



Decision and Reasons for Decision

Application Number: 311610

Applicant: Michel

Respondent: Department of Communities, Child Safety and Disability Services

Decision Date: 4 September 2013

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – applicant sought access to information held by the Department concerning her mother – whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld) – whether exempt information under section 48 and schedule 3, section 12 of the *Right to Information Act 2009* (Qld) – whether disclosure is prohibited by section 187 of the *Child Protection Act 1999* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Communities, Child Safety and Disability Services (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents relating to her mother's time in care between specified dates in 1920 and 1944.
2. The Department refused access to five relevant pages under section 47(3)(a) of the RTI Act on the basis that they comprise historical child protection documents, the disclosure of which is prohibited under section 187 of the *Child Protection Act 1999* (Qld) (**CP Act**).
3. The applicant sought external review by the Office of the Information Commissioner (**OIC**) and I have decided to affirm the Department's decision to refuse access for the reasons set out below.

Background

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

Reviewable decision

5. The decision under review is the Department's decision dated 28 May 2013.

Evidence considered

6. The evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendices).

Information in issue

7. The information in issue is five pages of historical child protection information identified at paragraph two above (**Information in Issue**).¹

Applicant's submissions

8. The applicant made a number of submissions explaining the impact her mother's time in care has had on the lives of herself and her siblings² and the benefit that would result from releasing the Information in Issue.³ These submissions can be summarised as follows:
 - the Information in Issue is now relatively old and the applicant's mother and those involved in her care are now deceased
 - the applicant's mother was deeply affected by her childhood experiences and this impacted her children
 - the applicant's mother was interested in accessing her records while she was alive, however, she was not in a position to take advantage of this because of her health and age
 - the applicant wishes to know more about her mother, particularly her history during those formative years, to enable her to better understand her mother's life and solve unanswered questions
 - the applicant believes she would be honouring her mother's memory by pursuing this matter
 - the applicant believes the Information in Issue now rightfully belongs to her mother's children
 - release of the Information in Issue would be in the spirit of transparency and the current culture of children who have been raised in care being given a voice
 - the Information in Issue may help to determine whether there is any evidence of familial disease
 - the applicant and her siblings would be well equipped to handle the Information in Issue as they have experience in dealing with sensitive issues; and
 - the applicant was not informed when she applied and paid the \$40.50 application fee that there was a potential for the Information in Issue to be refused.
9. I have carefully considered all submissions made by the applicant. It is understandable that she and her siblings have a very strong desire to know this information. However, the legal test I am required to apply, as set out below, does not extend to a consideration of the issues raised by the applicant.
10. Where it is established that a document contains exempt information, the Information Commissioner does not have power to direct that access to the document is to be given.⁴ Therefore, if the Information in Issue meets the legal requirements for exempt information set out below, I must affirm the Department's decision to refuse access.

¹ Four pages which the Department deleted as out of scope are not in issue in this review. OIC confirmed in its acceptance letter to the applicant dated 4 July 2013 that the issue under review is whether access to five pages may be refused on the basis they comprise exempt information under the RTI Act.

² The applicant's siblings did not make submissions directly to OIC, however, as these issues were not material to the decision, OIC did not seek to verify the applicant's submissions on behalf of her siblings.

³ Letters dated 12 June and 29 July 2013, and phone calls on 26 June, 3 and 25 July 2013.

⁴ Section 105(2) of the RTI Act.

Relevant law

11. Access must be given to a document unless disclosure would, on balance, be contrary to the public interest.⁵ Schedule 3 of the RTI Act sets out information which Parliament considers is exempt information on the basis that disclosure would, on balance, be contrary to the public interest.⁶ The Department is entitled to refuse access to the extent that the Information in Issue comprises exempt information.⁷ Schedule 3, section 12 of the RTI Act provides that information is exempt if its disclosure is prohibited by a number of listed provisions, including section 187 of the CP Act.⁸ Section 187 prohibits the disclosure of information acquired by, able to be accessed by, or in the custody of, a public service employee performing functions under or in relation to the administration of the CP Act.
12. Therefore, to comprise exempt information, the Information in Issue must:
 - a) be about another person's affairs
 - b) be able to be accessed by, have been acquired by or be in the custody of, a public service employee performing functions under or in relation to the administration of the CP Act; and
 - c) not be subject to the exceptions listed in section 187 of the CP Act or schedule 3, section 12(2) of the RTI Act.

Findings

(a) Is the Information in Issue about another person's affairs?

13. Yes, for the reasons set out below.
14. The term 'person's affairs' is not defined in the CP Act or the *Acts Interpretation Act 1954* (Qld). The relevant dictionary definitions for 'affair/s' are 'matters of interest or concern' and 'a private or personal concern'.⁹
15. I am satisfied that the Information in Issue is about another¹⁰ person's affairs – ie. matters of personal interest/concern to the applicant's mother.

(b) Was the Information in Issue acquired by, or is it able to be accessed by or in the custody of, a public service employee performing functions under or in relation to the administration of the CP Act?

16. Yes, the Information in Issue is able to be accessed by public servants within the Department performing functions relating to the administration of the CP Act, which includes providing services to protect children, such as long term guardianship.¹¹

(c) Does an exception apply?

17. No. Both the RTI Act and the CP Act contain exceptions that apply if the Information in Issue is 'about' the applicant.¹² While the Information in Issue is very personally

⁵ Sections 44(1) and 48(1) of the RTI Act.

⁶ Section 48(2) of the RTI Act.

⁷ Section 47(3)(a) of the RTI Act.

⁸ See Appendix B for the text of the relevant parts of section 187 of the CP Act.

⁹ *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at paragraph 30.

¹⁰ That is, a person separate to the public service employee who is able to access the Information in Issue under the CP Act.

¹¹ See Chapter 2 of the CP Act.

¹² Section 187(4)(a) of the CP Act and schedule 3, section 12(2) of the RTI Act. Schedule 3, section 12(2) of the RTI Act specifically refers to 'personal information' as defined in section 12 of the *Information Privacy Act 2009* (Qld). As one of the fundamental elements of the definition has not been satisfied (ie. that the information is 'about' the applicant's mother), I have not considered it necessary to reach a decision about the remaining elements of the definition of 'personal information'.

significant to the applicant, I am satisfied that it is not *about* the applicant, rather it is about her mother. I have also considered each of the remaining exceptions¹³ set out in section 187 of the CP Act and I am satisfied that none of these are applicable.

Is the Information in Issue exempt information?

18. As no exceptions apply and the other requirements of section 187 of the CP Act are met, I find that the Information in Issue is exempt information under section 48 and schedule 3, section 12 of the RTI Act.

DECISION

19. I affirm the Department's decision to refuse access to the Information in Issue under section 47(3)(a) of the RTI Act on the basis that it comprises exempt information under section 48 and schedule 3, section 12 of the RTI Act, the disclosure of which is prohibited by section 187 of the CP Act.
20. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

JS Mead
Right to Information Commissioner

Date: 4 September 2013

¹³ Set out in Appendix B.

APPENDIX A**Significant procedural steps**

Date	Event
5 April 2013	The Department received an access application from the applicant.
28 May 2013	The Department decided to refuse access to the Information in Issue under section 47(3)(a) of the RTI Act.
18 June 2013	OIC received the applicant's application for external review and acknowledged receipt of this application.
21 June 2013	The Department provided OIC with a copy of relevant correspondence from the processing of the applicant's access application.
26 June 2013	The Department provided a verbal description of the Information in Issue to OIC.
	OIC conveyed an oral preliminary view to the applicant that the Department was entitled to refuse access to the Information in Issue under the RTI Act.
3 July 2013	The applicant confirmed that she did not accept the oral preliminary view.
4 July 2013	OIC informed the applicant and the Department that the application for external review had been accepted.
8 July 2013	OIC received a copy of the Information in Issue from the Department.
17 July 2013	OIC provided the applicant with a written preliminary view and invited the applicant to make a submission in support of her case by 2 August 2013.
25 July 2013	OIC received a telephone call from the applicant indicating she did not agree with OIC's preliminary view and would be making further written submissions.
29 July 2013	OIC received a written submission from the applicant.

APPENDIX B

Relevant legislation provisions

Schedule 3, section 12 of the RTI Act relevantly provides:

12 Information disclosure of which prohibited by Act

(1) Information is exempt information if its disclosure is prohibited by 1 of the following provisions—

...

Child Protection Act 1999, sections 186 to 188

...

(2) Information is not exempt information under subsection (1) in relation to an access application if it is personal information for the applicant.

...

Section 187 of the CP Act relevantly provides:

187 Confidentiality of information obtained by persons involved in administration of Act

(1) This section applies to a person who—

(a) is or has been—

(i) a public service employee, a person engaged by the chief executive, or a police officer, performing functions under or in relation to the administration of this Act; or

...

(b) in that capacity acquired information about another person's affairs or has access to, or custody of, a document about another person's affairs.

(2) The person must not use or disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) However, the person may, subject to section 186, use or disclose the information or give access to the document to someone else—

(a) to the extent necessary to perform the person's functions under or in relation to this Act; or

(b) if the use, disclosure or giving of access is for purposes related to a child's protection or wellbeing; or

Example—

An approved carer in whose care a child has been placed under this Act may disclose relevant information about the child to a person, including, for example, a school teacher or member of the carer's immediate family, to help the person understand and meet the child's needs.

(c) if the use, disclosure or giving of access—

(i) relates to the chief executive's function of cooperating with government entities that have a function relating to the protection of children or that provide services to children in need of protection or their families; or

(ii) is for the performance by the chief executive (adoptions) of his or her functions under the Adoption Act 2009; or

(iii) is otherwise required or permitted under this Act (including, for example, this division or section 159M) or another law.

(4) Also, the person may disclose the information or give access to the document—

(a) to another person, to the extent that the information or document is about the other person; or

...