



Decision and Reasons for Decision

Citation:	<i>Stanway and Frederick Marsden Youth Centre Inc</i> [2014] QICmr 22 (4 June 2014)
Application Number:	311811
Applicant:	Stanway
Respondent:	Frederick Marsden Youth Centre Inc
Decision Date:	4 June 2014
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – JURISDICTION OF INFORMATION COMMISSIONER – whether the respondent is an agency subject to the application of the <i>Right to Information Act 2009</i> (Qld) – whether the respondent is a ‘public authority’ within the terms of section 16 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Frederick Marsden Youth Centre Inc (**FMYC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to various documents including minutes and financial reports.
2. FMYC wrote to the applicant, advising it was not an agency subject to the operation of the RTI Act. The applicant applied to the Office of the Information Commissioner (**OIC**) for review of FMYC’s decision to refuse him access to requested documents.
3. FMYC is not an agency subject to the RTI Act. The Information Commissioner does not have jurisdiction to deal further with the applicant’s application for external review.

Background

4. Significant procedural steps relating to this access application and external review are summarised in the appendix. For the purposes of the reasons that follow, however, it is useful to briefly canvass the history and nature of the respondent, FMYC.
5. FMYC is an entity originally incorporated as the ‘Marsden Home for Boys’ on 22 December 1932, by way of Letters Patent granted by the Governor in Council¹ under the former *Religious, Educational and Charitable Institutions Act 1867* (**RECI Act**).² It

¹ That is, the Governor acting with the advice of the Executive Council.

² The RECI Act empowered the ‘...Governor with the advice of the Executive Council...’ to issue Letters Patent to incorporate religious, educational and charitable groups. Organisations incorporated under the RECI Act were able to manage estates, properties and effects; receive and purchase property; borrow and lend money; and sue and be sued. The RECI Act was replaced by the *Associations Incorporation Act 1981* (Qld). However, section 144 of the *Associations Incorporation Act 1981* (Qld) saves Letters Patent issued under the RECI Act, which continue to be of full force and effect.

was initially established as an orphanage, which apparently began operating in 1929³ on land at Petrie donated by a Mr Frederick Marsden.

6. It appears a group of concerned citizens⁴ organised to manage the affairs and administration of the orphanage, leading to the formation of a governing committee. This committee settled a constitution and set of rules,⁵ and in late 1932 resolved to seek incorporation under the RECI Act.⁶ Steps including the swearing and filing of affidavit material were taken,⁷ and in December of that year Letters Patent establishing the 'Marsden Home for Boys' were, as noted, granted.
7. Orphanage operations were later discontinued,⁸ and a name change reflecting the organisation's shift away from residential care was effected by a grant of further Letters Patent on 2 March 2000, restyling the entity the 'Frederick Marsden Youth Centre Inc'. For the sake of simplicity, in these reasons I have only referred to the entity by its contemporary name.

Jurisdiction to review

8. The power of the Information Commissioner to consider and determine issues relating to the limits of the Commissioner's jurisdiction has been explained and confirmed in several prior OIC decisions.⁹ For present purposes, it is sufficient to note that I am satisfied that I have both power and duty to decide on the limits of that jurisdiction as arising in this case.

Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnote and appendix).

Issue to be determined

10. Section 23 of the RTI Act confers on persons a legally enforceable right of access to documents of an 'agency'. 'Agency' is defined in section 14 of the RTI Act to include 'public authorities'.¹⁰ Section 16 of the RTI Act relevantly¹¹ defines a public authority as an entity¹² either:
 - a) established by government under an Act for a public purpose,¹³ or
 - b) created by the Governor in Council or a Minister.¹⁴
11. The issue I must resolve is whether FMYC comprises a public authority of one or both of the kinds described in paragraph 10, and is thus an agency subject to the RTI Act. If so, then FMYC is subject to the obligations imposed on agencies by the RTI Act, and,

³ <http://www.fmyc.org.au/#!/our-story/cjq9> (accessed 6 May 2014).

⁴ Members of the Congregationalist community: see *The Queensland Congregationalist*, 23 March 1929, p.8. FMYC's website states that it is today 'is under the auspices of the Uniting Church in Australia (Queensland Synod.)': note 3.

⁵ 'Constitution and Rules of the Marsden Home for Boys at Petrie' dated 1932.

⁶ Affidavit Verifying Minutes by Eric Samuel Thompson sworn 11 November 1932.

⁷ As above.

⁸ FMYC's website notes that with 'the change in government policies and community needs the centre no longer operates as an orphanage, but now as a camp and conference centre': note 3.

⁹ *Christie and Queensland Industry Development Corporation* (1993) 1 QAR 1; *English and Queensland Law Society Inc* (1995) 2 QAR 714; *Tedesco and Mt Gravatt District Community Support Inc* (2005) 7 QAR 33.

¹⁰ FMYC is not a Department, local authority, government owned corporation or subsidiary of a government owned corporation falling within the definition of agency set out in section 14 of the RTI Act.

¹¹ There being no suggestion on the part of the applicant or otherwise that FMYC falls within any of the other categories of public authority as set out in section 16 of the RTI Act.

¹² 'Entity' includes a person and an unincorporated body: section 36 of the *Acts Interpretation Act 1954* (Qld).

¹³ Section 16(1)(a)(ii) of the RTI Act.

¹⁴ Section 16(1)(b) of the RTI Act.

pursuant to section 23, the applicant has a legally enforceable right¹⁵ to be given access to documents held by FMYC.

12. If FMYC is not an agency, however, it is not subject to the RTI Act, and the Information Commissioner has no jurisdiction to deal further with the application for review.

Applicant's submissions

13. In short, the applicant's case is that FMYC, as an entity incorporated by way of Letters Patent granted by the Governor in Council, falls within one or both of the categories of public authority specified in paragraph 10.

Findings

Is FMYC an entity established by government under an Act for a public purpose?

14. No, as FMYC was not 'established by government'.
15. FMYC is clearly an 'entity', established under – in accordance with¹⁶ – the provisions of the RECI Act. It also appears to have been established for a public purpose.¹⁷
16. Crucially, however, I am not satisfied that FMYC can be said to have been 'established by government'.

Meaning of 'established'

17. The meaning of the word 'established' as deployed in section 16 of the RTI Act was analysed by Judge Kingham, Deputy President of the Queensland Civil and Administrative Tribunal in *City North Infrastructure Pty Ltd v Information Commissioner*.¹⁸

11. *The ordinary meaning of the word establish, connotes the act of bringing something into existence:*

"1. to set up on a firm or permanent basis; institute; found; to establish a government, a business, a university etc."

This is consistent with the legal definition of the word:

"2. To make or form; to bring about or into existence <Congress has the power to establish Article III courts>".

In Queensland, the Acts Interpretation Act 1954 extends the definition to include:

"constitute and continue in existence".

The ordinary meaning of constitute is:

"3. to set up or found (an institution, etc) 4. to give legal form to (an assembly, court, etc.)" (Footnotes omitted.)

¹⁵ Subject to the application of other provisions of the RTI Act, e.g., the grounds for refusal of access prescribed in section 47 of the Act.

¹⁶ *Acts Interpretation Act 1954* (Qld), section 36.

¹⁷ A 'public purpose' is one '...that is for the benefit of members of the community generally, or a substantial segment of them': *McPhillimy and Gold Coast Motor Events Co* (1996) 3 QAR 376, at [22] (**McPhillimy**). The objects clause of FMYC's 1932 constitution provides, relevantly, that the entity shall aim to '...prepare boys for useful citizenship...', while the 'mission statement' on its website states FMYC shall, relevantly, '...provide services to the community that assist people in need to achieve a better quality of life...': note 3. Each of these aims appears to fall within the concept of a 'public purpose' as explained in *McPhillimy*.

¹⁸ [2010] QCATA 60 (**City North**).

18. FMYC derives its existence as a legal entity from the Letters Patent granted by an organ of government – the Governor in Council. The applicant contends that, accordingly, it was ‘established by’ government. The applicant’s case in this regard is certainly open on aspects of the definition expounded by Kingham J in the paragraph above: I do not think it can be said that anything other than the granting of Letters Patent by the Governor in Council was the act ‘giving legal form’ to FMYC.¹⁹
19. Yet equally it can be seen there are a range of alternative meanings of the word ‘established’ extending its definition beyond the narrow technical sense the applicant would have me adopt. A reasonable person adopting the natural and ordinary usage of ‘set up, institute or found’, for example, would not identify government as having established FMYC, but Mr Marsden and the concerned citizenry that donated land, erected premises, began an orphanage, formed a governing committee and eventually, petitioned or applied²⁰ to government seeking the formal incorporation of an entity under the RECI Act.
20. The question thus becomes as to which sense of the term ‘established’ I should prefer: the narrower, ‘technical’ sense as argued by the applicant, or a broader concept looking to the identity of the person or persons who ‘set up’ – who bestowed property, constructed premises, contributed time and effort and arranged for incorporation of – the relevant entity. Adopting the ordinary principles of statutory interpretation, I prefer the latter.
21. The ‘*primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute*’,²¹ and where – as here – there is more than one possible construction, it is legitimate to look to the purposes of an Act.²²
22. The purpose of the RTI Act is, essentially, to foster access to government information.²³ Given this purpose, it is in my view preferable to construe section 16(1)(a)(ii) of the RTI Act as requiring a decision-maker to identify the ‘founder’, the principal actor or motivating force responsible for causing an entity’s coming into existence – that is, the agent substantively responsible for arranging for the existence of the entity, and not simply for conferring its legal form.
23. In other words, in interpreting section 16(1)(a)(ii) of the RTI Act, I consider I am required to identify the character or nature of those responsible for ‘setting up’ or ‘founding’ the relevant entity – for, in this case, arranging for incorporation by bringing before government a request for Letters Patent, and thus for practically causing (rather than merely formalising) the bringing into existence of the entity. If, as in this case, the ‘founder’ is a non-government actor, then it cannot be said that the entity was ‘established by government’.

¹⁹ And nor do I dispute, as the applicant appears to apprehend in his submissions dated 10 March 2014, that FMYC is a legal entity separate from its members.

²⁰ Unlike the *Associations Incorporation Act 1981* (Qld), the RECI Act does not appear to have prescribed a method for making application for incorporation, which is a point the applicant seeks to emphasise (his submissions dated 8 April 2014 stress that ‘...the RECI Act simply offers no application process...’, going on to argue that ‘...the evidence rises no higher than establishing that an informal approach took place outside the operation of the RECI Act’). While it is not entirely clear what the process was for obtaining incorporation under the RECI Act, the ‘Affidavit Verifying Minutes’ dated 11 November 1932 (note 6) suggests a process that was far from ‘informal,’ and which I am prepared to find was, as a course of action initiated by private citizens, broadly analogous to an application process such as that now obtaining under the *Associations Incorporation Act 1981*. My view in this regard is reinforced by the actual text of the original 1932 Letters Patent, which refers to the FMYC’s then-officeholders having ‘represented’ to the Governor that ‘they are desirous of being incorporated’ and ‘have complied with the provisions [of the RECI Act]: language all of which clearly points to incorporation under the RECI Act occurring at the initiative of relevant citizenry, by way of an application-style process occurring directly under that Act – something much more than an ‘informal approach’ occurring ‘outside the operation of the RECI Act’.

²¹ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, at [69] (**Project Blue Sky**).

²² Paraphrasing section 14A of the *Acts Interpretation Act 1954*, and the observations of Dawson J in *Mills and Meeking* (1990) 169 CLR 214 at [235] made in the context of a consideration of the equivalent provision (section 35) of the *Interpretation of Legislation Act 1984* (Vic).

²³ See the Preamble, and the Object as stated in section 3(1) which provides for a primary object of giving a right of access to ‘information in the government’s possession or under the government’s control...’.

24. My view in this regard is consistent with the fundamental principles of statutory construction as summarised above and espoused in numerous authorities including, as cited by the applicant, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue*,²⁴ the relevant passage from which provides:²⁵

[47] This Court has stated on many occasions that the task of statutory construction must begin with a consideration of the text itself. Historical considerations and extrinsic materials cannot be relied on to displace the clear meaning of the text. The language which has actually been employed in the text of legislation is the surest guide to legislative intention. The meaning of the text may require consideration of the context, which includes the general purpose and policy of a provision, in particular the mischief it is seeking to remedy.

25. The natural and ordinary meaning of the 'language employed' in section 16(1)(a)(ii) in my view requires a decision maker to identify who is, in short, the 'founder' of a given entity. Construing the section in this manner aligns with the 'general purpose and policy' of the access scheme enshrined in the RTI Act – to extend access to information held by government. Reading the section in this fashion gives the provision full reign to address the 'mischief' it is intended to remedy – capturing and subjecting to the Act's transparency obligations entities founded or set up by government²⁶ – while excluding private benevolent, charitable or community organisations, which Parliament did not intend, so far as I can ascertain, to be subject to the Act.
26. My view is also consistent with a previous decision of this Office, *Tedesco and Mt Gravatt District Community Support Inc (Tedesco)*,²⁷ in which the Information Commissioner found that a community organisation incorporated under the *Associations Incorporation Act 1981* (Qld) had been established not by government, but by the group of individuals who had identified local community needs, developed an organisational structure and sought and obtained registration under that Act.
27. My view is further fortified by the observations of the Information Commissioner in *Barker and World Firefighter Games, Brisbane, 2002 (Barker)*.²⁸ In that case, the applicant requested documents held by 'World Firefighter Games, Brisbane, 2002' (**WFG**), a public company limited by guarantee and incorporated under the then Corporations Law on the application of two State government agencies.²⁹
28. The key point in *Barker* was whether the Act under which a body was established needed also to specify the public purposes for which the body was established.³⁰ WFG did, however, also contend that to find that it was subject to the FOI Act under the equivalent of section 16(1)(a)(ii) of the RTI Act would result in the extension of the former Act to private charitable and community organisations. The Information Commissioner expressly rejected this proposition:

²⁴ [2009] HCA 41, per Hayne, Heydon, Crennan and Kiefel JJ.

²⁵ Footnotes omitted. For a very recent restatement of relevant principles, see *Thiess v Collector of Customs* [2014] HCA 12 at [22], quoting *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* [2012] HCA 55, the High Court stating in the latter that it '...has stated on many occasions that the task of statutory construction must begin with a consideration of the [statutory] text'. So must the task of statutory construction end. The statutory text must be considered in its context. That context includes legislative history and extrinsic materials. Understanding context has utility if, and in so far as, it assists in fixing the meaning of the statutory text.' As for reference to an Act's purpose in order to discern the meaning of statutory language, see *Thiess*, at [23], where the Court noted that the Commonwealth equivalent to section 14A of the *Acts Interpretation Act 1954* (Cth) is '...a particular statutory reflection of a general systemic principle. For: "... statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.'" (Quoting in part *Cabell v Markham* 148 F 2d 737 (1945), at [739], in turn quoted in *Residual Assco Group Ltd v Spalvins* [2000] HCA 33.)

²⁶ And otherwise meeting the other requirements of the definition.

²⁷ See note 9.

²⁸ (2001) 6 QAR 149.

²⁹ The Queensland Fire and Rescue Authority and the Department of Emergency Services.

³⁰ At the time this decision was made, the relevant provision of the *Freedom of Information Act 1992* (Qld) (**FOI Act**) was silent as to whether the 'establishing Act' also needed to specify a qualifying public purpose. The FOI Act was subsequently amended so as to resolve this ambiguity via insertion of the words '...whether or not the public purpose is stated in the enactment,' a formulation carried over into section 16(1)(a)(ii) of the RTI Act.

[24] *I reject the submission by WFG's solicitors that the interpretation of s.9(1)(a)(ii) [the material equivalent, as far as is relevant, of section 16(1)(a)(ii) of the RTI Act] explained in paragraph 18 above is too broad, and would result in private or charitable bodies being caught by the terms of that provision...*

29. The Information Commissioner went on to emphasise that:

[27] *...the words of s.9(1)(a)(ii) of the FOI Act require that the body in question be established by government. This eliminates, from the scope of the provision, privately established bodies.*³¹

30. The 'practical' view I am proposing also gains some support from the decision of Kingham J in *City North*. The crucial issue in this case was whether it could be said a State-owned proprietary company (City North Infrastructure Pty Ltd – **CNI**) had been 'established...under' a State enactment,³² rather than the *Commonwealth Corporations Act 2001*.

31. While it was not crucial to her decision, Her Honour appears to have implicitly accepted that the actor causing the establishment of CNI was the State – the actor bringing the application for incorporation – and not the Commonwealth, the government effecting incorporation:

[33] *The company **was brought into existence by an action undertaken by government**³³ under (in accordance with) the Corporations Act, i.e. **by the application to register the company**. ... (My emphasis.)*

32. The applicant contends that *Tedesco* was wrongly decided, and disputes the value of the Information Commissioner's comments in *Barker*.³⁴ As for the *City North* decision, the applicant notes that the comments of Kingham J arose:

in a case [in which] nothing turned on whether it was application or registration that represented 'establishment'– the result would've been the same either way. The point was probably not in issue in that appeal or at the forefront of the judicial officers' minds.

33. The applicant instead relies on the following comment of Applegarth J in *Davis v City North Infrastructure Pty Ltd*³⁵ (**Davis**):

[41] *... The establishment of [CNI] depended upon the making of an application to ASIC and the exercise by ASIC of its power to register the company.*

34. The applicant contends that:³⁶

9. *Applegarth J very clearly holds that establishment of the subject corporation (City North Infrastructure Pty Ltd) in Davis depended on two actions – one private (the application) and one carried out by government (the registration). With respect, the proposition that "the judges in each decision ... implicitly accepted" that application equated to establishment does not survive even a cursory reading of Applegarth J's decision.*

³¹ Paragraph [27]. The Information Commissioner did not articulate what he meant by the words 'privately established body' in the passage cited, but it can be reasonably inferred he intended at least to include companies and incorporated associations registered on the application or at the instigation of private interests, having earlier (paragraph [23]) rejected a converse suggestion that bodies established under general purpose incorporative mechanisms such as the Corporations Law or the *Associations Incorporation Act 1981*(Qld) by government actors would not be subject to the FOI Act.

³² The *Financial Administration and Audit Act 1977* (Qld).

³³ 'Government' in this case being the State government bringing an application for registration under the *Commonwealth Corporations Act*, in a position no different to a private applicant for incorporation under that Act or, by analogy, community or charitable organisations seeking incorporation under the *Associations Incorporation Act 1981* (Qld)/RECI Act.

³⁴ Submissions dated 10 March 2014.

³⁵ [2011] QSC 285.

³⁶ Submissions dated 10 March 2014.

10. *I continue to respectfully contend that Tedesco was wrongly decided. That administrative decision expresses an error of law by placing undue weight on the actions of private citizens alone rather than on both their application **and also** the decision of the Registrar to grant their application and register the body corporate. The subject corporation in Tedesco was established by government (and possibly also by private citizens) in much the same way that the subject corporation in Davis. This follows the principle expressed by Applegarth J.*

10A. *The result of being established by both private citizens (through application) and government (through registration) would be that the corporation satisfies the test of being established by government.*

35. I accept that Kingham J's comments must be applied with care – indeed, in bringing both Her Honour's and the Information Commissioner's observations in *Barker* to the applicant's attention,³⁷ I did contextualise each so as to make it apparent that relevant observations were not crucial to the decision in either case. As to the judgment of Applegarth J on which the applicant urges reliance, I note that elsewhere in this decision His Honour makes observations in keeping with the view I have advanced above.³⁸ I also note that the caveats the applicant argues as regards *Barker* and *City North* would appear to apply equally to the comments of Applegarth J – that case arose from the same factual matrix as *City North*, and as in the latter, the question as to who ought be properly said to have 'established' the company was probably not, to quote the applicant '*at the forefront*' of His Honour's mind.
36. In any event, I think it sufficient to note that where I have cited any previous authorities in support of my decision, I have done so with an appropriate degree of caution. The issue I am required to determine is finely balanced, and while I recognise the force of the applicant's submissions,³⁹ I consider the approach that is both justifiable and preferable in this case is that which I have advanced above.
37. Accordingly, I am satisfied that the '*plain text which has actually been employed*' in section 16(1)(a)(ii) of the RTI Act – 'established by government' – requires that the entity under consideration have been substantively founded or set up⁴⁰ by government. FMYC was not.
38. In this regard, I do not accept that because government plays a role in conferral of legal form, government can therefore be said to 'establish' that entity in the sense discussed above. As I have explained, I prefer an interpretation of the phrase 'established by' that requires identification of those the ordinary person would understand to have founded a given entity – the organisers, volunteers and philanthropists who have taken initiative, marshalled resources and invested time, money and effort in arranging for incorporation. While undeniably responsible for conferring ultimate legal imprimatur, the Governor in Council took no practical initiative in bringing FMYC into being.
39. For these reasons, I do not think it can be said FMYC was 'established by' government. Accordingly, FMYC is not a 'public authority' within the meaning of section 16(1)(a)(ii) of the RTI Act. I will now consider the application of section 16(1)(b).

³⁷ By way of letter dated 6 March 2014.

³⁸ See paragraph [37], where His Honour observes that it was the '*act of the Coordinator-General (or departmental officers acting on his behalf) that led to the establishment of the respondent...the lodging of an application with ASIC...*'.

³⁹ Including too, in this regard, the cogent submissions addressing the principles of statutory interpretation made by him through the course of the review, such as his letter dated 15 November 2013.

⁴⁰ And not merely granted final legal form.

Is FMYC an entity created by Governor in Council?

40. No, FMYC was not 'created' by the Governor in Council or a Minister.

Meaning of 'created'

41. Unlike 'established', 'created' is not defined in the *Acts Interpretation Act 1954* (Qld). The Macquarie Dictionary relevantly defines 'create' as follows:⁴¹

1. to bring into being; cause to exist; produce.

...

4. to make by investing with new character or functions; constitute; appoint: to create a peer.

5. to be the cause or occasion of; give rise to.

42. As with the word 'established,' the definition of 'created' as excerpted above allows more than one construction of section 16(1)(b) of the RTI Act. In this regard, I acknowledge that, as the applicant submits, the issuing of Letters Patent by the Governor in Council under the RECI Act may be argued to have 'created' FMYC.

43. I consider, however, the preferable view to be that it was concerned citizenry – those who actually funded and constructed an orphanage and took steps necessary to obtain incorporation under the RECI Act of an entity to carry on their aims – who were 'the cause or occasion of' FMYC's existence and thus responsible for bringing FMYC 'into being'.

44. I have canvassed above the principles of statutory interpretation relevant to this case, in the context of my analysis of section 16(1)(a)(ii) of the RTI Act. For present purposes, it is sufficient to recall that the '*primary object of statutory construction*' is to achieve a result '*consistent with the language and purpose of all the provisions of the statute*'⁴² – remembering that, as noted above, where there is more than one possible construction, it is legitimate to look to the purposes of an Act.⁴³

45. Bearing in mind the object of the RTI Act and Parliament's intention as set out in the Preamble – to foster access to government, and not community or private charitable information – in my view it is preferable that, as with section 16(1)(a)(ii), section 16(1)(b) of the RTI Act be construed as requiring identification of the 'founder'⁴⁴ of a given entity, as that concept is commonly understood. The founder of FMYC was neither the Governor in Council nor a Minister, but the relevant group of concerned citizens.

46. In reaching this conclusion, I do not intend to 'downplay' the role of the Governor in Council in FMYC's formation.⁴⁵ I have simply adopted a broader, practical view of what is meant by the phrase 'created by' as deployed in section 16(1)(b); one preferring substance to form. This has the consequence of excluding from the operation of the RTI Act private charitable and community organisations such as FMYC, and results in an interpretation that aligns with Parliament's intention and best achieves⁴⁶ the purpose of the RTI Act: to promote the right to government information.

⁴¹ Macquarie Dictionary (online), accessed March 2014 and 28 May 2014.

⁴² Paraphrasing *Project Blue Sky*, cited in paragraph 21.

⁴³ See note 22.

⁴⁴ Paraphrasing the Macquarie Dictionary (online) definition of 'constitute', which forms part of the definition of 'create' as set out above.

⁴⁵ Submissions dated 10 March 2014.

⁴⁶ As mandated by the *Acts Interpretation Act 1954* (Qld): section 14A.

DECISION

47. I find that FMYC is not an agency subject to the RTI Act. I do not have jurisdiction to deal further with the applicant's application for external review dated 15 November 2013.
48. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Jenny Mead
Right to Information Commissioner

Date: 4 June 2014

APPENDIX

Significant procedural steps

Date	Event
4 November 2013	The applicant wrote to FMYC applying for access to documents under the RTI Act.
12 November 2013	FMYC wrote to the applicant, rejecting his application on the basis it was not an agency subject to the RTI Act.
15 November 2013	The applicant applied to OIC for external review of FMYC's rejection of his access application.
6 December 2013	OIC wrote to the applicant conveying a preliminary view FMYC is not an agency subject to the RTI Act and that the Information Commissioner therefore had no jurisdiction to deal further with his external review application. OIC invited the applicant to provide submissions in the event he did not accept this preliminary view.
9 December 2013	The applicant wrote to OIC, advising he did not accept OIC's preliminary view and setting out submissions in support of his case.
6 March 2014	OIC wrote to the applicant, reiterating its preliminary view FMYC is not an agency subject to the RTI Act. OIC again invited the applicant to provide submissions in the event he did not accept this reiterated preliminary view.
10 March 2014	The applicant wrote to OIC, advising he did not accept OIC's reiterated preliminary view and setting out further submissions in support of his case.
19 March 2014	OIC wrote to FMYC, advising it of OIC's review, conveying OIC's preliminary view as to FMYC's status in relation to the RTI Act, and requesting information as to FMYC's change of name from the 'Marsden Home for Boys'.
26 March 2014	OIC received FMYC's response to OIC's 19 March letter. FMYC conveyed information as to its change of name by way of Letters Patent dated 2 March 2000.
2 April 2014	OIC wrote to the applicant forwarding information pertaining to the incorporation of FMYC including each set of Letters Patent and the 'Affidavit Verifying Minutes' dated 11 November 1932. OIC advised relevant information appeared to confirm factual assumptions made in earlier correspondence. OIC also wrote to FMYC advising it of the status of the review and its role as respondent in the review, and inviting FMYC to lodge any submissions it may wish to make by 16 April 2014 (none received).
8 April 2014	The applicant contested OIC's view as to certain factual assumptions and lodged further submissions in support of his case.