



## Decision and Reasons for Decision

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**Application Number:** 310634

**Applicant:** 26XZXJ

**Respondent:** Commission for Children and Young People and Child Guardian

**Decision Date:** 6 March 2012

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - DISCLOSURE OF CONCERN TO THIRD PARTY - third party objected to disclosure of information they had provided the agency about the Access Applicant’s suitability to hold a “blue card” - third party considered that disclosure would identify the constituent they were representing and would breach confidentiality - agency decided information should be disclosed to the Access Applicant - whether third party has, on external review, established that a decision not to disclose the information is justified - whether disclosure would, on balance, be contrary to the public interest - section 49 of the *Right to Information Act 2009 (Qld)*

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## REASONS FOR DECISION

### Summary

1. An individual applied (**Access Applicant**) to the Commission for Children and Young People and Child Guardian (**Commission**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for documents relating to their application for a Blue Card<sup>1</sup> and related tribunal hearings.
2. Prior to this, the external review applicant (**Third Party**) had corresponded with the Commission as a Member of the Queensland Parliament (**MP**), to raise concerns about the Access Applicant's Blue Card status on behalf of a constituent. Following the Third Party's communication of their constituent's concerns, a chain of emails was created between Commission officers discussing these concerns.
3. In processing the application, the Commission sought the Third Party's views on disclosure of nine pages of emails sent between staff of the Commission and the Third Party discussing the specific concern raised by the Third Party.
4. The Third Party objected to the disclosure of any of the emails, contending, among other reasons<sup>2</sup>, that release of the information could reasonably be expected to prejudice:
  - the protection of their constituent's right to privacy<sup>3</sup>
  - the fair treatment of their constituent<sup>4</sup>
  - the flow of information to a law enforcement or regulatory agency<sup>5</sup>; and
  - the Commission's ability to obtain confidential information.<sup>6</sup>
5. The Commission decided in its initial decision and subsequent internal review decision to release the emails to the Access Applicant with any information that could identify the constituent deleted. The remaining information in the emails comprises communications between the Third Party and Commission officers identifying the Third Party and discussing the Commission's position on the concerns raised by the Third Party (**Information in Issue**).
6. The Third Party applied to OIC for external review of the Commission's decision to disclose the Information in Issue, on the basis that disclosure of any part of the emails discussing the concerns raised by the Third Party would, on balance, be contrary to the public interest. The Third Party primarily submits that disclosure of the Information in Issue would prejudice the privacy of their constituent and disclose confidential communications between the Third Party and their constituent.
7. For the reasons set out below, I am satisfied that that disclosure of the emails in part, would not, on balance, be contrary to the public interest and accordingly, the Commission may grant the Access Applicant partial access to the emails in accordance with its internal review decision and the pro-disclosure objective of the IP Act.<sup>7</sup>

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<sup>1</sup> A Blue Card is necessary for any individual who works with children in Queensland. The Blue Card system ensures all individuals who work with children have been subject to the relevant criminal history checks.

<sup>2</sup> In reaching this decision I have considered the submissions made by the Third Party to the Commission in the Third Party's letter dated 4 March 2011 and internal review application dated 31 April 2011 as well as all submissions made by the Third Party on external review.

<sup>3</sup> Schedule 4, part 3, section 3 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

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

<sup>5</sup> Schedule 4, part 3, section 13 of the RTI Act.

<sup>6</sup> Schedule 4, part 3, section 16 of the RTI Act.

<sup>7</sup> Section 40 of the IP Act.

### **Significant procedural steps**

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

### **Reviewable decision**

9. The decision under review is the Commission's internal review decision dated 15 April 2011, granting access to the emails in part, on the basis disclosure would not, on balance, be contrary to the public interest under the *Right to Information Act 2009* (Qld) (RTI Act).

### **Evidence considered**

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

### **Information in Issue**

11. The Information in Issue in this review is nine pages of emails excluding any information which directly or indirectly identifies the Third Party's constituent.

### **Onus on external review**

12. Section 100(2) of the IP Act provides that if the decision under external review is a disclosure decision,<sup>8</sup> the person who opposes the decision has the onus of establishing that a decision not to disclose the information is justified or that the Information Commissioner should give a decision adverse to the access applicant.
13. As the Commission decided to release the Information in Issue contrary to the objections of the Third Party, the Third Party as the external review applicant has the onus of establishing that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

### **Relevant law**

14. Under the IP Act a person has a right to be given access to documents of an agency to the extent they contain the applicant's personal information.<sup>9</sup> However, this right is subject to other provisions of the IP Act and the RTI Act including the grounds on which an agency may refuse access to documents.<sup>10</sup>
15. In this review, the Third Party contends that access should be refused to the Information in Issue under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.<sup>11</sup>

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

16. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, a public interest consideration is one which is

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<sup>8</sup> *Disclosure decision* is defined in section 100(3)(a) of the IP Act as a decision to disclose a document or information contrary to the views of a relevant third party obtained under section 56 of the IP Act.

<sup>9</sup> Section 40 of the IP Act.

<sup>10</sup> Section 67 of the IP Act provides that access may be refused in the same way and to the same extent as under section 47 of the RTI Act.

<sup>11</sup> Under section 49 of the RTI Act.

common to all members, 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?***

17. 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 the balance of the public interest, I must:<sup>12</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 disclosing the information would, on balance, be contrary to the public interest.

### **Findings**

#### ***Would release of the information be contrary to public interest?***

18. I am satisfied that disclosing the Information in Issue would not, on balance, be contrary to the public interest for the reasons that follow.
19. I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied I have not taken into account any irrelevant factors in reaching my decision.
20. The Third Party's submission that disclosure of the Information in Issue could lead to misinterpretation and misunderstanding does not give rise to a relevant public interest factor.

#### ***Analysis – balancing competing public interest factors***

##### **Privacy and fair treatment of constituent**

21. The Third Party primarily contends that the Information in Issue should not be released in order to protect the privacy of the individual on whose behalf the Third Party was acting. The Third Party submits that their constituent communicated with the Third Party in confidence and did not expect details of the concerns raised to be disclosed to the Access Applicant.
22. Following a careful assessment of the Information in Issue, I am satisfied that disclosure of the Information in Issue would not identify the individual on whose behalf the Third Party was acting. The Information in Issue specifically deletes all references to the identity of the constituent and any information that may indirectly identify the constituent.
23. By letter to OIC dated 12 January 2012 the Third Party accepted that all information that could identify their constituent had been deleted from the Information in Issue.
24. As the constituent is not identifiable from the Information in Issue I am satisfied that disclosure of the Information in Issue would not prejudice the privacy or the fair treatment of the constituent and, therefore this factor in favour of nondisclosure does not apply in this matter.

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<sup>12</sup> Section 49(3) of the RTI Act.

### **Personal information of Third Party**

25. Although the Third Party's submissions primarily focus on the privacy and fair treatment of the Third Party's constituent, I also consider that the Information in Issue is the personal information<sup>13</sup> of the Third Party, as the Third Party is identified by name in the Information in Issue.
26. The RTI Act recognises the following factors favouring nondisclosure in relation to personal information:
  - disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy;<sup>14</sup> and
  - disclosure could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>15</sup>
27. As I am satisfied that the Information in Issue is the personal information of the Third Party I find that some weight can be attributed to these factors in favour of nondisclosure of the Information in Issue.
28. However, I am also satisfied that the weight that can be given to these factors is limited as the Third Party communicated the Information in Issue to the Commission in their role as an MP. As it is within the expected role of an MP to communicate constituent concerns to the appropriate regulatory agency, I am satisfied that disclosure of the Information in Issue would not prejudice the privacy of the Third Party.
29. I also note that the Third Party has appeared on the public record to raise concerns in relation to the Access Applicant's Blue Card status, and accordingly, I do not consider that disclosing the Third Party opinions evident in the Information in Issue would prejudice the Third Party's privacy.
30. On the basis of the above, I am satisfied that minimal weight can be attributed to these factors in favour of nondisclosure.

### **Confidential communications and flow of information to government agencies**

31. I consider that private citizens may expect to communicate with the Commission in confidence and have their privacy protected. I also consider that in order to ensure the free flow of information to the Commission in relation to its investigatory role it is important that members of the public are able to communicate with the Commission in confidence.
32. However, I do not consider the same interests apply to information communicated by an MP in their official representative capacity. There is a general public expectation that an MP as part of their official role, will usually convey the concerns raised by their constituents to the appropriate regulatory agency. This is a reasonable expectation given the important role an MP fulfils in contributing to public debate on issues of concern to the community.

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<sup>13</sup> Personal information is defined under Section 12 of the IP Act as information, 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.

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

<sup>15</sup> Schedule 4, part 4, section 6 of the RTI Act.

33. The Information in Issue records communications between the Commission and the Third Party in their role as an MP, I am satisfied that the disclosure of the Information in Issue would not prejudice the flow of information from an MP in their capacity as a representative of their constituents to regulatory agencies such as the Commission. Accordingly, I am satisfied that no weight can be attributed to this factor in favour of nondisclosure.

### **Accountability of government**

34. The RTI Act recognises that where disclosure of information could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability, this will establish a public interest factor favouring disclosure.<sup>16</sup>
35. I am also satisfied that the public interest in allowing people to understand reasons for a government decision and any background or contextual information that informed the decision is relevant in this case.<sup>17</sup> I consider that disclosure of the Information in Issue could reasonably be expected to reveal background and contextual information surrounding actions taken by the Commission following the Third Party's communications.
36. This factor in favour of disclosure is particularly relevant in this circumstance as the Commission's decisions and actions have had a direct effect on the Access Applicant's ability to obtain work. Accordingly, I am satisfied that significant weight can be attributed to this factor in favour of disclosure.<sup>18</sup>

### **Personal information of Access Applicant**

37. In reaching my decision, I note that the Access Applicant is the individual against whom the Third Party raised particular concerns and the Information in Issue can be considered the Access Applicant's personal information.<sup>19</sup> I am satisfied that the Information in Issue is about the Access Applicant and the Access Applicant's identity can reasonably be ascertained from the Information in Issue.
38. I am therefore satisfied that moderate weight should be attributed to this factor in favour of disclosure of the Information in Issue.<sup>20</sup>

### **Summary**

39. As set out above, I am satisfied that:
- the public interest in protecting an individual's right to privacy does not apply in this case given my finding that the Information in Issue does not identify the constituent and the Third Party communicated the Information in Issue to the Commission in their role as an MP and not as a private citizen;
  - minimal weight can be attributed to the factors favouring nondisclosure of the Third Party's personal information;
  - no weight can be attributed to any other public interest factors favouring nondisclosure of the Information in Issue; and
  - moderate weight should be attributed to the public interest in favour of disclosure as the Information in Issue is the Access Applicant's personal information; and

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<sup>16</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>17</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>18</sup> Under schedule 4, part 2, section 11 of the RTI Act.

<sup>19</sup> Section 12 of the IP Act

<sup>20</sup> Under schedule 4, part 2, section 7 of the RTI Act.

- substantial weight should be attributed to the public interest in favour of disclosure in enhancing the accountability of the Commission.

40. On the basis of the above I am satisfied that the balance of the public interest favours disclosure of the Information in Issue.

## **DECISION**

41. For the reasons set out above, I affirm the Commission's internal review decision and find that:

- the external review applicant has not established that a decision to not disclose the Information in Issue is justified; and
- disclosure of the Information in Issue would not, on balance, be contrary to the public interest under section 49 of the RTI Act.

42. 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**

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

<b>Date</b>	<b>Event</b>
1 December 2010	The Access Applicant sought access to all documents held by the Commission referring to any matters that pertain to the Access Applicant's application for a Blue Card and subsequent Child Safety Tribunal & Queensland Civil and Administrative Tribunal hearings
10 December 2010	Access Applicant amended the scope of the application to all information held by the Commission about, and/or relating to the Access Applicant
23 February 2011	The Commission sought the Third Party's views on disclosure of the Information in Issue
4 March 2011	The Third Party objected to disclosure of the Information in Issue
8 March 2011	The Commission decided to release the Information in Issue because disclosure would not, on balance, be contrary to the public interest
4 April 2011	The Third Party sought internal review of the Commission's decision to grant access to the Information in Issue
15 April 2011	On internal review, the Commission affirmed its decision that disclosure of the Information in Issue would not, on balance, be contrary to the public interest
19 May 2011	The Third Party applied to OIC for external review of the Commission's internal review decision
13 December 2011	OIC conveyed its preliminary view that disclosure of the Information in Issue would not, on balance, be contrary to the public interest
12 January 2012	The Third Party made submissions objecting to OIC's preliminary view