



Decision and Reasons for Decision

Application Number: 2006 F0309

Applicant: EC

Respondent: Department of Corrective Services

Decision Date: 25 October 2006

Catchwords: **FREEDOM OF INFORMATION – applicant not entitled to access – application of section 11E of the *Freedom of Information Act 1992* – whether applicant an offender under the *Corrective Services Act 2006* – whether document in issue is a risk assessment document**

Criminal Code – section 302

***Corrective Services Act 2006* – sections 214, 426, 434**

***Corrective Services Act 2000* – sections 140**

***Freedom of Information Act 1992* – section 11E**

***Freedom of Information and Other Legislation Amendment Act 2005* – section 10**

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Reasons for Decision

Background

1. At the time of his application the applicant in this review was subject to a post-prison community based release order. The applicant seeks review of the decision of the Department of Corrective Services (DCS) that due to the operation of section 11E of the *Freedom of Information Act 1992* (FOI Act), he was not entitled to access an Assessment Unit Report prepared for the Queensland Community Corrections Board to assist with determining his application for post-prison community based release.
2. In his freedom of information (FOI) application dated 19 April 2006, the applicant applied for access to:

*REPORT – COMMUNITY CORRECTIONS ASSESSMENT
UNIT – APRIL 2006 as written by Ms ... Fielding*

3. By letter dated 10 May 2006, Ms K Turner, Acting FOI Officer of DCS, advised the applicant that one document responsive to his application had been identified, however, she had decided that the applicant was not entitled to access the document because of section 11E of the FOI Act.
4. The applicant applied for internal review of Ms Turner's decision by letter dated 2 June 2006. Ms V Young, Acting Senior FOI and Privacy Officer of DCS, conducted an internal review and by letter dated 13 June 2006 advised the applicant that she had decided to affirm Ms Turner's decision.
5. By letter dated 23 June 2006, the applicant applied for external review, under Part 5 of the FOI Act, of Ms Young's internal review decision.

Steps taken in the external review process

6. The document in issue was obtained and examined.
7. By letter dated 31 July 2006, Assistant Information Commissioner (AC) White advised the applicant that she had formed the preliminary view that section 11E of the FOI Act applied to the document in issue with the effect that he was not entitled to access the document. The applicant was requested to provide further submissions in the event that he did not accept the preliminary view.
8. By letter dated 13 August 2006, the applicant advised that he did not accept AC White's preliminary view and provided further submissions in support of his case for release of the document in issue.
9. In making my decision in this matter, I have taken into account the following material:
 - the document in issue;
 - the applicant's FOI access application dated 19 April 2006;
 - the applicant's application for internal review dated 2 June 2006;
 - the applicant's application for external review dated 23 June 2006;
 - the applicant's letter dated 13 August 2006;
 - DCS' initial and internal review decisions dated 10 May 2006 and 13 June 2006 respectively; and

- AC White's letter to the applicant dated 31 July 2006.

Matter in issue

10. The document in issue is an eleven page Assessment Unit Report by Senior Community Correctional Officer Fielding dated 28 March 2006.

Section 11E of the FOI Act

11. Section 11E of the FOI Act was inserted into the FOI Act by section 10 of the *Freedom of Information and Other Legislation Amendment Act 2005* and came into effect on 31 May 2005. During the course of this review, the *Corrective Services Act 2000* (2000 Act) was repealed and the *Corrective Services Act 2006* (2006 Act) was enacted. Section 11E of the FOI Act was amended by the 2006 Act to its current wording.
12. I am ordinarily bound to apply the law as it stands at the time of making my decision unless an amendment to legislation has destroyed a right accrued by the applicant under the previous form of the legislation (see: *Re Woodyatt and Minister for Corrective Services* (1995) 2 QAR 383). I am satisfied that the result of this review would have been the same both before and after the amendment to section 11E and that no rights were accrued by the applicant under the previous form of the section. Consequently, I must consider the application of section 11E in its present form.
13. Section 11E provides as follows:

11E Application of Act to offenders or agents

- (1) *An offender, or an offender's agent, is not entitled to obtain access to a risk assessment document received, or brought into existence, by—*
 - (a) *the department in which the Corrective Services Act 2006 is administered; or*
 - (b) *a parole board as defined under that Act.*
- (2) *In this section—*

offender means an offender as defined under the Corrective Services Act 2006—

 - (a) *who is serving a term of imprisonment for a prescribed offence, or serving a period of imprisonment that includes a term of imprisonment for a prescribed offence, whether the person was sentenced to the term or period of imprisonment before or after the commencement of this section; or*
 - (b) *who is a detained dangerous prisoner (sexual offender), or a supervised dangerous prisoner (sexual offender), as defined under the Corrective Services Act 2006.*

Note—

Under the Corrective Services Act 2006, schedule 4, offender means—

- (a) *a prisoner; or*
- (b) *a person who is subject to—*
 - (i) *a community based order; or*
 - (ii) *a conditional release order.*

period of imprisonment *see the Penalties and Sentences Act 1992, section 4.*

prescribed offence *means—*

- (a) *an offence against a provision mentioned in the Penalties and Sentences Act 1992, schedule; or*

Note—

See the Penalties and Sentences Act 1992, section 208(2).

- (b) *an offence against the Criminal Code, section 302; or*
- (c) *an offence against the Criminal Code, section 359E.*

risk assessment document means a document, or that part of a document, that assesses or is used for the assessment of—

- (a) *the risk an offender may pose to the community; or*
- (b) *a risk to the security or good order of a corrective services facility as defined under the Corrective Services Act 2006.*

Example for paragraph (a)—

a document prepared to help the chief executive make a decision under the Corrective Services Act 2006, section 12(2), 66 or 98

term of imprisonment see the Penalties and Sentences Act 1992, section 4.

- 14. The effect of section 11E is to prevent offenders from accessing certain risk assessment documents under the FOI Act.

Offender

- 15. The first question to determine is whether the applicant, who was convicted of murder, is an offender within the meaning of section 11E of the FOI Act.
- 16. Schedule 4 of the 2006 Act defines offender as meaning a prisoner, or a person subject to either a community based order or a conditional release order. Schedule 4 of the 2006 Act provides that a prisoner means a person who is in the chief executive's custody, including a person who is released on parole.
- 17. The applicant was released into the community pursuant to a post-prison community based release, and is no longer serving his sentence in a correctional facility. As a result of the introduction of the 2006 Act, orders previously called post-prison community based release orders are no longer made. Section 426 of the 2006 Act provides that existing post-prison community based release orders granted under the 2000 Act are taken to be parole orders granted under the 2006 Act. The applicant's release is therefore taken to be subject to a parole order under the 2006 Act such that the applicant is an offender for the purposes of that Act.
- 18. Section 214 of the 2006 Act provides:

214 Prisoner released on parole taken to be still serving sentence

A prisoner released on parole is taken to be still serving the sentence imposed on the prisoner.

- 19. On that basis the applicant is currently serving a sentence for his conviction of the offence of murder. The offence of murder is an offence against section 302 of the Criminal Code and therefore falls within the definition of prescribed offence in section 11E of the FOI Act.
- 20. I am satisfied that the applicant is an offender serving a term of imprisonment for a prescribed offence for the purposes of section 11E of the FOI Act.

Risk assessment document

21. The next question for determination is whether the document in issue is a risk assessment document which was received or brought into existence by DCS or a parole board. If the document in issue is properly characterised as a risk assessment document the applicant is not entitled to access it under the FOI Act. As noted above, a risk assessment document is a document (or part of a document) that assesses or is used for the assessment of the risk an offender poses to the community or a risk to the security or good order of a corrective services facility.
22. The document in issue is an Assessment Unit Report (the Report) prepared by Senior Corrections Officer Fielding of the Borallon Correctional Centre Assessment Unit for use by the Queensland Community Corrections Board. I am satisfied that the document in issue was brought into existence by the department in which the 2006 Act is administered, in accordance with section 11E of the FOI Act. In its internal review decision dated 13 June 2006 DCS states that when an application for post-prison community based release was made, departmental procedure required that an assessment unit report be prepared for consideration by the Queensland Community Corrections Board.
23. I am satisfied that the Report was prepared for the purpose of assisting the Queensland Community Corrections Board to make a decision under section 140 of the 2000 Act whether or not the applicant (an offender) should be granted post-prison community based release.
24. The Report contains material regarding the applicant's offending history, the circumstances surrounding the offence for which he was imprisoned, details of his past employment, details of psychiatric assessments conducted in relation to the prisoner, recommendations for custodial programs and the results of such programs, details of the applicant's conduct in custody and the recommendation of the officer preparing the Report.
25. It is clear that the Report assesses the risk which the applicant may pose to the community should he be granted a post-prison community based release order, for the purposes of making a recommendation to the Queensland Community Corrections Board. The recommendation considered by the Queensland Community Corrections Board is made in accordance with the Ministerial Guidelines to the Board which require that the risk a prisoner may pose to the community be assessed.
26. It is apparent from DCS' initial and internal review decisions that the Report was then considered by the Queensland Community Corrections Board in making its decision to grant the release order.
27. In his application for internal review dated 2 June 2006, the applicant argued that as his application for post-prison community based release was successful, the risk he may pose to the community need not be an issue. The applicant has also advised that he seeks access to the document in issue so that he may show it to his treating doctors in order to assist with his supervision in the community. The applicant further submitted in his application for external review dated 23 June 2006 that it is desirable, in the interest of procedural fairness, for him to have access to documents on which the Queensland Community Corrections Board has relied in making its decision.
28. As I have noted above, if a document is properly characterised as a risk assessment document (received or brought into existence by DCS or a parole board), an offender is not entitled to access the document under the FOI Act. Section 11E of the FOI Act

makes it quite clear that I have no discretion in a review under Part 5 of the FOI Act to consider any reasons an applicant may proffer for seeking access.

29. I am satisfied that the document is a risk assessment document used to assess the risk the applicant may have posed to the community should he be granted post-prison community based release. Accordingly, section 11E of the FOI Act applies with the consequence that the applicant is not entitled to access the document under the FOI Act.

Conclusion

30. I find, therefore, that the Assessment Unit Report by Senior Community Correctional Officer Fielding dated 28 March 2006 is a document to which the applicant is not entitled to access pursuant to section 11E of the FOI Act.

Decision

31. I affirm the decision under review (being the decision made on 23 June 2006 on behalf of DCS by Ms V Young) that the applicant is not entitled to access the document in issue, identified at paragraph 10 above, under section 11E of the FOI Act.

C Taylor
Information Commissioner