



## Decision and Reasons for Decision

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**Application Number:** 310183  
**Applicant:** 07UKSD  
**Respondent:** Department of Environment and Resource Management  
**Decision Date:** 23 December 2010

**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - THIRD PARTY CONSULTATION** - agency decided to grant access to information contrary to views of a third party - third party applied for external review on the basis that disclosure would reveal his personal information - information contained in a letter sent by the third party to the agency objecting to a road closure - whether, on external review, third party has established that a decision not to disclose the information is justified - whether disclosure of information would, on balance, be contrary to the public interest under section 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

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## REASONS FOR DECISION

### Summary

1. The access applicant made an application to the Department of Environment and Natural Resources (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for letters objecting to an application to close a section of road.
2. The external review applicant wrote a letter to the Department objecting to the road closure application (**Objection Letter**). The Department obtained the views of the external review applicant about the disclosure of the Objection Letter to the access applicant and the external review applicant opposed its disclosure.<sup>1</sup>
3. The Department decided to release the Objection Letter to the access applicant subject to the deletion of certain information which would identify the external review applicant.
4. The external review applicant applied to OIC for external review of the Department's decision on the basis that disclosure of any part of the Objection Letter to the access applicant would identify the external review applicant as the author of the letter and would consequently:
  - threaten their personal safety
  - lead to misinterpretation and misunderstanding of their intentions
  - prejudice the protection of their right to privacy which could be considered as unfair treatment.
5. For the reasons set out below, I find that the Objection Letter should be partially released to the access applicant subject to the deletion of certain identifying information, which would, on balance be contrary to the public interest to disclose.

### Background

6. Significant procedural steps relating to this review are set out in the Appendix.

### Reviewable decision

7. The decision under review is the Department's internal review decision to disclose part of the Objection Letter to the access applicant contrary to the external review applicant's views.

### Information in issue

8. The information in issue in this review comprises information in the two page Objection Letter which the external review applicant objects to being released (**Information in Issue**). Specifically, the Information in Issue comprises the reasons provided to the Department for objecting to the road closure application.
9. During the course of the external review, OIC identified further parts of the Objection Letter which, if disclosed, could identify the external review applicant. The access applicant and the Department accepted OIC's preliminary view in relation to this information. Therefore information which could identify the external review applicant, including their name and address, is not in issue in this review.

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<sup>1</sup> Section 37(1) of the RTI Act provides that an agency may give access to a document that contains information the disclosure of which may reasonably be expected to be of concern to a person only if the agency has taken the steps that are reasonably practicable to obtain the views of the relevant third party.

## **Evidence considered**

10. In making my decision, I have considered the following:

- access application
- external review applicant's letter to the Department dated 29 January 2010, internal review application and external review application
- Department's initial decision and internal review decision
- file notes of telephone conversations between staff members of the OIC, the Department, the access applicant and the external review applicant during the external review
- external review applicant's written submissions to OIC dated 14 July 2010 and 20 October 2010
- Objection Letter
- relevant sections of the RTI Act .

## **Relevant law**

11. Access must be given to a document unless it contains exempt information or its disclosure would, on balance, be contrary to the public interest.<sup>2</sup>

### ***Onus on external review***

12. Section 87(2) of the RTI Act provides that if the decision under external review is a disclosure decision,<sup>3</sup> the person who opposes the decision has the onus of establishing that a decision not to disclose the information is justified or that the Information Commissioner should give a decision adverse to the access applicant.

13. As the Department decided to release parts of the Objection Letter to the access applicant, the external review applicant therefore has the onus of establishing that disclosure of the Information in Issue would, on balance, be contrary to the public interest.

### ***Contrary to the public interest***

14. To decide whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I must:

- 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 disclosure of the information, on balance, would be contrary to the public interest.

## **Findings**

15. No irrelevant factors arise in this case.

16. I will now consider the relevant public interest factors which favour disclosure and nondisclosure of the Information in Issue.

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<sup>2</sup> Sections 44, 48 and 49 of the RTI Act.

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

### ***Personal information and protection of the right to privacy***

17. The RTI Act recognises that a public interest factor favouring nondisclosure will be established where:
  - personal information of a person is disclosed<sup>4</sup>
  - disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>5</sup>
18. Personal information is defined as information, 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.<sup>6</sup>
19. The external review applicant believes that disclosure of any part of the Objection Letter to the access applicant will identify them and that it comprises their personal information which, if disclosed, could reasonably be expected to prejudice their right to privacy.
20. The Information in Issue comprises the reasons provided to the Department for objecting to the road closure application. I am satisfied that the identity of the author of the Objection Letter is not apparent, nor can it reasonably be ascertained from disclosure of the Information in Issue.
21. Therefore, I am satisfied that the Information in Issue does not comprise the external review applicant's personal information and its disclosure could not reasonably be expected to prejudice the protection of their right to privacy.
22. As I am satisfied that disclosure of the Information in Issue would not identify the external review applicant, I do not consider that its disclosure could threaten the external review applicant's physical safety.

### ***Providing reasons for a government decision***

23. I consider that the public interest in allowing people to understand reasons for a government decision and any background or contextual information that informed the decision is relevant in this case.<sup>7</sup>
24. The access applicant contends that disclosure of the relevant parts of the Objection Letter will enable them to understand and respond to the Department's decision in relation to the road closure application.
25. I am satisfied that disclosure of the Information in Issue is likely to assist the access applicant to understand the background and contextual information that informed the Department's decision in relation to the road closure objection and that this factor carries some weight in this case.

### ***Accountability of government***

26. The RTI Act recognises that where disclosure of information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability, this will establish a public interest factor favouring disclosure.<sup>8</sup>

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<sup>4</sup> Schedule 4 part 4 item 6 of the RTI Act.

<sup>5</sup> Schedule 4 part 3 item 3 of the RTI Act.

<sup>6</sup> Section 12 of the *Information Privacy Act 2009* (Qld).

<sup>7</sup> Schedule 4 part 2 item 11 of the RTI Act.

<sup>8</sup> Schedule 4 part 2 item 1 of the RTI Act.

27. I am satisfied that disclosure of the Information in Issue could reasonably be expected to enhance the accountability of the Department in relation to the way in which it has dealt with the road closure application and that this factor also carries some weight.
28. The applicant's submission that disclosure of the Information in Issue could lead to misinterpretation and misunderstanding of their intentions does not give rise to a relevant public interest factor.

***Balancing the relevant public interest factors***

29. I am satisfied that:
- the public interest in protecting the external review applicant's right to privacy does not apply in this case given my finding that the Information in Issue does not identify the external review applicant; and
  - there is a public interest in providing reasons for the Department's decision in relation to the road closure application and in promoting the Department's accountability, both of which carry some weight in the circumstances.
30. Accordingly, I find that the public interest favours disclosure of the Information in Issue in this case.

**DECISION**

31. For the reasons set out above, I affirm the Department's decision and find that:
- the external review applicant has not established that a decision to not disclose the Information in Issue is justified; and
  - disclosure of the Information in Issue would not, on balance, be contrary to the public interest under section 49 of the RTI Act.
32. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Jenny Mead**  
**Right to Information Commissioner**

**Date: 23 December 2010**

**APPENDIX 1****Significant Procedural Steps**

<b>Date</b>	<b>Event</b>
22 December 2009	The access applicant applies to the Department for access to letters objecting to the road closure application under the RTI Act.
18 January 2010	The Department consults the external review applicant under section 37 of the RTI Act in relation to the Objection Letter.
29 January 2010	The external review applicant opposes the disclosure of the Objection Letter to the access applicant.
9 February 2010	The Department decides to grant the access applicant partial access to the Objection Letter subject to the deletion of certain information which could identify the external review applicant.
4 March 2010	The external review applicant applies for internal review of the Department's initial decision.
24 March 2010	The Department affirms the initial decision on internal review.
20 April 2010	The external review applicant applies to OIC for external review.
21 April 2010 11 May 2010	The Department provides OIC with copies of documents relating to the application.
12 May 2010	OIC informs the Department and the external review applicant that the external review application has been accepted for review.
13 May 2010	The Department provides OIC with a copy of the Objection Letter.
21 June 2010	OIC conveys to the external review applicant by telephone the preliminary view that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.  The external review applicant advises OIC that they contest the preliminary view.
24 June 2010	OIC invites the external review applicant to provide submissions in support of their case.
14 July 2010	The external review applicant provides written submissions to OIC confirming they oppose release of the Objection Letter.
5 October 2010	OIC confirms the preliminary view in writing to the external review applicant.
20 October 2010	The external review applicant provides further submissions in support of their case.
26 October 2010	OIC conveys the preliminary view to the Department by telephone that further parts of the Objection Letter should be deleted as they could identify the external review applicant.  The Department advises OIC that it does not contest the preliminary view.
29 October 2010	OIC conveys the preliminary view to the access applicant by telephone that further parts of the Objection Letter should be deleted as they could identify the external review applicant.  The access applicant advises OIC that they do not contest the preliminary view.