



## Decision and Reasons for Decision

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Application Number: 310671

Applicant: Underwood

Respondent: Department of Housing and Public Works

Decision Date: 18 May 2012

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - applicant requested the complete file on her tenancy in a public housing property - agency excluded information which fell outside the scope, or was irrelevant to the terms, of the access application - whether irrelevant information may be deleted under section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - access refused to documents on the agency's legal file - whether information is exempt on the basis of legal professional privilege under schedule 3, section 7 of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - access refused to information about other individuals - personal information and privacy - whether disclosure would, on balance, be contrary to public interest - whether access may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - access refused to documents available through access scheme under the *Land Titles Act 1994* (Qld) - whether the applicant can reasonably access the documents under another Act - whether access may be refused under sections 47(3)(f) and 53(a) of the *Right to Information Act 2009* (Qld)

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## REASONS FOR DECISION

### Summary

1. The applicant is a former resident of a public housing unit in Brisbane (**Unit 1**). While living in Unit 1, the applicant raised concerns with the former Department of Public Works (**Department**) in relation to risks to her health, safety and wellbeing as a public housing tenant. In early 2011, the applicant applied to the Department<sup>1</sup> under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to “the complete file” on Unit 1 and/or herself (**access application**).
2. The Department located 1317 pages in response to the access application and decided<sup>2</sup> to grant the applicant complete access to some pages and refuse access to other whole and part pages on the basis that information (i) was exempt on the basis of legal professional privilege<sup>3</sup> or (ii) would, on balance, be contrary to the public interest to disclose.<sup>4</sup> The Department also identified information which it considered to be “outside the scope”, or irrelevant to the terms, of the access application—the Department did not grant the applicant access to this information.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of all aspects of the Department’s decision, and also questioned the sufficiency of the Department’s searches. As OIC resolved the sufficiency of search issue with the applicant during the external review, it is not considered in this decision.<sup>5</sup>
4. The applicant submits that she has a right to see all documents on her case files held by the Department. The submissions made by the applicant to OIC during the review demonstrate that she remains aggrieved by the way the Department handled the concerns she raised during her tenancy of Unit 1, particularly, in relation to the ‘persistent problem of flooding and raw sewage effluent discharge into the unit’ and ‘verbal and property abuse from ... tenants in the adjoining Unit’.<sup>6</sup> The applicant has also indicated to OIC that she is seeking access to all information for the purpose of ‘corrections to any errors or misleading and vague information’.<sup>7</sup>
5. Having reviewed the information available to OIC in this review, I vary the Department’s deemed decision and find that:
  - documents outside the scope of the access application may be excluded from the application
  - information which is not relevant to the terms of the access application may be deleted from particular documents<sup>8</sup>; and
  - access to information may be refused on the following bases:
    - it is exempt due to legal professional privilege<sup>9</sup>
    - disclosure would, on balance, be contrary to public interest<sup>10</sup>; or
    - the applicant can reasonably access the documents under other legislation<sup>11</sup>.

<sup>1</sup> As a result of recent machinery of government changes and pursuant to *Administrative Arrangements Order (No. 3) 2012* the relevant agency in this review is now the Department of Housing and Public Works.

<sup>2</sup> The decision was dated 20 May 2011. However, the decision under review is a deemed decision – see footnote 12.

<sup>3</sup> Under sections 47(3)(a), 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>4</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>5</sup> 17 additional pages were located as a result of searches conducted by the Department on external review and were released to the applicant on 17 July 2011. By letter dated 13 January 2012, the applicant accepted OIC’s preliminary view dated 15 December 2011 that the Department had taken all reasonable steps to locate documents responding to her application and that further documents were nonexistent or unlocatable.

<sup>6</sup> Page 6 of the applicant’s submissions to OIC dated 17 February 2012.

<sup>7</sup> Page 28 of the applicant’s submissions to OIC dated 17 February 2012.

<sup>8</sup> Under section 73 of the RTI Act.

<sup>9</sup> Under sections 47(3)(a) and 48 of the RTI Act.

<sup>10</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>11</sup> Under sections 47(3)(f) and 53(a) of the RTI Act.

### Significant procedural steps

6. Significant procedural steps are set out in the Appendix to these reasons.

### Reviewable decision

7. The decision under review is the Department's deemed decision taken to have been made on 20 May 2011.<sup>12</sup>

### Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision is disclosed in these reasons (including footnotes and Appendix).

### Information in issue

9. There are 780 pages<sup>13</sup> remaining in issue in this review (**Information in Issue**). The particular categories of Information in Issue are set out below.

Type information	Number of pages
Documents which do not relate to Unit 1 and/or the applicant	4 (full)
Information about properties and/or issues which does not relate to Unit 1 and/or the applicant	11 (part)
Legal file documents	582 (full)
Information about other individuals and a body corporate	180 (part)
Documents relating to the purchase of Unit 1 by the Queensland Government from private individuals in 2008: <ul style="list-style-type: none"> <li>• release of mortgage; and</li> <li>• settlement notice</li> </ul>	3 (full)
<b>TOTAL NUMBER PAGES REMAINING IN ISSUE ON REVIEW</b>	<b>780</b>

### Relevant law and findings

10. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>14</sup> This right is subject to some limitations, including grounds on which access to information may be refused.<sup>15</sup>

### Scope of the application

11. The applicant applied for access to "*the complete file*" on Unit 1 and/or herself. On that basis, she does not accept that any information located by the Department in response to her application can be considered outside the scope of her application.
12. The Department has explained to OIC that it does not maintain just one file on a public housing tenant and/or their tenancies and that information relevant to a request such as the access application may be located in several different business units.

<sup>12</sup> The Department reached an agreement with the applicant for a longer processing period (pursuant to section 35 of the RTI Act) until this date. However, while the decision notice was dated 20 May 2011, it did not reach the applicant until 26 May 2011. On external review, the Department acknowledged that, in accordance with the agreement to a longer processing period, the applicant should have been *provided* with the decision notice by 20 May 2011. On that basis, the Department accepted that the decision was deemed to have been made on 20 May 2011 and refunded the application fee to the applicant pursuant to section 46(1)(b) of the RTI Act. OIC took the Department's decision notice as a submission on the issues raised on external review.

<sup>13</sup> 589 full pages and 191 part pages.

<sup>14</sup> Section 23 of the RTI Act.

<sup>15</sup> Section 47 of the RTI Act.

Accordingly, the Department asked the business units involved in the acquisition, management and dealings in relation to Unit 1, to search for documents relating to Unit 1 and/or the applicant.

13. On the basis of the Department's recordkeeping practices and the terms of the access application, I am satisfied that only information that relates to Unit 1 and/or the applicant can be considered to fall within the scope of the access application. If a document has been incorrectly included in the collections of documents located in response to the application, for example, a document relates to an entirely different property and/or another individual, I consider that such a document would be outside the scope of the access application. This would include documents which have been filed incorrectly.
14. Having reviewed the Information in Issue, I have identified that there are four pages<sup>16</sup> which relate to a different property and the Department's dealings in relation to that property. I am satisfied that these pages are outside the scope of the access application because they do not relate to Unit 1 and/or the applicant. On that basis, they are not relevant to this review.

### **Irrelevant information**

15. Section 73 of the RTI Act allows an agency to delete information that is not relevant to the terms of an access application. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents identified for release to an applicant.<sup>17</sup> In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the application.<sup>18</sup>
16. The relevant Information in Issue<sup>19</sup> comprises:
  - information about other public housing properties, for example, photographs, emails regarding works and legal information regarding the sale/lease of these properties;<sup>20</sup> and
  - a letter from a private individual about the complex, which has no apparent connection to the applicant or Unit 1.<sup>21</sup>
17. On the basis of the above and the terms of the access application, I am satisfied that the relevant Information in Issue:
  - does not have any bearing upon Unit 1 and/or the applicant; and
  - may be deleted, under section 73 of the RTI Act, on the basis that it is not relevant to the terms of the access application.

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<sup>16</sup> Pages 805-808.

<sup>17</sup> Under section 73(3) of the RTI Act, the agency may give access to the document if it considers from the terms of the application or after consultation with the applicant, that the applicant would accept the copy and it is reasonably practicable to give access to the copy. I note that if the agency is able to form this view based on the terms of the application, consultation with the applicant is not required.

<sup>18</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>19</sup> 11 pages.

<sup>20</sup> Pages 874, 918-920, 928, 941, 956, 1045, 1215, 1224.

<sup>21</sup> Page 1278.

### **Legal professional privilege**

18. Information will be exempt under schedule 3, section 7 of the RTI Act if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (**LPP**). This exemption reflects the common law requirements for establishing LPP.<sup>22</sup>
19. The general principles of LPP were summarised by the High Court of Australia in *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission*<sup>23</sup> as follows:
 

*It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings.*
20. The dominant purpose is ‘*the ruling, prevailing, paramount or most influential purpose*’<sup>24</sup> and is to be determined objectively, having regard to the evidence, the nature of the document and the parties’ submissions.
21. LPP is generally divided into two categories—advice and litigation privilege.<sup>25</sup> Advice privilege attaches to confidential communications between a legal adviser and client or third party which are made for the dominant purpose of obtaining or providing legal advice.<sup>26</sup> Litigation privilege attaches to confidential communications between a legal adviser and client in relation to current or reasonably anticipated litigation.
22. Legal advice can involve more than just advising a client about the law—it also includes advice as to ‘*what may prudently and sensibly be done in the relevant legal context*’.<sup>27</sup> However, it does not include advice that is predominantly for administrative, financial, personal, commercial or public relations purposes.<sup>28</sup>
23. Documents prepared by lawyers using their skill and expertise, such as legal research memoranda, summaries of argument and chronologies of facts may also be subject to LPP, even where they are not communicated to the client, provided they satisfy the other requirements of LPP.<sup>29</sup>

### **Government legal officers**

24. The High Court of Australia has established that LPP may protect communications between salaried employee legal advisers of a government department or statutory authority and his/her employer as client (including communications through other employees of the same employer) provided there is a professional relationship of legal

<sup>22</sup> The Electoral and Administrative Review Commission Report on Freedom of Information (1990) stated, in the context of the equivalent exemption in section 43 of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**), ‘*the exemption incorporates the common law concept of legal professional privilege*’. This approach was recently confirmed in *Ozcare and Department of Justice and Attorney-General* (Unreported, Information Commissioner of Queensland, 13 May 2011) at [12].

<sup>23</sup> (2002) 213 CLR 543 at 552 (**Daniels**).

<sup>24</sup> *Federal Commissioner of Taxation v Spotless Services Ltd* (1996) 186 CLR 404 at 416, see also *AWB v Cole* (No. 1) (2006) 152 FCR 382 at 411 [105] (**AWB No 1**).

<sup>25</sup> *Mitsubishi Electric Australia Pty Ltd v Victorian Workcover Authority* (2002) 4 VR 322 [8]-[9].

<sup>26</sup> *AWB v Cole* (No.5) (2006) 155 FCR 30, 44 [41]; *Waterford v Commonwealth* (1987) 163 CLR 54 (**Waterford**) at 95; *Pratt Holdings Pty Ltd v Federal Commissioner of Taxation* (2004) 136 FCR 357 (**Pratt Holdings**).

<sup>27</sup> *Balabel v Air India* [1988] Ch 317 per Lord Justice Taylor at 330 and referred to with approval in *Pratt Holdings* at 88, 89.

<sup>28</sup> *Three Rivers District Council v Governor and Company of the Bank of England* (No.6) [2005] 4 All ER 948, 989; *Barnes v Commissioner for Taxation* [2007] FCAFC 88 [8]; *Waterford* at 77, 85.

<sup>29</sup> *Commissioner of Australian Federal Police v Propend Finance* (1997) 188 CLR 501 per Gummow J at 569; *AWB No 1* at 417 [132]; *Daniels* at 564 and 573.

adviser and client, which secures to the advice an independent character notwithstanding the employment.<sup>30</sup>

25. In *Osland v Secretary to the Department of Justice (Vic)*<sup>31</sup> the limits of LPP, as it applies to communications by government lawyers, were explained as follows:

*It would be a mistake to assume that all communications with government lawyers, no matter what their origins, purpose and subject matter, fall within the ambit of the State's legal professional privilege. Advice taken from lawyers on issues of law reform and public policy does not necessarily attract the privilege.*<sup>32</sup>

26. The Information Commissioner has previously decided that communications with government legal officers will attract LPP, provided the legal adviser is an appropriately qualified legal practitioner conducting their practice with a requisite degree of independence.<sup>33</sup>

### Analysis

27. The relevant Information in Issue, a departmental legal file, contains communications (**Legal Documents**) which occurred in the context of:

- a) the lawyer-client relationship between the Department's Legal Services Unit (**Legal Services**) and the Department's Housing Unit; and
- b) the lawyer-client relationship between Crown Law and the Department.

28. The Legal Documents can be generally described<sup>34</sup> as:

- emails (including attachments) between Legal Services, Crown Law and staff of the Department, conveying instructions, updates and advice
- emails (including attachments) within Legal Services conveying instructions, updates and draft advice
- Legal Services file notes of telephone conversations with Crown Law and staff of the Department; and
- legislation and case law collated by Legal Services for the purpose of researching legal issues relating to the legal work that was conducted.

29. The Department claims that the Legal Documents are exempt under schedule 3, section 7 of the RTI Act on the basis that they would be privileged from production in a legal proceeding.

30. The applicant submits that LPP does not apply because:

- of resulting inequalities of access to legal advice and pre-hearing legal representation<sup>35</sup>
- *'there is an imbalance of power and knowledge between herself and the Department's access to comprehensive legal advice and instruction'*<sup>36</sup>
- the applicant was self-represented and *'the rules of evidence confirm there is "no Legal Professional Privilege" when a person is self-represented'*<sup>37</sup>

<sup>30</sup> *Waterford* at 95 per Mason and Wilson JJ.

<sup>31</sup> [2008] HCA 37 (**Osland**).

<sup>32</sup> *Osland* at [89].

<sup>33</sup> *Hillier and Redland Shire Council* (Unreported, Queensland Information Commissioner, 9 June 2011). See also *C01MAA and The Public Trustee of Queensland* (Unreported, Queensland Information Commissioner, 8 May 2012).

<sup>34</sup> Section 108(3) of the RTI Act prohibits the Information Commissioner from including information that is claimed to be exempt information in reasons for a decision on an external review. This prevents me from describing the actual content of the Legal Documents in these reasons.

<sup>35</sup> Page 23 of the applicant's submissions to OIC dated 17 February 2012.

<sup>36</sup> Page 19 of the applicant's submissions to OIC dated 17 February 2012.

<sup>37</sup> Page 2 of the applicant's submissions to OIC dated 13 April 2012.

- some pages which are subject to a claim of LPP were previously claimed by the Department to be contrary to public interest to disclose; and
- legal matters before the Queensland Civil and Administrative Tribunal (**QCAT**) will be finalised soon and therefore, LPP will not apply.

31. Having examined the Legal Documents in detail, I am satisfied that:

- the documents were prepared by independent legal advisors employed at Legal Services and Crown Law, for the dominant purpose of providing legal advice to their client, the Department, on relevant legal issues arising in relation to the applicant's tenancy and Unit 1; and
- the communications were made confidentially between lawyers and clients and that the content was not disclosed to third parties outside of the lawyer-client relationship.

32. I acknowledge that some of the Legal Documents relate to issues arising out of the applicant's tenancy of Unit 1. However, I do not consider that this entitles her to access privileged information. I am also satisfied that Crown Law and Legal Services were representing the Department in providing legal advice, and were not acting on behalf of the applicant. Similarly, I do not consider the applicant's involvement in a QCAT proceeding (irrespective of the stage it is at) has the effect of setting aside the privilege in the Legal Documents, as submitted by the applicant.

33. I am also satisfied that there is no information available in this review to indicate that LPP has been waived<sup>38</sup> or that the communications were made for an illegal or improper purpose.<sup>39</sup>

34. On the basis of the above, I am satisfied that the Legal Documents meet the requirements for LPP and are therefore exempt under schedule 3, section 7 of the RTI Act. Accordingly, I find that access to the Legal Documents may be refused under section 47(3)(a) of the RTI Act.

### **Public interest**

35. It is Parliament's intention that access should be given to a document unless giving access would, on balance, be contrary to the public interest.<sup>40</sup>

36. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, a public interest consideration is one which is common to all members of the community, 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 a particular individual.

37. In deciding whether disclosure would, on balance, be contrary to public interest, the RTI Act requires a decision-maker to:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure

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<sup>38</sup> At common law, LPP can be waived by a client either intentionally disclosing a privileged communication *Goldberg v Ng* (1994) 33 NSWLR 639 at 670, or engaging in conduct that is inconsistent with the maintenance of confidentiality that privilege is intended to protect *Mann v Carnell* (1999) 201 CLR 1.

<sup>39</sup> LPP will not be available where a communication is made in furtherance of an illegal or improper purpose, ie., a purpose that is contrary to the public interest. *R v Bell; Ex Parte Lees* (1980) 146 CLR 141.

<sup>40</sup> Section 44(1) of the RTI Act. Where disclosure would, on balance, be contrary to the public interest, access may be refused under sections 47(3)(b) and 49 of the RTI Act.



- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosing the information would, on balance, be contrary to the public interest.<sup>41</sup>

38. Schedule 4 of the RTI Act sets out various public interest factors that may be relevant in determining the public interest.<sup>42</sup>

### **Analysis**

39. The information which is subject to assessment of public interest factors for and against disclosure includes:

- information about individual(s) who raised complaints with the Department in relation to the applicant and her tenancy of Unit 1 (**Complainant Information**)
- information about the individuals from whom the Queensland Government purchased Unit 1 in 2008 (**Vendor Information**)
- membership and financial information about the body corporate of the community title scheme which comprises Unit 1 (**Body Corporate Information**)
- information about a public servant (**Public Servant Information**)
- names of employees of private sector businesses which were contracted to provide services to the Department specifically in relation to public housing (**Private Sector Employee Names**); and
- name of an employee of the Tenants' Union of Queensland who represented the applicant in relation to issues regarding her tenancy of Unit 1 (**Union Representative**).

40. I have considered each category of information and the relevant public interest factors for and against disclosure, separately below. I am satisfied that no irrelevant factors in schedule 4 of the RTI Act arise in relation to any of the categories of information in this case.

### **Complainant Information**

41. The Department disclosed to the applicant the substance of the complaints which had been made in relation to her tenancy of Unit 1 but refused access to information which it considered could reasonably be expected to identify the individual complainant(s).

42. The relevant Information in Issue<sup>43</sup> consists of names, addresses and contact details of the complainant(s). There is also some information which indicates a relationship or proximity to the applicant which could reasonably be expected to identify individual(s) who made complaints to the Department. I am satisfied that this information comprises the personal information<sup>44</sup> of other individual(s). I consider this factor carries significant weight due to the importance of safeguarding personal information held by government.<sup>45</sup>

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<sup>41</sup> See section 49(3) of the RTI Act.

<sup>42</sup> This is a non-exhaustive list and therefore, other factors not included in schedule 4 may be relevant in a particular case.

<sup>43</sup> In pages 111, 426, 446, 447, 481-482, 499-500, 664-666, 670-672, 674-675, 709-713, 717-718, 723, 728, 732-737, 740-741, 800-801, 904 and 1241.

<sup>44</sup> *Personal information* is defined at section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**) 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."

<sup>45</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

43. The Right to Information Commissioner has previously found that:
- when an individual provides information to a government agency about their thoughts and opinions related to a complaint, this comprises a private action falling within an individual's 'personal sphere'; and
  - disclosure of this information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>46</sup>
44. I am therefore satisfied that there is also a high privacy interest attaching to this information, given the complaint context in which it was given, and that this raises a strong factor favouring nondisclosure.<sup>47</sup>
45. I have identified that *some* of the relevant Information in Issue<sup>48</sup> is the applicant's personal information as it refers directly to her and the impact of her behaviour on other individual(s). This raises a factor favouring disclosure<sup>49</sup> which I consider carries moderate weight. However, given the particular context in which the information appears, I do not consider the applicant's personal information can be separated from the personal information of the other individual(s).
46. The applicant submits that she is entitled to see all information provided by complainant(s) on the basis that it may contain erroneous information and false allegations<sup>50</sup> and that she has a right to know how the Department would handle a complaint resolution between herself and other unknown persons.<sup>51</sup> These submissions raise the following further factors favouring disclosure:
- disclosure could reasonably be expected to reveal that information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;<sup>52</sup> and
  - disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>53</sup>
47. The Right to Information Commissioner recently considered the public interest in disclosing complaint information and stated that:
- ... complaint information is by its very nature, an individual's particular version of events which is shaped by factors including the individual's memory and subjective impressions.*
- In my view, this inherent subjectivity does not necessarily mean that the resulting account or statement is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Rather, it means that complaint information comprises a personal interpretation of relevant events, which an investigator must balance against other (often competing) statements and evidence in reaching a conclusion in a particular case.<sup>54</sup>*
48. Given the inherent nature of complaint information as described by the Right to Information Commissioner above, I consider that little weight can be given to the applicant's submission that the information should be disclosed on the basis it is erroneous and contains false allegations. I am also satisfied that disclosing *who* made the complaints will not further the applicant's understanding of the allegations made

<sup>46</sup> *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [23] (**Matthews**).

<sup>47</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>48</sup> Pages 666, 671, 710, 732-734, 736-737, 740 and 800-801.

<sup>49</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>50</sup> Page 26 of the applicant's submissions dated 17 February 2012.

<sup>51</sup> Page 1 of the applicant's submissions dated 13 April 2012.

<sup>52</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>53</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>54</sup> *Matthews* at [17] - [18].

against her and/or reveal information about the Department's complaint-handling processes. I therefore find that this factor carries only very low weight in favour of disclosure.

49. On the basis of the above, I find that the factors favouring nondisclosure of the Complainant Information outweigh the factors favouring disclosure. I am satisfied that disclosure would, on balance, be contrary to the public interest and that therefore, access to this information may be refused under section 47(3)(b) of the RTI Act.

### **Vendor Information**

50. The Department refused access to information about the individuals from whom the Queensland Government purchased Unit 1 in 2008. The relevant Information in Issue includes the vendors' signatures, bank account name, property asking price, legal representation and insurance policy details, as it appears in contracts, forms and transactional correspondence associated with the purchase of Unit 1.
51. The applicant states that she is entitled to access all information about the purchase of Unit 1 because, '*the condition of the Unit and its suitability to attract a tenant or to be considered suitable for attracting a full market rental... demonstrates the Government procedures concerning inspections and acquisitions of units for public housing tenants*'.<sup>55</sup>
52. I accept that there is a public interest in disclosing information about government's dealings with public housing properties to ensure and enhance transparency and accountability of government expenditure and operations.<sup>56</sup> However, I consider that this factor carries only limited weight in relation to the particular Information in Issue as described in paragraph 50 above.
53. The name of a previous owner of real property in Queensland can be accessed under the *Land Titles Act 1994* (Qld) (**Land Titles Act**) through an historical title search.<sup>57</sup> Therefore, the privacy attaching to the vendors' names is significantly reduced<sup>58</sup> and as a result, the names were disclosed to the applicant during the review. However, I do not consider that the same can be said for the private banking, legal and insurance information of the vendors, or their signatures as this is not available through the Land Titles Act scheme and is highly personal in nature. In my view, this is the personal information of the vendors<sup>59</sup> which attracts a very high privacy interest favouring nondisclosure.<sup>60</sup>
54. On the basis of the above, I am satisfied that safeguarding the personal information and privacy of the Vendor Information outweighs the accountability interest. I find that disclosure of the Vendor Information would, on balance, be contrary to the public interest and that access to it may be refused under section 47(3)(b) of the RTI Act.

### **Body Corporate Information**

55. The Department refused access to information about the financial affairs and membership of the body corporate for the community title scheme which incorporates Unit 1.

<sup>55</sup> Page 2 of the applicant's submissions dated 13 April 2012.

<sup>56</sup> Schedule 4, part 2, items 1, 3 and 4 of the RTI Act.

<sup>57</sup> Discussed further at paragraph 75 of this decision.

<sup>58</sup> See also *J2P8MT and Department of Health* (Unreported, Queensland Information Commissioner, 11 May 2012) at [40].

<sup>59</sup> Schedule 4, part 4 item 6 of the RTI Act.

<sup>60</sup> Schedule 4, part 3 item 3 of the RTI Act.

56. The applicant submits that she is entitled to know the Body Corporate Information because she was a tenant of the complex and the body corporate had responsibility for the conditions and maintenance of all units, including Unit 1. I note however, that the applicant is no longer a tenant of Unit 1 and therefore, any interest she *may* have had in the Body Corporate Information as a resident of the complex, can no longer be established.
57. As stated in paragraph 52 above, there is a public interest in disclosing certain information about public housing properties where disclosure would enhance transparency and accountability of government expenditure, operations and reasons for decisions.<sup>61</sup> However, I do not accept that public interest extends to membership and financial information of a community title scheme body corporate. In my view, this information relates to the financial affairs of the body corporate (as a legal entity) and the other private lot owners. I am satisfied that, if disclosed, this information could reasonably be expected to prejudice those affairs<sup>62</sup> and the privacy of individual lot owners.<sup>63</sup>
58. I am satisfied that the accountability interest combined with any interest the applicant *may* have had in the information as a previous tenant in the complex, is outweighed by the strong interest in protecting the financial affairs and privacy of the body corporate and individual lot owners. On balance, I find that disclosure of Body Corporate Information would be contrary to the public interest and that therefore, access to it may be refused under section 47(3)(b) of the RTI Act.

### ***Public Servant Information***

59. The Department refused access to information about a public servant appearing in a departmental email concerning Unit 1.<sup>64</sup>
60. Generally, information relating to the day-to-day work duties and responsibilities of a public service officer may be disclosed under the RTI Act, despite it falling within the definition of personal information.<sup>65</sup> This includes information such as a work email address, a work phone number, an opinion given in a professional capacity or information about an officer's qualifications required for the position. I accept that disclosure of this type of information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.<sup>66</sup> However, agency documents can also contain personal information of public servants which is not "routine" work information, for example, reasons for taking sick leave or opinions about an officer's performance.
61. Having reviewed the relevant Information in Issue, I am satisfied that the Public Servant Information is not routine personal work information of the kind mentioned in paragraph 60 above. I consider that its disclosure could reasonably be expected to:
- reveal the personal information of a public servant<sup>67</sup>
  - prejudice the protection of his/her right to privacy;<sup>68</sup> and
  - prejudice the management function of an agency.<sup>69</sup>

<sup>61</sup> Schedule 4, part 2, items 1, 3 and 4 of the RTI Act.

<sup>62</sup> Schedule 4, part 3, item 2 and item 15 of the RTI Act.

<sup>63</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>64</sup> Pages 879, 882 and 883.

<sup>65</sup> As defined in section 12 of the IP Act. See footnote 44 above.

<sup>66</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>67</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>68</sup> Schedule 4, part 3 item 3 of the RTI Act.

<sup>69</sup> Schedule 4, part 3, item 19 of the RTI Act.

62. I am satisfied that the above public interest factors favouring nondisclosure carry significant weight and that on balance, disclosure of the Public Servant Information would be contrary to the public interest. Therefore, I find that access to the information may be refused under section 47(3)(b) of the RTI Act.

### ***Private Sector Employee Names***

63. The relevant Information in Issue comprises the names of individual employees of private sector businesses contracted to provide trade and property-related services to the Queensland Government in relation to Unit 1 (**Contracted Service Providers**).
64. The applicant submits that she is entitled to access any information that:
- reports on the *“rectification appraisal”* of Unit 1 so that the applicant can see whether such reports *“mislead or contain erroneous information that conflicts with the applicant’s review and knowledge of problems pertaining to the liveability of her unit”*; and
  - shows the qualifications of the tradesmen employed by the Department.
65. I acknowledge there is a strong public interest in disclosing information about services performed for government by contracted service providers in terms of enhancing transparency and accountability in government expenditure and operations.<sup>70</sup>
66. In this case, the business names of the Contracted Service Providers and details of the work performed at Unit 1 have been released to the applicant. In my view, the disclosed information serves the public interest in enhancing transparency and the accountability of government. I do not consider that disclosing the names of individual employees who performed the work would further this public interest. I am satisfied that in this case, a distinction can be drawn between the Contracted Service Providers, as the entities which contracted with government to provide trade/property services, and their individual employees who, while they performed the relevant work, have no direct contractual relationship with government. I also note that the Information in Issue does not disclose the qualifications of individual tradesmen as sought by the applicant. On the basis of the above, I am satisfied that the accountability interest in disclosing this information can only be afforded low weight.
67. I also consider that the fact that an individual works for a private sector business is their personal information and that this raises a public interest harm factor favouring nondisclosure<sup>71</sup> and also, a privacy interest.<sup>72</sup> I accept that there will however, be some instances in which the privacy is reduced. For example, where the individual concerned is a senior manager of the business and their name, title and contact details are accessible through the business website, this may reduce the privacy attaching to an individual’s private sector employment information. However, in this case, the employees concerned are not in senior/managerial roles and there is no information available to indicate that their employment details are publicly available. Accordingly, I consider the personal information and privacy factors carry significant weight in favour of nondisclosure.
68. I am satisfied that the public interest in accountability and transparency is outweighed by the strong privacy interest attaching to the Private Sector Employee Names and the importance in safeguarding personal information held by government. I therefore find that disclosure would, on balance, be contrary to the public interest and that access to this information may be refused under section 47(3)(b) of the RTI Act.

<sup>70</sup> Schedule 4, part 2, items 1, 3 and 4 of the RTI Act.

<sup>71</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>72</sup> Schedule 4, part 3, item 3 of the RTI Act.

### **Union Representative**

69. The Department refused access to the name of an employee of the Tenants' Union of Queensland (**TUQ**) who represented the applicant in particular dealings with the Department. TUQ is a community organisation, mainly funded from the interest earned on tenant bond money managed by the Residential Tenancies Authority.
70. The applicant objects to the *'name and contents of the TUQ's correspondence being removed as the TUQ Social Housing Worker is [her] representative'*.<sup>73</sup>
71. As set out at paragraphs 60 and 67 above, information about a person's employment is their personal information and this raises a public interest harm factor favouring nondisclosure.<sup>74</sup> The privacy interest which attaches to the information will however, vary according to the particular circumstances of the case. In this case, the applicant has indicated that she knows the name of the Union Representative because of her dealings with the particular individual in relation to Unit 1. I accept that this somewhat reduces the privacy attaching to the name of the Union Representative.
72. While partly funded through government funds, TUQ officers are not employed under the *Public Service Act 2008* (Qld) and for this reason, I am not satisfied that that a TUQ officer would reasonably expect that their employment information would be available under the RTI Act, as is the case for public servants in relation to their routine personal work information. Accordingly, I consider that moderate weight can be given to the personal information and privacy factors favouring nondisclosure.
73. On the basis of the above, I am satisfied that while the privacy interest is slightly reduced in this case, the weight in protecting the personal information and privacy of an individual employed outside the public sector remains high. I therefore find that disclosure of the name of the Union Representative would, on balance, be contrary to the public interest and that access to this information may be refused under section 47(3)(b) of the RTI Act.

### **Information to which other access is available**

74. Sections 47(3)(f) and 53(a) of the RTI Act allow an agency to refuse access to a document that is reasonably available under another Act or administrative arrangement, whether or not the access is subject to a fee or charge. Section 53(a) of the RTI Act replicates the requirements of section 22(a) of the repealed FOI Act.<sup>75</sup> The Information Commissioner previously recognised that the purpose of section 22(a) of the FOI Act was to ensure that more specialised schemes for accessing documents are not overridden by the access regime in the FOI Act.<sup>76</sup>
75. The relevant Information in Issue includes the Release of Mortgage (Form 3)<sup>77</sup> and the Settlement Notice (Form 23)<sup>78</sup> relating to the purchase of Unit 1 by the Queensland Government in 2008. The former Department of Environment and Resource Management<sup>79</sup> confirmed to OIC that, under section 35 of the Land Titles Act, both documents are available for purchase by a member of the public through an access provider such as CITEC<sup>80</sup> or in person at a business centre of the relevant agency.

<sup>73</sup> Page 2 of the applicant's submissions to OIC dated 13 April 2012.

<sup>74</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>75</sup> *Middleton and the Building Service Authority* (Unreported, Queensland Information Commissioner, 22 September 2010).

<sup>76</sup> *JM and Queensland Police Service* (1995) 2 QAR 516 at 24.

<sup>77</sup> Page 952.

<sup>78</sup> Pages 1063-1064.

<sup>79</sup> The Land Titles Act access scheme is now administered by the Department of Natural Resources and Mines as a result of recent machinery of government changes. See *Administrative Arrangement Order (No 3.) 2012*.

<sup>80</sup> [www.confirm.citec.com.au](http://www.confirm.citec.com.au)

76. On the basis of the above, I am satisfied that:

- the applicant can reasonably access the Release of Mortgage and the Settlement Notice under the Land Titles Act
- the fact that access is subject to payment of a fee is irrelevant
- the requirements of section 53(a) of the RTI Act are satisfied; and
- access to the relevant Information in Issue may be refused under section 47(3)(f) of the RTI Act.

## **DECISION**

77. For the reasons set out above, I vary the deemed decision of the Department and find that:

- documents relating to a different property are outside the scope of the access application
- information which is not relevant to the terms of the access application may be deleted under section 73 of the RTI Act; and
- access to information may be refused under sections 47(3)(a), 47(3)(b) and 47(3)(f) of the RTI Act, in accordance with these reasons for decision.

78. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 18 May 2012**

## APPENDIX

### Significant procedural steps

Date	Event
28 February 2011	The applicant applied under the RTI Act to the Department for access to the complete file on Unit 1 and/or herself ( <b>access application</b> ).
April - May 2011	The Department obtained the applicant's agreement to an extension until 20 May 2011 to provide the applicant with its decision on her application.
26 May 2011	The applicant received the Department's decision notice dated 20 May 2011.
16 June 2011	The applicant applied to OIC for external review.
24 June 2011	OIC notified the applicant and the Department that the application had been accepted for review. OIC asked the Department to provide a submission in relation to the searches which had been conducted on the application.
18 July 2011	The Department provided OIC with: <ul style="list-style-type: none"> <li>• a copy of the documents to which the applicant had been refused access</li> <li>• submissions about the searches conducted on the application and certifications from relevant officers involved in the searches; and</li> <li>• additional documents located by the Department relevant to the application.</li> </ul>
29 August 2011	OIC conveyed, by telephone, a preliminary view to the applicant that the Department had taken all reasonable steps to locate documents responding to her application. OIC also informed the applicant that additional documents had been located and would be released to her by the Department. The applicant did not accept the preliminary view.
30 August 2011	The Department confirmed to OIC that it had posted the additional documents to the applicant.
29 September 2011	The Department confirmed to OIC that it did not object to its written submissions on searches being provided to the applicant by OIC.
29 September 2011 27 October 2011 11 November 2011	OIC spoke to the applicant by telephone about the status of the external review and the issues under consideration by OIC.
18 November 2011	OIC made further enquiries with the Department in relation to the searches conducted of QBuild records and QBuild recordkeeping systems.
8 December 2011	OIC asked the Department to provide a submission on documents identified as outside scope of the application and information identified as irrelevant.
12 December 2011	OIC obtained further information from the Department in relation to its recordkeeping practices in relation to public housing tenancies.
15 December 2011	OIC conveyed a written preliminary view to the applicant that the Department had taken all reasonable steps to locate documents responding to her application and that any further documents were either nonexistent/unlocatable under section 52(1) of the RTI Act. OIC requested the applicant's response to the preliminary view by 13 January 2012.
23 December 2011	The Department provided a submission to OIC regarding out of scope documents and irrelevant information. In this submission, the Department agreed to disclose additional information subject to consultation with the former Department of Communities ( <b>Communities</b> ).



3 January 2012	OIC obtained additional information from the Department in relation to its submissions received 23 December 2011 and confirmed the status of OIC's assessment of the remaining issues in the review.
13 January 2012	The applicant provided OIC with written submissions in relation to the sufficiency of search issues. In her submissions, she advised OIC that she accepted the preliminary view in resolution of these issues.
1 February 2012	OIC conveyed a further preliminary view to the applicant in relation to the following issues: <ul style="list-style-type: none"> <li>• documents identified as outside the scope of the application</li> <li>• information identified as irrelevant to the terms of the application</li> <li>• documents subject to legal professional privilege; and</li> <li>• whether disclosure of particular information would, on balance, be contrary to the public interest.</li> </ul> OIC asked the applicant to respond to the preliminary view by 17 February 2012.
1 February 2012	OIC provided the Department with a copy of documents reflecting the preliminary view of OIC that certain information would not, on balance, be contrary to the public interest to disclose. OIC asked the Department to confirm its position on disclosure of the particular documents by 10 February 2012.
14 February 2012	The Department provided OIC with submissions in response to certain contrary to public interest information and indicated that Communities should be consulted in relation to particular documents.
16 February 2012	OIC consulted with Communities in relation to the disclosure of particular documents.
17 February 2012	The applicant responded to the preliminary view dated 1 February 2012, indicating that she did not accept the view and providing submissions in support of her case.
24 February 2012	OIC made enquiries with the former Department of Environment and Resource Management regarding publicly available documents.
27 February 2012	Communities informed OIC in writing that it had no objections to disclosure of the documents on which it had been consulted.
1 March 2012	OIC obtained publicly available information relating to Unit 1 through CITEC searches.
16 March 2012	OIC spoke to the Department about the status of OIC's assessment of the remaining issues in the external review and the preliminary view which had been conveyed to the applicant. The Department agreed to provide the applicant with access to any additional documents in accordance with the preliminary view within two weeks.
16 March 2012	OIC wrote to the applicant to respond to some concerns raised in her 17 February 2012 submissions and to convey a further preliminary view on particular information. OIC asked the applicant to respond to the preliminary view by 30 March 2012.
19 March 2012	OIC provided the Department with copies of the remaining documents in issue marked up to reflect OIC's preliminary view to the applicant. OIC asked the Department to release the additional pages identified for disclosure to the applicant by 30 March 2012.

23 March 2012	The Department confirmed to OIC that it agreed with the redactions made to the documents in issue in accordance with OIC's preliminary view and would forward the documents to the applicant on CD by 30 March 2012.
27 March 2012	The Department confirmed to OIC that it had posted the CD of documents to the applicant.
30 March 2012	The applicant responded to the preliminary view dated 16 March 2012, indicating that she did not accept the view, providing further submissions and requesting additional time in which to provide final submissions.
30 March 2012	OIC granted the applicant an extension of time until 13 April 2012 to provide her final submissions.
13 April 2012	The applicant provided further submissions and requested a further extension of time to provide final submissions.
16 April 2012	OIC informed the applicant that OIC was not in a position to grant any further extensions of time for her to provide submissions on the issues in this review.
24 April 2012	The applicant provided OIC with additional submissions in support of her application.