



Decision and Reasons for Decision

Application Number: 210923

Applicant: LUE

Respondent: Department of Police

Decision Date: 24 March 2010

Catchwords: **FREEDOM OF INFORMATION – section 44(1) of the *Freedom of Information Act 1992* – matter affecting personal affairs – information concerning the personal affairs of a person, whether living or dead – whether disclosure of the matter would, on balance, be in the public interest – procedural records of the agency relating to the applicant’s deceased brother and other individuals**

Contents

REASONS FOR DECISION	2
Summary	2
Background.....	2
Decision under review	2
Steps taken in the external review process	2
Matter in issue	4
The applicant’s submissions.....	4
The law	6
Personal Affairs Question	6
Public Interest Question	7
Findings	7
Personal Affairs Question	7
Public Interest Question	8
Public interest considerations favouring disclosure of the matter in issue	8
Justifiable need to know.....	8
<i>Information about other people</i>	9
<i>Information concerning the Deceased</i>	9
Accountability of QPS for the performance of its functions	9
Public interest considerations favouring non disclosure of the matter in issue	10
Balancing the public interest considerations.....	11
DECISION	11

REASONS FOR DECISION

Summary

1. The applicant seeks access to information from the Department of Police (also known as Queensland Police Service) (**QPS**) about her brother who passed away in 2008.
2. For the reasons set out below, I find that the information remaining in issue in this review is exempt from disclosure under section 44(1) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**).

Background

3. On 1 June 2009 (**FOI Application**), QPS received an application under the FOI Act in which the applicant sought access to information about her brother's death.
4. By letter dated 13 June 2009 (**Initial Decision**), QPS advised the applicant that it had decided to refuse to deal with the FOI Application under section 29(4) of the FOI Act on the basis that if the requested documents existed, they would be exempt from disclosure under section 44(1) of the FOI Act.
5. By letter dated 8 July 2009, the applicant applied for internal review of the Initial Decision.
6. By letter dated 16 July 2009 (**Internal Review Decision**), QPS advised the applicant that it had decided to affirm the Initial Decision.
7. By email on 19 August 2009, the applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Internal Review Decision.

Decision under review

8. The decision under review is the Internal Review Decision referred to at paragraph 6 above.

Steps taken in the external review process

9. By letters dated 27 August 2009, the OIC advised the parties that the external review application had been accepted and the Internal Review decision would be reviewed.
10. On 27 August 2009 and 22 September 2009, the applicant spoke with a staff member of this Office in relation to matters relating to this external review.
11. By letter dated 23 September 2009, the OIC requested that QPS forward the OIC a copy of the documents claimed to be exempt and submissions supporting the application of section 44(1) of the FOI Act.
12. On 24 September 2009, a staff member of the OIC spoke with a staff member of QPS in relation to matters relating to this external review.
13. By email on 24 October 2009, QPS requested an extension of time to forward the relevant documents to the OIC.
14. By email on 27 October 2009, the OIC agreed to extend the period for QPS to forward the relevant documents.

15. By letter dated 12 November 2009, QPS provided the OIC with a copy of the relevant documents.
16. By letters dated 17 February 2010, I advised the applicant and QPS that, on the information available to me, of the preliminary view that:
 - section 29(4) of the FOI Act is not applicable in the circumstances
 - some of the matter in issue in this review is not exempt from disclosure under section 44(1) of the FOI Act, namely:
 - information relating to the applicant and/or her mother
 - information the applicant and/or her mother provided to QPS
 - the remainder of the matter in issue is exempt from disclosure under section 44(1) of the FOI Act.

I invited the applicant and QPS to provide submissions in support of their case by 3 March 2010 if they did not accept the preliminary view.

17. By email dated 28 February 2010, the applicant requested an extension of time to provide submissions in response to my preliminary view.
18. By email dated 1 March 2010, I agreed to extend the period for the applicant to respond to the preliminary view letter.
19. On 4 March 2010, the applicant spoke with a staff member of this Office in relation to matters relating to this external review.
20. By letter dated 3 March 2010, QPS advised that it concurs with the preliminary view, subject to confirmation that the FOI Application is also made on behalf of the applicant's mother.
21. By letter dated 15 March 2010, the applicant advised that she did not accept the preliminary view and provided submissions in support of her case. The applicant's mother also forwarded a letter to the OIC confirming that:
 - the FOI Application was also made on her behalf
 - she does not object to the release of information which she provided to QPS or which relates to her.
22. In making this decision, I have taken the following into account:
 - the applicant's FOI Application, internal review application and external review application
 - QPS' Initial Decision and Internal Review Decision
 - file notes of telephone conversations with the applicant on 27 August 2009, 22 September 2009 and 4 March 2010
 - file notes of telephone conversations with QPS on 24 September 2009
 - the applicant's submissions dated 15 March 2010
 - the letter provided by the applicant's mother dated 15 March 2010
 - QPS' submissions dated 3 March 2010
 - the matter in issue
 - relevant provisions of the FOI Act
 - previous decisions of the OIC as referred to in this decision.

Matter in issue

23. The matter in issue in this review comprises 89 folios which relate to the applicant's brother (**the Deceased**). The information contained in those folios can be broadly categorised as:

Category	Description
A	information relating to the applicant and/or the applicant's mother and information which the applicant and/or the applicant's mother provided to QPS
B	QPS' procedural records related to the Deceased's death
C	QPS' procedural records relating to the Deceased's dealings with QPS prior to his death

24. As QPS has accepted the preliminary view in relation to the Category A matter, this decision deals only with whether the Category B and C matter is exempt from disclosure under section 44(1) of the FOI Act.

The applicant's submissions

25. In her internal review application to QPS, the applicant relevantly submitted that:

... if [QPS] had processed my application, then it would have been identified in [QPS] information records that I was present with my brother on a number of occasions, as were other members of my brother's immediate family.

...

I am seeking [QPS] support in helping me and my family to help my beloved brother who has passed away. If my beloved brother were here, he would give me, and my family, his permission.

... I believe it is in the community interest because what happened to my brother is a public interest factor that all community members can relate to.

26. In her external review application to the OIC, the applicant relevantly submitted that:

On behalf of my mother and siblings ... I request a review of the requested documents based on:

- 1. My, my mother's and sibling attendances with my brother ... when seeking and receiving support from [QPS]; and*
- 2. It is unacceptable to my family that my brother died as a result of domestic violence and we are refused access to documents which [QPS] cannot even determine if the documents exist and secondly my family was present at a number of attendances by and with [QPS]. If accurate records are maintained, then the documents must exist and [QPS] should be able to confirm the existence of documents.*

Domestic violence in Australia is unacceptable for men and women, yet domestic violence has a much higher profile, numerous support services and immediate attention for women than men.

My brother was a very loving father and husband. He was a very good man who worked very hard. My brother and his two little girls suffered domestic violence. My brother died trying to protect himself and his two little girls from his very abusive wife, the mother of their two children.

My mother, siblings, relatives and friends all believe that it is in the public interest to be informed about domestic violence including, but not limited to, how the

Queensland Government documents, records, maintains and releases information in relation to domestic violence. It is fact that domestic violence by women is rising.

27. In her letter dated 15 March 2010, the applicant relevantly submitted that:

We believe that we are entitled to the information relating to the steps taken to notify individual/s about my brother's death because my mother and I provided the details and information to enable this to occur. We believe that we are entitled to know what information and how that information was recorded and relayed, and to whom.

In regard to "other individuals' dates of birth, residential addresses, private contact numbers and passport numbers", we did not request this personal information specifically and we apologise if this is not clear in our FOI application. However, please note that I and my mother provided such details to [QPS], as requested, in relation to my brother ... [another individual] and their two children. In relation to "other" individuals, we understand that we will not receive this particular information however in relation to the separate personal details and information which we have provided to [QPS], we believe we are entitled to know what information and how that information was recorded and relayed, and to whom.

In regard to the information about other individuals' domestic circumstances and relationships, our request is in regard to information which is encompassed and/or related to my brother.

As mentioned in my letter, domestic violence in Australia is unacceptable for men and women, and domestic violence does have a much higher profile, numerous support services and immediate attention for women than men. It has been documented that domestic violence by women is rising. My brother's death was contributed to and/or caused through domestic violence.

There is a justifiable need to know and the requested information under Categories B and C would further my family's understanding of the domestic violence circumstances surrounding and leading to my brother's death. Our request is only for information in relation to my brother who was affected and/or present during all stages, or part stages, of the domestic violence circumstances and the pattern of domestic violence established by [another individual] and extended to the audience of her family. We believe that it is in the community interest to know and establish that policies and procedures should be effected where men are subjected to domestic violence not necessarily confined to the immediate parties but extended to and disguised by the wider audience of the family of the person effecting the domestic violence.

We believe that domestic violence did lead and/or contribute to my brother's death while he was trying to protect himself and his daughters from his abusive wife and that is unacceptable to our family that my brother died as a result of domestic violence and that we are refused access to documents not only for closure but because:

- 1. Our Local Member is supportive and aware of my brother's situation and we will lobby support from our Local Member to present to Government that men should have equal profile to domestic violence against women; and*
- 2. We believe that the community would agree that it is not acceptable for related and third parties to neglect and disguise an established pattern of domestic violence against men; and*
- 3. Government should address the inadequacy of its policies in relation to domestic violence against men including the wider audience being aware of a person effecting the domestic violence and "turning a blind eye" because the person effecting the domestic violence is related to them.*

The law

28. Section 44(1) of the FOI Act relevantly provides:

44 Matter affecting personal affairs

(1) *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

29. Section 44(1) requires me to consider the following questions in relation to the Matter in Issue:

- Firstly, does the matter in issue concern the personal affairs of person/s (other than the applicant)? (**Personal Affairs Question**) If so, a public interest consideration favouring non-disclosure of the matter in issue is established.
- Secondly, are there public interest considerations favouring disclosure of the matter in issue which outweigh all public interest considerations favouring non-disclosure of the matter in issue? (**Public Interest Question**)

Personal Affairs Question

30. In *Stewart and Department of Transport (Stewart)*¹ the Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' (and relevant variations) as it appears in the FOI Act. In particular, he said that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:

- family and marital relationships
- health or ill-health
- relationships and emotional ties with other people
- domestic responsibilities or financial obligations.

31. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is essentially a question of fact, to be determined according to the proper characterisation of the information in question.

32. The Information Commissioner also noted in *Stewart* that:

- for information to be exempt under section 44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual²
- information, such as a person's name, must be characterised according to the context in which it appears.³

¹ (1993) 1 QAR 227. See in particular paragraphs 79 – 114.

² At paragraph 81.

³ At paragraph 90. See also paragraphs 21 – 23 of *Pearce and Queensland Rural Adjustment Authority; Various Landowners (Third Party)* (1999) 5 QAR 242.

Public Interest Question

33. The 'public interest' refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens.
34. In general, a public interest consideration is one which is common to all members of the community, or a substantial segment of them, and for their benefit. The public interest is usually treated as distinct from matters of purely private or personal interest. However, some recognised public interest considerations may apply for the benefit of individuals in a particular case.
35. In *Fox and Department of Police*,⁴ the Information Commissioner indicated that:

Because of the way that section 44(1) of the FOI Act is worded and structured, the mere finding that information concerns the personal affairs of a person other than the applicant for access must always tip the scales against disclosure of that information (to an extent that will vary from case to case according to the relative weight of the privacy interests attaching to the particular information in issue in the particular circumstances of any given case), and must decisively tip the scales if there are no public interest considerations which tell in favour of disclosure of the information in issue. It therefore becomes necessary to examine whether there are public interest considerations favouring disclosure, and if so, whether they outweigh all public interest considerations favouring non-disclosure.

Findings

36. I will now consider whether the matter in issue is exempt from disclosure under section 44(1) of the FOI Act.

Personal Affairs Question

37. I confirm that the matter remaining in issue relates to QPS' procedural records related to:
- the Deceased's death (Category B)
 - the Deceased's dealings with QPS prior to his death (Category C).
38. Parts of the matter in issue also concerns other individuals, for example:
- information relating to the steps taken to notify another individual about the Deceased's death
 - other individuals' dates of birth, residential addresses, private contact numbers and passport numbers
 - information about other individuals' domestic circumstances and relationships.
39. The Information Commissioner has previously decided that an applicant's familial relationship to another person does not confer any entitlement to be given access to information concerning the personal affairs of that other person.⁵ Accordingly, the fact that the applicant is the Deceased's sister and seeks access to the information on behalf of her family, does not automatically entitle the applicant to access information concerning the Deceased's personal affairs.

⁴ (2001) 6 QAR 1 at paragraph 19.

⁵ *FMG and Queensland Police Service* (Unreported, Queensland Information Commissioner, 24 April 1998) at paragraph 22.

40. However, I acknowledge the applicant's submission that '*If my beloved brother were here, he would give me, and my family, his permission [to access information concerning his personal affairs]*'.
41. As noted above, the matter in issue is not limited to information about the Deceased and parts of the matter in issue contain information about:
- the steps taken to notify another individual about the Deceased's death
 - other individuals' domestic circumstances and relationships.
42. These parts of the matter in issue concern the shared personal affairs of the Deceased and other persons which is interwoven to such an extent that it cannot be separated. Where this is the case, then severance or deletion of the personal affairs information from the document under section 32 of the FOI Act is not possible.
43. Having carefully considered the Category B and C information, I am satisfied that it:
- falls within the meaning of the phrase 'personal affairs of a person' as it relates to the private aspects of the Deceased's life (and the lives of other individuals in some cases)
 - is *prima facie* exempt from disclosure under section 44(1) of the FOI Act subject to the public interest balancing test.
44. I must now consider whether disclosure of the matter in issue would, on balance, be in the public interest.

Public Interest Question

45. Information that is *prima facie* exempt from disclosure under section 44(1) of the FOI Act (as the information is here) can only be disclosed in circumstances where the public interest considerations favouring disclosure outweigh the public interest considerations favouring non disclosure.
46. I will first examine the public interest considerations favouring disclosure.

Public interest considerations favouring disclosure of the matter in issue

47. I acknowledge the applicant's concern about the circumstances surrounding her brother's death and her belief that her '*brother died trying to protect himself and his two little girls from his very abusive wife ...*'. Based on the applicant's submissions, I consider that the following public interest considerations favouring disclosure are relevant:
- a justifiable need for the applicant to know relevant information which is more compelling than for other members of the public
 - enhancing the accountability of QPS in relation to its dealings with the Deceased.

Justifiable need to know

48. In *Pemberton and The University of Queensland*,⁶ the Information Commissioner decided that in some cases the nature of a particular applicant's involvement in, and concern with, particular information, can be such as to give the applicant a 'justifiable

⁶ (1994) 2 QAR 293 (*Pemberton*).

need to know' that is more compelling than for other members of the public, and which can be taken into account in the application of a public interest balancing test.⁷

49. This public interest consideration can be of determinative weight (depending on the relative weight of competing public interest considerations favouring non-disclosure).⁸

Information about other people

50. To the extent that the relevant information relates to information about other people, such as:
- the steps taken to notify another individual about the Deceased's death
 - the date of birth, residential addresses, private contact numbers and passport numbers of other individuals

I find that no justifiable need to know arises as this information is not of a type which could further the applicant's understanding of the circumstances surrounding the Deceased's death. Therefore, this consideration is afforded no weight in the circumstances.

Information concerning the Deceased

51. In respect of the remaining information which comprises QPS' procedural records related to the Deceased's death (Category B matter) and the Deceased's dealings with QPS prior to his death (Category C), I have carefully considered the applicant's submissions about domestic violence and taken into account the fact that the applicant is a direct family member.
52. I have also carefully considered the information in the records to assess whether a justifiable need to know arises in respect of this information.
53. In the circumstances, I am satisfied that:
- the information does not address the applicant's concerns about domestic violence particularly where that violence is directed toward men
 - the information is limited to QPS' procedural records in relation to the Deceased's death and his prior dealings with QPS
 - the information is not of a type which establishes a link between the circumstances surrounding the Deceased's death and issues of domestic violence, which the applicant raises in her submissions
 - this public interest consideration should be afforded limited weight in the circumstances.

Accountability of QPS for the performance of its functions

54. Facilitating the accountability of government is a public interest consideration that is recognised in section 5 of the FOI Act.
55. The relevant question is whether disclosure of the matter in issue would allow interested members of the public a better understanding of action taken, or proposed to be taken, by government, and enable them to better scrutinise and assess the performance of government.

⁷ Pemberton at paragraph 193.

⁸ Pemberton at paragraph 172.

56. Accordingly, it must be determined whether disclosure of the particular matter in issue would materially enhance that public interest consideration to an extent that warrants it being accorded significant weight in favour of disclosure.
57. Based on the applicant's submissions, I acknowledge that there is a public interest in:
- QPS' accountability for its handling of domestic violence matters involving complaints from male victims as the system is largely geared towards female victims
 - assessing the thoroughness and appropriateness of the response and support provided to victims of domestic violence.
58. I also note the applicant's submissions that:
- the Deceased died while trying to protect himself and his daughters from his abusive wife
 - it is unacceptable to the applicant's family that the Deceased died as a result of domestic violence and that the applicant is refused access to documents.
59. Given the applicant's submissions and the extent of her knowledge in respect of this issue, I have very carefully considered the content of the Category B and C matter. In the circumstances, I find that:
- the matter in issue does not reveal a link between the circumstances of the Deceased's death and domestic violence
 - disclosure of this information will not materially enhance QPS' accountability in the way the applicant contemplates, given its content
 - the public interest considerations favouring disclosure should be afforded limited weight in the circumstances.
60. Against these considerations favouring disclosure, I must balance those considerations favouring non disclosure.

Public interest considerations favouring non disclosure of the matter in issue

61. There is an inherent public interest consideration in protecting the privacy of other individuals. This public interest consideration is a strong one, which will ordinarily be deserving of considerable weight in the application of a public interest balancing test.
62. In this case, I consider that the public interest in protecting the privacy of other individuals should be afforded significant weight as the matter in issue concerns highly sensitive and personal information. While I acknowledge the applicant's need for understanding and closure, I must take into account that this highly sensitive and personal information does not directly relate to the applicant and is information concerning the personal affairs of other individuals.
63. Accordingly, I find that this public interest consideration favouring non disclosure should be afforded significant weight in the circumstances.

Balancing the public interest considerations

64. As set out above, if there are no public interest considerations of sufficient weight to tip the scales in favour of disclosure of the matter in issue, the matter in issue will be exempt from disclosure under section 44(1) of the FOI Act.
65. After carefully weighing all of the considerations set out above, I find that the public interest considerations favouring disclosure do not outweigh or override the public interest in protecting the privacy of other individuals.

DECISION

66. For the reasons set out above, I vary the decision under review by finding that the Category B and C matter qualifies for exemption from disclosure under section 44(1) of the FOI Act.
67. I have made this decision as a delegate of the Information Commissioner, under section 90 of the FOI Act.

F Henry
Assistant Commissioner

Date: 24 March 2010