



Decision and Reasons for Decision

Citation:	<i>2CDLO3 and Department of Education and Training [2016] QICmr 20 (10 June 2016)</i>
Application Number:	312600
Applicant:	2CDLO3
Respondent:	Department of Education and Training
Decision Date:	10 June 2016
Catchwords:	ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - application on behalf of child for information about that child - whether exempt - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and section 48 and schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application on behalf of child for information about that child - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - IRRELEVANT INFORMATION - application on behalf of child for information about that child - information not relating to the child - whether deleted information was irrelevant to the terms of the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld) ADMINISTRATIVE LAW - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - application on behalf of child for information about that child - applicant contends additional documents exist - whether agency has taken all reasonable steps to locate the documents but the documents cannot be located or do not exist - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. A mother and father applied to the Department of Education and Training (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) on behalf of their child (**applicant**),¹ seeking access to documents relating to the education of the child.
2. The Department decided to disclose 482 full pages and 11 part pages. The Department refused to disclose the balance of the 11 part pages and 307 full pages on the grounds that the information in question was exempt information, being subject to legal professional privilege, or its disclosure would, on balance, be contrary to the public interest.
3. The applicant² applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access to the 11 part pages and 307 full pages. The applicant also requested that OIC consider the sufficiency of the Department's searches for documents responsive to the access application.
4. On external review, the Department released some information that it had refused to disclose in its decision. Further, the Department located and released some additional information.
5. For the reasons set out below, I vary the Department's decision and find that access to the information remaining in issue in this review may be refused or deleted on the grounds that:
 - it is exempt information, as it is subject to legal professional privilege
 - its disclosure would, on balance, be contrary to the public interest
 - it is not relevant to the access application; or
 - it is nonexistent or unlocatable.

Background

6. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

7. The decision under review is the Department's decision dated 27 August 2015.

Evidence considered

8. Evidence, submissions, legislation and other material that I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
9. Submissions were provided to OIC by the applicant (that is, by applicant's parents on the applicant's behalf³) on a number of occasions.⁴ I have summarised and addressed the applicant's submissions below, to the extent they are relevant to the issues for

¹ The definition of 'applicant' in section 45(1) and schedule 5 of the IP Act provides that where an application is made for a child, the child is taken to be the applicant.

² By the child's parents on the child's behalf.

³ For sake of brevity and to reflect the parents' role as the applicant's agent, this decision refers to these submissions as having been made by the applicant.

⁴ As set out in the Appendix.

determination. In respect of the submissions that are not relevant to the issues for determination, these generally relate to the parents' concerns about the conduct of the Department's officers and the manner in which the Department processed the access application. OIC's jurisdiction under the IP Act relates only to decisions about access to documents held by agencies and does not extend to any consideration of these matters.

Information in issue

10. The access application sought access to documents relating to the education of the applicant, including any written correspondence between the Department's regional officers, school staff and central office generally, and 12 nominated individuals in particular, regarding the handling of the applicant's medical and other sensitive information.
11. During the external review, the Department released some information that it had refused to disclose in its decision, and also located and released some additional information. The information that remains in issue (**Information in Issue**) comprises:
 - 216 full pages⁵ and 32 part pages⁶ the Department refused on the basis that legal professional privilege attaches to this information and it is therefore exempt information
 - 28 full pages⁷ and 10 part pages⁸ the Department refused on the basis that disclosure of the information would, on balance, be contrary to the public interest; and
 - documents which the applicant believes exist, that have not been located by the Department's searches for information responsive to the access application.

Issues for determination

12. The issues for determination on external review are whether the Information in Issue may be refused or deleted on the grounds that:
 - it is subject to legal professional privilege, and is therefore exempt information
 - its disclosure would, on balance, be contrary to the public interest
 - it is not relevant to the access application; or
 - it is nonexistent or unlocatable.

Exempt information

Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual's personal information.⁹

⁵ Pages 187-190, 201-206 and 209-210 in File C; 52-58, 71-74 and 86-92 in File D; and 1-5, 23-45, 49-89, 90-94, 97-109, 113-123, 136-150, 154-159, 162-168, 203-211, 220-234, 239-243, 245-272 and 330-332 in File E.

⁶ Parts of pages 192, 194 and 195 in File C; 110 and 126 in File E; and 1-4, 6-9, 15, 16 and 18-34 in File F. Note – on external review, parts of these 32 pages, and 31 other full pages that the Department's decision had found were subject to legal professional privilege (that is, pages 90-93, 196, 207, 208, 211, 212 and 251-255 in File C; 75 and 76 in File D; 111, 112 and 127-135 in File E; and 5, 10 and 17 in File F) were released to the applicant.

⁷ Pages 2, 29, 35, 44-48, 94-95, 105-108 and 115-127 in File C; and 99 in File D.

⁸ Parts of pages 5, 22, 32 and 228-232 in File C; and 1-2 in File D.

⁹ Section 12 of the IP Act defines personal information as '*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*'.

However, this right is subject to limitations, including grounds for refusal of access.¹⁰

14. An agency may refuse access to documents to the extent they comprise exempt information.¹¹ Relevantly, exempt information includes information that would be privileged from production in a legal proceeding on the ground of legal professional privilege.¹²
15. This exemption reflects the requirements for establishing legal professional privilege at common law.¹³ Accordingly, for information to be subject to legal professional privilege, it must comprise or record a communication that was:
 - made in the course of a lawyer-client relationship
 - confidential at the time and remains confidential; and
 - made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.¹⁴
16. When each of these requirements is met, legal professional privilege is established. Qualifications and exceptions to the privilege¹⁵ may, in particular circumstances, affect the question of whether information attracts or remains subject to it.

Analysis

17. The applicant submits that *'some of the documents that [the Department] has ... referred to as being "professional privilege" documents are not truly "professional privilege" in nature'*.¹⁶ These submissions are not made with reference to any particular documents or types of documents; nor do they raise any qualifications or exceptions to legal professional privilege.
18. I have carefully considered the Information in Issue. While I am restricted as to the level of detail I can relate about the contents of this information,¹⁷ I can confirm that I am satisfied that 216 pages¹⁸ and parts of ten pages of this information¹⁹ comprise or record communications that meet each of the requirements of legal professional privilege identified above. Further, I am satisfied that no qualifications or exceptions to legal professional privilege are relevant in the circumstances of this case.²⁰
19. The applicant's submissions include public interest arguments as to why information that is subject to legal professional privilege should, in any event, be disclosed.²¹ However, when information meets the requirements of legal professional privilege and qualifies as exempt information—as is the case here, as set out at paragraph 18

¹⁰ 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 it could refuse access to the document under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**) were the document to be the subject of an access application under the RTI Act.

¹¹ Under sections 47(3)(a) and 48 of the RTI Act. The various types of exempt information are set out in schedule 3 of the RTI Act.

¹² Schedule 3, section 7 of the RTI Act.

¹³ As confirmed in *Ozcare and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 13 May 2011) at [12].

¹⁴ *Esso Australia Resources Ltd v Commission of Taxation* (1999) 201 CLR 49 at 73; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552.

¹⁵ Such as waiver or improper purpose.

¹⁶ Submission dated 18 March 2016.

¹⁷ Submission dated 18 March 2016.

¹⁸ Section 121(3) of the IP Act.

¹⁹ As set out at footnote 6 above.

²⁰ Parts of pages 192, 194 and 195 in File C, 110 and 126 in File E and 2-4, 8 and 9 in File F. Note—the other part pages that the Department's decision determined were subject to legal professional privilege remaining in issue are addressed under the heading 'Irrelevant information' below.

²¹ The applicant has made no submissions contending that any exception to legal professional privilege arises.

²² Submissions dated 15 October 2015 and 10, 18 and 25 March 2016.

above—public interest arguments such as those raised by the applicant cannot be taken into consideration. Parliament has determined that disclosure of exempt information would, on balance, be contrary to the public interest in all instances.²² Further, while agencies may decide to exercise discretion to release exempt information, OIC cannot.²³

20. In conclusion, on the material before me, I find that access to the 216 pages and parts of ten pages of the Information in Issue referred to above may be refused on the ground that this information is subject to legal professional privilege, and is therefore exempt information.

Contrary to the public interest information

Relevant law

21. An agency may also refuse access to information on the ground that its disclosure would, on balance, be contrary to the public interest.²⁴ In assessing the balance of the public interest, the RTI Act identifies many factors that may be relevant²⁵ and explains the steps that a decision-maker must take²⁶ as follows:

- 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 disclosure of the information in issue would, on balance, be contrary to the public interest.

Analysis

22. Generally, the applicant submits that it is '*of public interest*' that the Information in Issue is released.²⁷ Further, the applicant submits that refusing access to the Information in Issue:

- is against the Department's policies and principles of transparency and accountability²⁸
- is contrary to the public interest, as the documents will reveal or substantiate claims regarding deceptive and misleading behaviour and corrupt conduct,²⁹ and
- disadvantages the applicant legally in terms of potential legal action.³⁰

23. The Department decided that disclosure of 28 full pages and parts of 10 pages³¹ would, on balance, be contrary to the public interest. I have carefully considered the

²² Section 48(2) of the RTI Act.

²³ Section 118(2) of the IP Act.

²⁴ Sections 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, 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.

²⁵ Schedule 4 of the RTI Act sets out lists of the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these lists are not exhaustive; in other words, factors that are not listed may also be relevant.

²⁶ Section 49(3) of the RTI Act.

²⁷ External review application and submissions dated 10 March 2016.

²⁸ External review application.

²⁹ Submissions dated 15 October 2015 and dated 10 March 2016.

³⁰ External review application.

³¹ As set out at footnotes 8 and 9 above.

Information in Issue and consider that the 28 full pages and parts of 3 pages³² may be refused on this basis. While I am constrained as to the level of detail I can relate about the contents of this information,³³ I can confirm that it can be categorised as:

- **Third Party Information**—the names and contact details of third parties; and
- **Mutual Personal Information**—the personal information of public service employees, interwoven with the personal information of the applicant and the applicant's parents.

24. I will address these two categories of information in turn.

Third Party Information

25. As noted above, the Third Party Information is comprised by the names and contact details of third parties.³⁴ No irrelevant factors arise in relation to the Third Party Information. I will now address the relevant factors.

26. Public interest factors in favour of disclosure will arise where disclosure of information could reasonably be expected to:

- promote open discussion of public affairs and enhance government accountability³⁵
- inform the community of government operations³⁶
- reveal the reasons for a government decision and any background or contextual information that informed the decision³⁷
- reveal or substantiate that an agency or its officers have engaged in misconduct or corruption or allow inquiry into possible deficiencies of conduct;³⁸ and
- contribute to the administration of justice generally, including procedural fairness, or for a person.³⁹

Accountability and transparency

27. I have carefully considered the Third Party Information. Given the nature of this information and the context in which it appears, and taking into consideration the significant proportion of the located information that has been released to the applicant, and the content of that released information, I consider that disclosure of the Third Party Information would only marginally advance the public interest in accountability and transparency regarding government operations. I therefore afford low weight to these disclosure factors.

28. Further, I am satisfied that the Third Party Information does not relate to any government decision—and, accordingly, its disclosure could not reveal reasons for or background to any such decision. On this basis, I am satisfied that the disclosure factor regarding contextual information about government decisions does not apply.

³² Pages 2, 29, 35, 44-48, 94-95, 105-108 and 115-127 in File C; and 99 in File D; and parts of pages 5, 22 and 32 in File C. Note—the other part pages that the Department's decision determined could be refused on this ground are addressed under the heading 'Irrelevant information' below.

³³ Section 121(3) of the IP Act.

³⁴ Note—given the context in which this information appears (in a document relating to the applicant), the Third Party Information is relevant to the terms of the access application.

³⁵ Schedule 4, part 2, item 1 of the RTI Act.

³⁶ Schedule 4, part 2, item 3 of the RTI Act.

³⁷ Schedule 4, part 2, item 11 of the RTI Act.

³⁸ Schedule 4, part 2, items 5 and 6 of the RTI Act.

³⁹ Schedule 4, part 2, items 16 and 17 of the RTI Act.

29. The applicant considers that the information sought will reveal or substantiate deceptive, misleading or corrupt conduct by the Department and its employees. However, again noting the nature and context of the Third Party Information, I am unable to identify how its disclosure could reasonably be expected to enable inquiry into any possible deficiencies in conduct, or reveal or substantiate any misconduct. Accordingly, I consider that the disclosure factors regarding examination of the conduct of agencies and their officers are not relevant.

Administration of justice

30. The applicant has also indicated that the information sought is required for potential legal action, such as action under the "Education Qld Act", an amendment application and a complaint to the Crime and Corruption Commission. However, on the material before me, I am unable to identify how disclosure of the Third Party Information could assist the applicant to pursue any legal remedy, or evaluate whether any such remedy is available or worth pursuing;⁴⁰ nor can I discern how disclosure of this information could advance procedural fairness, or otherwise contribute to the administration or justice generally. For these reasons, I consider that the disclosure factors relating to the administration of justice are inapplicable.

Personal information and privacy

31. The RTI Act recognises that disclosing information could reasonably be expected to cause a public interest harm, if it would disclose personal information of a person, whether living or dead.⁴¹ The RTI Act also recognises that a factor favouring nondisclosure will arise, if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴²
32. I am satisfied the Third Party Information is personal in nature, as it is comprised by the identities and contact information of individuals other than the applicant. It is therefore relevant to consider the extent of the public interest harm and prejudice to privacy that could result from disclosing the Third Party Information under the IP Act.
33. I am satisfied that there is a clear public interest in ensuring that government protects and treats with respect the personal information it holds for the purpose of maintaining student records. Accordingly, I consider that disclosure of the Third Party Information under the IP Act would be a significant intrusion into the privacy of the individuals concerned, and that the extent of the public interest harm that could be anticipated from disclosure is significant. However, I also acknowledge that the applicant's parents may already know the Third Party Information, or some of it. I consider that this position reduces, but does not negate, the weight to be attributed to these nondisclosure factors. Therefore, while I would usually afford these factors significant weight, in the present circumstances I consider that moderate weight is applicable.

Balancing the relevant factors

34. I consider that public interest factors related to accountability and transparency regarding government operations are relevant, but should be afforded low weight in the circumstances of this review. On the other hand, I consider that the public interest in protecting other individuals' privacy and personal information should be attributed moderate weight.

⁴⁰ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

⁴¹ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴² Schedule 4, part 3, item 3 of the RTI Act.

35. On balance, I am satisfied that the factors favouring nondisclosure of the Third Party Information outweigh the factors favouring disclosure. In these circumstances, I consider that it would be contrary to the public interest for this information to be disclosed.

Mutual Personal Information

36. As noted above, the Mutual Personal Information is comprised by the personal information of public service employees, intertwined with the personal information of the applicant and the applicant's parents. No irrelevant factors arise regarding this information. I will now address the relevant factors.

Accountability and transparency

37. Given the applicant's submissions, the disclosure factors considered in relation to the Third Party Information⁴³ must also be considered regarding the Mutual Personal Information. Further, as the applicant has submitted that the Mutual Personal Information in particular could include detrimental or false statements about the applicant's parents which they may wish to challenge or seek to amend, it is also necessary to consider whether disclosure of the Mutual Personal Information could reasonably be expected to reveal that it is incorrect, misleading, gratuitous or unfairly subjective.⁴⁴
38. I acknowledge that disclosing the Mutual Personal Information would provide the applicant with a more complete picture of the Department's records about the applicant, particularly regarding some interactions that have occurred between the applicant's parents and representatives of the Department regarding matters related to the applicant. However, given the content of the Mutual Personal Information, and taking into account the extent and content of the located information that has been released to the applicant, I consider that disclosure of the Mutual Personal Information itself would not further advance the public interest in accountability and transparency regarding government operations and decisions⁴⁵ to any significant degree. Accordingly, in the circumstances of this review, I afford these factors low weight.
39. Further, I accept that disclosure of the Mutual Personal Information could assist the applicant's parents in their inquiries into possible deficiencies in departmental officers' conduct alleged by them. Noting, however, the limited extent of such assistance relative to the assistance afforded by the information already released to the applicant, I consider that this disclosure factor⁴⁶ should also be assigned low weight only.
40. In terms of the applicant's concerns that the Mutual Personal Information may contain false or detrimental statements about the applicant parents, I note that the Mutual Personal Information records the observations, experiences and/or emotions of various departmental officers regarding particular interactions with the applicant's parents. I have carefully considered the entirety of this information, along with the other information located by the Department and the applicant's submissions. I accept that the Mutual Personal Information is necessarily subjective in nature, because it records departmental officers' observations, experiences and/or emotions. However, I am unable to identify any material to support a finding that disclosure of this information could reasonably be expected to reveal that it is *unfairly* subjective, incorrect,

⁴³ As set out at paragraph 26 above.

⁴⁴ Schedule 4, part 2, item 12(a), (c), (d) and (e) of the RTI Act.

⁴⁵ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 5 of the RTI Act.

misleading or gratuitous. Accordingly, I am satisfied that this disclosure factor does not apply.

41. Similarly, in terms of revealing deceptive, misleading or corrupt conduct (including the making of false or detrimental statements about the applicant's parents), there is nothing in the material before me to suggest that disclosure of the Mutual Personal Information could reasonably be expected to reveal or substantiate any such conduct. Accordingly, I consider that this disclosure factor⁴⁷ is not relevant.

Administration of justice

42. Given my findings at paragraphs 40 and 41 above that disclosure of the Mutual Personal Information could not reasonably be expected to reveal the types of misconduct alleged or anticipated by the applicant's parents, it follows that I am also satisfied that disclosure of the Mutual Personal Information could not reasonably be expected contribute to the pursuit of any challenge to, or amendment of, the Mutual Personal Information to remedy such misconduct.
43. I have also considered the Mutual Personal Information in light of the applicant's submissions regarding potential legal action, such as action under the "Education Qld Act", an amendment application and a complaint to the Crime and Corruption Commission. On the material before me—with particular reference to the nature and content of the information in question in the context of all other located information—I consider that disclosure of the Mutual Personal Information is unlikely to assist the applicant to evaluate or pursue any legal remedy. Further, I am unable to determine how its disclosure could advance procedural fairness or otherwise contribute to the administration or justice generally. In these circumstances, I am satisfied that the disclosure factors relating to the administration of justice⁴⁸ do not apply to the Mutual Personal Information.

Personal information and privacy

44. I am satisfied that a small portion of the Mutual Personal Information—that is, the information within it that refers to the applicant—comprises the applicant's personal information. This gives rise to a public interest factor favouring disclosure⁴⁹ that I consider should be afforded significant weight.⁵⁰
45. When information is about an applicant who is a child represented by their parents, it is also possible that factors regarding the child applicant's best interests⁵¹ may apply. However, in absence of any material to suggest that the applicant's views accord with, or differ from, the applicant's parents' views, there is insufficient material before me to support a finding that either of these factors are relevant regarding the Mutual Personal Information insofar as it relates to the applicant.
46. Given that the Mutual Personal Information is comprised by the observations, experiences and/or emotions of various departmental officers regarding particular interactions with the applicant's parents, I am satisfied that the entirety of it this

⁴⁷ Schedule 4, part 2, item 6 of the RTI Act.

⁴⁸ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁴⁹ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁰ At times, the applicant's submissions may, in my opinion, be construed as suggesting that there is a public interest factor favouring disclosure of information about the applicant's parents—that is, a factor akin to schedule 4, part 2, item 7 of the RTI Act, but relating to the applicant's agent rather than the applicant. However, in the present circumstances, noting that the access application seeks information about the applicant (rather than the applicant's parents), I do not consider that such a factor arises.

⁵¹ Schedule 4, part 2, item 8 and schedule 4, part 3, item 4 of the RTI Act.

information is the personal information of other individuals, namely the applicant's parents and the departmental officers. These two types of personal information are intertwined with one another (and, at times, the applicant's personal information⁵²), and it is not possible to separate them. As a result, it is necessary to examine whether disclosing the Mutual Personal Information could reasonably be expected to prejudice the protection of an individual's right to privacy⁵³ and cause a public interest harm.⁵⁴

47. As the applicant's parents have, in this external review, made submissions on behalf of the applicant in pursuit of the Mutual Personal Information, it appears reasonable to conclude that disclosing this information would not be a significant intrusion into their privacy or give rise to a significant public interest harm. As a result, I afford these nondisclosure factors low weight in respect of the personal information of applicant's parents, as it appears in the Mutual Personal Information.
48. In terms of the personal information of the departmental officers, I note that generally, information relating to the day-to-day work duties and responsibilities of a public service employee may be disclosed under the IP Act, despite it falling within the definition of personal information. However, agency documents can also contain personal information of public servants which is not routine work information.⁵⁵ The personal information of the departmental officers in the Mutual Personal Information, although appearing in a workplace context, comprises the observations and experiences of those officers about what can be characterised as interactions with other individuals falling outside their usual, day-to-day work duties and responsibilities, and their feelings arising from those non-routine interactions. I consider such information is not related to the routine day-to-day work activities and is not routine personal work information.
49. It is then relevant to consider the extent of the harm that could result from disclosing such personal information under the IP Act. I am satisfied that the personal information of public servants in the Mutual Personal Information is sensitive and personal in nature. I am satisfied that its disclosure under the IP Act would be a significant intrusion into their privacy, and that the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of these public interest factors favouring nondisclosure significant weight in respect of the personal information of departmental officers in the Mutual Personal Information.

Balancing the relevant factors

50. I consider that public interest factors related to accountability and transparency regarding government operations, decisions and possible deficiencies in conduct should be afforded low weight. I also consider there is a significant public interest in the applicant accessing the small portion of the applicant's personal information as it appears among the Mutual Personal Information. Counter balanced against these considerations, I have identified the public interest in protecting the personal information of other individuals which appears throughout the Mutual Personal Information, and also the privacy of those other individuals. In the circumstances of this review, I afford low weight to protecting the personal information of the applicant's parents and their privacy, but significant weight to protecting the public servants' personal information and their privacy.

⁵² As noted at paragraph 44 above.

⁵³ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁴ Schedule 4, part 4, section 6(1) of the RTI Act.

⁵⁵ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60].

51. On balance, I am satisfied that the factors favouring nondisclosure of the Mutual Personal Information outweigh the factors favouring disclosure. Accordingly, I am satisfied that it would be contrary to the public interest to disclose this information.

Conclusion

52. For the reasons set out above, I find that both the Third Party Information and the Mutual Personal Information may be refused on the ground that disclosure of such information would, on balance, be contrary to the public interest.⁵⁶

Deleted information

Relevant law

53. Section 88 of the IP Act permits an agency to delete information from a document which it considers is not relevant to an application.
54. This provision does not set out a ground for refusal of access. Rather, it provides a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the application.⁵⁷

Analysis

55. The applicant submits⁵⁸ that the applicant has a right to access all information sought, and what the Department and OIC consider to be irrelevant may be highly relevant to the applicant.
56. I have carefully considered the Information in Issue and am satisfied that:
- parts of 29 pages⁵⁹ constitute information about departmental procedures that do not specifically involve or relate to the applicant or the applicant's parents; and
 - parts of seven pages⁶⁰ are about students other than the applicant, and concern matters solely relating to those students.
57. Given the content of these 36 part pages, I am satisfied that they in no way relate to the applicant.
58. As noted above,⁶¹ the access application sought information relating to the applicant. Based on the terms of the access application, and given that the part pages in question clearly fall outside the scope of it, I am satisfied that it was appropriate for the Department to delete the 36 part pages.⁶²

⁵⁶ Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

⁵⁷ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made in the context of the equivalent to section 88 of the IP Act, section 27(3) of the repealed *Freedom of Information Act 1992* (Qld). Refer also to *Kiepe and The University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [11].

⁵⁸ Submission dated 8 April 2016.

⁵⁹ Parts of pages 192, 194 and 195 in File C; and 1, 2, 4, 6-9, 15, 16 and 18-34 in File F.

⁶⁰ Parts of pages 228-232 in File C; and 1-2 in File D.

⁶¹ At paragraphs 1 and 10.

⁶² In accordance with the requirements of section 88(2) of the IP Act.

Nonexistent or unlocatable documents

Relevant law

59. An agency may refuse access to documents⁶³ which:
- do not exist,⁶⁴ or
 - have been (or should be) in an agency's possession, but cannot be located.⁶⁵
60. A document is nonexistent if there are reasonable grounds for an agency or Minister dealing with the application to be satisfied the document does not exist. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.⁶⁶
61. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.⁶⁷
62. By considering these factors, an agency may ascertain that a particular document was not created because, for example, its processes do not involve creating the specific document. In such instances, it is not necessary for the agency to search for the document. It is sufficient that the relevant circumstances to account for the nonexistent document are explained.
63. In assessing whether documents are nonexistent, an agency may also conduct searches. Where searches are conducted, an agency must demonstrate that it has taken all reasonable steps to locate responsive documents, prior to deciding that the documents are nonexistent. In determining whether all reasonable steps have been taken, regard should be had to the key factors.
64. To determine whether a document exists, but is unlocatable, the IP and RTI Acts require consideration of whether:
- there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and
 - the agency has taken all reasonable steps to find the document.⁶⁸
65. In answering these questions, regard should again be had to the circumstances of the case and the key factors.⁶⁹

Applicant's submissions

66. The applicant submits⁷⁰ that the Department should have located the following types of **Additional Documents**:

⁶³ Under section 47(3)(e) of the RTI Act.

⁶⁴ Section 52(1)(a) of the RTI Act.

⁶⁵ Section 52(1)(b) of the RTI Act.

⁶⁶ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19] which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]. The key factors include: the administrative arrangements of government; the agency structure; the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); the agency's practices and procedures (including but not exclusive to its information management approach); and other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

⁶⁷ Section 52(1)(b) of the RTI Act.

⁶⁸ As set out in *PDE* at [44] and [47]. See also section 137(2) of the IP Act.

⁶⁹ *Pryor* at [21].

- additional OneSchool log-in records and 'search criteria' records
- additional records of conversations and interactions between the applicant's parents and various Department officers
- CCTV footage; and
- additional documents and correspondence between Department officers.

67. More specifically, the applicant's parents submit that:

- signs around the school refer to video cameras and the CCTV cameras and signage was mentioned by the school principal during school parades in 2014⁷¹
- additional records (such as emails, diary entries and other notations) regarding conversations and interactions should exist, as they would be created as part of normal practice;⁷² and
- documents of this type did exist but were subsequently destroyed in or about December 2015 by the Department, after receiving correspondence from the applicant's legal representative.⁷³

Department's submissions

68. On external review, the Department provided the following information⁷⁴ regarding the Additional Documents:

- OneSchool records released to the applicant include details of the log-in dates and times, the name and student ID of the student to which each log-in relates and the name and user ID of each person who logged in but the OneSchool system does not record what information in the student profile was accessed, a reason for the access or whether the parent is aware of the access
- OneSchool records of contact can be printed either as records of contact forms, which is the format of documents released to the applicant, or as screen shots,⁷⁵ and the information is identical in both
- a physical inspection confirmed that there are no CCTV cameras, video surveillance or signage about such cameras or surveillance located within the relevant school grounds; and
- the Department officer who was principal at the school in 2014 advised that there were no CCTV cameras or signage at the school and CCTV cameras and signage were not mentioned on parade or discussed at P&C meetings during his time as principal.

Analysis

69. On external review, OIC asked the Department to conduct further searches for the Additional Documents. As the Department conducted further searches to locate the Additional Documents, I must consider whether the Department has taken all reasonable steps to locate them.

⁷⁰ External review application, submissions dated 15 October 2015, submissions dated 10 March 2016 and submissions dated 18 March 2016.

⁷¹ Submissions dated 15 October 2015 and 18 March 2016.

⁷² Submission dated 18 March 2016.

⁷³ Submission dated 18 March 2016.

⁷⁴ Submissions dated 29 October 2015 and 18 April 2016.

⁷⁵ Which is the document format referred to as 'search criteria' in the submissions dated 15 October 2015 received from the applicant's parents.

70. The Department provided OIC with a copy of its search records and enquiries. During the initial processing of the access application, the Department performed searches for documents responsive to the application at two schools, the Department's relevant childhood program, the Department's relevant regional office, the Department's State School division and the Department's Legal and Administrative Law branch. On external review, the Department performed further searches for the Additional Documents at one of the schools where initial processing searches had been undertaken and made enquiries of relevant Department officers.
71. On the information before me, including search statements, I consider that Department officers have:
- conducted searches of relevant locations for the types of information requested in the access application; and
 - identified relevant officers and made enquiries of them regarding the possible existence and location of the Additional Documents.
72. In these circumstances, I am satisfied that the Department has ensured that relevant officers have undertaken comprehensive and appropriately targeted searches for documents responsive to the applicant's application. Accordingly, I consider it reasonable to conclude that no further documents exist or can be located.
73. A mere assertion or belief that further conversation and interaction records should have been created does not mean that such records were in fact created. Additional records relating to conversations and interactions would, if they existed, be located within the Department records that have been searched by the Department. Further, noting that the Department's additional searches requested by OIC were completed in October 2015, there is no evidence before me to support the applicant's allegation that the requested additional conversation and interaction records previously existed, but were destroyed by the Department after receiving the letter from the applicant's legal representative in December 2015.
74. For these reasons, I am satisfied that:
- the Department has taken all reasonable steps in searching for documents responsive to the access application; and
 - access to the Additional Documents can be refused⁷⁶ on the basis they are nonexistent or unlocatable.⁷⁷

DECISION

75. I vary the Department's decision and find that access to the:
- 216 full pages and 10 part pages may be refused on the ground that this information is exempt information
 - 28 full pages and 3 part pages may be refused on the ground that disclosure of this information would, on balance, be contrary to the public interest; and
 - the Additional Documents may be refused on the ground that they are nonexistent or unlocatable.

⁷⁶ Under section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

⁷⁷ Under 52(1) of the RTI Act.

76. I also find that parts of 36 pages are not relevant to the access application and can be deleted.
77. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Acting Assistant Information Commissioner
Date: 10 June 2016

APPENDIX

Significant procedural steps

Date	Event
10 July 2015	The Department received the applicant's valid access application.
27 August 2015	The Department issued its decision on the access application.
21 September 2015	The applicant applied to OIC for external review of the Department's decision.
22 September 2015	OIC notified the Department that the external review had been received and requested relevant procedural documents. OIC received the requested documents from the Department.
30 September 2015	OIC notified the applicant and the Department that it had accepted the external review. OIC requested the Department provide a copy of the documents in issue by 15 October 2015.
13 October 2015	OIC received the requested documents from the Department.
15 October 2015	OIC received the applicant's submissions.
23 October 2015	OIC asked the Department to conduct further searches for information the subject of the applicant's sufficiency of search submissions.
29 October 2015	OIC received the Department's response regarding the applicant's sufficiency of search submissions.
3 February 2016	OIC conveyed a preliminary view to the Department and requested submissions by 17 February 2016.
12 February 2016	OIC received the Department's submissions.
18 February 2016	OIC conveyed a preliminary view to the applicant and requested submissions by 3 March 2016.
29 February 2016	OIC notified the applicant that the due date for submissions was extended to 10 March 2016. OIC requested that the Department release additional information to the applicant by 2 March 2016.
10 March 2016	OIC received the applicant's further submissions.
14 March 2016	OIC confirmed its preliminary view to the applicant and requested submissions by 21 March 2016.
18 March 2016	OIC received the applicant's further submissions.
25 March 2016	OIC received the applicant's further submissions.
29 March 2016	OIC confirmed to the applicant that certain of the applicant's concerns could not be addressed in the external review.
7 April 2016	OIC asked the Department to provide additional information regarding the applicant's sufficiency of search submissions.
8 April 2016	OIC received the applicant's further submissions.
18 April 2016	OIC received the Department's further submissions.
22 April 2016	OIC confirmed its preliminary view to the applicant and requested submissions by 6 May 2016.
2 May 2016	OIC received the applicant's further submissions.