



## Decision and Reasons for Decision

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**Application Number:** 310629

**Applicant:** I3C1ST

**Respondent:** Department of Community Safety

**Decision Date:** 30 August 2011

**Catchwords:** ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – application for access to correspondence between particular officers of the agency in relation to the applicant– section 67(1) of the *Information Privacy Act 2009* (Qld) – grounds on which access may be refused

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – access refused under section 47(3)(a) and schedule 3 section 10(1)(i) of the *Right to Information Act 2009* (Qld) – whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment

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## REASONS FOR DECISION

### Summary

1. The applicant made an application to the Department of Community Safety (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to emails between the General Manager of the prison in which he is an inmate and the Deputy Commissioner of Custodial Operations of the Department.
2. The Department located a chain of emails comprising two pages and decided to refuse access to the emails under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or environment.<sup>1</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. During the course of the external review, the Department agreed to release most of the email chain to the applicant but maintained its claim that disclosure of the remaining information in the emails (**Information in Issue**) could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.
5. The remaining issue for determination is whether the Department is entitled to refuse access to the Information in Issue under sections 47(3)(a) and 48 of the RTI Act.
6. For the reasons set out below, I affirm the Department's decision in relation to the Information in Issue and find that its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons.

### Background

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

### Reviewable decision

8. The decision under review is the Department's decision to refuse access to the Information in Issue under sections 47(3)(a) and 48 of the RTI Act.

### Evidence considered

9. In making this decision, I have considered the following:
  - the applicant's access application and external review application to OIC
  - the Department's decision
  - the applicant's submissions to OIC dated 8 August 2011 and 17 August 2011
  - the Department's submissions to OIC dated 21 June 2011
  - file notes of telephone conversations between OIC staff members and officers of the Department during the external review
  - the Information in Issue
  - relevant sections of the IP Act and RTI Act; and

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<sup>1</sup> Schedule 3 section 10(1)(i) of the RTI Act.

- previous decisions of the Information Commissioner as referred to in this decision.

### Relevant law

10. Under the IP Act, a person has a right to access documents of an agency<sup>2</sup> subject to other provisions of the IP Act and RTI Act including the grounds on which an agency may refuse access to documents.<sup>3</sup>
11. Schedule 3 of the RTI Act sets out information which Parliament considers is exempt information on that basis that disclosure would, on balance be contrary to the public interest.<sup>4</sup>
12. Schedule 3 section 10(1)(i) of the RTI Act provides that information is exempt information if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment. This provision will apply if each of the following requirements are met:<sup>5</sup>
  - there exists an identifiable system or procedure
  - it is a system or procedure for the protection of persons, property or the environment; and
  - disclosure of the information could reasonably be expected to prejudice that system or procedure.

### Department's submissions

13. During the course of this external review, the Department provided submissions in support of its case detailing how disclosure of the Information in Issue could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment. Disclosure of part of these submissions would reveal information that is claimed to be exempt and accordingly those submissions are not set out in this decision.<sup>6</sup>
14. The Department's reasons for decision and subsequent submissions to OIC which can be set out in this decision are summarised as follows:
  - The Department obtains information about offenders in custody and under supervision and persons associated with them on a continuing basis and by a variety of lawful means. Some of those means by themselves constitute 'methods or procedures' but together they comprise a system for observing, recording, assessing and sharing information.
  - The purpose of intelligence gathering by the Department is to ensure the safety and security of correctional centres and the proper supervision and monitoring of offenders in the community, both to detect unlawful or undesirable behaviour or to anticipate and prevent it.

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<sup>2</sup> Section 40 of the IP Act.

<sup>3</sup> As set out in section 67 of the IP Act and section 47 of the RTI Act. 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 the agency could refuse access under section 47 of the RTI Act were the document the subject of an application under the IP Act.

<sup>4</sup> Section 48 of the RTI Act.

<sup>5</sup> *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at paragraphs 27 – 36.

<sup>6</sup> Section 108(3) of the RTI Act.

- The Department does not disclose or confirm suspicions held about the systems and procedures available to it to obtain information or to detect and prevent unlawful conduct, either generally or in relation to any particular person or incident. In some cases merely to disclose the nature of a particular system or procedure is sufficient to alert offenders to what the Department is in a position to know and to do, whether or not they are the subject of intelligence gathering at that time.
- If offenders become aware that they may be the subject of particular forms of scrutiny on the part of the Department and are in a position to surmise what may be known about them or about other offenders, the Department's intelligence holdings will be compromised and unlawful or undesirable behaviour will become more difficult to detect and prevent. This will hamper the Department's ability to ensure the safety of offenders, staff and the community.
- Disclosure of the Information in Issue would reveal the methods and systems by which the Department collects and communicates intelligence information. If offenders and associated individuals become aware of these methods and systems, they will no longer be effective.

### **Applicant's submissions**

15. The applicant's submissions can be summarised as follows:

- A decision was made by the General Manager of the prison in which he is an inmate to increase his escape risk rating from minimum to moderate. The applicant believes the decision was biased and made without any lawful reason.
- The factors taken into account by custodial officers when assessing a prisoner's escape risk are in the public domain.
- Without access to the Information in Issue, the applicant cannot know if incorrect, inaccurate, fabricated or out of date information was used to make a decision on his escape risk rating and he is unable to challenge any errors that have been made by the decision maker, effectively denying him natural justice.
- The applicant requests access to the Information in Issue to present his case to the Queensland Ethical Standards Branch and to use as evidence in an ongoing case in the Queensland Civil and Administrative Tribunal in relation to deliberate and unlawful action taken by the Department to stop his progression through the Queensland prison system.
- In his view, he has been subject to unfair treatment by the Department and this has resulted in his current escape risk rating.

### **Findings**

16. The applicant raises a number of public interest factors in support of his view that the Information in Issue should be disclosed. However, the exemptions in schedule 3 of the RTI Act represent specific types of information, the disclosure of which Parliament considers would on balance, be contrary to the public interest. Therefore, in accordance with the provisions of the RTI Act, I am unable to take public interest factors into account in considering whether the Information in Issue comprises exempt

information under the RTI Act.

17. I have carefully considered the Information in Issue together with the information provided by the Department and the applicant. I am satisfied that the Information in Issue in this case relates to:
- the systems for accessing intelligence and assessing whether a prisoner is an escape risk; and
  - the nature of the intelligence concerning the applicant to which the Deputy Commissioner had regard in making a determination about his classification.
18. I am satisfied that disclosure of the Information in Issue could reasonably be expected to:
- reveal the intelligence systems used by the Department to gather information for the protection of persons; and
  - prejudice these systems by reducing their effectiveness.
19. On that basis, I am satisfied that access to the Information in Issue should be refused as its disclosure could reasonably be expected to prejudice a system for the protection of persons.<sup>7</sup>

## **DECISION**

20. For the reasons set out above, I affirm the Department's decision in relation to the Information in Issue and find that the Department is entitled to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.
21. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Jenny Mead**  
**Right to Information Commissioner**

**Date: 30 August 2011**

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<sup>7</sup> Schedule 3, section 10(1)(i) of the RTI Act.

**APPENDIX****Significant procedural steps**

Date	Event
31 March 2011	The applicant makes an application under the IP Act to the Department for emails between the General Manager of the prison in which he is an inmate and the Deputy Commissioner of Custodial Operations of the Department.
21 April 2011	The Department locates a chain of emails comprising two pages and decides to refuse access to them on the basis that they comprise exempt information under section 48 of the RTI Act.
10 May 2011	The applicant applies to OIC for external review of the Department's decision.
23 May 2011	The Department provides OIC with a copy of documents relevant to the review.
26 May 2011	The Department provides OIC with a copy of the chain of emails.
31 May 2011	A staff member of OIC telephones the Department to request clarification on the decision.  OIC notifies the applicant and the Department that the external review application has been accepted. OIC asks the Department to provide further written submissions in support of its case.
21 June 2011	The Department agrees to release part of the chain of emails to the applicant and provides submissions in relation to the remaining information.
3 August 2011	OIC conveys to the applicant the preliminary view that access should be refused to the Information in Issue on the basis that it comprises exempt information under section 48 of the RTI Act.
15 August 2011	The applicant contests the preliminary view in relation to the Information in Issue and provides submissions in support of his case.
17 August 2011	The applicant provides further submissions in support of his case.