



## Decision and Reasons for Decision

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Citation:	<i>Capewell and Department of Communities, Child Safety and Disability Services</i> [2014] QICmr 9 (18 March 2014)
Application Number:	311842
Applicant:	Capewell
Respondent:	Department of Communities, Child Safety and Disability Services
Decision Date:	18 March 2014
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - information about applicant obtained in connection with applicant's grandchild - whether disclosure prohibited by section 186 or section 187 of the <i>Child Protection Act 1999</i> (Qld) - whether exempt - section 47(3)(a) and section 48 and schedule 3, section 12 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the Department of Communities, Child Safety and Disability Services (**Department**) for access under the *Information Privacy Act 2009* (Qld) (**IP Act**) to all documents about herself in a specific time period.
2. The Department gave the applicant access to some information and refused access to the remaining information on the basis that it comprised exempt information as its disclosure is prohibited by sections 186-188 of the *Child Protection Act 1999* (Qld) (**Child Protection Act**).<sup>1</sup>
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision.
4. For the reasons given below, I affirm the Department's decision.

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<sup>1</sup> Under section 47(3)(a) and section 48 and schedule 3 section 12 of the *Right to Information Act 2009* (Qld) (**RTI Act**), in conjunction with section 67(1) of the IP Act. Section 67 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 to the document under section 47 of the RTI Act.

## Background

5. The applicant seeks access to information in order to apply to the Department under the IP Act for amendment of any false information it may hold arising from custody proceedings in the Federal Magistrates Court of Australia concerning the applicant's grandchild.
6. On external review, the applicant asked that the Department be required to conduct searches for documents relating to an alleged incident in September 2013. However the Right to Information Commissioner decided not to further deal with that part of the external review application on the ground that it lacked substance.<sup>2</sup>

## Reviewable decision

7. The decision under review is the Department's decision dated 15 November 2013.

## Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

## Information in Issue

9. The information in issue comprises 15 part and 35 full pages (**Information in Issue**).<sup>3</sup>

## Relevant law

10. Under the IP Act an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>4</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>5</sup> Relevantly, an agency may refuse access to a document to the extent the document comprises exempt information.<sup>6</sup>
11. Schedule 3 of the RTI Act sets out twelve categories of information which Parliament has decided are exempt from release. Schedule 3 section 12 of the RTI Act provides that information is exempt if its disclosure is prohibited by sections 186-188 of the Child Protection Act.
12. In summary, disclosure of information is prohibited under these sections of the Child Protection Act if the information:
  - identifies a person making a notification of a suspicion that a child has been or is likely to be harmed;<sup>7</sup> or
  - is about the affairs of another person and was acquired by a person performing particular functions under the Child Protection Act.<sup>8</sup>

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<sup>2</sup> Under section 107(1)(a) of the IP Act.

<sup>3</sup> Concessions by the applicant and the Department during the external review resulted in the following documents remaining in issue: full pages 22, 23, 25-28, 35, 37, 41-46, 57, 78, 82, 84, and 86-89 in File 1 and 11, 12, 16, 17, 23-26, 28, 29 and 32-34 in File 2; and part pages 24, 36, 38-40, 47, 48, 79, 81, 83 and 85 in File 1 and 2, 19, 21 and 27 in File 2.

<sup>4</sup> Section 40 of the IP Act.

<sup>5</sup> Section 67(1) of the IP Act and section 47 of the RTI Act.

<sup>6</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>7</sup> Section 186 of the Child Protection Act.

13. The prohibition on disclosure is subject to the exceptions set out in schedule 3, section 12(2) of the RTI Act and sections 187 and 188 of the Child Protection Act.

## Findings

14. Turning first to the applicant's submissions. Essentially, the applicant contends<sup>9</sup> that:
- OIC failed to consider her submissions as an 'individual case'
  - false allegations were made to the Department, which if uncorrected may lead to decisions which place the grandchild in danger; and
  - in relying on provisions of the Child Protection Act to refuse access to requested information, the Department is protecting itself from scrutiny regarding its improper behaviour in accepting stolen documents and the improper conduct of a Departmental officer associated with a family member of the grandchild.
15. These submissions raise issues relative to public interest factors that may favour disclosure of the Information in Issue in the context of assessing under the RTI Act whether or not disclosure would, on balance, be contrary to the public interest.
16. I am not required to perform a public interest balancing test<sup>10</sup> to determine if, on balance, it would be contrary to the public interest to disclose the Information in Issue if the legal requirements of the exemption provision set out above are met.
17. Where information falls into one of the twelve categories of information which Parliament has decided are exempt from release, set out in schedule 3 of the RTI Act, public interest factors favouring disclosure cannot be taken into account.
18. The Information in Issue comprises:
- a report of suspected harm or risk of harm (**Suspected Harm Information**); and
  - portions of Departmental reports, correspondence and file notes; and statements and affidavits (**File Information**).
- (i) **Does the Suspected Harm Information identify a notifier?**
19. Yes, for the reasons set out below.
20. I have carefully examined the Suspected Harm Information. It identifies a person who made a notification under the Child Protection Act that a child has been or is likely to be harmed. I therefore find that the Suspected Harm Information is:
- subject to the prohibition on disclosure in section 186(2) of the Child Protection Act; and
  - falls within the exemption in schedule 3, section 12(1) of the RTI Act.
- (ii) **Is the File Information about a person's affairs and received under the Child Protection Act?**
21. Yes, for the reasons set out below.

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<sup>8</sup> Section 187 of the Child Protection Act.

<sup>9</sup> In written submissions dated 17 February 2014 and in submissions attached to the applicant's external review application received by OIC on 6 December 2013.

<sup>10</sup> As set out in sections 47(3)(b) and 49 of the RTI Act.

22. The term 'person's affairs' is not defined in the Child Protection Act or the *Acts Interpretation Act 1954* (Qld). The relevant dictionary definitions for 'affair/s' are 'matters of interest or concern' and 'a private or personal concern'.<sup>11</sup>
23. I have carefully examined the File Information. I am satisfied that it is about matters of personal interest/concern to other persons, including the applicant's grandchild, the grandchild's family members, and other individuals.
24. The File Information is information received or obtained by Departmental officers (public servants) under the Child Protection Act. The Child Protection Act lists a public service employee<sup>12</sup> as a person to whom section 187 applies.
25. I am therefore satisfied that the File Information is:
  - about other persons' affairs and has been given to or received by a person performing functions under or relating to the administration of the Child Protection Act
  - subject to the prohibition on disclosure in section 187(2) of the Child Protection Act; and
  - subject to the exemption in schedule 3, section 12(1) of the RTI Act.

**(iii) Do any of the exceptions apply?**

26. The exemption in schedule 3, section 12(1) of the RTI Act will not apply if the relevant information comprises only the applicant's personal information.<sup>13</sup>
27. Section 187 and 188 of the Child Protection Act contain a number of exceptions where information given or received under the Child Protection Act may be disclosed. In this case, section 187(4)(a) is relevant. It provides that access may be given to another person if the information is about that other person.
28. The Information in Issue is about the grandchild, the grandchild's family members and other individuals. In some instances the Information in Issue is about the applicant but that information is intertwined with the information of others. After careful assessment, I find that it is never about the applicant solely.<sup>14</sup>
29. I am satisfied that:
  - the Information in Issue is about other persons' affairs and concerns other individuals' personal information; and

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<sup>11</sup> 7CLV4M and Department of Communities (Unreported, Queensland Information Commissioner, 21 December 2011) at paragraph 30.

<sup>12</sup> Section 187(1)(a) of the Child Protection Act.

<sup>13</sup> Schedule 3, section 12(2) of the RTI Act. 'Personal information' comprises '*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.*': schedule 6 of the RTI Act, and section 12 of the IP Act.

<sup>14</sup> In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) applies to shared information about the applicant and other persons. She observed at paragraph 26: "*The CP Act exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the CP Act exception will not apply.*"

- the exceptions in schedule 3, section 12(2) of the RTI Act and section 187(4)(a) of the Child Protection Act do not apply to the Information in Issue because it is not only about the applicant.

***Is the Information in Issue exempt information?***

30. As no exceptions to the exemption apply and the other requirements of sections 186 and 187 of the Child Protection Act are met, I find that the Information in Issue is exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.
31. As the legal test for exemption that I am required to apply is satisfied, I am unable to consider the submissions raised by the applicant summarised in paragraph 14 above and I have not taken them into account in forming my decision.

**DECISION**

32. For the reasons set out above, I affirm the Department's decision to refuse access to the Information in Issue on the basis that it comprises exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act, the disclosure of which is prohibited by sections 186 and 187 of the Child Protection Act.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

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**L Lynch**  
**Assistant Information Commissioner**

**Date: 18 March 2014**

## APPENDIX

### Significant procedural steps

Date	Event
22 October 2013	The Department received the applicant's access application under the IP Act.
15 November 2013	The Department issued its initial decision to the applicant.
6 December 2013	OIC received the external review application.
12 December 2013	The applicant narrowed the scope of documents in issue, by not seeking access to documents to which other access was available.
12 December 2013	OIC advised the applicant and the Department it had accepted the external review application and asked the Department to provide copies of relevant documents.
13 December 2013	The Department provided OIC with the requested documents.
20 January 2014	The applicant narrowed the scope of documents in issue, by not seeking to access copies of documents in issue.
31 January 2014	The Department identified additional documents falling within the scope of the access application.
7 February 2014	OIC confirmed to the applicant the documents in issue in the review and conveyed a preliminary view to the applicant and invited her to provide submissions supporting her case by 21 February 2014 if she did not accept the preliminary view.
11 February 2014	OIC decided not to further deal with part of the applicant's external review application relating to 'sufficiency of search' concerns raised by the applicant.
20 February 2014	OIC received correspondence from the applicant, including the applicant's submissions in response to the preliminary view.