



Decision and Reasons for Decision

Citation:	<i>Henderson and Department of Transport and Main Roads [2015] QICmr 24 (10 September 2015)</i>
Application Number:	312472
Applicant:	Henderson
Respondent:	Department of Transport and Main Roads
Decision Date:	10 September 2015
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – personal information and privacy – vehicle registration certificate – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – DOCUMENTS NONEXISTENT OR UNLOCATABLE – vehicle registration application – whether agency has taken all reasonable steps to locate requested documents – whether documents are nonexistent or unlocatable – sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to two documents relating to a specific vehicle:
 - certificate of current registration (**Registration Certificate**); and
 - application by the registrant/s for first registration (**First Registration Application**).
2. The Department refused the applicant access to:
 - part of the Registration Certificate on the basis that it comprised the personal information of another individual, the disclosure of which would be, on balance, contrary to the public interest;¹ and

¹ Section 47(3)(b) of the RTI Act.

- the First Registration Application on the basis that this document had been destroyed and was therefore non-existent.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
 4. On external review, the Department agreed to release to the applicant some additional information in the Registration Certificate that in OIC's view did not identify the third party.³ The applicant continued to seek full access to the Registration Certificate.
 5. For the reasons set out below, I have decided to vary the Department's decision⁴ and find that access to:
 - the remaining information in the Registration Certificate may be refused, as its disclosure would, on balance, be contrary to the public interest;⁵ and
 - the First Registration Application can be refused as this document has been destroyed by the Department and is therefore non-existent.⁶

Background

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

Reviewable decision

7. The decision under review is the Department's decision dated 11 May 2015.

Evidence considered

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

Information in Issue

9. The information in issue comprises:
 - parts of a current vehicle registration certificate⁷ identifying the name, date of birth, personal address, driver's licence number and insurance policy number of an individual other than the applicant; and
 - the application for first registration of the same vehicle.

Registration Certificate - Contrary to public interest information

Relevant law

10. Under the RTI Act, a person has a right to be given access to documents of an agency.⁸ However, this right of access is subject to other provisions of the RTI Act,

² Section 47(3)(e) of the RTI Act.

³ Specifically this information comprised the details of the third party insurer.

⁴ As the Department released additional information on external review.

⁵ Section 47(3)(b) of the RTI Act.

⁶ Section 47(3)(e) of the RTI Act.

⁷ This certificate is in the form of a two page print out from the Department's *Vehicle Registration Hub*.

⁸ Section 23 of the RTI Act.

including the grounds on which an agency may refuse access to documents.⁹ Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.

11. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, 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 an individual.
12. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹⁰ and explains the steps that a decision-maker must take¹¹ in deciding the public interest as follows:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

Applicant submissions

13. The applicant argues that:¹²
 - vehicle registration documents are unique as they may be involved in *civil, criminal or administrative incidents*
 - *Queensland Regulatory Authorities appear to enjoy an 'as of right' access to these records to aid their investigations* and there should not be discrimination against any private person who seeks to launch private criminal or civil proceedings involving registered vehicles; and
 - the RTI Act provides there is a *presumption towards disclosure* of government information.
14. I accept that the RTI Act provides a prodisclosure presumption¹³ and I have taken this into account in reaching my decision. However, I also note this presumption is subject to the grounds set out in the RTI Act on which access can be refused to information as I have outlined paragraph 9 above.
15. I do not consider that the applicant's remaining submissions raise any public interest factors favouring disclosure of the specific information in issue in this review as the applicant refers to hypothetical situations rather than explaining how the Registration Certificate in this case is relevant to any ongoing legal, criminal or administrative matters.

⁹ Set out in section 47 of the RTI Act.

¹⁰ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

¹¹ Section 49(3) of the RTI Act.

¹² The applicants submissions are set out in a letter to OIC dated 12 August 2015.

¹³ Section 44(1) of the RTI Act states that an agency or Minister should decide to give access to the (requested) document unless giving access would, on balance, be contrary to the public interest.

Findings

16. No irrelevant public interest factors arise in the circumstances of this review.
17. The information that has been refused in the Registration Certificate comprises the name, date of birth, personal address, driver's licence number and insurance policy number of an individual other than the applicant.

Personal information and privacy

18. The RTI Act recognises factors in favour of nondisclosure where disclosure could reasonably be expected to:
 - prejudice the protection of an individual's right to privacy;¹⁴ and
 - cause a public interest harm if it would disclose personal information of a person, whether living or dead.¹⁵
19. I am satisfied that the remaining information in the Registration Certificate comprises the personal information¹⁶ of a third party as it is unique to a particular individual and can be used to identify that individual and their ownership of a specific vehicle.¹⁷
20. Generally, individuals do not expect that the details they provide to the Department in order to register a vehicle would then be released without reason to other members of the public. This information is not made publicly available by the Department. The information in issue in the Registration Certificate provides details about where an individual resides, their birthdate and their ownership of a particular vehicle. I consider this to be a private aspect of that individual's life and disclosure of this information can reasonably be expected to prejudice that individual's privacy.¹⁸
21. I attribute significant weight to these factors favouring nondisclosure as I consider that the disclosure of the remaining information on the Registration Certificate is likely to prejudice their privacy and cause significant public interest harm by disclosing what would otherwise be private personal information. There is no evidence before me to suggest that the privacy interest in this information is in any way diminished.

Balancing the public interest

22. As the information in issue in the Registration Certificate is limited to the personal information of a third party and all remaining information in the Registration Certificate has been disclosed to the applicant, I am unable to identify any factors in favour of disclosure that apply in this specific case.
23. The information in issue does not disclose any details of government action or decision making. There is also no information before me to suggest that disclosure of the information in issue would promote any of the public interest factors relevant to the fair

¹⁴ Schedule 4, part 3, item 3 of the RTI Act.

¹⁵ Schedule 4, part 4, item 6(1) of the RTI Act.

¹⁶ In accordance with the definition of *personal information* in section 12 of the *Information Privacy Act 2009* (Qld): "*information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*".

¹⁷ On external review OIC issued a preliminary view to the Department that some additional information could be disclosed in the Registration Certificate without identifying the third party. Specifically, this information comprised details of the CTP Insurer and Class as well as details about the period of registration. The Department accepted OIC's view and provided the applicant with this additional information on 21 July 2015.

¹⁸ Schedule 4, part 3, item 3 of the RTI Act.

treatment of an individual or the pursuit of a legal remedy.¹⁹ Accordingly, I find that there are no relevant factors in favour of disclosure of the information in issue.

24. I am satisfied that significant weight can be afforded to the factors favouring nondisclosure relating to the personal information and privacy of the third party. I am satisfied that the weight of these factors sufficiently outweighs the general prodisclosure bias of the RTI Act.
25. Accordingly, I find that disclosure of the remaining information in the Registration Certificate would, on balance be contrary to the public interest and access may be refused to this information under section 47(3)(b) of the RTI Act.

Nonexistent or unlocatable documents

26. The Department refused access to the First Registration Application on the basis that this document had been destroyed and is no longer available.

Relevant Law

27. Under the RTI Act an agency is entitled to refuse access to documents which do not exist or cannot be located.²⁰
28. Where documents do not exist, an agency must either provide an explanation for the nonexistence (e.g. by referring to its recordkeeping policies and practices) or conduct searches to demonstrate that the documents do not exist.²¹ To demonstrate that documents are unlocatable, an agency must show that it has taken all reasonable steps to find the documents. What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on the particular circumstances.

Findings

29. The Department has provided OIC with search certifications and copies of its correspondence with its document archiving facility confirming that all vehicle registration documents prior to 2001 have been destroyed.²²
30. In a submission to OIC dated 29 June 2015 the Department explained that as the subject vehicle was first registered in March 2000 the Registration Application for this vehicle would have been destroyed as it predated 2001. The Department also confirmed in this submission that the destruction of this document was in accordance with the Department's Retention and Disposal Schedule.
31. In his submissions the applicant questions whether the destruction of the requested document was authorised. However, in this review I am considering whether or not the document sought by the applicant exists and not whether its destruction by the Department was authorised.
32. Having assessed the submissions made by the Department, I am satisfied that the First Registration Application the applicant is seeking is non-existent as it has been destroyed by the Department. The Department has provided OIC with a clear

¹⁹ While the applicant was presented with an opportunity to make submissions on these points in OIC's preliminary view letter of 30 June 2015, the applicant did not advance any submissions relevant to the specific information in issue in this matter.

²⁰ Sections 47(3)(e) and section 52(1)(a) and (b) of the RTI Act.

²¹ *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) [34-38].

²² Agency submissions dated 15 June 2015.

explanation for why it does not exist and also provided evidence of the enquiries it made to confirm that the First Registration Application has been destroyed.

33. Accordingly, I am satisfied the Department is entitled to refuse access to the First Registration Application under section 47(3)(e) of the RTI Act on the basis that it does not exist.

DECISION

34. For the reasons set out above, I vary the Department's decision. I find that access to the remaining parts of the Registration Certificate may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 and schedule 4 of the RTI Act.
35. I am also satisfied that the First Registration Application has been destroyed by the Department and access can be refused to this document under section 47(3)(e) of the RTI Act on the basis that it is nonexistent under section 52(1)(a) of the RTI Act.
36. 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
Acting Privacy Commissioner

Date: 10 September 2015

APPENDIX

Significant procedural steps

Date	Event
9 April 2015	The Department received the access application.
11 May 2015	The Department issued its initial decision.
1 June 2015	OIC received the applicant's application for external review of the Department's decision.
1 June 2015	OIC requested copies of documents relevant to the access application from the Department.
3 June 2015	OIC requested further information from Department, regarding search records or other information regarding the 'first registration' of the vehicle.
15 June 2015	The Department provided OIC with its search records.
22 June 2015	<p>OIC notified the applicant and Department that the application had been accepted for external review.</p> <p>OIC conveyed a preliminary view to the Department that additional information in the Current Registration Certificate could be disclosed to the applicant.</p>
29 June 2015	The Department accepted OIC's preliminary view and agreed to release additional information to the applicant.
30 June 2015	OIC conveyed a preliminary view to the applicant.
1 July 2015	The applicant rejected OIC's preliminary view and requested an extension of time to 14 August 2015 to provide submissions. OIC granted the requested extension of time.
21 July 2015	<p>OIC asked the Department to provide the applicant with the additional information in the Registration Certificate in accordance with OIC's preliminary view.</p> <p>OIC also requested that the Department provide OIC with additional information relevant to the registration of the subject vehicle.</p> <p>The Department provided OIC with the requested information.</p>
17 August 2015	OIC wrote to the applicant seeking his final written submissions.
18 August 2015	OIC received the applicant's submissions dated 12 August 2015 in response to the preliminary view.