability – that is a matter for the courts. In this external review, I am concerned with whether, as a matter of law, access must be granted or may be refused to the information in issue.
21. It does not follow that, if the information in issue is disclosed, the applicant will necessarily commence and/or succeed in any legal action they may initiate. However, in order to pursue enquiries as to whether they may take legal action, the applicant would require the information in issue. To refuse disclosure would deny the applicant the opportunity to seek a remedy which the law may otherwise afford for loss they have suffered.
22. I am therefore satisfied that this factor arises, and should be given considerable weight.

### **Personal information and privacy<sup>14</sup>**

23. The information in issue consists of the external review applicant's name and address and other information which would identify them. This is clearly their personal information.<sup>15</sup> I am satisfied that disclosing this information could reasonably be expected to cause a public interest harm by disclosing personal information.

---

<sup>10</sup> Willsford at paragraph 17.

<sup>11</sup> The access applicant set out in detail their losses in their application for internal review dated 5 October 2010.

<sup>12</sup> As stated in their original RTI application dated 27 October 2009.

<sup>13</sup> In a fax received on 24 November 2011.

<sup>14</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>15</sup> As defined in section 12 of the *Information Privacy Act 2009* (Qld) 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'.

Disclosure could also reasonably be expected to prejudice the privacy of the external review applicant.

24. Disclosing the information in issue, linked as it is to the details of the fire, reveals information which is reasonably sensitive and which the external review applicant does not wish to have known by others without having consented to the disclosure. At the same time, information of this nature is not infrequently reported in media because these sorts of events are considered newsworthy. Therefore, although some degree of sensitivity attaches to the information, information of this type is not generally treated as being especially private. I therefore attribute only moderate weight to these nondisclosure factors.

### **Conclusion**

25. In the circumstances of this review, the public interest in the administration of justice, as discussed above, is particularly strong. Weighing against this public interest is the prejudice to the external review applicant's privacy. I am satisfied, in the circumstances, that the information in issue is not overly sensitive information and therefore the impact or extent of the harm that could be anticipated from disclosure, whilst significant for the external review applicant, is not sufficient to outweigh the strong public interest in disclosure in this case.
26. Therefore, the nondisclosure factors are outweighed by the strong public interest in favour of disclosure. I am satisfied that releasing the information in issue would not, on balance, be contrary to the public interest.

### **DECISION**

27. I affirm the Department's decision to release the information in issue, as disclosure of this information would not, on balance, be contrary to the public interest.
28. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

---

**Suzette Jefferies**  
**Assistant Information Commissioner**

**Date: 16 December 2011**

## APPENDIX

### Significant procedural steps

| Date <sup>16</sup>             | Event   |
|--------------------------------|---|
| 27 October 2009                | Access applicant applied to Department of Community Safety ( <b>Department</b> ) for access to 'the official investigation report into a [specified] bushfire'.   |
| 1 September 2010               | Department consulted a third party ( <b>external review applicant</b> ) regarding the release of the information requested by the access applicant.   |
| 6 September 2010               | The external review applicant responded objecting to release of the information requested by the access applicant.  |
| 13 September 2010              | Department issued its decision ( <b>access decision</b> ).  |
| 5 October 2010                 | Access applicant applied to Department for internal review of the access decision.  |
| 20 October 2010                | Department issued an internal review decision granting access to the information requested by the access applicant (bar a small amount of irrelevant information) ( <b>internal review decision</b> ).          |
| 18 November 2010 <sup>17</sup> | External review applicant applied to the Office of the Information Commissioner ( <b>OIC</b> ) for an external review of Department's internal review decision.   |
| 25 November 2010               | OIC informed Department and the external review applicant that the application had been accepted for external review.   |
| 24 October 2011                | OIC conveyed a written preliminary view to the external review applicant and invited the external review applicant to provide submissions in support of their case if they did not accept the preliminary view. |
| 10 November 2011               | OIC re-issued the preliminary view in the same terms, with an extended timeframe for response to the external review applicant at an alternative address, as the first preliminary view was not received.       |
| 18 November 2011               | The external review applicant orally conveyed to OIC that he did not accept the preliminary view.   |
| 24 November 2011               | The external review applicant wrote to OIC providing written submissions confirming he did not accept the preliminary view.   |

<sup>16</sup> Of correspondence or relevant communication unless otherwise stated.

<sup>17</sup> The application was one day out of time. The Information Commissioner exercised her discretion to extend time and accepted the application.