



Decision and Reasons for Decision

Application Number: 210962

Applicant: Mr G Copley

Respondent: Department of Justice and Attorney General

Decision Date: 24 May 2010

Catchwords: ADMINISTRATIVE LAW – FREEDOM OF INFORMATION – REFUSAL OF ACCESS – EXEMPT MATTER – MATTER CONCERNING PERSONAL AFFAIRS – documents concern personal affairs of persons other than the applicant – whether public interest considerations favouring disclosure outweigh public interest considerations favouring nondisclosure

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REASONS FOR DECISION

Summary

1. Having considered the parties' submissions and evidence, relevant legislation, case law and decisions, I am satisfied that access to parts of the Coronial Findings should be refused under section 44(1) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**) on the basis that:
 - the information concerns the personal affairs information of persons other than the applicant
 - on balance, disclosure of the information is not in the public interest.

Background

2. By letter dated 20 May 2009 the applicant applied to the Office of the State Coroner (**OSC**) for access to the full Coronial Findings on the deaths of Person A and Person B (**Coronial Findings**).
3. By letter dated 28 May 2009, Ms Alexandra Cope, A/Coronial Information Support Officer, OSC informed the applicant that the State Coroner had declined the applicant's request for access to the Coronial Findings on the basis that they contained information of an 'extremely personal nature' to the deceased and their families.
4. By letter dated 3 June 2009 the applicant applied to the Department of Justice and Attorney General (**Department**) under the FOI Act for access to the Coronial Findings (**FOI Application**).
5. By letter dated 15 July 2009, Mr John Posner, Senior Information Officer of the Department informed the applicant of the Department's decision (**Initial Decision**) to refuse access to the Coronial Findings on the basis that they contained exempt information under section 44(1) of the FOI Act.
6. By letter dated 20 July 2009 the applicant challenged the accuracy and completeness of the Initial Decision. The Department interpreted this letter to be an application for internal review of the Initial Decision.
7. By letter dated 5 August 2009, Mr Jim Forbes, Principal Policy Officer of the Department informed the applicant of the Department's purported internal review decision.
8. By letter dated 13 August 2009 the applicant indicated to the Department that this letter was his application for internal review of the Department's Initial Decision (**IR Application**) and that his letter dated 20 July 2009 was a response to the Initial decision and not an application for internal review.
9. By letter dated 2 September 2009, Mr Forbes of the Department informed the applicant of the Department's internal review decision (**IR Decision**) to affirm its Original Decision to refuse the applicant access to the Coronial Findings.
10. By letter dated 2 October 2009 the applicant applied for external review (**ER Application**) of the Internal Review Decision.

Decision under review

11. The decision under review is the IR Decision referred to in paragraph 9 above.

Steps taken in the external review process

12. By letter dated 26 October 2009 Acting Assistant Commissioner Jefferies informed the applicant that the ER Application had been accepted.
13. By letter dated 26 October 2009 Acting Assistant Commissioner Jefferies informed the Department that the ER application had been accepted and requested copies of the Coronial Findings.
14. By letter dated 29 October 2009 the Department provided this Office with copies of correspondence that had been exchanged between the Department and the Applicant.
15. On 30 October 2009 the Department hand delivered copies of the Coronial Findings to this Office.
16. On 9 November 2009 staff of this Office contacted the OSC to establish whether a coronial inquest application had been made in relation to the Coronial Findings. The OSC indicated to this Office that no applications had been made.
17. On 11 November 2009 staff of this Office called the applicant to discuss the ER Application. During this telephone discussion, the applicant:
 - was provided with further information on the external review process
 - was informed that it was the preliminary view of Acting Assistant Commissioner Jefferies that the Department was entitled to refuse access to the Coronial Findings on the basis of section 44(1) of the FOI Act.
 - made submissions on why he believed there was a strong public interest in the disclosure of the Coronial Findings.
18. On 11 December 2009 staff of this Office called the applicant to confirm the preliminary view of Acting Assistant Commissioner Jefferies. The applicant made further submissions and indicated that he is also seeking the contact details of the legal representatives of the deceased individual's to whom the Coronial Findings relate.
19. By letter dated 19 January 2010, I provided the applicant with the written preliminary view that the Coronial Findings qualified for exemption under section 44(1) of the FOI Act.
20. On 28 January 2010 staff of this Office contacted the OSC to determine whether the Coroner may release information such as the identity of a deceased individual's legal representatives. The OSC indicated that the Coroner has the discretion to release any information that relates to the Coronial Findings. The OSC informed this Office that it has received correspondence from the applicant requesting the contact details of the legal representatives of the deceased individuals.
21. By letter dated 2 February 2010, the applicant responded to the preliminary view dated 19 January 2010 and indicated that he would be willing to accept the views of this Office if the Coronial Findings were provided to him "after personal material of the deceased and other persons" was blacked out by this Office.

22. On 4 February 2010 staff of this Office telephoned the applicant and indicated that:
- the preliminary view at this stage was that the whole of the Coronial Findings qualified for exemption under section 44(1) of the FOI Act
 - in light of the applicant's submission dated 2 February 2010, Assistant Commissioner Corby would reconsider whether any part of the Coronial Findings can be released to the applicant
 - if the applicant required the contact details of the legal representatives of the deceased individuals, he may request this directly from the Coroner's Office, as it is not within the scope of this external review.
23. On 8 February 2010 staff of this Office contacted the Department and advised that in the preliminary view of this Office, there were some parts of the Coronial Findings that could be released without disclosing personal affairs information of individuals other than the applicant.
24. By email dated 9 February 2010, the Department indicated to this Office that it:
- agreed with the preliminary view
 - had provided the applicant with partial access to a copy of the Coronial Findings (**Redacted Coronial Findings**).
25. On 10 February 2010 staff of this Office telephoned the applicant and confirmed that the Department had sent the applicant a copy of the Redacted Coronial Findings and advised the applicant that if he had any further issues in this review he should advise the Office of those issues by 15 February 2010.
26. By letter dated 10 February 2010, Acting Assistant Commissioner Jefferies indicated to the applicant that if this Office did not hear from him by 15 February 2010 this review would be finalised on the basis that the applicant is satisfied with the release of the Redacted Coronial Findings.
27. By letter dated 15 February 2010, the applicant indicated that he required further time to peruse the Redacted Coronial Findings and requested that the Information Commissioner refrain from finalising this review until 22 February 2010.
28. By letter dated 22 February 2010 the applicant indicated that he did not accept the Redacted Coronial Findings and made further submissions as to why the deleted parts of the Redacted Coronial Findings should be disclosed.

Matter in issue

29. In the course of this review concessions were made by the Department with respect to the amount of matter to which the applicant was refused access. In light of the preliminary view of this Office, the Department released parts of the Coronial Findings to the applicant.
30. The matter in issue now consists of those parts of the Coronial Findings which were deleted by the Department on 9 February 2010 (**Matter in Issue**) which identifies the deceased individuals, discusses the circumstances of their death and medical history or identifies and provides the information about their next of kin.

Applicable legislation

31. The FOI Act was repealed by the *Right to Information Act 2009* (Qld) (**RTI Act**)¹ which commenced on 1 July 2009.² However, because the FOI Application was made under the FOI Act and has not yet been finalised, for the purposes of this external review, I am required to consider the application of the FOI Act (and not the RTI Act) to the matter in issue.³

Relevant Law

Section 14 of the FOI Act

32. In his submission dated 2 February 2010, the applicant contended that section 14 of the FOI Act supports his case for the release of the Matter in Issue.

33. Section 14 of the FOI Act provides:

Act not intended to prevent other publication of information etc.

This act is not intended to prevent or discourage-

- a) The publication of information; or*
- b) The giving of access to documents (including documents containing exempt matter and exempt documents); or*
- c) The amendment of documents relating to the personal affairs of persons;*

otherwise than under this Act if that can properly be done or is permitted or required to be done by law.

34. This section operates to encourage the release of information held by government agencies through the use of alternative access arrangements and ensures that the FOI Act does not inhibit the administrative release of information by government agencies.
35. In this case, although the applicant had applied to the OSC for the release of the Coronial Findings outside of the FOI Act, the applicant was refused administrative access by the OSC. The applicant then applied to the Department under the FOI Act for access to the same Coronial Findings.
36. In making an application for external review to this Office the applicant sought review of the decision made by the Department in refusing access to the matter in issue on the basis that it was exempt under section 44(1) of the FOI Act. Accordingly, I am required to consider the application of section 44(1) to the matter in issue and not section 14 which relates to circumstances where access may be granted to information outside the provisions of the FOI Act.

Section 44(1) of the FOI Act

37. Section 44(1) of the FOI Act provides:

Matter affecting personal affairs

¹ Section 194 of the RTI Act.

² With the exception of sections 118 and 122 of the RTI Act. Though these provisions have since commenced.

³ Section 199 of the RTI Act.

- (1) *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

...

38. Section 44(1) therefore requires me to consider the following questions in relation to the matter in issue:

- firstly, does the matter in issue concern the personal affairs of person/s (other than the applicants) (**Personal Affairs Question**)? If so, a public interest consideration favouring non-disclosure of the matter in issue is established
- secondly, are there public interest considerations favouring disclosure of the matter in issue which outweigh all public interest considerations favouring non-disclosure of the matter in issue (**Public Interest Question**)?

Personal Affairs Question

What are personal affairs of a person?

39. In *Stewart and Department of Transport (Stewart)*⁴, the Information Commissioner discussed in detail the meaning of the phrase 'personal affairs of a person' as it appears in the FOI Act. In particular, the Information Commissioner found that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:

- family and marital relationships
- health or ill health
- relationships and emotional ties with other people
- domestic responsibilities or financial obligations.

40. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.

Information which identifies a person

41. The Information Commissioner has previously considered the question of whether a person's name constitutes their personal affairs. In *Stewart*,⁵ the Information Commissioner noted that:

- a person's name, address and telephone number were matters falling into the 'grey area' rather than within the 'core meaning' of the phrase 'personal affairs of a person'
- such matter must be characterised according to the context in which it appears.⁶

42. Importantly, in *Stewart*, the Information Commissioner stated:

⁴ (1993) 1 QAR 227.

⁵ See (1993) 1 QAR 227 at paragraphs 86 – 90.

⁶ See also paragraphs 21 – 23 of *Pearce and Queensland Rural Adjustment Authority; Various Landowners* (Third Party) (1999) 5 QAR 242, which discusses various authorities on this point.

For information to be exempt under s.44(1) of the FOI Act, it must be information which identifies an individual or is such that it can readily be associated with a particular individual. Thus deletion of names and other identifying particulars or references can frequently render a document no longer invasive of personal privacy, and remove the basis for claiming exemption under s.44(1).⁷

Public interest balancing test

Public interest question

43. Where matter is *prima facie* exempt from disclosure under section 44(1) of the FOI Act, it is exempt ‘*unless its disclosure would, on balance, be in the public interest*’.
44. The ‘public interest’ refers to considerations affecting the good order and functioning of community and governmental affairs, for the well-being of citizens. In general, a public interest consideration is one which is common to all members of the community, or a substantial segment of them, and for their benefit. The public interest is usually treated as distinct from matters of purely private or personal interest. In *Fox and The Department of Police*,⁸ the Information Commissioner indicated that:

Because of the way that section 44(1) of the FOI Act is worded and structured, the mere finding that information concerns the personal affairs of a person other than the applicant for access must always tip the scales against disclosure of that information (to an extent that will vary from case to case according to the relative weight of the privacy interests attaching to the particular information in issue in the particular circumstances of any given case), and must decisively tip the scales if there are no public interest considerations which tell in favour of disclosure of the information in issue. It therefore becomes necessary to examine whether there are public interest considerations favouring disclosure, and if so, whether they outweigh all public interest considerations favouring non-disclosure.

Public interest arguments favouring disclosure

Accountability of government

45. Facilitating the accountability of government is a public interest consideration that is recognised in section 5 of the FOI Act.
46. A relevant question is whether disclosure of the matter in issue would allow interested members of the public a better understanding of action taken, or proposed to be taken, by government, and enable them to better scrutinise and assess the decision making and performance of government.⁹

Pursuit of Legal Remedy

47. In *Willsford and Brisbane City Council*,¹⁰ the Information Commissioner recognised that there may be a public interest in a person being able to access information to pursue a legal remedy in certain circumstances.
48. The Information Commissioner reasoned in *Willsford* that a public interest consideration favouring disclosure may be established if an applicant can demonstrate all of the following:¹¹

⁷ *Stewart*, see paragraph 81.

⁸ (2001) 6 QAR 1 at paragraph 19.

⁹ *Lue and Department of Police*, unreported decision, 210923, 24 March 2010

¹⁰ (1996) 3 QAR 368 (*Willsford*) at paragraph 16.

- (i) loss or damage or some kind of wrong has been suffered in respect of which a remedy is, or may be available under the law
 - (ii) the applicant has a reasonable basis for seeking to pursue the remedy
 - (iii) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
49. The existence of a public interest consideration of this kind represents one consideration to be taken into account in the weighing process along with any other relevant public interest considerations.¹²

Public interest arguments favouring non-disclosure

Privacy interest

50. As indicated above, there is an inherent public interest in protecting personal privacy if the information held by an agency concerns the personal affairs of a person other than the applicant. An appropriate weight must be allocated to that interest, having regard to the character and significance of the particular information.¹³
51. Ordinarily, the weight to be accorded to the privacy interest where the information relates to the identities and personal affairs of individuals is relatively high, unless that information has been treated in such a way as to reduce the weight of the privacy interest.

Privacy interest where the matter in issue has been published

52. Where the personal information in issue has been published on an earlier occasion, for example in the media or in the public records of a government agency the privacy interest in that information may be reduced.
53. In *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council*¹⁴, the Deputy Information Commissioner recognised the following circumstances in which the weight of the privacy interest may be reduced in the relevant information:

If the particular information in issue could be obtained with little difficulty from sources in the public domain, or has received publicity in the popular media¹⁵, and especially if the individual concerned has volunteered (or consented to) the public disclosure¹⁶, that must logically reduce the weight that can sensibly be accorded to the protection of a privacy interest said to attach to the relevant information.

54. In *Lower Burdekin* the Deputy Information Commissioner went on to note that on the facts of that case, the significant time that elapsed since the publication of the information was a factor that was relevant in considering whether the weight of the

¹¹ *Willsford* at paragraph 17.

¹² *Willsford* at paragraph 18.

¹³ See *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328 at paragraph 23.

¹⁴ *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328

¹⁵ *Re Richardson and Queensland Police Service* (2001) 6 QAR 125 at paragraph 40

¹⁶ *Re The Director-General, Department of Families, Youth and Community Care and Department of Education and Ors* (1997) 3 QAR 459 at paragraph 22

privacy interest had been reduced at the time of the decision.¹⁷

Level of accessibility

55. In *Lower Burdekin* the Deputy Information Commissioner specifically provided that the particular information in issue should be capable of being obtained with little difficulty from sources in the public domain before the privacy interest can be taken to have been reduced in relation to that information.¹⁸
56. In a recent paper, Justice Mullins of the Queensland Supreme Court explained that the weight of the privacy interest in personal information that is available in the public domain is to be assessed in light of the degree of difficulty that is associated with locating that information.¹⁹ Justice Mullins explained that:
- where, for example, the information in issue can be readily ascertained through the use of internet search engines, it may be concluded that the weight of the privacy interest in that information is relatively low
 - there is still a relatively high privacy interest in the personal information of individuals where the information in issue is only accessible after extensive searches of archives which for example, may require the payment of a fee or prior knowledge of the facts to which the information relates.
57. Therefore, in determining the weight of the privacy interest in personal information that is available in the public domain, in my view, the following considerations are relevant:
- whether the individual the information is about consented to the publication of their personal information
 - the time elapsed since the publication of the personal information and the access application for the same information
 - the medium in which that information was published
 - the level of accessibility of the personal information in issue at the time of the decision on access and whether extensive searches are required in order for personal information to be accessed.

Coroner's Act 2003 (Qld) (Coroner's Act)

58. The following sections of the Coroner's Act are relevant to my findings in this matter.
59. Section 30 of the Coroner's Act provides:

Applying for inquest to be held

- 1) *A person may apply to the coroner investigating a person's death to hold an inquest into the death.*
- 2) *The application must—*
 - (a) *be written; and*
 - (b) *outline why the applicant considers it is in the public interest for an inquest to be held.*

¹⁷ See *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328 at paragraph 24.

¹⁸ See *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328 at paragraph 24.

¹⁹ *Judicial Writing in an Electronic Age* (2004) Justice Deborah Mullins of the Queensland Supreme Court <<http://archive.sclqld.org.au/judgepub/2004/mullins211204.pdf>> at 16 April 2010

- 3) *The coroner must, within the prescribed period, decide the application and give written reasons for the decision to—*
 - (a) *the applicant; and*
 - (b) *if the coroner is not the State Coroner—the State Coroner.*

60. Section 54 of the Coroner's Act provides:

Access to investigation documents for other purposes

- 1) *This section applies if a person wants access to 1 of the following documents, that is in the possession of a coroner, for purposes other than research purposes—*
 - (a) *a coronial document;*
 - (b) *another type of investigation document.*
- 2) *The person may access the document with the consent of—*
 - (a) *the coroner who is conducting, or had conducted, the investigation to which the document relates; or*
 - (b) *if that coroner is not available and has not delegated his or her power to the registrar under section 86(4)(c)—another coroner nominated by the State Coroner.*
- 3) *The coroner may consent only if the coroner is satisfied that the person has a sufficient interest in the document.*

61. Schedule 2 of the Coroner's Act defines a coronial documents as:

a document or part of a document—

- (a) *prepared for the investigation, other than a record, or a copy of a record, of an inquest made under the Recording of Evidence Act 1962; or*
- (b) *seized by a police officer in connection with the investigation.*

Examples—

- 1) *An autopsy report.*
- 2) *A report from a police officer helping a coroner about the investigation into a reportable death.*
- 3) *A **record of the coroner's findings and comments**.*

General information on the coronial process

62. In reaching my decision on the Matter in Issue I have also taken into account information about the general coronial process as published on the Queensland State Coroner's webpage (**Webpage**).²⁰

63. The Webpage explains that once a death is reported to the coroner,

"The coroner is required to make written findings, where possible, about the identity of the deceased and when, where and how they died and what caused them to die."

"When an inquest is held, the coroner may also make recommendations about broader issues connected with the death aimed at preventing similar deaths from occurring in the

²⁰ Accessible from the Queensland Courts Website on <http://www.courts.qld.gov.au/129.htm> at 16 April 2010

future. For example, the coroner might make recommendations about improving hospital procedures, safety standards or road signage. During the inquest the coroner can receive expert evidence on which to base such recommendations...

Findings are provided to the family and if recommendations are made they are sent to the responsible government department. If an inquest has been held the coroner's findings are posted on the Queensland Courts website.²¹

Online publication in relation to Person A

64. Staff of this Office undertook searches using various internet search engines to establish whether any information identifying Person A and the circumstances of their death is or was in the public domain. No information was found that identified Person A or disclosed any of Person A's personal affairs information.

Online publication in relation to Person B

65. Staff of this Office also undertook searches using internet search engines to establish whether any of the personal information of Person B and the circumstances of their death is or was in the public domain. Those searches established that the following details in relation to Person B have been published by the Courier Mail and are currently available on the internet:

- the date, time and location of Person B's death
- Person B's full name and age
- details of Person B's employment
- brief explanation of the cause of Person B's death.

Applicant's Submissions

66. I have considered the arguments raised by the applicant in his:
- IR Application
 - correspondence with the Department and the OSC
 - ER Application
 - telephone discussions with staff of this Office
 - written submissions to this Office dated 2 February 2010 and 22 February 2010.
67. In the External Review Application, the applicant stated in relation to his request for access to the Coroner's Findings on the death of Person A :

"Really, in light of the serious issues which caused [Person A]'s premature death, FOI decisions so far protect the interest of Council and the State (Department of Main Roads) and makes nearly no sense and is in direct conflict to the stated intentions of the FOI Act...

Ms Kinross as you are the Information Commissioner clearly it falls on you not to stand in the way of public scrutiny of any available evidence being provided to any member of the public which assists not just in assisting with compensation to [Person A's] next of kin but may also assist in rectifying the ongoing danger to myself and our community who have to deal with this dangerous entry gate to [a premises on a major highway] on a daily basis."

²¹ Accessible from the Queensland Courts Website on <http://www.courts.qld.gov.au/1743.htm> at 16 April 2010

68. In relation to the applicant's request for access to the Coroner's Findings on the death of Person B, the applicant contended in his external review application that:

"Out of respect to [Person B], her next of kin and family it is necessary and reasonable for the investigation of all issues dealing with her premature death to be handled by an external body other than the [government department that employed Person B] (Employer).

I have been provided with information regarding [Person B's] work place and her death and this information is in the public interest and the interest of honest [employees] working at the [Employer's premises] and particularly the safety of the public and interests of all persons including trades people visiting the [Employer's premises].

To deny disclosure of the Findings on the basis of protecting medical issues and identities and birth dates of relatives etc can reasonably be construed as a tool to keep from public view the issues which led to [Person B] allegedly taking her life at her work premises."

69. In addition, during telephone discussions with staff of this Office the applicant made the following submissions:

- that the Coronial Findings should have led to a Coronial Inquest and that if he had access to the Coronial Findings he can appeal the Coroner's decision not to commence an inquest
- the site of Person A's death is on a major highway which the applicant and members of his family pass on a daily basis. The Coronial Findings may provide the applicant with sufficient evidence to demonstrate that the current road construction is dangerous and should be rectified by the relevant government departments
- in January 2007, the applicant observed a white cross on the side of the road where he contends Person A died which displayed Person A's birth date, thereby extinguishing any privacy interest in this information
- the disclosure of the Coronial Findings will provide evidence that the Coroner's Office is failing to meet its obligation to conduct an Inquest into the death of Person B
- access to the Coronial Findings will enable the applicant to assist the families of the deceased individuals in understanding the truth surrounding the death of their family member and to obtain compensation from the Queensland Government for their loss.

70. In his submission dated 22 February 2010, the applicant contended that:

- in relation to Person B, the Coronial Findings "go to the very heart of honest government" and the full release of these findings will ensure that Coroner Barnes is not concealing the corrupt actions of investigating officers
- information relating to the circumstances of Person A's death, which forms part of the Matter in Issue, should not be exempt as photographs and details of Person A's death were published in a local newspaper on 20 December 2006.

Documents provided in support of the applicant's submissions

71. In reaching my decision in this review I have also considered the following documents provided by the applicant in the course of this review:

- copy of a local newspaper article which the applicant contends relates to Person A
- photograph of a road side memorial, in the form of a white cross, which the applicant contends relates to Person A
- copy of a public sector union journal article (**Journal Article**) discussing the death of Person B

Findings of fact

72. Having carefully considered the matter in issue, the applicant's submissions and all available evidence, I make the following findings of fact:

- the Queensland Coroner's Office conducted investigations and made findings on the deaths of Person A and Person B
- the form in which the Coroner recorded the findings on the deaths of Person A and Person B are the same
- on the basis of the definition outlined in Schedule 2 of the Coroner's Act, the records of the Coroner's Findings on the deaths of Person A and Person B are coronial documents
- section 54 of the Coroner's Act provides an alternative route to the FOI Act for individuals who are seeking access to coronial documents, such as the Coronial Findings, and have sufficient interest in the document.
- in order to grant access to documents under section 54 the Coroner must be satisfied that the applicant has a sufficient interest in the documents request
- the applicant in this review previously sought access to the Coroner's Findings under section 54 of the Coroner's Act
- the Coroner's Office refused the applicant access to the Coroner's Findings on the basis that the applicant did not have a sufficient interest in the documents
- the applicant does not have any personal relationship or connection to Person A, Person B or their families
- as explained on the Coroner's Webpage, the usual coronial practice is that the coronial findings into an individual's death set out the following details
 - the identity of the deceased person
 - when and where they died
 - how the individual died
 - the cause of death
- during this external review the Department has released parts of the Coronial Findings to the applicant.
- the released parts of Coronial Findings outline the questions asked by the Coroner and details of the Coroner who conducted the relevant investigations
- the parts of the Coronial Findings released to the applicant indicate that, in relation to the question of what caused the relevant person to die, the Coroner looks

specifically at the medical cause of death, rather than broader issues that may be connected with the person's death

- additionally, the form in which the Coronial Findings were recorded also requires the inclusion of information about the:
 - contact details for the next of kin
 - investigating Coroner
 - Coroner's recommendation as to whether an inquest is necessary
- the Matter in Issue consists of the parts of the Coronial Findings which are the answers to the questions asked by the relevant Coroner in relation to the deaths of Person A and Person B
- the parts of the Coronial Findings that were deleted by the Department in the copies released to the applicant on 9 February 2010 (i.e. the Matter in Issue) include the following information about Person A and Person B:
 - the medical cause of their death
 - date of birth and residential details
 - contact details for the next of kin
 - other family and personal history details relevant to their deaths
- the Matter in Issue does not detail the investigation process undertaken to gather the above information
- following a careful assessment of the Matter in Issue, I am satisfied that the form used to record the findings in relation to the deaths of Person A and Person B accords with usual coronial practice
- as explained on the Coroner's Webpage, following the findings stage, if the Coroner finds that there is a public interest in the investigation of the death (for example where the death occurred in police custody) a Coronial Inquest is held.
- the findings following a Coronial Inquest are published on the Queensland Courts Website²² and may include the coroner's recommendations on preventing similar deaths from occurring in the future
- under section 30 of the Coroner's Act members of the public can request that an inquest be held by writing to the Coroner outlining why it is in the public interest for an inquest to be held
- if a Coronial Inquest does not take place, the results of the Coroner's Findings are not published
- the Coroners' findings in relation to Person A and Person B concluded that a Coronial Inquest was not required, therefore, the Coronial findings have not been published
- I accept the information of the applicant that in January 2007 a white cross was placed on the side of a major highway at a place where the applicant passes, as a memorial for an individual identified by first name, date of birth and date of death
- on 20 December 2006 a local newspaper published a story in relation to the death of an individual. The article did not identify the individual by name, instead referring to the individual by association with a suburb. The article provided details about:
 - the time, date and location of the individual's death
 - the motor vehicle accident that allegedly caused the individual's death

²²Coronial Inquest findings are available at <http://www.courts.qld.gov.au/1680.htm>

- in May 2009 the Journal Article published details about the death and mental health history of Person B
- in relation to Person B, the Courier Mail has reported on the following details on its website:
 - the date, time and location of Person B's death
 - Person B's full name and age
 - employment description
 - that Person B committed suicide.

Analysis

Application of section 44(1) of the FOI Act

73. I have examined the Matter in Issue and find that all of the information contained within the Matter in Issue can be considered the personal affairs of individuals other than the applicant. In particular the information is of a personal nature as it:

- relates to the private aspects of the lives of the deceased individuals and their next of kin, such as information about their health or ill health, residential address and family relationships
- details the circumstances of death
- is capable of identifying or being associated with the deceased individuals and their next of kin.

74. Therefore, I am satisfied that the Matter in Issue is *prima facie* exempt from disclosure under section 44(1) of the FOI Act.

Public interest balancing test

Public interest question

75. Where matter is *prima facie* exempt from disclosure under section 44(1) of the FOI Act, it is exempt '*unless its disclosure would, on balance, be in the public interest*'.
76. As I am satisfied that the Matter in Issue concerns the personal affairs of others, namely Person A, Person B and their families, section 44(1) of the FOI Act requires that I must consider whether there are sufficient public interest considerations favouring disclosure of the Matter in Issue to outweigh the public interest considerations favouring non-disclosure of the Matter in Issue.

Public interest arguments favouring disclosure

Accountability of government

Person A

77. The applicant has argued that it is in the public interest for the public to be provided information that will enable the scrutiny of government decision making, in particular where the actions of government bodies may lead to members of the public suffering harm.
78. With respect to the Matter in Issue concerning Person A the applicant contended that the release of the Matter in Issue will enable scrutiny of the decisions made by the

Department of Transport and Main Roads (**DTMR**) and Beaudesert Shire Council (**Council**) in relation to road safety issues at the site of Person A's death.

79. Specifically, the applicant argued that the DTMR had failed to ensure that a right hand turning lane was constructed in accordance with the re-zoning conditions placed on the Beaudesert Shire Council (**Council**)
80. The applicant has also argued that:
- Council, which was responsible for the construction of the right hand turning lane, also failed to uphold its legal obligations in relation to re-zoning conditions
 - the release of the Matter in Issue will demonstrate that Council's failure to construct the right hand turning lane resulted in the death of Person A.
81. In this case, the:
- information contained within the Matter in Issue relates to the Coronial Findings on the specific circumstances surrounding the death (i.e. medical cause of death) of Person A, and, does not include any comments on the culpability of the DTMR or Council in relation to Person A's death
 - Matter in Issue does not provide any information in relation to the road safety conditions at the location of Person A's death
82. Accordingly, the information contained in the Matter in Issue, in relation to Person A's death, does not disclose information that would facilitate the public scrutiny of government or government decision-making on matters of public safety. Therefore, this public interest is not one that can be taken into account in favour of disclosure when balancing the public interest considerations for and against disclosure.

Person B

83. With respect to the Matter in Issue concerning Person B the applicant has argued that disclosure will lead to enhanced transparency and accountability of Person B's Employer in relation to the provision of a safe working environment.
84. In cases where information contained in a document relates to workplace health and safety issues in government agencies then there may be a public interest in the disclosure of that information. In the present case, however, I have assessed the Matter in Issue and I am satisfied that the information:
- contained within the Matter in Issue relates to the specific circumstances of Person B's death and includes sensitive personal information about Person B's medical history and family relationships
 - does not include any comments on the culpability of the Employer in relation to Person B's death
 - does not discuss any workplace health and safety concerns.
85. Therefore as disclosure of the matter in issue does not provide information that would enhance the transparency or accountability of government, this public interest is not one that can be taken into account in favour of disclosure when balancing the public interest considerations for and against disclosure.

Accountability of the Coroner's Office

86. The applicant has argued that disclosure of the Matter in Issue will enable members of the public to ensure that the Coroner's Office has discharged its obligations in investigating the deaths of individuals. The applicant contends that the release of the Coroner's Findings will enable public scrutiny of the coronial process.
87. However, following a careful assessment of the Matter in Issue, I am satisfied that little weight can be given to the public interest in relation to the accountability of the Coroner's Office. My reason for this is set out below.
88. I note that the applicant has been provided with access to the questions asked by the relevant Coroner in relation to the deaths of Person A and Person B. This information provides some insight into the coronial process. However, as previously explained, the Matter in Issue:
- details the coroner's findings in relation to the deaths of Person A and Person B
 - does not provide any information about the process undertaken by the coroner in arriving at those findings and therefore does not assist in public scrutiny of the coroner's investigation process.
89. I am satisfied that in light of the information contained within the Matter in Issue its disclosure would not enable the public scrutiny of the coronial process. Therefore as the matter in issue does not provide information that would enhance the transparency or accountability of government, this public interest is not one that can be taken into account in favour of disclosure when balancing the public interest considerations for and against disclosure.

Pursuit of legal remedy

90. The applicant has argued that if he is granted access to the Matter in Issue he will be able to assist the families of Person A and Person B to obtain compensation from the government departments which the applicant believes are responsible for their deaths.
91. As discussed in *Willsford* a public interest consideration favouring disclosure may be established if the applicant can demonstrate all of the following:²³
- (iv) loss or damage or some kind of wrong has been suffered in respect of which a remedy is, or may be available under the law
 - (v) the applicant has a reasonable basis for seeking to pursue the remedy
 - (vi) disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
92. In this case I note that the applicant is not a legal representative of the families of Person A and Person B. He has also indicated to this Office that he does not have the contact details of Person A and Person B's families or legal representatives. Accordingly, the applicant cannot be said to be pursuing a legal remedy on behalf of the families of Person A and Person B.

²³ *Willsford* at paragraph 17.

93. In addition, there is no evidence before me to suggest that the applicant has suffered any loss, damage or some kind of wrong in respect of the deaths of Person A and/or Person B for which he may seek a remedy.
94. Therefore, in this case, the criteria outlined in *Wilsford* have not been met. Accordingly, the disclosure of the Matter in Issue to the applicant will not enable him to pursue a legal remedy and therefore this public interest consideration is not one that can be taken into account in favour of disclosure in balancing the public interest considerations for and against disclosure.

Public interest arguments favouring non-disclosure

Privacy interest

95. As discussed earlier, if the matter in issue concerns the personal affairs of a person other than the applicant then there is an inherent public interest in protecting the privacy of that person. However, an appropriate weight must be allocated to that interest, having regard to the character and significance of the particular matter in issue.²⁴
96. A factor to be taken into account in the weighing exercise is whether the information has been treated in such a way as to reduce the weight of the privacy interest. For instance, if matter in issue could be obtained with little difficulty from sources in the public domain, or has received publicity in the media, and in particular, where an individual has volunteered (or consented to) the public disclosure of information, the weight that can be sensibly accorded to the protection of a privacy interest must be reduced.²⁵

Person A

97. The applicant has argued that, in relation to Person A, the date of birth information and details relating to the circumstances of death found within the Matter in Issue can no longer be considered private as these details have been published in a local newspaper and have been displayed on a road side memorial by Person A's family.
98. I have examined the local newspaper article and have found that it does not refer to the subject of the article by name.
99. I have examined the photograph provided by the applicant, I have found that it is a photograph of a white cross on a road side and it bears the first name of an individual, their date of birth and their date of death.
100. In order for someone to identify that the local newspaper article and road side memorial relate to Person A they would need to have some background knowledge of the circumstances of Person A's death as neither piece of information on its own identifies Person A.
101. The Matter in Issue identifies Person A by name and provides personal affairs information in relation to that person's death and family relationships that cannot be established from the information available in the public domain.

²⁴ See *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328 at paragraph 23.

²⁵ See *Lower Burdekin Newspaper Company Pty Ltd and Burdekin Shire Council; Hansen, Covolo and Cross (Third Parties)* (2004) 6 QAR 328 at paragraph 24.

102. Searches conducted of the internet, including online news archives, by the staff of this Office did not locate any newspaper or media article concerning Person A, suggesting that the information identifying Person A and disclosing Person A's personal affairs is not easily accessible in the public domain.
103. Even if Person A had been identified in, for example, news reports at the time of Person A's death and Person A's details were available in the public domain at that time, as that information is not currently easily accessible, I am satisfied that there would still be a strong privacy interest in the personal information of Person A.
104. On the information before me, I am satisfied that:
- Person A has not consented to the publication of their personal affairs information
 - the local newspaper article, which the applicant contends published some of the personal affairs information of Person A, is a local publication that has a relatively limited circulation
 - the local newspaper article was published in 2007 and is not currently available on the internet
 - in any case, the local newspaper article does not identify the subject of the article by name.

Finding on the privacy interest in Person A's personal information

105. On the evidence before me, and based on the factors identified in paragraph 57, I am satisfied that the privacy interest in Person A's personal information is not reduced as Person A:
- is not identified in the road side memorial and the local newspaper article submitted by the applicant
 - on the evidence before me, has not been identified in the public domain and at present Person A's personal affairs information is not easily accessible
 - has not authorised the release of their personal information

Person B

106. The applicant has also provided submissions to indicate that the details of Person B's death and mental health history have been published in the Journal Article. This particular article identifies Person B by their full name and their work place and has been authored by a close relative of Person B.
107. In addition, staff of this Office have identified Courier Mail reports that are currently available on the internet that provide the personal information of Person B in relation to the circumstances of their death.

Finding on the privacy interest in Person B's personal information

108. I am satisfied that the privacy interest in Person B's personal information has been reduced on the basis that:
- Person B is identified by name in the Journal Article and the Courier Mail report
 - the Courier Mail reports that coronial investigations were made in relation to Person B

- the Courier Mail is circulated across Queensland and its website is easily accessible to anyone with internet access.

109. However, although the privacy interest may be reduced in relation to Person B's personal information, in applying the factors identified at paragraph 57 I am satisfied that this interest is not extinguished completely as:

- Person B has not consented to the release of any of their personal affairs information
- the majority of Person B's personal affairs information contained within the Matter in Issue is not available in the public domain and has not been treated in a way that would reduce the weight of the privacy interest.

Public interest considerations - summary

110. After careful examination of the Matter in Issue, I am satisfied that the information comprising the Matter in Issue is the sensitive personal affairs information of Person A and Person B, and their families.
111. Given the content of the Matter in Issue, I find that the public interest arguments in favour of disclosure relating to the accountability of government and the pursuit of a legal remedy, as raised by the applicant have not been made out.
112. On the other hand, I must also consider the public interest considerations in favour of nondisclosure, which in this matter is the public interest in maintaining privacy of the personal affairs information of Person A and Person B.
113. In relation to Person A, I am satisfied that the privacy interest in their information has not been reduced, and accordingly in the absence of any countervailing public interest considerations, the public interest in maintaining the privacy of Person A's personal information tips the scales in favour of nondisclosure.
114. In relation to Person B, I acknowledge that the privacy interest in their personal information has been reduced, however, for the reasons given in paragraph 109 this interest has not been extinguished.
115. In the absence of any public interest in favour of disclosure, even though the privacy interest in person B's personal information is reduced, in balancing the public interest considerations; the privacy interest still tips the scale in favour of nondisclosure.
116. I am therefore satisfied that, on balance, the public interest in favour of nondisclosure (protecting the privacy of the deceased individuals and their families) precludes disclosure of the Matter in Issue.

DECISION

117. I am satisfied that:

- the Matter in Issue contains information which concerns the personal affairs of persons other than the applicant
- on balance it is not in the public interest to disclose that information.

118. Accordingly, I vary²⁶ the decision under review by finding that the Matter in Issue is exempt from disclosure under section 44(1) of the FOI Act.

119. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

Assistant Commissioner Corby

Date:

²⁶ The decision of the department is varied as the concessions of the Department to release some information contained in the coronial findings for Person A and Person B in the course of this review resulted in the matter in issue in this decision being different to the matter in issue in the Department's IR Decision, which is the subject of this review.