



Decision and Reasons for Decision

Application Number: 310468

Applicant: 74KDLG

Respondent: Department of Health

Decision Date: 25 February 2011

Catchwords: **INFORMATION PRIVACY ACT – REFUSAL OF ACCESS - applicant seeks access to information relating to justices examination order - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or environment - whether access to information can be refused under section 67 of the *Information Privacy Act***

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REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Health¹ (**QH**) under the *Information Privacy Act 2009* (Qld) (IP Act) for access to documents relating to a Justices Examination Order (**JEO**) application made under the *Mental Health Act 2000* concerning him.
2. QH located 35 documents responsive to the applicant's access application. QH gave the applicant access to 13 documents in full and five in part. Access to 17 documents was refused in full, on the basis the documents (or parts of documents) comprised exempt information under section 48 of the *Right to Information Act 2009* (Qld) (**RTI Act**). The applicant applied to the Office of the Information Commissioner (**OIC**) for review of QH's decision refusing access to this information.
3. Having considered the material before me, I am satisfied access to the relevant information can be refused under section 67 of the IP Act and sections 47(3)(a) and 48 of the RTI Act, on the basis it comprises exempt information under schedule 3 section 10(1)(i) of the RTI Act.

Background

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

Decision under review

5. The decision under review is QH's decision dated 16 November 2010 to refuse the applicant access under section 67 of the IP Act to five documents in part and 17 in full, on the basis:
 - all 22 documents (or parts of document) comprise exempt information under section 48 and schedule 3 section 10(1)(i) of the RTI Act; and
 - 15 documents also comprise exempt information under section 48 and schedule 3 section 8(1) of the RTI Act.

Information in issue

6. The information in issue in this review comprises the 22 documents (or parts of documents) referred to in paragraph 5.²

Evidence relied upon

7. In making this decision, I have taken the following into account:
 - applicant's access application dated 28 September 2010;
 - applicant's further correspondence to QH dated 11 October 2010
 - QH's decision dated 16 November 2010;
 - applicant's external review application dated 22 November 2010 and correspondence with this office dated 29 December 2010;
 - the information in issue;
 - previous decisions of the Information Commissioner as referred to in these reasons; and
 - relevant provisions of the IP Act, RTI Act and *Mental Health Act 2000*.

Relevant law

8. Access must be given to a document unless it contains exempt information or its disclosure would, on balance, be contrary to the public interest.³
9. Schedule 3 section 10(1)(i) of the RTI Act provides that information is exempt information if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment. This provision will apply if each of the following requirements are met:⁴
 - a) there exists an identifiable system or procedure;
 - b) it is a system or procedure for the protection of persons, property or environment; and
 - c) disclosure of the information in issue could reasonably be expected to prejudice that system or procedure.

Findings

Requirement (a) – Is there an identifiable system or procedure?

10. The objective of a JEO is to allow a person in the community to request a non-urgent, involuntary mental health assessment for a person they believe may be experiencing mental health problems.⁵
11. Chapter 2, Part 3, Division 2 of the *Mental Health Act 2000* relevantly provides:
 - a person may apply to a Magistrate or Justice of the Peace for a JEO for another person;⁶
 - the Magistrate or Justice of the Peace may issue a JEO if he/she reasonably believes that the relevant person has a mental illness and should be examined;⁷
 - once a JEO has been issued and sent to the administrator of an authorised mental health service, a doctor or authorised mental health practitioner may conduct the examination;⁸
 - the JEO authorises a doctor or authorised mental health practitioner to examine the person to decide whether a recommendation for assessment for the person should be made;⁹
 - if a recommendation for assessment for the person is not made after the person's examination under the JEO, the examining doctor or authorised mental health practitioner must give notice to the director.¹⁰

12. In view of the above, I am satisfied that the *Mental Health Act 2000* establishes a 'system or procedure' for the purpose of schedule 3, section 10(1)(i) of the RTI Act.

Requirement (b) – Is the system or procedure for the protection of persons, property or environment?

13. The Information Commissioner has considered whether the JEO procedure is an identifiable procedure for the protection of persons in a number of decisions.¹¹
14. In *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)*¹² Information Commissioner Albietz said:¹³

In my view, it is clear that the legislature considered it necessary to establish a system or procedure whereby members of the community who hold a genuine belief that a person is mentally ill, and a danger to himself/herself or to others,

can initiate action to protect that person or others from the apprehended danger. This clearly answers the description “a system or procedure for the protection of persons”, within the terms of s.42(1)(h) of the FOI Act.

15. I am satisfied that the procedure for making a JEO application is a procedure for the protection of persons.

Requirement (c) – Could disclosure of the information in issue reasonably be expected to prejudice that system or procedure?

16. The Information Commissioner made the following observations on the JEO process in SQD:¹⁴

Persons applying for a JEO provide information on the understanding that it is confidential and will only be used for the limited purpose of ensuring the proper administration of the Mental Health Act 2000.

17. The JEO process is an important mechanism by which persons in need of appropriate mental health care may be removed from the community for the purposes of assessment and treatment, thereby minimising the potential for harm to themselves and others. As the Information Commissioner noted in SQD, confidentiality is integral to this process. I consider that members of the community would be hesitant to use the JEO process if their identity and information they or others supplied in support of a JEO application were open to disclosure. Alternatively, JEO applicants would feel sufficiently inhibited so as to avoid supplying information that might lead to their identification. This, in turn, would have the adverse consequence of reducing the quality of information upon which JEO assessments and decisions are based.

18. Accordingly, I am satisfied that disclosure of the information in issue could reasonably be expected to prejudice – to detrimentally impact¹⁵ – the JEO procedure prescribed in the *Mental Health Act 2000*. The information in issue is therefore exempt information within the meaning of schedule 3 section 10(1)(i) of the RTI Act. Given my finding in this regard, it is not necessary for me to consider the application of schedule 3 section 8(1) of the RTI Act.¹⁶
19. The applicant has raised various submissions in support of his case for disclosure of the information in issue.¹⁷ Essentially, the applicant:
 - believes he knows the identity of the JEO applicant;
 - believes the JEO application contains false information and was made maliciously;
 - states the putative JEO applicant is dangerous and the applicant fears for his safety;
 - states that he has been advised to take ‘legal action’ against the putative JEO applicant and requires access to the information in issue for this purpose.
20. None of the applicant's submissions give rise to relevant considerations in this case. Firstly, it is not the function of the information access provisions of the IP Act to confirm or deny an applicant's suspicions as to the identity of a JEO applicant. Secondly, schedule 3 section 10(1)(i) of the RTI Act does not require an examination of a JEO applicant's motives, nor assessment of the veracity of application material. Finally, the balance of the applicant's submissions effectively comprises public interest considerations. Schedule 3 section 10(1)(i) is not subject to a public interest balancing test. Accordingly, it does not matter that an applicant can identify public interest considerations which might otherwise favour disclosure of information.

DECISION

21. For the reasons set out above, I affirm QH's decision insofar as that decision characterised the information in issue as exempt matter under schedule 3, section 10 of the RTI Act, by finding that the information in issue comprises exempt information under section 47(3)(a), section 48 and schedule 3 section 10(1)(i) of the RTI Act and that QH was entitled to refuse the applicant access to this information under section 67 of the IP Act.
22. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Jenny Mead
Right to Information Commissioner

Date: 25 February 2011

APPENDIX

Significant procedural steps

Date	Event
28 September 2010	The applicant applies to QH for access to JEO documentation under the IP Act.
11 October 2010	The applicant writes to QH supplying evidence of identity, rendering access application compliant under the IP Act.
16 November 2010	QH refuses access to various documents in part and full, on the basis the documents comprise exempt information under section 47(3)(a) of the RTI Act.
22 November 2010	The applicant applies to OIC for external review of the QH decision.
30 November 2010	QH provides OIC with copies of documents relating to the application.
3 December 2010	OIC informs QH the external review application has been accepted for review.
7 December 2010	The Department provides OIC with a copy of the information in issue, i.e. JEO documents to which access was refused.
21 December 2010	OIC informs applicant application has been accepted for review. OIC conveys to the applicant the written preliminary view that documents to which access was refused comprise exempt information under section 47(3)(a) of the RTI Act.
29 December 2010	The applicant advises OIC that he does not accept the preliminary view and provides submissions in support of his case for access.
2 February 2011	OIC conveys oral and written preliminary view to QH two segments of matter appearing on two documents in issue do not comprise exempt information under section 47(3)(a) of the RTI Act.
9 February 2011	QH accepts OIC preliminary view two segments of matter not exempt from disclosure.

¹ Known as Queensland Health.

² During the course of this review QH agreed to disclose two additional segments of information appearing on two of the five documents partly disclosed to the applicant, comprising the identity of the assessing psychiatrist. While this information is no longer in issue, the applicant has been refused access to other information appearing on these pages.

³ Sections 64 (Pro disclosure bias) and 67 (Grounds on which access may be refused) of the IP Act and sections 47(3)(a) and (b) of the RTI Act.

⁴ *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at paragraphs 27-36.

⁵ See http://www.health.qld.gov.au/mha2000/documents/jeo_brochure.pdf for further information.

⁶ Section 27 of the *Mental Health Act 2000*.

⁷ Section 28 of the *Mental Health Act 2000*.

⁸ Section 29 and 30 of the *Mental Health Act 2000*.

⁹ Section 30 of the *Mental Health Act 2000*.

¹⁰ Section 32 of the *Mental Health Act 2000*.

¹¹ See for example *SQD and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 2 September 2010) at paragraph 16; *VHL and Department of Health* (Unreported, Queensland Information Commissioner, 20 February 2009) at paragraph 49; *ROSK and Brisbane North Regional Health Authority; Others (Third Parties)* (1996) 3 QAR 393 at paragraphs 13 – 15 and *QPF and Department of Health* (Unreported, Queensland Information Commissioner, 29 June 2009) at paragraphs 21 – 26.

¹² (1996) 3 QAR 393 at paragraph 15.

¹³ Discussing section 42(1)(h) of the former *Freedom of Information Act 1992*, the terms of which were materially comparable to schedule 3, section 10 of the RTI Act.

¹⁴ At paragraph 17.

¹⁵ Adopting the ordinary meaning of the term 'prejudice': see *Daw and Queensland Rail* (220020, 24 November 2010) at paragraph 17 for a succinct exposition of the meaning of 'prejudice' as used throughout the RTI Act.

¹⁶ As noted at paragraph 5, QH decided that 15 of the 22 documents refused also comprised exempt information under schedule 3 section 8(1) of the RTI Act.

¹⁷ See correspondence comprising the applicant's access application dated 28 September 2010, letter to QH dated 11 October 2010, application for external review dated 22 November 2010, and the applicant's letter to the OIC dated 29 December 2010.