



Decision and Reasons for Decision

Application Number: 310842

Applicant: 15ZPBD

Respondent: Department of Justice and Attorney-General

Decision Date: 17 April 2012

Catchwords: **RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION - REFUSAL OF ACCESS – applicant sought information about gaming machine statistics from the Department of Justice and Attorney-General – third party objected to disclosure of information – whether the information comprised exempt information – section 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) – whether disclosure of the information would, on balance be contrary to the public interest – section 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)**

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REASONS FOR DECISION

Summary

1. The access applicant sought access¹ from the Department of Justice and Attorney-General (**Department**)² under the *Right to Information Act 2009* (Qld) (**RTI Act**) to certain information concerning the turnover, metered win and taxes of gaming machines in Queensland hotels and clubs, including:³

Information for the period 1 May 2010 to 30 April 2011 as follows:

...

2. *In ranking order according to amount wagered (turnover), the leading 10 poker machine establishments (hotels and clubs) for the specified 12 months; and*
 3. *For each of the top 50 poker machine establishments, the average amount wagered, total amount paid out in winnings and total amount paid out in stamp duty in groups of 10, for the specified 12 months.*
2. The Department identified one page responsive to this part of the access application (the **Relevant Document**).
 3. After consultation with relevant parties, including the external review applicant (**Club**), the Department decided⁴ to grant full access to the Relevant Document as it neither comprises exempt information, nor would its disclosure, on balance, be contrary to the public interest.
 4. The Club sought internal review of this decision⁵ and the Department affirmed its original decision on internal review.⁶
 5. The Club⁷ then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.⁸
 6. Having considered all submissions and information before me, I am satisfied that the Relevant Document does not comprise exempt information, nor would its disclosure, on balance, be contrary to the public interest.

¹ By application dated 6 June 2011 and received on 8 June 2011.

² The access application was mistakenly addressed to the Department of Employment, Economic Development and Innovation and was transferred to the Department of Justice and Attorney-General. The latter Department gained responsibility for the Office of Liquor and Gaming Regulation following machinery of government changes in February 2011.

³ According to the revised scope of the access application, confirmed in the Department's decision dated 1 September 2011.

⁴ By decision dated 1 September 2011.

⁵ By letter dated 28 September 2011.

⁶ See internal review decision dated 21 October 2011.

⁷ The Club in this review is the same applicant in the external review recently decided by the Right to Information Commissioner, *15ZPBD and Department of Justice and Attorney-General* (Unpublished, Queensland Information Commissioner, 11 January 2012) (**15ZPBD**). The Club made near identical submissions to those addressed in *15ZPBD* on whether the Relevant Document comprises exempt information and the public interest in its disclosure. Therefore, much of the reasoning in *15ZPBD* is applicable in this case, and is referred to as relevant throughout these reasons.

⁸ By external review application dated 18 November 2011 and received by OIC on 21 November 2011.

Reviewable decision

7. The decision under review is the Department's internal review decision dated 21 October 2011.

Information sought

8. The Relevant Document comprises a list of the ten most profitable gaming machine venues in Queensland for the period from 1 May 2010 to 30 April 2011. The venues are ranked in order of profitability and are identified by venue name. The Relevant Document also comprises a table showing the three figures comprising the aggregate dollar amounts of turnover, metered win and tax for the top fifty most profitable gaming machine venues in Queensland, in groups of ten.

Issues in this review

9. The applicant does not accept OIC's preliminary view⁹ that the Relevant Document does not comprise exempt information and its disclosure would not, on balance, be contrary to the public interest and has provided submissions in support of its case.¹⁰
10. Therefore, the issues for determination are whether:
 - the Relevant Document comprises exempt information; and
 - disclosure of the Relevant Document would, on balance, be contrary to the public interest.

Significant procedural steps

11. Significant procedural steps relating to the application and external review are set out in the Appendix.

Evidence considered

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

Relevant law

Onus on external review

13. Section 87(2) of the RTI Act provides that on external review, if the reviewable decision is a '*disclosure decision*',¹¹ the participant in the external review who opposes the disclosure decision has the onus of establishing that a decision not to disclose the information is justified or that the Information Commissioner should give a decision adverse to the access applicant.

⁹ Conveyed by letter dated 2 February 2012.

¹⁰ By correspondence dated 22 February 2012.

¹¹ '*Disclosure decision*' is defined in section 87(3)(a) of the RTI Act as a decision to disclose a document or information contrary to the views of a relevant third party obtained under section 37 of the RTI Act.

Right to access information

14. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.
15. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises 'exempt information'. Schedule 3 sets out the types of information which the Parliament has considered to be 'exempt information' as its disclosure would, on balance, be contrary to public interest.
16. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest. In determining whether disclosure of the information sought would, on balance, be contrary to the public interest I must:¹²
 - identify and disregard irrelevant factors
 - identify factors favouring disclosure of the information in the public interest
 - identify factors favouring nondisclosure of the information in the public interest
 - balance the relevant factors favouring disclosure and nondisclosure
 - decide whether disclosure of the information would, on balance, be contrary to public interest.
17. I will examine in turn whether the Relevant Document comprises exempt information and/or whether its disclosure would, on balance, be contrary to the public interest.

Findings

Whether the Relevant Document comprises exempt information

18. The applicant submits that the Relevant Document comprises exempt information, the disclosure of which could reasonably be expected to:¹³
 - endanger a person's life or physical safety¹⁴
 - endanger the security of a building, structure or vehicle;¹⁵ and
 - prejudice a system or procedure for the protection of persons, property or the environment.¹⁶
19. These submissions are near identical to those raised by the Club in *15ZPBD*, the only change being the addition of the third concern, ie, prejudice to a protection system or procedure.
20. As in *15ZPBD*, the Club's submission, in summary, is that overall the Club and its patrons, staff and the local community would face a greater risk of criminal activity if disclosure occurred.

¹² Section 49(3) of the RTI Act.

¹³ For an explanation of what is meant by "could reasonably be expected to", and its application in the context of these exemptions under the RTI Act see paragraph 19 and 22 of *15ZPBD*.

¹⁴ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(c) of the RTI Act.

¹⁵ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(h) of the RTI Act.

¹⁶ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(i) of the RTI Act.

21. The Right to Information Commissioner did not accept these submissions in *15ZPBD*¹⁷ and I do not accept it here including in relation to the further concern raised in this external review about prejudice to a protection system of procedure.
22. As was the case in *15ZPBD* there is insufficient evidence before me to establish that an expectation of increased criminal activity is reasonably based especially given that:
- more specific information than that set out in the Relevant Document is currently publically available¹⁸
 - the Relevant Document does not contain any information that could reveal the estimated amount of cash held at the Club; and
 - as submitted by the Club, the nature of club already renders it a target for criminal activity.
23. After carefully considering all of the relevant information before me including gaming information which is currently publicly available, I am satisfied that:
- there is insufficient evidence before me to conclude that disclosure of the Relevant Document could reasonably be expected to increase the likelihood of criminal activity at the Club; and
 - the Relevant Document does **not** comprise exempt information under the RTI Act, the disclosure of which could reasonably be expected to endanger a person's life or physical safety¹⁹ or the security of a building, structure or vehicle,²⁰ or prejudice a system or procedure for the protection of persons, property or the environment.²¹

Whether the Relevant Document comprises information, the disclosure of which would, on balance, be contrary to the public interest

24. The applicant submits that the "*the decision maker is restricted in considering the public interest to the matters specifically enumerated in Schedule 4 [of the RTI Act]*";²² and that the public interest test outlined in section 47(3)(b) of the RTI Act was misunderstood and misapplied.²³
25. The Right to Information Commissioner addressed identical submissions in *15ZPBD* and for the reasons outlined at paragraph 25 of that decision, I am satisfied that a proper assessment of public interest regarding disclosure of the Relevant Document is not confined to the consideration of public interest factors set out in schedule 4 of the RTI Act. The public interest factors set out in schedule 4 of the RTI Act are not a finite list instead, public interest factors **including** those mentioned in schedule 4 are to be considered.

¹⁷ See paragraphs 18-23 of *15ZPBD*.

¹⁸ OLGR statistics available at <http://www.olgr.qld.gov.au/resources/index.php/gamingstatistics/search/sites-all/> and also published on the Club's website show that the club is one of only ten club gaming venues in Queensland with the maximum number of 280 electronic gaming machines (**EGMs**), the average number of EGMs among club gaming venues being 45 according to further OLGR statistics at <http://www.olgr.qld.gov.au/resources/index.php/gamingstatistics/search/stats-egm-clubs/AUG%202011/e137d9454cce164c5c9b28ae6e7c6863>

¹⁹ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(c) of the RTI Act.

²⁰ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(h) of the RTI Act.

²¹ Sections 47(3)(a), 48 and schedule 3, sections 10(1)(i) of the RTI Act.

²² At 9 of the applicant's submissions dated 22 February 2012 and referred to in submissions dated 18 November 2011.

²³ In the OIC's preliminary view dated 2 February 2012.

Irrelevant factors

26. The Club raises concerns about the purpose of the access application and the use to which the information contained in the Relevant Document may be put should it be disclosed.²⁴
27. I agree with the Right to Information Commissioner's finding in *15ZPBD* that these issues are irrelevant to a proper consideration of the public interest.
28. No other irrelevant factors arise on the information before me.

Factors favouring disclosure of information in the public interest

29. On the information before me, I am satisfied that the public interest factors favouring disclosure of the Relevant Document include that disclosure of information relating to gaming statistics could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability²⁵
 - contribute to positive and informed debate on important issues or matters of serious interest²⁶
 - reveal whether OLGR is effectively satisfying its responsibility for '*maintaining the integrity and probity of the gambling industry in Queensland and ensuring that, on balance, the state and the community benefit from gambling*';²⁷ and
 - promote OLGR's "vision" as '*a proactive and responsive regulatory agency*'.²⁸

Factors favouring nondisclosure of information in the public interest

30. On the information before me, I am satisfied that the public interest factors favouring nondisclosure of the Relevant Document raised by the Club include that disclosure of this information:
 - could reasonably be expected to prejudice security, law enforcement or public safety of the club
 - could reasonably be expected to pose a threat to the health, safety and security of the club's staff, patrons, passers-by and nearby residents as well as the club itself
 - would disclose information concerning the business, professional, commercial or financial affairs of a person and could reasonably be expected to have an adverse effect on those affairs
 - could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of the Club

²⁴ The applicant submits in correspondence dated 18 November 2011 and 22 February 2012 that the access applicant does not suggest that the information will be used to further openness in government and the purpose of the access application appears to be "*to create an occasion of publicity, by ... using the RTI process in order to give the information ultimately disclosed an appearance of being more authoritative or as being more deserving of public attention because it was sourced from Government and obtained under an RTI process*". Again, these submissions are identical to submissions addressed in *15ZPBD* at paragraphs 28-29.

²⁵ Schedule 4, part 2, item 1 of the RTI Act.

²⁶ Schedule 4, part 2, item 2 of the RTI Act.

²⁷ As set out on the OLGR website at: <http://www.olgr.qld.gov.au/aboutUs/organisation/index.shtml>.

²⁸ See OLGR website at: <http://www.olgr.qld.gov.au/aboutUs/organisation/priorities/index.shtml>

- could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person; and
- would attract attention and scrutiny from competitors and could therefore have an adverse effect on the club's "*unique commercial edge*".²⁹

Balancing factors favouring disclosure and nondisclosure in the public interest

31. I am mindful of the importance of promoting open discussion of public affairs and the accountability of government³⁰ and contributing to positive and informed debate on important issues or matters of serious interest.³¹
32. The Club submits, for the same reasons it relied on in *15ZPBD*,³² that the information contained in the Relevant Document has no relevance to the functions of government or matters of interest or concern to the community and therefore its disclosure would not serve these public interests.
33. As the Right to Information Commissioner highlighted in *15ZPBD*, the Club acknowledges that it provided information contained in the Relevant Document to the Department in accordance with the Club's compliance obligations under the *Gaming Machine Act 1991 (Qld) (GM Act)*. The object of the GM Act states that:³³

1A Object

- (1) *The object of this Act is to ensure that, on balance, the State and the community as a whole benefit from gaming machine gambling.*
- (2) *The balance is achieved by allowing gaming machine gambling subject to a system of regulation and control designed to protect players and the community through—*
 - (a) *ensuring the integrity and fairness of games; and*
 - (b) *ensuring the probity of those involved in the conduct of gaming machine gambling; and*
 - (c) *minimising the potential for harm from gaming machine gambling*

34. On this basis, I agree with the Right to Information Commissioner's conclusion in *15ZPBD* and am satisfied that the information here has a strong connection to matters of serious interest and concern to the community which Parliament has sought to address partially through the operation of the GM Act.
35. I also note the Department's submissions³⁴ including that:

- the Relevant Document does not detail individual turnover, metered win and tax for each club in the list, rather their position within the group
- the club promotes its financial success on its website
- the club's annual report, available on its website, reveals the club's financial performance over the financial year, including in relation to gaming machine takings

²⁹At page 5 of the applicant's 'Attachment A to RTI Objection Form', provided by correspondence dated 18 November 2011.

³⁰Schedule 4, part 2, item 1 of the RTI Act.

³¹Schedule 4, part 2, item 2 of the RTI Act.

³²Which are outlined at paragraph 33 of *15ZPBD* and considered by the Right to Information Commissioner in paragraphs 34-36 of that decision.

³³Section 1A of the GM Act.

³⁴In the Department's notice of decision to the applicant, dated 2 September 2011 and its internal review decision dated 21 October 2011.

- there is a strong public interest in members of the public being informed on gaming machine statistics held by government
- OLGR is responsible for maintaining the integrity and probity of the gambling industry in Queensland and ensuring that, on balance, the state and the community benefit from gambling³⁵
- while the information comprises business affairs, it is very similar in nature to information publicly available on both the OLGR website and the club's own website and therefore no adverse effect would result from disclosure.
- competitors "*are aware of which Queensland establishments are within the top ten leading venues in terms of turnover and have been in consultation with each other regarding (the RTI) process*".³⁶

36. In short, the Department submits that disclosure of the information set out in the Relevant Document could reasonably be expected to:

- enhance the Government's accountability
- contribute to matters of interest
- provide effective oversight of public funds.

37. After carefully considering all of the information before me, I am satisfied that:

- the disclosure of statistics and rankings such as those set out in the Relevant Document could reasonably be expected to promote open discussion of public affairs, enhance Government accountability³⁷ and contribute to positive and informed debate on matters of serious interest
- disclosure will allow for increased scrutiny of OLGR
- there is no discordance between the RTI Act and GM Act; and
- the factors favouring disclosure of the Relevant Document should be afforded significant weight in the circumstances of this review.

38. As to the public interest factors favouring nondisclosure based on prejudice to security, law enforcement and public safety,³⁸ I repeat and rely upon the reasons set out in paragraphs 18-23 of this decision and find that these public interest factors should be afforded little or no weight in the circumstances of this review.

39. With respect to the public interest factors favouring nondisclosure based on the effect disclosure could reasonably be expected to have on the business, professional, commercial or financial affairs of the Club,³⁹ I note that:

- the Relevant Document does not detail individual turnover, metered win and tax for each club on the list⁴⁰
- the Club's success is already a matter of public knowledge given the information which is currently publicly available on both the OLGR and Club's websites

³⁵ I also note the applicant's view that the RTI Act creates discordance with the GM Act and second guesses the Queensland Gaming Commission as the independent government body vested with relevant functions in relation to gaming information.

³⁶ At page 9 of its notice of decision dated 2 September 2011.

³⁷ Schedule 4, part 2, item 1 of the RTI Act.

³⁸ Including threats posed to the health, safety and security of relevant staff, patrons, passers-by and nearby residents as well as to the applicant.

³⁹ Including prejudice to trade secrets or research, and attention and scrutiny from competitors which the applicant submits could have an adverse effect on the club's "*unique commercial edge*".

⁴⁰ As stated by the Department.

- there is no evidence before me which supports the Club's submission that disclosure of this additional information could reasonably be expected to have the adverse impact claimed; and
 - the Relevant Document does not reveal information concerning the club's "*intellectual property*", research or trade secrets.⁴¹
40. I am satisfied that these factors favouring nondisclosure of the Relevant Document should be afforded little or no weight in the circumstances of this review.
41. The Club submits that gaming turnover has a significant impact upon and close relationship with individual incomes of persons involved with the Club and therefore, disclosure of the Relevant Document:
- would disclose personal information of individuals
 - could breach the privacy of individuals; and
 - could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of the Club.
42. Again, these submissions are identical to those raised by the Club in *15ZPBD* and were addressed by the Right to Information Commissioner at paragraphs 43-45 of that decision. I agree with that assessment of these submissions and am satisfied that these factors favouring nondisclosure of the Relevant Document should be afforded no weight in this review.
43. On balance and taking into account all of the matters set out above, I am satisfied that:
- the public interest factors favouring disclosure of the Relevant Document outweigh the public interest factors favouring nondisclosure; and
 - disclosure of the Relevant Document would not, on balance, be contrary to the public interest.

DECISION

44. I affirm the Department's decision to grant access to the Relevant Document in accordance with the right of access conferred by section 23 of the RTI Act and find that the Relevant Document:
- does not comprise exempt information under section 47(3)(a) of the RTI Act; and
 - would not, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act.
48. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Louisa Lynch
Acting Assistant Information Commissioner

Date: 17 April 2012

⁴¹ At page 4 of the applicant's 'Attachment A to RTI Objection Form', provided by correspondence dated 18 November 2011.

APPENDIX**Significant procedural steps**

Date	Event
8 June 2011	Access applicant sought access to information about turnover, metered win and taxes of gaming machines in Queensland establishments
29 July 2011	Department sought the Club's views on disclosure of the Relevant Document
16 August 2011	The Club objected to disclosure of the Relevant Document
1 September 2011	Department decided to grant access in full to the Relevant Document
2 September 2011	Department advised the Club of its decision to grant access to the Relevant Document
28 September 2011	The Club applied to Department for internal review of its decision to grant access to the Relevant Document
21 October 2011	On internal review, the Department affirmed its decision to grant access to the Relevant Document
18 November 2011	The Club applied to OIC for external review of Department's internal review decision
2 February 2011	By correspondence, OIC conveyed its preliminary view that the Relevant Document does not comprise exempt information; and that its disclosure would not, on balance, be contrary to the public interest
22 February 2011	By correspondence, the Club's representatives advised that the Club did not accept OIC's preliminary view.