



Decision and Reasons for Decision

Application Number: 310805

Applicant: 0ZH6SQ

Respondent: Queensland Health

Decision Date: 21 May 2012

Catchwords: **ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – QUEENSLAND – REFUSAL OF ACCESS – a prisoner sought access to psychiatric reports about him – agency refused access to some details of offences and information about victims, family members and other individuals – an agency may refuse access to a document of an agency in the same way and to the same extent the agency could refuse access to the document under section 47 of the *Right to Information Act 2009* (Qld) were the document to be the subject of an access application under that Act – section 67(1) of the *Information Privacy Act 2009* (Qld)**

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – QUEENSLAND – REFUSAL OF ACCESS – whether disclosing the information would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant,¹ a prisoner, applied to Queensland Health (**QH**), under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to all documents on his file retained by Queensland Mental Health from 1983 to 2011 and in particular his quarterly psychiatric reports for a specified period.
2. QH granted access to the requested documents subject to the deletion of a small amount of information on the basis that its disclosure would, on balance, be contrary to the public interest. The information which QH refused access to can be generally described as details of some of the applicant's offences and information about his victims, family members and other people known to him (**Information in Issue**).
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QH's decision to refuse him access to the Information in Issue on the basis that he provided the Information in Issue to the psychiatrists and required unedited versions of the reports for his parole hearing.
4. I am satisfied that, while there is a public interest in the applicant accessing his personal information, as the information is already known to him this factor warrants little weight. I also consider that the public interest in the administration of justice and accountability warrants only minimal weight in this review. Balanced against this, however, is the strong public interest in protecting the privacy of those individuals identified in the Information in Issue. This tips the balance of the public interest in favour of nondisclosure of the Information in Issue. For these reasons, I find that disclosing the Information in Issue would, on balance, be contrary to the public interest under the *Right to Information Act 2009* (Qld) (**RTI Act**) and the decision under review is affirmed.

Background

5. Significant procedural steps relating to the application are set out in the appendix.

Reviewable decision

6. The decision under review is QH's internal review decision dated 13 October 2011.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Information in Issue

8. The Information in Issue is contained within 9 pages² of psychiatric reports about the applicant and specifically comprises information about:

¹ The applicant has been de-identified in this decision, as the information sought relates to victims of sexual abuse, who were children at the time of the offences. This accords with the strong community view that victims of this type of crime are protected to the greatest extent possible.

² Out of 207 pages, the balance of which were released.

- members of his family and other people known to him, including individuals' names, ages, dates of birth, medical information and personal relationships with the applicant, and one individual's alleged criminal background
- victims of the applicant's offending, including their names and ages, and the names of related persons; and
- offences against those victims.

Relevant law

9. Under the IP Act, an individual has a right to access documents of an agency to the extent those documents contain the individual's personal information.³ However, this right is subject to other provisions of the IP Act and RTI Act, including the grounds on which an agency may refuse access to documents.⁴ An agency may refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.⁵
10. 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.⁶
11. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest.⁷ It also explains the steps that a decision-maker must take in deciding the public interest. To decide this issue I must:⁸
 - 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, on balance, would be contrary to the public interest.

Findings

12. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest for the reasons that follow.
13. No irrelevant factors arise in this case.⁹ A number of factors must be considered in balancing the public interest in this review. I discuss these factors and their relative weight below.

³ Section 40 of the IP Act.

⁴ 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 the agency could refuse access under section 47 of the RTI Act were the document the subject of an application under the RTI Act.

⁵ Sections 47(3)(b) and 49 of the RTI Act.

⁶ Examples include where the information is the applicant's personal information or where disclosure of the information could reasonably be expected to contribute to the administration of justice for a person (schedule 4, part 2, items 7 and 17 of the RTI Act, respectively).

⁷ 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.

⁸ Section 49(3) of the RTI Act.

⁹ In reaching this conclusion I have examined the irrelevant factors in schedule 4 of the RTI Act and considered whether any other irrelevant factors arise.

Personal information and privacy

14. The applicant questions how it is reasonable and acceptable that he is refused access to his personal information when he previously provided the information to QH.
15. This is a reasonable argument. However, the applicant's right to access the information turns on the relative weight to be attributed to the public interest in the applicant accessing his personal information and the privacy of other individuals together with any other public interest considerations relevant to this matter.
16. I agree that the Information in Issue is the applicant's personal information, appearing as it does in psychiatric reports about the applicant.¹⁰ This gives rise to a public interest factor favouring disclosure of the Information in Issue.¹¹ However, in practical terms, the applicant presumably knows the content of the Information in Issue as he claims he provided the information to the psychiatrists.¹² Therefore the public interest is not significantly advanced by disclosing this particular personal information to the applicant. Accordingly, this factor warrants little weight. It must also be weighed against any other factors favouring nondisclosure.
17. The Information in Issue is also the personal information of others. The RTI Act provides that it is reasonable to expect that disclosing an individual's personal information to another person will cause a public interest harm.¹³ The Information in Issue identifies a number of individuals and provides sensitive information about them. It is therefore reasonable to expect that disclosing these individuals' personal information would cause a public interest harm. It is then relevant to consider the extent of that harm.
18. If disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy, this factor weighs against disclosure.¹⁴ Where information is already known to an applicant, the privacy interests of those individuals identified are somewhat diminished but are not negated entirely. Disclosure under the IP Act and RTI Act is not assumed to be *disclosure to the world at large*.¹⁵ However, once information is disclosed in this way, its dissemination cannot be controlled.
19. The applicant indicates, and I accept, that he has had some contact with his family members. However, this of itself does not affect the balancing of the public interest, as the privacy interests of these family members are still relevant when considering disclosure of their personal information under the IP Act.
20. Parts of the Information in Issue identify victims of sexual offences committed by the applicant. Again, as the applicant is the likely source of this information or knows the identities of his victims, it is relevant to consider to what extent the privacy interests of the identified individuals may be diminished. It is unclear whether the victims were identified in open court proceedings at the time the applicant was convicted and

¹⁰ Section 12 of the IP Act defines personal information as '*information or an opinion... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

¹¹ Schedule 4, part 2, item 7 of the RTI Act.

¹² It is not clear from the Information in Issue whether the applicant was the source of the information in all instances.

¹³ Schedule 4, part 4, item 6 of the RTI Act.

¹⁴ Schedule 4, part 3, item 3 of the RTI Act.

¹⁵ *Patrick and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 24 November 2011) at paragraph 19.

sentenced. Those proceedings occurred more than twenty years ago and the transcripts of those proceedings are not available to the general public. I consider there is a significant public interest in protecting the identities of victims of sexual offences¹⁶ and note that this is reflected in Queensland legislation which prohibits publication of material likely to lead to the identification of a complainant in respect of court proceedings involving sexual offences.¹⁷ When considering disclosure of such identifying information in the context of the IP Act and RTI Act, I consider that significant weight must be afforded to the privacy interests of these individuals.

21. The applicant indicates that he has previously received similar information from the Victorian Registry of Births, Deaths and Marriages, the corrective services section of the Victorian Department of Justice, and through a Queensland District Court order. This may be the case, but I note that in none of these instances was the information provided through a general information access scheme. I do not consider this a relevant consideration here.
22. The applicant contends that he is being refused access to information which he provided. He does not consider this reasonable. This is understandable. However, the information sought now appears in a psychiatric report. The source of the information is not clearly apparent from the report. I consider that disclosing sensitive information, appearing as it does, in a psychiatric report, under a general information access scheme could reasonably be expected to significantly impact the privacy of the individuals identified.
23. Given the nature of the Information in Issue, I am satisfied that the extent of the public interest harm that could be anticipated from disclosure is quite significant. Further, disclosure could significantly prejudice other individuals' privacy and this factor warrants substantial weight.

Administration of justice

24. The applicant advised OIC that he requires the records without any deletions to assist with his parole application. It is therefore relevant to consider whether disclosing the Information in Issue could reasonably be expected to contribute to the administration of justice for the applicant.¹⁸
25. I accept that the parole board having access to the records without any deletions may be relevant to the applicant's parole application and therefore may be expected to contribute to the administration of justice for him. However, in performing its review, the parole board has powers to access the reports in full as part of its hearing.¹⁹ I consider that this factor can only be afforded minimal weight in the circumstances.

¹⁶ In this instance disclosing details of the offences may, if linked with other available information, identify the victims of the offending.

¹⁷ See, for example, section 6 of the *Criminal Law (Sexual Offences) Act 1978* (Qld) and section 193 of the *Child Protection Act 1999* (Qld).

¹⁸ Schedule 4, part 2, item 17 of the RTI Act.

¹⁹ See, for example, section 242 of the *Corrective Services Act 2006* (Qld) which gives a parole board the power to require a person to attend a meeting of the board to produce a stated document containing information relating to a prisoner's application for a parole order.

Accountability

26. I have also considered whether disclosing the Information in Issue could reasonably be expected to enhance the Government's accountability²⁰ to the extent that it would enable the applicant to verify that the information he provided to the psychiatrists and which is about him was recorded accurately and considered in the assessment. On this issue I note that the applicant has been granted full access to almost all of the information sought, subject only to the deletion of the Information in Issue. Given the nature of the Information in Issue, I consider that this factor should be afforded only minimal weight.

Balancing the relevant factors

27. In the circumstances of this review I consider there is a public interest in the applicant accessing his personal information, though as the information is already known to him, this factor warrants little weight. I also consider that the public interest in the administration of justice and enhancing government accountability warrants only minimal weight in this review. Balanced against this, however, is the strong public interest in protecting the privacy of those individuals identified in the Information in Issue. This tips the balance of the public interest in favour of nondisclosure of the Information in Issue.
28. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest.

DECISION

29. For the reasons set out above, I affirm QH's decision to refuse access to the Information in Issue.
30. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Suzette Jefferies
Assistant Information Commissioner

Date: 21 May 2012

²⁰ Schedule 4, part 2, item 1 of the RTI Act.

APPENDIX

Significant procedural steps

Date ²¹	Event
19 May 2011	QH received the access application under the IP Act.
26 August 2011	QH issued a decision in which the decision-maker decided to disclose 196 pages in full and to give partial access to 11 pages (initial decision).
16 September 2011	QH received the application for internal review of the initial decision.
13 October 2011	On internal review, QH disclosed further information to the applicant and affirmed the initial decision to grant partial access in relation to 9 pages (internal review decision).
27 October 2011	OIC received the application for external review of the internal review decision.
27 October 2011	OIC asked QH to provide relevant procedural documents.
1 November 2011	OIC received the relevant procedural documents from QH.
3 November 2011	OIC notified the applicant and QH that the external review application had been accepted for review and asked QH to provide OIC with copies of the documents to which access had been partially refused.
16 November 2011	OIC received the requested documents from QH.
17 November 2011	The applicant provided OIC with information relevant to the external review.
10 January 2012	OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case by 27 January 2012 if he did not accept the preliminary view.
12 January 2012	The applicant advised OIC that he did not accept the preliminary view and provided submissions supporting his case.
16 January 2012	The applicant provided further submissions supporting his case.
20 January 2012	OIC addressed some of the applicant's concerns regarding the internal review decision.
3 February 2012 7 February 2012 9 February 2012 22 February 2012 27 February 2012 29 February 2012	The applicant provided further submissions supporting his case.

²¹ Of correspondence or relevant communication unless otherwise stated.