



Decision and Reasons for Decision

Application Number: 310478

Applicant: Patrick

Respondent: Department of Justice and Attorney-General

Decision Date: 24 November 2011

Catchwords: RIGHT TO INFORMATION – refusal of access – information relating to a person’s feelings – sections 47(3)(a) and 49 of the *Right to Information Act 2009* (Qld) – whether disclosure would, on balance, be contrary to the public interest

Contents

REASONS FOR DECISION	2
Summary	2
Background.....	2
Reviewable decision	2
Evidence considered	2
Information in issue.....	2
The applicant’s submissions.....	2
Relevant law	3
Findings	3
DECISION	4

REASONS FOR DECISION

Summary

1. The applicant is a journalist who made an access application under the *Right to Information Act* 2009 (Qld) (**RTI Act**) to the Department of Justice and Attorney-General (**Department**) for a range of information relating to the death of Ms Christina Watson in 2003 while scuba diving off the coast of Townsville and the subsequent trial of her husband, Mr David Gabriel “Gabe” Watson.
2. The information remaining in issue in this review comprises two paragraphs of an email written by the father of the deceased to the Townsville Coroner which describe his feelings (**Information in Issue**).
3. The Department consulted with a third party about the possible disclosure of the Information in Issue to the applicant. The third party objected to its disclosure.
4. The Department decided to refuse the applicant access to the Information in Issue on the basis that its disclosure would, on balance, be contrary to the public interest.
5. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department’s decision.
6. For the reasons set out below, I affirm the Department’s decision in relation to the Information in Issue.

Background

7. Significant procedural steps relating to the application are set out in the appendix to this decision.

Reviewable decision

8. The decision under review is the Department’s internal review decision dated 8 November 2010.

Evidence considered

9. 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

10. A number of issues have been informally resolved during the course of this external review. The information remaining in issue is identified at paragraph 2 above.

The applicant’s submissions

11. The relevant parts of the applicant’s submissions as they relate to the particular Information in Issue are set out below:
 - As the Department released the Information in Issue to another media outlet, there can be no prejudice to the public interest in providing the same information to the applicant.

- The Information in Issue is “*largely in the public domain due to the continual, constant and voluntary disclosures of the individuals to world media organizations*”. The deceased’s parents have been “*less than direct in prosecuting their complaints and ... the public have a clear right to know, based on legislation, precedent and practice in FOI cases, the nature of their prosecution. ... [T]he public have been misled by prior statements of the [deceased’s] family, both nuclear and extended.*”
- The Information in Issue is “*not so personal in nature or sensitive it cannot be released.*” “*Journalists need to take account of grief. It is part of our trade. These experiences are often reported by the media. Our media code of practice ... requires us to take account of such experiences and to report them fairly and properly.*”

Relevant law

12. Section 44(1) of the RTI Act provides that if an access application is made to an agency for a document, the agency should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.
13. The term ‘public interest’ is not defined in the RTI Act. Instead the RTI Act recognises that many factors can be relevant to the concept of the public interest. The public interest refers to considerations affecting the good order and functioning of the community and governmental affairs for the well-being of citizens. The notion of the public interest is usually treated as separate from matters of purely private or personal interest. Usually, a public interest consideration is one that is available to all members or a substantial segment of the community should they choose to access it. Although, in some circumstances public interest considerations can apply for the benefit of particular individuals.
14. In deciding whether disclosure of the Information in Issue would be contrary to the public interest, I must:¹
 - 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 would, on balance, be contrary to the public interest.

Findings

15. No irrelevant factors arise in this case. I will now consider the relevant factors favouring disclosure and nondisclosure of the Information in Issue.
16. As noted above, the Information in Issue relates to an individual’s feelings. In my view, the Information in Issue clearly comprises personal information² of the deceased’s father and is highly sensitive in nature. On that basis I am satisfied that:
 - disclosure of the Information in Issue could reasonably be expected to cause a public interest harm because it would disclose personal information of a person,

¹ Section 49(3) of the RTI Act.

² Section 12 of the *Information Privacy Act 2009* (Qld) defines personal information as “*information or an opinion, including information or an opinion forming part of a database, 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*”.

- whether living or dead;³ and
 - this factor should be afforded significant weight in the circumstances.
17. Although information that is generally similar to the Information in Issue (i.e. information about feelings) may have been made publicly available through the coronial inquest and court proceedings, I am satisfied that disclosure of the Information in Issue without the consent of the relevant individual could prejudice the protection of his right to privacy.⁴ In my view, this factor should be afforded significant weight.
 18. The applicant submits that the Department disclosed the Information in Issue to another media organisation under the RTI Act and that the Department should not refuse him access to it in this case.
 19. In the decision of *OKP and Department of Communities*⁵ the Information Commissioner considered the decision of the Victorian Court of Appeal in *Victoria Police v Marke*⁶ and decided that the now repealed *Freedom of Information Act 1992* (Qld) did not support the long held and widely utilised assumption that release of documents to an applicant is necessarily release to the world at large.⁷
 20. Therefore, in my view, the fact that part of the Information in Issue has been disclosed to another media outlet does not mean that it has been released to the world at large and does not, in itself, justify its further disclosure. I have considered the other media organisation's treatment of the issue and note that the Information in Issue was not publicly broadcast. I am satisfied that in this case, the strength of the individual's privacy interest is preserved given that they have not consented to further disclosure of the relevant information.
 21. The applicant submits that there are a range of public interest factors favouring disclosure of the Information in Issue as set out above. I have carefully considered all of the applicant's submissions provided during the course of the external review, the factors set out in schedule 4 part 2 of the RTI Act and the nature of the Information in Issue. I am satisfied that there are no factors favouring disclosure of the particular Information in Issue in this case.

DECISION

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

Jenny Mead
Right to Information Commissioner

Date: 24 November 2011

³ Schedule 4, part 4, item 6(1) of the RTI Act.

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

⁵ (Unreported, Queensland Information Commissioner, 9 July 2009).

⁶ [2008] VSCA 218.

⁷ At paragraphs 128 and 129.

APPENDIX

Significant procedural steps

Date	Event
12 August 2010	The applicant made an access application to the Department under the RTI Act for a range of information.
28 September 2010	The Department decided to refuse access to the relevant 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.
11 October 2010	The applicant applied for internal review of the Department's decision.
8 November 2010	The Department affirmed the internal review decision in relation to the Information in Issue.
7 December 2010	The applicant applied to OIC for external review of the Department's decision.
7 December 2010	OIC requested that the Department provide a copy of the documents relevant to the review.
8 December 2010	The Department provided OIC with the requested documents.
15 December 2010	OIC notified the Department the application has been accepted for external review and requested a copy of the documents in issue by 7 January 2011.
16 December 2010	OIC notified the applicant the application has been accepted for external review
20 December 2010	The Department provided OIC with a copy of the documents in issue.
15 March 2011	OIC conveyed a preliminary view to the applicant and invited him to provide submissions in support of his case by 30 March 2011 if he did not accept the preliminary view.
29 March 2011	The applicant requested an extension until 22 April 2011 to provide submissions in response to the preliminary view. OIC agreed to extend the time for the applicant to provide submissions until 13 April 2011.
13 April 2011	The applicant provided submissions in support of his case.
29 September 2011	OIC conveyed a preliminary view to the applicant and the Department and requested submissions by 13 October 2011 if either party did not accept the preliminary view.
4 October 2011	The Department notified OIC that it accepted the preliminary view.
6 October 2011	OIC consulted with a third party about the possible disclosure of certain information and invited the third party to provide submissions by 27 October 2011 if they objected to disclosure of the relevant information. The third party did not provide an objection.
12 October 2011	The applicant notified OIC that he did not accept the preliminary view in relation to the Information in Issue and provided submissions in support of his case. The applicant requested an additional two weeks to provide further submissions in support of his case.
13 October 2011	OIC granted the applicant the requested extension of time.
26 October 2011	The applicant provided final submissions in support of his case.