



Decision and Reasons for Decision

Citation:	<i>Endeavour Foundation and Department of Communities, Child Safety and Disability Services; 32SGRU (Third Party) [2017] QICmr 37 (31 August 2017)</i>
Application Number:	313039
Applicant:	Endeavour Foundation
Respondent:	Department of Communities, Child Safety and Disability Services
Third Party:	32SGRU
Decision Date:	31 August 2017
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - INFORMATION PRIVACY ACT - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for information about a child while under Department's care - whether disclosing non-government sector employee information would, on balance, be contrary to the public interest - enhancing transparency, accountability and oversight of expenditure of public funds - contributing to informed debate on important issues - informing the community about Department operations - personal information and privacy - 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)

REASONS FOR DECISION

Summary

1. By application dated 5 May 2014,¹ an access applicant (the **third party** in this external review) applied, on behalf of his son, to the Department of Communities, Child Safety and Disability Services (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a range of information related to care provided to his son by a non-government not-for-profit entity.
2. The Department located 1782 pages of information responsive to the application.
3. The Department consulted with the entity (the **applicant** in this external review) under section 56 of the IP Act in respect of the Department's proposed release of information contained in 420 pages. The Department sought the applicant's views about disclosure

¹ Received by the Department on 9 May 2014.

of the information to the third party. The applicant objected to the Department's proposed disclosure of information in the 420 pages.

4. The Department decided to release information to the third party, including information in respect of which the applicant had objected to disclosure. The Department issued a decision to that effect to the third party on 21 August 2014.² Information which was not subject to the applicant's objections was released to the third party in accordance with the Department's decision. The third party did not seek external review of the Department's decision to refuse him access to some information.
5. Due to an administrative error, the Department overlooked its obligation to also issue a decision to the applicant to advise it that the Department had, contrary to the applicant's objections, decided to release some information to the third party. On identifying this, the Department issued a decision to the applicant on 19 May 2016. The applicant then sought internal review of the Department's decision on 15 July 2016. The Department issued its internal review decision to the applicant and to the third party on 15 August 2016. It decided to refuse access to small portions of additional information, but otherwise confirmed its initial decision.
6. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision to release certain information to the third party.³ The third party did not seek external review of the Department's decision to refuse access to the additional portions of information.
7. During the course of the review, the third party confirmed that he continued to pursue access to the information in respect of which the applicant objected to disclosure. The third party was therefore joined as a participant to the review.⁴ During the review, each of the participants made concessions regarding this information.
8. For the reasons set out below, I decide to vary the Department's decision and find that disclosure of the information remaining in issue in this review would, on balance, be contrary to the public interest. Access to that information may therefore be refused under the IP Act.

Background

9. Significant procedural steps relating to the external review are set out in the Appendix.
10. When the access application was lodged with the Department, the third party's son was a child, as that term is defined in the IP Act.⁵ However, when the applicant applied to OIC for external review, the third party's son was no longer a child.

Reviewable decision

11. The decision under review is the Department's internal review decision to the applicant dated 15 August 2016.

² The Department had initially issued a decision to the third party on 19 August 2014 but then issued an amended decision on 21 August 2014.

³ The application for external review was dated 8 September 2016. This application was lodged utilising OIC's online service; however, due to technical issues, the application was not received by OIC until 27 October 2016.

⁴ Under section 102(2) of the IP Act.

⁵ Section 45(2) of the IP Act.

Evidence considered

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

Information in issue

13. The Department's internal review decision under review is a disclosure decision⁶—namely, a decision to disclose certain information to the third party.⁷
14. During the review, each of the participants made concessions regarding the information that the Department's internal review decision had considered should be disclosed. The Department accepted that a small amount of the information should not be disclosed; however, the third party confirmed that he wished to access this particular information, so it remains in issue. Also, the third party agreed not seek some of the information and the applicant agreed that some of it could be released. These concessions had the effect of reducing the information in issue. Accordingly, the information to be addressed in this decision is information which identifies certain individuals—specifically, the names, initials and signatures of non-government staff,⁸ medical practitioners and teachers that appear on 386 pages⁹ (**Information in Issue**).

Onus

15. As the decision under review is a disclosure decision, the applicant bears the onus of establishing that a decision not to disclose the Information in Issue is justified or that the Information Commissioner should give a decision adverse to the third party (as the access applicant).¹⁰

Issue to be determined

16. The issue to be determined is whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.

Relevant law

17. An individual has a right to be given access, under the IP Act, to documents of an agency to the extent the documents contain the individual's personal information.¹¹ The IP Act is to be administered with a pro-disclosure bias;¹² however, the right of access is subject to a number of exclusions and limitations. Section 67(1) of the IP Act provides that access to a document may be refused on the same grounds upon which access to a document could be refused under section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁶ 'Disclosure decision' is defined in section 100(3) 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.

⁷ As the third party did not seek review of the Department's original decision to refuse access to some information, or the Department's internal review decision to refuse access to some small portions of additional information, this information is not in issue in this review.

⁸ Including staff of the applicant.

⁹ Being pages 119, 121, 140, 142 and 170-171 in File 09, pages 51-52, 220 and 222 in File 10, pages 2-4, 7-12, 17-19, 22-24, 30-33, 43-45, 84-91, 93-107, 110-115, 311-372, 374-379, 387-394, 396-439, 441-451, 453-455 and 460 in File 13, pages 2-3, 30-31, 34-37, 155-158, 162-163, 171-172, 205-209, 228-231, 233-238, 246-249, 257-265, 267-270, 278-279, 283-287, 290-292, 294-295, 299-302, 305-307, 310-313, 321-325, 328-330, 332-344, 346-348, 357-358, 360-367 and 369-372 in File 15, pages 9-10 and 34-35 in File 16 and pages 146-152, 296-314, 317-333, 338, 343-344, 346-352, 356, 359-362, 363, 364-368, 370 and 372-383 in File 17.

¹⁰ Section 100(2) of the IP Act.

¹¹ Section 40(1)(a) of the IP Act.

¹² Section 64(1) of the IP Act.

18. Relevantly, one such ground is that access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹³
19. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹⁴ and explains the steps that a decision-maker must take¹⁵ in deciding the public interest 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.

Findings

Irrelevant factors

20. The applicant raised concerns that, given the third party has previously posted information about his son's care on social media sites and criticised the applicant regarding the care it provided to his son, it is likely that the third party will '*recklessly disclose*' the Information in Issue on social media sites, and may use the Information in Issue to attempt to damage the applicant's reputation and the reputation of the individuals in question. While I acknowledge that there may be a basis for the applicant's concerns, the RTI Act specifically precludes a decision-maker from taking into account any '*mischievous conduct by the applicant*'¹⁶ in deciding the public interest.
21. The third party has provided copies of documents released by agencies in response to previous access applications which contain names of non-government staff involved in the care of his son in support of his position that Information in Issue should be disclosed.¹⁷ However, the fact that the Department or other agencies may have released information of a similar nature to the applicant in response to other access applications does not impact on the present circumstances. There is nothing in the IP Act to prevent an agency from reconsidering its position on the disclosure of a particular type of information. Similarly, there is no requirement for me to follow the approach taken by an agency in response to a previous access application. In conducting a merits review, I am required to determine each matter on its own facts and on the basis of available evidence at the time of making my decision.
22. I have not taken into account the above irrelevant factors, or any other irrelevant factor, in this review.

¹³ Under section 47(3)(b) 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.

¹⁴ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

¹⁵ Section 49(3) of the RTI Act.

¹⁶ Schedule 4, part 1, item 3 of the RTI Act.

¹⁷ Submissions dated 4 May 2017.

Factors favouring disclosure

Government accountability and transparency

23. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability¹⁸
 - contribute to positive and informed debate on important issues¹⁹
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community²⁰
 - ensure effective oversight of public funds;²¹ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²²
24. The Information in Issue appears in placement progress reports and progress notes which the applicant, a non-government not-for-profit service-provider, provided to the Department about a child under the Department's care. Most of the information in those reports and notes is to be released to the applicant (**Care Information**). As the Care Information contains substantial detail about the care provided to the third party's son, I consider that its disclosure significantly advances the public interest factors favouring disclosure that relate to accountability, transparency, oversight of public expenditure and providing information about the Department's operations. However, as regards the Information in Issue, I consider that disclosure of information that identifies individuals of non-government organisations who were involved in the care of the third party's son would advance, to only a very limited extent, those same public interest factors.
25. Accordingly, I afford low weight to these factors favouring disclosure of the Information in Issue.²³

Administration of justice and fair treatment

26. The third party submits²⁴ that he seeks access to the Information in Issue because he may not be happy with the care which the individuals in question provided to his son. I have therefore considered whether disclosing the Information in Issue could reasonably be expected to:
- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;²⁵ and
 - contribute to the administration of justice generally, including procedural fairness;²⁶
 - contribute to the administration of justice for a person.²⁷
27. I accept that disclosing the Information in Issue would inform the third party about the identity of particular individuals who were involved in providing his son's care. However,

¹⁸ Schedule 4, part 2, item 1 of the RTI Act.

¹⁹ Schedule 4, part 2, item 2 of the RTI Act.

²⁰ Schedule 4, part 2, item 3 of the RTI Act.

²¹ Schedule 4, part 2, item 4 of the RTI Act.

²² Schedule 4, part 2, item 11 of the RTI Act.

²³ Schedule 4, part 2, items 1, 2, 3, 4 and 11 of the RTI Act.

²⁴ In a telephone conversation with an OIC officer on 10 February 2017.

²⁵ Schedule 4, part 2, item 10 of the RTI Act.

²⁶ Schedule 4, part 2, item 16 of the RTI Act.

²⁷ Schedule 4, part 2, item 17 of the RTI Act.

I do not consider that disclosing the Information in Issue would advance the public interest factors identified above.

28. On the information before me, I understand that the third party's son was discharged from the Department's care in September 2014 and he has been in his family's care since that date. Taking into account the content of the Care Information, I consider that, should the third party consider the care provided for his son was inadequate, he is able, on the basis of the Care Information, to take any action he considers appropriate against the entities in question.²⁸ I further note that, should the third party decide to commence legal proceedings, it is reasonable to expect that relevant court disclosure processes will be available to him. In these circumstances, I consider that the Information Commissioner's comments in *Phyland and Department of Police*²⁹ are relevant:

The RTI Act was not, however, designed to serve as an adjunct to court processes, but to comprise a stand-alone mechanism for enabling public access to government-held information. Obviously, the applicant is entitled to elect to pursue access under the right of access conferred by the RTI Act. In doing so, however, she must accept the qualifications upon and limitations to that right imposed by the Act itself, including refusal of access where ... disclosure would disclose personal information or infringe upon an individual's right to privacy.

29. In light of these considerations, I am unable to determine how disclosure of the Information in Issue would advance the fair treatment of the third party or his son in their dealings with the Department, or contribute to the administration of justice either generally, or for the third party or his son. Accordingly, I find that the public interest factors identified at paragraph 26 above do not apply in the circumstances of this review. However, for the sake of completeness, I note that even if I were incorrect in this regard, and these factors could be said to apply, they nonetheless warrant low to no weight in favour of disclosing the Information in Issue.

Deficiencies in conduct

30. Given the third party stated to OIC that he had concerns about his son's care,³⁰ I have also considered whether disclosing the Information in Issue could reasonably be expected to:
- allow or assist inquiry into the possible deficiencies in conduct or administration of any agency or official³¹ or any other person;³² or
 - reveal or substantiate that misconduct or negligent, improper or unlawful conduct has been engaged in by an agency or official³³ or any other person.³⁴
31. Having carefully reviewed the Information in Issue and surrounding Care Information, I am unable to identify how disclosure of the Information in Issue could reasonably be expected to advance these public interest factors. Consequently, I am satisfied that these public interest factors do not apply in the circumstances of this review. However, for the sake of completeness, I note that even if I were incorrect in this regard, and these factors could be said to apply, they nonetheless warrant no weight in favour of disclosing the Information in Issue.

²⁸ Refer to *Willsford and Brisbane City Council* (1996) 3 QAR 368.

²⁹ (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

³⁰ In his conversation with an OIC officer on 10 February 2017.

³¹ Schedule 4, part 2, item 5 of the RTI Act.

³² The public interest factors listed in schedule 4 of the RTI Act are non-exhaustive—see section 49(3)(a), (b) and (c) of the RTI Act. Accordingly, I have considered other persons, as well as agencies and their officers.

³³ Schedule 4, part 2, item 6 of the RTI Act.

³⁴ See footnote 33.

Other factors

32. I have carefully considered all public interest factors favouring disclosure listed in schedule 4, part 2 of the RTI Act, and can identify no other factors that weigh in favour of disclosure of the Information in Issue.³⁵

Factors favouring nondisclosure

Personal information and privacy of other individuals

33. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;³⁶ and
 - 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.³⁷
34. The Information in Issue is the personal information of persons other than the third party and his son. This automatically gives rise to the application of these factors favouring nondisclosure. I am satisfied that the information is not publicly available information. It identifies individuals who were involved in the care of the third party's son, including his individual carers, medical practitioners who treated him, and his teachers. While I consider it likely that the third party would be aware generally of the individuals who were, in 2012 and 2013, involved in providing his son's care, he would not know which individuals recorded the observations and opinions which appear in the Care Information. Disclosure of the Information in Issue would enable the applicant to identify the individuals who recorded each of those observations and opinions.
35. The individuals in question are not public sector employees.³⁸ They are non-government sector employees who, through the course of their work, may encounter challenging and emotionally difficult situations, particularly where there are instances of conflict with young people under their care and/or with family members regarding the care provided. I consider that this necessitates a degree of privacy regarding their dealings in the workplace, and that disclosure of the Information in Issue could reasonably be expected to prejudice those privacy interests. I acknowledge that some of the individuals referred to in the Information in Issue were caring for the third party's son on behalf of the Department and a level of accountability attaches to the discharge of their duties in that regard. However, as discussed above, I am not satisfied that disclosure of the names of individuals would advance, to any significant degree, the accountability of the non-government entity involved in caring for the third party's son, such as to displace the public interest in protecting the privacy interests of individual employees.

³⁵ For example, I do not consider that the Information in Issue can be regarded as the personal information of the applicant (schedule 4, part 2, item 7 of the RTI Act) or the personal information of a child, the disclosure of which could reasonably be considered to be in the child's best interests (schedule 4, part 2, item 8 of the RTI Act), nor do I consider that disclosing the Information in Issue could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act).

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

³⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

³⁸ For a discussion of the personal information of private sector employees, as well as a discussion of routine and non-routine personal work information of public sector employees, see *Kiepe and The University of Queensland* (Information Commissioner of Queensland, 1 August 2012) at [18] to [21].

36. Given these considerations, I afford moderate weight to the public interest in protecting the personal information and privacy interests of the individuals whose names, initials and signatures comprise the Information in Issue.

Other factors

37. The applicant has raised concerns that, given the third party's public criticism of the applicant, disclosure of the Information in Issue may result in the individuals referred to in the Information in Issue being subjected to harassment and intimidation.³⁹
38. Schedule 3, section 10(1)(e) of the RTI Act provides that information is exempt information if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation. During the course of the review, the applicant accepted my preliminary view that the grounds for this exemption were not made out. I have also given consideration to whether the applicant's submissions could give rise to a related public interest factor favouring nondisclosure—that is, whether disclosure could reasonably be expected to result in a person being subjected to lower level (that is, less than the 'serious' level required by the exemption provision) harassment or intimidation. However, on consideration of the material before me, including the content of the Care Information and the nature of the Information in Issue itself, I am unable to determine a reasonable nexus or connection between disclosure of the Information in Issue and an occurrence, or re-occurrence, of the conduct which the applicant considers to amount to harassment and intimidation. As a result, I am not satisfied that the conduct anticipated by the applicant could reasonably be expected to occur, or re-occur, as a result of disclosure of the Information in Issue. In those circumstances, I do not consider that a factor of this nature applies to the Information in Issue.

Balancing the public interest

39. For the reasons explained above, I afford low weight to the public interest factors that I have identified above as weighing in favour of disclosure of the Information in Issue, and moderate weight to those I have identified as favouring nondisclosure of the Information in Issue. In these circumstances, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and that access may be refused on this basis.

Conclusion

40. I am satisfied that the applicant has discharged the onus, imposed by section 100(2) of the IP Act, of establishing that the Information in Issue comprises contrary to the public interest information.
41. Accordingly, I am satisfied that access to the Information in Issue may be refused under the IP Act on the ground that its disclosure would, on balance, be contrary to the public interest.

DECISION

42. I vary the Department's decision and find that access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.⁴⁰

³⁹ External review application.

⁴⁰ Under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

43. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Assistant Information Commissioner

Date: 31 August 2017

APPENDIX

Significant procedural steps in the external review

Date	Event
8 September 2016	The applicant submitted an application for external review with OIC. ⁴¹
18 November 2016	OIC notified the applicant and the Department that it had accepted the external review application and asked the Department to provide background information.
7 December 2016	OIC received the requested information from the Department.
20 December 2016	OIC provided the applicant with an update on the status of the review.
10 February 2017	The third party advised OIC that he did not seek access to contact details contained in the deferred documents, but that he did continue to seek access to the names and initials of individuals contained in the deferred documents.
21 April 2017	OIC conveyed a preliminary view to the applicant and to the third party and invited each to provide submissions if they did not accept the preliminary view.
4 May 2017	OIC received the third party's submissions.
8 May 2017	OIC conveyed a further preliminary view to the third party.
22 May 2017	OIC received the third party's further submissions.
12 July 2017	OIC wrote to the applicant confirming the applicant's acceptance of OIC's preliminary view. OIC conveyed a preliminary view to the Department and invited the Department to provide submissions if it did not accept the preliminary view.
24 July 2017	The Department confirmed to OIC that it accepted OIC's preliminary view.
17 August 2017	OIC wrote to the third party advising that the other participants accept OIC's preliminary view.
20 August 2017	OIC received a response from the third party expressing concern about the progress of the review.
22 August 2017	OIC wrote to the applicant responding to his concerns.

⁴¹ This application was lodged utilising OIC's online service. Due to technical issues, the application was not received by OIC until 27 October 2016.