



## Decision and Reasons for Decision

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**Application Number:** 310177

**Applicant:** Lai

**Respondent:** Department of Transport and Main Roads

**Decision Date:** 13 April 2011

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - applicant sought access to documents relating to a motor vehicle accident and related show cause proceedings involving third party driver - whether disclosure of the driver's personal information would, on balance, be contrary to the public interest - whether factors relating to administration of justice and accountability outweigh the privacy considerations - whether access to information can be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

### Contents

REASONS FOR DECISION.....	2
Summary .....	2
Significant procedural steps .....	2
Reviewable decision.....	2
Information in Issue .....	2
Evidence considered .....	3
Relevant law.....	3
Findings.....	3
Factors favouring disclosure .....	3
Factors favouring nondisclosure .....	5
Balancing the public interest .....	6
DECISION.....	6
Appendix .....	7
Significant procedural steps .....	7

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Department of Transport and Main Roads (**Department**) for documents relating to a traffic incident which resulted in the death of his wife. The applicant's wife was struck by a motor vehicle, driven by a third party, while she was walking along a footpath. The Department subsequently required the third party driver to show cause as to their suitability to hold a driver's licence.<sup>1</sup> As a result of medical evidence provided by the driver to the Department, the driver was permitted to maintain an open licence.
2. The Department granted the applicant access to some information but refused access to personal details of the driver, including information appearing in medical certificates provided by the driver to the Department in response to the show cause notice, on the basis that disclosure would, on balance, be contrary to the public interest under the *Right to Information Act 2009* (Qld) (**RTI Act**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access to the driver's personal details.<sup>2</sup>
4. On external review, the applicant submitted that the Department's decision to reinstate the driver's licence was based on contradicting medical information and that therefore, there was a strong accountability interest in disclosing the driver's personal information. The applicant also contended that disclosure of the driver's identity would assist him in lodging a complaint against the medical practitioner who issued the medical certificates with the Australian Health Practitioners Regulation Agency (**AHPRA**).
5. For the reasons set out below, I affirm the Department's decision to refuse access to the personal information of the driver under sections 47(3)(b) and 49 of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.

### Significant procedural steps

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

### Reviewable decision

7. The decision which is the subject of this external review is the Department's internal review decision dated 9 April 2010 refusing access to information under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

### Information in Issue

8. The driver's name, address, date of birth, signature and Queensland driver's licence number comprise the Information in Issue in this review.<sup>3</sup>

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<sup>1</sup> Pursuant to the *Transport Operations (Road Use Management – Driver Licensing) Regulation 1999* (Qld).

<sup>2</sup> The applicant also raised concerns about the existence of further documents, thereby raising the issue of 'sufficiency of search'. During the course of the review, all sufficiency of search issues were resolved through negotiations with the applicant and Department and therefore, are not dealt with in this decision (see Appendix).

<sup>3</sup> The information appears in the medical certificates and the two 'screen prints' located by the Department on external review (for further details, see the Appendix).

## Evidence considered

9. In making this decision, I have considered the following:

- applications for access to information, internal review and external review made by the applicant;
- original and internal review decisions made by the Department;
- documents containing the Information in Issue;
- applicant's submissions to OIC dated 3 November 2010, 10 November 2010, 21 January 2011 and 22 February 2011 and supporting documents;
- Department's submissions to OIC made during the course of the review;
- file notes of telephone discussions held between OIC and the applicant, Department and representatives of AHPRA during the course of the review;
- email correspondence between AHPRA and the applicant, forwarded to OIC by the applicant during the course of the review;
- relevant sections of the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**); and
- previous decisions of the Information Commissioner as set out in this decision.

## Relevant law

10. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>4</sup> However, this right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.<sup>5</sup> Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.<sup>6</sup>

11. To decide whether disclosure of the Information in Issue would be contrary to the public interest, I must:

- 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, on balance, would be contrary to the public interest.<sup>7</sup>

## Findings

12. No irrelevant factors arise in this case.

### **Factors favouring disclosure**

#### **Accountability**

13. The applicant contends that the Department acted irresponsibly in accepting '*contradicting medical details*' from the driver during the show cause process. The applicant also submits that the Department is '*endangering public safety*' by allowing the driver to hold an unrestricted driver's licence.

14. The applicant's above submissions relate generally to the public interest in enhancing government accountability and transparency. In this regard, the following public interest factors favouring disclosure are relevant:

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<sup>4</sup> Section 23 of the RTI Act

<sup>5</sup> As set out in section 47 of the RTI Act.

<sup>6</sup> Sections 44, 48 and 49 of the RTI Act.

<sup>7</sup> Section 49(3) of the RTI Act.

- disclosure of information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision;<sup>8</sup> and
  - disclosure of information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency<sup>9</sup>.
15. I acknowledge that, in this case, disclosing information which demonstrates the Department's conduct and decision making process on the show cause notice, would further the accountability interest. In this regard, the Department has already released a number of documents relating to the show cause proceedings to the applicant (**Show Cause Documents**).<sup>10</sup>
16. In contrast, the personal details of the driver that appear in the Information in Issue do not comprise:
- details of any medical condition of the driver, the assessment of which would have been relevant to the actions taken by the Department on the show cause notice; or
  - any further reasons explaining the basis for the Department's decision to issue the driver with an unrestricted licence.
17. I consider that disclosure of the Show Cause Documents has assisted in furthering the public interest in accountability of the Department in this case. I am also satisfied that, due to the particular personal details contained within the Information in Issue, the accountability interest would not be any further advanced by disclosure of the Information in Issue.
18. Accordingly, I am satisfied that the public interest factors favouring disclosure which relate to the accountability of the Department should not be afforded any weight in this case.

### **Administration of justice**

19. The applicant contends that he requires the Information in Issue to make a complaint to AHPRA about the medical practitioner who issued the medical certificates to the driver.
20. The RTI Act recognises that where disclosure of information could reasonably be expected to contribute to the administration of justice for a person, this will favour disclosure.<sup>11</sup>
21. I accept that AHPRA investigates complaints against registered medical practitioners and accordingly, the disclosure of information enabling a complaint to be made by the applicant may contribute to the administration of justice in this regard. However, the Information in Issue does not contain any details about the medical practitioner who issued the medical certificates.
22. Information pertaining to the AHPRA complaint process indicates that where a medical certificate is the subject of a complaint, a registered medical practitioner must be identified on the relevant medical certificate.<sup>12</sup> I note that the applicant has already

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<sup>8</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>9</sup> Schedule 4, part 2, item 5 of the RTI Act

<sup>10</sup> Including a copy of the show cause notice and corresponding decisions that were issued by the Department. These documents were released to the applicant subject to the deletion of the personal details of the driver.

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

<sup>12</sup> This was explained to the applicant by AHPRA in an email dated 10 November 2010. The applicant forwarded a copy of this email to OIC in the course of this review.

been given access to the name and contact details of the medical practitioner by the Department.<sup>13</sup>

23. On the basis that the Information in Issue relates only to the driver and not the medical practitioner and the fact that the applicant already has a copy of the medical certificates identifying the medical practitioner, I am satisfied that:
- disclosure of the Information in Issue could not reasonably be expected to assist the applicant in making a complaint to AHPRA about the medical practitioner; and
  - the public interest in the administration of justice cannot be attributed any weight in this case.

### **Factors favouring nondisclosure**

24. The Department contends that the Information in Issue comprises the driver's personal information which would, on balance, be contrary to the public interest to disclose.
25. When considering the disclosure of other individuals' personal information, the RTI Act recognises the following factors in favour of nondisclosure:
- disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy<sup>14</sup>; and
  - disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead<sup>15</sup>.
26. For the reasons set out below, I consider that the above factors are relevant in this case.

### **Personal information**

27. Section 12 of the IP Act defines 'personal information' 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 or opinion.*<sup>16</sup>

28. As set out in paragraph 8 above, the Information in Issue comprises the driver's name, address, date of birth, signature and Queensland driver's licence.
29. While an individual's name in isolation does not comprise their personal information, if a name links an identifiable person to information about a private aspect of their life, for example, health information, their name in that context will comprise personal information.<sup>17</sup>
30. The Information in Issue places the driver's name and personal details in medical certificates and show cause records produced in response to a show cause notice issued by the Department in relation to the traffic incident. I am satisfied that disclosure of the Information in Issue in this context would directly link the driver with

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<sup>13</sup> These details appear in the medical certificates which were released by the Department to the applicant under its original decision.

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

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

<sup>16</sup> The definition of 'personal information' in schedule 6 of the RTI Act refers to the IP Act definition.

<sup>17</sup> See *Roue and Moreton Bay Regional Council* (unreported, Qld Information Commissioner 24 February 2011) at paragraphs 32 and 33.

the medical certificates and the show cause proceedings and thereby, disclose the driver's personal information.

31. Due to the particularly sensitive context in which the personal information appears, I am satisfied that its disclosure could reasonably be expected to cause a public interest harm.

### **Privacy**

32. For reasons I am not able to fully discuss in this decision<sup>18</sup>, the particular circumstances of this case somewhat reduce the privacy interest which would ordinarily attach to the driver's name in the Show Cause Documents. However, I consider that information about an individual's medical history and corresponding restrictions placed on their driver's licence relate to the private sphere of a person's life. Accordingly, I am satisfied that disclosure of the driver's name in this specific context could reasonably be expected to prejudice the protection of the driver's right to privacy. I therefore afford this factor favouring nondisclosure, as it relates to the driver's name, moderate weight.
33. With respect to the remaining Information in Issue, I consider that the privacy interest in these details is significant. As is noted above, information about an individual's medical history or driver's licence restrictions relates to the private aspects of a person's life. There is no evidence that the privacy interest has been reduced in any way.

### ***Balancing the public interest***

34. In balancing the competing public interest factors identified above with respect to disclosure of the Information in Issue, I consider that:
- the public interest in accountability of the Department and administration of justice do not carry any weight in this case;
  - the Information in Issue is the driver's personal information and its disclosure could reasonably be expected to cause a public interest harm;
  - while the privacy interest in the driver's name is somewhat reduced, the Information in Issue still attracts a strong privacy interest due to the sensitive and private context in which it appears; and
  - on balance, the public interest factors favouring disclosure are outweighed by the factors favouring nondisclosure.

### **DECISION**

35. For the reasons set out above, I affirm the Department's decision to refuse access to the Information in Issue under sections 47(3)(b) and 49 of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
36. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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

**Date: 13 April 2011**

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<sup>18</sup> A more expansive explanation may have the effect of causing the harm section 108(3) of the RTI Act is intended to guard against.

## Appendix

### Significant procedural steps

Date	Event
5 February 2010	<p>The applicant applied to the Department for access to documents relating to:</p> <ul style="list-style-type: none"> <li>• the circumstances of his wife's death; and</li> <li>• the medical show cause notice issued by the Department to the third party driver.</li> </ul>
2 March 2010	<p>The Department identified 15 documents in response to the access application and decided (<b>Original Decision</b>) to:</p> <ul style="list-style-type: none"> <li>• grant full access to three documents and partial access to 12 documents relating to the show cause notice issued by the Department to the driver; and</li> <li>• refuse access to the remaining information in the 12 documents under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.</li> </ul> <p>In its decision, the Department also indicated that it did not hold any documents specifically relating to the death of the applicant's wife.</p>
10 March 2010	<p>The applicant applied to the Department for internal review of the Original Decision. In his internal review application, the applicant:</p> <ul style="list-style-type: none"> <li>• contested the decision to refuse access to parts of 12 documents on public interest grounds; and</li> <li>• questioned whether the Department had located all relevant documents responding to his access application.</li> </ul>
9 April 2010	<p>On internal review, the Department affirmed the Original Decision to refuse access to parts of 12 documents under section 47(3)(b) of the RTI Act.</p> <p>With respect to the applicant's submission as to additional documents, the Department confirmed that, in accordance with section 52(1) of the RTI Act, further documents falling within the scope of the access application did not exist.</p>
14 April 2010	<p>The applicant applied to OIC for external review of the Department's internal review decision on the basis that he sought:</p> <ol style="list-style-type: none"> <li>(i) full access to the partially released 12 pages; and</li> <li>(ii) further confirmation from the Department as to whether there were any missing documents.</li> </ol> <p>OIC interpreted item (ii) as raising the issue of sufficiency of search.</p>
21 April 2010	<p>OIC accepted the external review application and requested the Department to conduct further searches for documents within the scope of the access application.</p>
31 August 2010	<p>In a telephone discussion with OIC the applicant made submissions in support of his application for full access to the 12 documents.</p>
13 -17 September 2010	<p>The Department provided OIC with search records and certifications to address the sufficiency of search issues raised by the applicant.</p> <p>The Department informed OIC that it had located some additional documents and provided copies of these to OIC (<b>Further Documents</b>). The Department submitted that it did not consider the Further Documents were within the scope of the access application as they were created not in relation to the show cause process but as a direct result of the applicant's earlier <i>Freedom of Information Act 1992</i> (Qld) application.</p>

Date	Event
15 October 2010	<p>OIC conveyed to the applicant the preliminary view that access to the Information in Issue could be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.</p> <p>OIC also provided the applicant with a description of the Further Documents and sought the applicant's view as to whether he had intended to seek access to these documents in his access application.</p>
15 October 2010	The applicant indicated to OIC in a telephone conversation that he did not accept the preliminary view.
15 October 2010 – 9 November 2010	The applicant sent several emails to OIC during this period containing copies of his correspondence with AHPRA in relation to making a complaint about a medical practitioner.
3 November 2010	The applicant confirmed to OIC that he did not accept the preliminary view and that he wished to pursue access to all Further Documents.
11 November 2010 – 21 January 2011	<p>During this period, OIC engaged in extensive negotiations with the Department regarding the issue of scope. Following an assessment of the terms of the access application, Further Documents and submissions made by the Department on this issue, OIC formed the view that:</p> <ul style="list-style-type: none"> <li>• most of the Further Documents located by the Department fell outside the scope of the access application as they had been generated by the Department as a result of the applicant's earlier <i>Freedom of Information Act 1992 (Qld)</i> application and not specifically in relation to the show cause notice process; and</li> <li>• the only Further Documents which were within scope of the application were two 'screen prints' generated through the Department's customer database.</li> </ul>
21 January 2011	OIC telephoned the applicant to convey OIC's position on the scope of the review. The applicant did not dispute OIC's view on the issue of scope but emphasised that he was still seeking access to the personal details of the driver appearing in the medical certificates.
8 February 2011	<p>OIC informed the applicant that:</p> <ul style="list-style-type: none"> <li>• two further documents ('screen prints') responding to the scope of his access application had been located by the Department;</li> <li>• the Department would provide him with access to the documents subject to the deletion of information identifying a third party; and</li> <li>• in OIC's preliminary view, there are reasonable grounds to be satisfied that no further documents falling within the terms of the access application exist.</li> </ul>
11 February 2011	The Department released the screen prints to the applicant, subject to the deletion of the personal details of the driver.
22 February 2011	The applicant provided submissions to OIC confirming he continued to seek access to the third party's personal information in issue.