



Decision and Reasons for Decision

Citation: *H62 and Department of Children, Youth Justice and Multicultural Affairs* [2021] QICmr 67 (14 December 2021)

Application Number: 316242

Applicant: H62

Respondent: Department of Children, Youth Justice and Multicultural Affairs

Decision Date: 14 December 2021

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - documents about child safety concerns, assessments and outcomes - whether disclosure prohibited by sections 186-188 of the *Child Protection Act 1999* (Qld) - whether exempt information - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST - mobile phone numbers of agency officers - disclosure of personal information - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 and schedule 4 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - IRRELEVANT INFORMATION - information duplicated or repeated in located documents - information ruled out of scope with applicant during processing - whether deleted information was irrelevant to the access application - section 88(2) of the *Information Privacy Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant in this matter is a child.¹ The applicant applied² under the *Information Privacy Act 2009* (Qld) (**IP Act**), to the Department of Children, Youth Justice and Multicultural Affairs (**Department**) for access to child safety records concerning the applicant.
2. The Department located 36 pages and decided³ to refuse access to:
 - two full pages and parts of 23 pages on the ground that this information comprised exempt information, as its disclosure is prohibited by sections 186-188 of the *Child Protection Act 1999* (Qld) (**Child Protection Act**); and
 - part of one page on the ground that disclosure of the information would, on balance, be contrary to the public interest.
3. The Department also deleted parts of five pages on the basis that they were irrelevant to the access application pursuant to section 88 of the IP Act as the deleted information was duplicated or repeated elsewhere in the located pages. During the processing of the application the Department wrote to the applicant's father to indicate that it would not consider duplicated or repeated information as relevant to the terms of the request,⁴ and the applicant's father did not object to this approach.
4. The applicant applied⁵ for internal review of this decision, and the Department affirmed its original decision.⁶
5. The applicant then applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
6. For the reasons set out below, I vary the Department's decision.

Reviewable decision

7. The reviewable decision is the Department's internal review decision dated 3 August 2021.

Evidence considered

8. Significant procedural steps relating to the external review are set out in the Appendix.
9. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).

¹ The child's father made an access application and sought external review on behalf of the child. In this decision, references to the applicant include references to the child's father when acting on behalf of the child in relation to the access application. Section 45 of the *Information Privacy Act 2009* (Qld) provides that a child's father is a parent who may make an access application for the child. In such circumstances the applicant is taken to be the child rather than the parent (see the definition of 'applicant' in schedule 5 of the *Information Privacy Act 2009* (Qld)).

² Application dated 1 June 2021.

³ Decision dated 30 June 2021.

⁴ Letter dated 8 June 2021.

⁵ By email dated 6 July 2021.

⁶ Internal review decision dated 3 August 2021.

⁷ On 4 August 2021.

10. The applicant's father has sent a large volume of email correspondence to OIC during this and other reviews. To the extent that that material contains information that is relevant to the issues for determination in this review, I have taken account of it.
11. I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ A decision maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act when applying the law prescribed in the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**).⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁰ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹¹

Information in issue

12. The information in issue is contained within:
- two full pages¹² and parts of 24 pages¹³ (**Category A information**)
 - part of one page¹⁴ (**Category B information**); and
 - parts of three pages¹⁵ (**Category C information**).
13. While I cannot provide details of the information in issue,¹⁶ it generally comprises information relating to child protection matters involving the applicant and others.

Issues for determination

14. The issues for determination are whether:
- access to the Category A information may be refused on the ground that it comprises exempt information, namely information the disclosure of which is prohibited by sections 186 - 188 of the Child Protection Act
 - access to the Category B information may be refused on the ground that disclosure would, on balance, be contrary to the public interest; and
 - the Category C information may be deleted from copies of the documents disclosed to the applicant on the basis that it is irrelevant to the terms of the access application.

Applicant's submissions

15. Since the commencement of this external review, the applicant's father has sent voluminous correspondence to OIC. To ensure that I considered the applicant's relevant submissions, on 10 September 2021, Assistant Information Commissioner Martin wrote to the applicant's father¹⁷ and directed him to identify the external review reference number in his correspondence and to limit his correspondence to

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹¹ *XYZ* at [573].

¹² Pages 17 and 31.

¹³ Pages 1-4, 8, 11-14, 16, 19-20, 22, 25-30 and 32-36.

¹⁴ Page 25.

¹⁵ Pages 3, 4 and, 5.

¹⁶ Section 121(3) of the IP Act prohibits the Information Commissioner from including information that is claimed to be exempt in reasons for a decision on external review.

¹⁷ Pursuant to section 108(2) of the IP Act.

submissions relating to the issues on external review.¹⁸ The applicant's father did not follow these directions and continued to provide OIC with voluminous correspondence in relation to his interactions with numerous other government agencies and court processes.

16. Having assessed the applicant's father's correspondence, I understand that, in relation to the issues in this review, he submits that:¹⁹

- the records held by the Department are '*100% false except a few minor details such as names and dates or reports from [the applicant's father] etc.*', and that there is evidence to '*show undeniably that what they state happened or was said was NOT fact and DID NOT happen anything like what they allege*'.
- the applicant's father does not agree with the actions of the Department and considers them to be unlawful
- the applicant's father's interactions with the Department demonstrate wrongdoing by the Department; and
- OIC and the Department staff had '*falsely alleged that [the applicant's father has] not carried out the stated guidelines and that [the applicant's father has] no basis or substance for [his] claims*' without having investigated and analysing the '*evidence provided*'.

17. In response to an update from OIC regarding the status of this and other external reviews the applicant's father submitted the following:²⁰

Thank you for your response, I look forward to reading the Justice obstructing continually relentlessly Rigidly thinking repeated and fixated Mental Gymnastics and illogical Cognitive Dissonance to support their unlawful Ad Hominem as soon as possible... I will unpack it all and reply in a "Timely Manner". (sic)

18. For the most part it is unclear to me how the applicant's father's submissions relate to the issues for my consideration on external review. I acknowledge that broadly the submissions raise public interest concerns, particularly with respect to Department actions and decisions and the accuracy of the relevant records. As I have explained in more detail below, such public interest arguments do not impact on my assessment of whether the Category A information to which access was refused can be considered exempt information. This is because Parliament has determined that the disclosure of exempt information²¹ is contrary to the public interest, and access may therefore be refused.²² The applicant's father's submissions do not provide information that would impact on the application of the exemption, nor do they directly contest the refusal of access to a mobile telephone number (the Category B information) or the issue of irrelevance.

Category A information

Relevant law

19. Under the IP Act an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.²³ This right is subject to other provisions of the IP Act and the RTI Act, including the grounds on

¹⁸ I repeated this direction in my email to the applicant's father dated 12 November 2021.

¹⁹ Emails from the applicant's father dated 10 September 2021 and 27 September 2021.

²⁰ Email from the applicant's father 12 November 2021.

²¹ The categories of exempt information are set out in schedule 3 to the RTI Act.

²² Section 48(2) of the RTI Act.

²³ Section 40 of the IP Act.

which an agency may refuse access to information.²⁴ Relevantly, access to information may be refused to the extent it comprises exempt information.²⁵ Schedule 3, section 12 of the RTI Act provides that information is exempt information if its disclosure is prohibited by sections 186-188 of the Child Protection Act.

20. Relevantly, disclosure of information is prohibited under the Child Protection Act if the information:
- identifies a person making a notification of a suspicion that a child has been or is likely to be harmed;²⁶ or
 - is about the affairs of another person²⁷ and was acquired by a person performing particular functions under the Child Protection Act.²⁸
21. The prohibition on disclosure is subject to certain exceptions in the Child Protection Act.²⁹ Further, an exception to information qualifying as exempt information under schedule 3, section 12(1) of the RTI Act is set out in schedule 3, section 12(2) of the RTI Act.

Findings

Would the Category A information identify any person/s who made a notification?

22. Having assessed the Category A information, I am satisfied that *some* parts of it identify a person/s who made a notification/s under the Child Protection Act.
23. Accordingly, I am satisfied that these parts of the Category A information:
- are subject to the prohibition on disclosure in section 186(2) of the Child Protection Act; and
 - qualify as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).

Is the *remaining* Category A information about another person's affairs and received under the Child Protection Act?

24. The term '*person's affairs*' is not defined in the Child Protection Act or the *Acts Interpretation Act 1954* (Qld). The relevant dictionary definitions for '*affair/s*'³⁰ are '*matters of interest or concern*' and '*a private or personal concern*'.³¹
25. Having assessed the *remaining* Category A information, I am satisfied it comprises information about the interests and concerns of individuals other than the applicant. These individuals may be known to the applicant; however, this does not impact on my assessment that it comprises the personal affairs of these other individuals.

²⁴ Section 67(1) of the IP Act and section 47 of the RTI Act.

²⁵ Section 47(3)(a) of the RTI Act.

²⁶ Section 186(2) of the Child Protection Act.

²⁷ That is, not the person seeking to access the information.

²⁸ Section 187(2) of the Child Protection Act.

²⁹ Section 187(3) and (4) and 188 (4) of the Child Protection Act.

³⁰ Butler, S. (Ed.). (2017). '*Affairs*'. In *The Macquarie Dictionary* (7th ed.). Macquarie Dictionary Publishers.

³¹ As established in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30].

26. I am also satisfied that this information was received or obtained by Departmental officers under the Child Protection Act. Relevantly, the Child Protection Act lists a public service employee³² as a person to whom section 187 applies.
27. On the basis of the above findings, I am satisfied that the remaining Category A information is about other persons' affairs and was given to, or received by, a person performing functions under or in relation to the administration of the Child Protection Act.
28. Accordingly, I am satisfied that the remaining parts of the Category A information are:
 - subject to the prohibition on disclosure in section 187(2) of the Child Protection Act; and
 - qualify as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).

Do any of the exceptions apply?

29. Sections 187 and 188 of the Child Protection Act contain a number of exceptions to the prohibition on the disclosure of information given or received under the Child Protection Act. Of relevance to this review, section 187(4)(a) provides that access may be given to another person to the extent that the information is about the other person.
30. In addition, schedule 3, section 12(2) of the RTI Act provides that information is not exempt information under schedule 3, section 12(1) if the information is only personal information of the applicant.
31. Where information is not about the applicant, or where the information is about the applicant but is not solely about the applicant,³³ or where an applicant's personal information³⁴ cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.
32. The Category A information is about individuals other than the applicant. In some instances, the Category A information is also about the applicant, but is intertwined with the information of others. After careful assessment, I find that the Category A information is not solely about the applicant or only the personal information of the applicant.
33. I am therefore satisfied that the exceptions in section 187(4)(a) of the Child Protection Act and schedule 3, section 12(2) of the RTI Act do not apply to the Category A information because it is not only about the applicant.
34. In seeking an external review, the applicant's father stated that he was the person who reported the child harm to the Department. The IP Act prohibits me from disclosing the information in issue in these reasons³⁵ and, given the context in which the Category A information appears, I am unable to directly respond to the applicant's father's

³² Section 187(1)(a) of the Child Protection Act.

³³ In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) of the Child Protection Act applies to shared information about the applicant and other persons. She observed at paragraph 26: 'The [Child Protection Act] exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the [Child Protection Act] exception will not apply'.

³⁴ 'Personal information' comprises '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': schedule 5 of the RTI Act, and section 12 of the IP Act.

³⁵ Section 121(3) of the IP Act.

submissions in this regard. Having considered all documents identified by the Department, including the released documents, I note that information relating to the applicant child only has been disclosed to the applicant's father. I have considered the applicant's father's submission that he was the relevant notifier of harm, however, I do not consider this submission impacts on this assessment.

35. The applicant's father also submitted that the records held by the Department contain incorrect information, which the applicant requires in order to have it amended, and contains false allegations made against the applicant's father by the Department, which are '*criminally unlawful*'.³⁶ The submissions raise issues relative to public interest factors that may favour disclosure of the Category A information. However, I cannot take these submissions into account. There is no scope for me to consider public interest arguments once I am satisfied that the information qualifies as exempt information. This is because Parliament has determined that disclosure of the types of information set out in schedule 3 of the RTI Act is contrary to the public interest, and access may therefore be refused.³⁷
36. As I consider the requirements of sections 186 and 187 of the Child Protection Act are met, and no exceptions in the Child Protection Act or schedule 3, section 12(2) of the RTI Act apply, I find that the Category A information is exempt information under schedule 3, section 12(1) of the RTI Act. Accordingly, I find that access to the Category A information may be refused under section 47(3)(a) of the RTI Act.

Category B information

Relevant law

37. Access to information may be also refused to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.³⁸
38. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:³⁹
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
39. Schedule 4 of the RTI Act contains non-exhaustive list of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision. Additionally, I have kept in mind the RTI Act's pro-disclosure bias⁴⁰ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly,⁴¹ and have not taken into account any irrelevant factors.

Findings

³⁶ Submission dated 10 September 2021.

³⁷ Section 48(2) of the RTI Act.

³⁸ Section 47(3)(b) of the RTI Act.

³⁹ Section 49(3) of the RTI Act.

⁴⁰ Section 44 of the RTI Act.

⁴¹ Section 47(2) of the RTI Act.

40. The Category B information comprises the mobile telephone number belonging to a staff member of another Queensland government department.

Factors favouring disclosure

41. The applicant's father's submissions have at no stage raised matters that could reasonably be viewed as necessitating my consideration of the public interest factors listed in schedule 4, part 2 of the RTI Act, or any other public interest factors favouring disclosure not listed in the RTI Act,⁴² for the Category B information.
42. Having considered the Category B information, I have not identified any factors listed in schedule 4, part 2 of the RTI Act favouring disclosure of this information.

Factors favouring nondisclosure

43. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁴³ and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁴
44. As noted above, the Category B information is a mobile telephone number. It solely comprises the personal information of a person other than the applicant. However, the Category B information relates to a public service officer, which necessitates a consideration of whether the information is routine personal work information. Routine personal work information is information that is solely and wholly related to the routine day to day work duties and responsibilities of a public sector employee, such as the fact of authorship of a work document or a work responsibility. Generally, it is not considered to be contrary to the public interest to disclose routine personal work information.⁴⁵ In this case, I do not consider that the Category B information is routine personal work information as it allows an officer to be contacted directly and outside of work hours. Disclosure of this type of information permits potential contact with a public service officer when off duty and/or engaged in private activity, thus giving rise to a reasonable expectation of intrusion into the officer's private life or personal sphere.⁴⁶
45. I consider that disclosure of the Category B information could reasonably be expected to prejudice the protection of the right to privacy of an individual other than the applicant and cause a public interest harm by disclosing their personal information. Given the nature of the information and the context in which it appears, I afford moderate weight to both of these factors in respect of the Category B information.

Balancing the public interest

46. I have considered the pro-disclosure bias in deciding access to information.⁴⁷ As outlined above, I have identified no factors favouring disclosure. On the other hand, I afford the factors favouring nondisclosure regarding the personal information and privacy of an individual other than the applicant moderate weight.

⁴² Which I must also consider, given that the public interest factors listed in the RTI Act are non-exhaustive—see section 49(3)(a), (b) and (c) of the RTI Act.

⁴³ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁵ However, it is considered to be contrary to the public interest to disclose sensitive personal information of public sector employees, such as complaints made by or about a public sector employee.

⁴⁶ See for example, *L78 and Queensland Health* [2020] QICmr 5 (10 February 2020). This decision was upheld at the Queensland Civil and Administrative Tribunal: *Webb v Information Commissioner* [2021] QCATA 116.

⁴⁷ Section 64 of the IP Act.

47. On balance, I consider the nondisclosure factors outweigh the disclosure factors. Accordingly, I find that access to the Category B information 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.

Category C information

Relevant law

48. Under the IP Act, an agency may delete information that is irrelevant to the terms of the access application.⁴⁸ This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is necessary to consider the scope of the access application, as agreed between the applicant and the relevant agency.

Findings

49. In this case, the deleted information appears, on its face, to be information relevant to the access application. However, having considered this information, I note that it comprises duplicates of information appearing elsewhere in the located documents, or repetition of the exact same information in Department records.
50. In a letter to the applicant⁴⁹ acknowledging receipt of the access application, the Department stated:

Duplicates and duplicated information

The IP Act requires an agency to make a decision in relation to all documents which fall within the scope of an application; this includes duplicate documents, documents containing duplicated information and each email in a chain of emails. However, for the purposes of your application, where relevant the following will be excluded unless you advise otherwise:

- *duplicate documents;*
- *information which is duplicated across a number of different documents with no change to the content of the information. In these cases, a decision will be made on only one instance of this information and any subsequent copy of the information will be removed (where this information is contained in a document which is otherwise within scope of the application, the information will be removed as irrelevant); and*
- *where email chains fall within the scope of your application, only the last unique email in the chain will be provided and earlier emails will be excluded.*

51. There is nothing before me to suggest that the applicant's father objected to the Department's proposed approach to consider any duplicated information as irrelevant to the scope of the access application.
52. I have examined the Category C information and am satisfied that it comprises copies of information already released to the applicant or Category A information which I have already found is exempt from disclosure. There is no change to the content of this information between where it originally appeared in the documents. In the context that this information appears, it is clear to me that it has been duplicated or repeated.
53. As the Department advised the applicant of its intention to remove the Category C information as irrelevant and, given the lack of any objection to this course of action by

⁴⁸ Section 88(2) of the IP Act.

⁴⁹ Dated 8 June 2021.

the applicant, I find that the Category C information may be deleted under section 88 of the IP Act on the basis that it is not relevant to the access application.

DECISION

54. I vary⁵⁰ the Department's decision and find that:

- access to the Category A information may be refused on the ground that it comprises exempt information⁵¹ the disclosure of which is prohibited by the Child Protection Act;
- the Category B information may be refused on the ground that disclosure would be, on balance, contrary to the public interest;⁵² and
- the Category C information may be deleted on the basis that it is not relevant to the access application.⁵³

55. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

A Rickard
Acting Right to Information Commissioner

Date: 14 December 2021

⁵⁰ This decision varies the Department's decision because I have found that access to parts of pages 19-20 may be refused on the ground they comprise exempt information, whereas the Department found that these pages were irrelevant to the application.

⁵¹ Under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.

⁵² Under sections 67(1) of the IP Act and sections 47(3)(b) and 49 and schedule 4 of the RTI Act.

⁵³ Under section 88(2) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
4 August 2021	OIC received the applicant's application for external review. OIC notified the Department that the application for external review had been received and requested procedural documents from the Department.
5 August 2021	OIC notified the applicant that the application for external review had been received.
11 August 2021	OIC received the requested procedural documents from the Department.
12 August 2021	OIC notified the applicant and the Department that it had accepted the application for external review and requested the information in issue from the Department.
26 August 2021	OIC received a copy of the located documents from the Department.
27 August 2021	OIC received oral submissions from the applicant.
1 September 2021	OIC received emailed submissions from the applicant.
10 September 2021	OIC conveyed a preliminary view to the applicant. OIC received emailed submissions from the applicant.
27 September 2021	OIC wrote to the applicant about his submissions received on 10 September 2021. OIC received three emailed submissions from the applicant.
11 November 2021	OIC received emailed submissions from the applicant.
12 November 2021	OIC wrote to the applicant about submissions received on 11 November 2021. OIC received emailed submissions from the applicant.