



## Decision and Reasons for Decision

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**Application Number:** 220020

**Applicant:** Daw

**Respondent:** Queensland Rail

**Decision Date:** 24 November 2010

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS – Grounds on which access may be refused – section 47(3)(b) of the *Right to Information Act 2009* (Qld) – to the extent the document comprises information the disclosure of which would, on balance be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld)

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## REASONS FOR DECISION

### Summary

1. The applicant is an employee of Queensland Rail (**QR**) who seeks access to documents concerning a workplace investigation<sup>1</sup> under the *Right to Information Act 2009* (Qld) (**RTI Act**).
2. The applicant seeks review of QR's decision refusing access to certain information.
3. Having considered the submissions and evidence before me, I am satisfied that access to the relevant documents can be refused under sections 47(3)(b) and 49 of the RTI Act on the basis that disclosure of the information would, on balance, be contrary to the public interest.

### Reviewable decision

4. The decision under review is QR's decision<sup>2</sup> refusing access to investigation documents including the investigation report and interview summaries.

### Issues in this review

5. The only remaining issue for determination is whether disclosure of the investigation documents would, on balance, be contrary to public interest.

### Evidence relied upon

6. In making this decision, I have taken the following into account:
  - the applicant's access application, application for external review and supporting material
  - QR's decision
  - submissions provided by the applicant and QR
  - file notes of telephone conversations between OIC staff and the applicant
  - file notes of telephone conversations between OIC staff and QR staff
  - records of meetings between OIC staff and QR staff and between OIC staff and the applicant
  - the content of the investigation report and interview summaries
  - the full summary of the investigation report (**Executive Summary**), which was provided to the applicant
  - relevant provisions of the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**)
  - previous decisions of the Information Commissioner of Queensland and other relevant case law as identified in this decision.

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<sup>1</sup> In which the applicant was the complainant.

<sup>2</sup> Made in response to the access application and dated 29 September 2009.

## The law

7. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.
8. Relevantly, sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to public interest.
9. In determining whether disclosure of the information sought would, on balance, be contrary to the public interest I must:
  - identify and disregard irrelevant factors
  - identify factors favouring disclosure of the information in the public interest
  - identify factors favouring nondisclosure of the information in the public interest
  - balance the relevant factors favouring disclosure and nondisclosure
  - decide whether disclosure of the information would, on balance, be contrary to public interest.

## Findings

### *Irrelevant factors*

10. No irrelevant factors arise on the information before me.

### *Factors favouring disclosure of the information in issue*

11. I have carefully considered the substantial submissions made by the applicant in respect of the public interest factors favouring disclosure of the relevant information.
12. Taking into account the nature and content of the information sought, I am satisfied that the following factors favour disclosure in the public interest:
  - some of the information is the applicant's personal information<sup>3</sup>
  - disclosure of the information could reasonably be expected to<sup>4</sup> contribute to the administration of justice generally, including procedural fairness
  - disclosure of the information could reasonably be expected to advance the public interest in government agencies being accountable for properly assessing and, where necessary, investigating, allegations against agency staff.

### *Factors favouring nondisclosure of the information in issue*

13. I have also carefully considered the factors favouring nondisclosure.
14. On balance, I am satisfied that the factors favouring nondisclosure include that disclosure of the relevant information could reasonably be expected to:

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<sup>3</sup> See section 12 of the IP Act.

<sup>4</sup> 'could reasonably be expected to', means there is a reasonable basis to expect that disclosing the information in issue will have the effect described: *Attorney-General's Department v Cockcroft* (1986) 64 ALR 97.

- cause a public interest harm in that it would disclose personal information of individuals other than the applicant (**third parties**)
  - prejudice the management function of QR.
15. It is relevant to set out the basis for the expectation that disclosure of the information could prejudice the management function of QR.
16. The word 'prejudice' is not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld). Therefore, it is appropriate to consider the ordinary meaning of the word. The Macquarie Dictionary contains a number of definitions for the word 'prejudice', the most relevant are:
- '*resulting injury or detriment*' and
  - '*to affect disadvantageously or detrimentally*'.
17. After careful consideration of this point, I am satisfied that disclosure may have a detrimental effect on QR's management function or place QR at a disadvantage in relation to its management function because disclosure could reasonably be expected to:
- result in staff being reluctant to co-operate in future investigations due to concerns that information provided could be disclosed outside of the investigation process
  - cause staff to lose confidence in the finalisation of investigations, particularly where allegations are found to be unsubstantiated
  - cause an adverse effect on workplace relationships, particularly because the applicant and third parties continue to work at QR.<sup>5</sup>
18. Accordingly, I am satisfied that this public interest factor<sup>6</sup> favours non-disclosure.

***Balancing factors favouring disclosure and nondisclosure in the public interest***

19. Consideration of the information sought reveals that the applicant's personal information is interwoven with the personal information of third parties<sup>7</sup> in such a way that it cannot be separated and is therefore considered to be 'mutual personal information'.
20. Accordingly, disclosure of the mutual personal information would disclose the third parties' personal information which would constitute a public interest harm.
21. On balance, I am satisfied that the public interest harm arising out of the disclosure of the third parties' personal information outweighs the applicant's right to access his own personal information which cannot be separated out from that of the third parties.
22. I am also satisfied that in the circumstances, the prejudice to the management function of QR which could reasonably be expected to result from disclosure of the information in issue should be afforded significant weight. This is particularly so because the investigation was conducted recently and the applicant continues to work with QR.

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<sup>5</sup> In this respect, I acknowledge the applicant's submissions that he now works in a different work unit to some third parties.

<sup>6</sup> Disclosure of the information could reasonably be expected to prejudice QR's management function.

<sup>7</sup> Including their views and opinions.

23. However, I am also conscious of the public interest in:
- a government agency being accountable for properly assessing and investigating allegations against agency staff, and
  - a person whose rights, interests or legitimate expectations could be affected by a decision, being given an opportunity to be heard.
24. In the circumstances of this review, I note that the relevant information concerns an investigation into allegations made by the applicant about other QR employees. Accordingly, in this context, there is a public interest in the applicant being given an adequate explanation of the outcomes of the investigation and the basis for those outcomes.<sup>8</sup>
25. In this respect, I note that the Executive Summary provided to the applicant comprises an accurate and comprehensive summary of the investigation report which explains:
- the conduct of the investigation
  - the basis of particular findings, and
  - the evidence relied upon.
26. Accordingly, on the basis of the information set out above, I am satisfied that:
- QR's accountability in relation to the handling of the investigation is sufficiently addressed by the Executive Summary
  - the Executive Summary satisfies the requirements of procedural fairness in this context as it provides an adequate explanation of the outcomes of the Investigation and the basis for those outcomes, to the applicant.
27. Taking into account all of the information set out above, including the submissions made by the parties, I am satisfied that:
- on balance, the factors favouring nondisclosure of the information sought outweigh those factors favouring disclosure
  - disclosure of the information would, on balance, be contrary to the public interest.

## DECISION

28. I affirm the decision under review by finding that QR is entitled to refuse access to the documents in issue under sections 47(3)(e) and 49 of the RTI Act on the basis that disclosure would, on balance, be contrary to public interest.
29. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

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**Clare Smith**  
**Right to Information Commissioner**

**Date: 24 November 2010**

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<sup>8</sup> See *Jackson and Department of Health* (Unreported, Queensland Information Commissioner, 10 February 2010) at paragraph 42.