



Decision and Reasons for Decision

Application Number: 310872
Applicant: Beale
Respondent: Department of Community Safety
Decision Date: 11 May 2012

Catchwords: ADMINISTRATIVE LAW - INFORMATION PRIVACY - REFUSAL OF ACCESS - applicant sought access to information relating to an incident in a correctional centre involving him and other prisoners - access refused to all CCTV footage of the incident - public interest harm in disclosure of visual recordings of a corrective services facility under schedule 4, part 4, item 5 of the *Right to Information Act 2009* (Qld) - whether disclosure would, on balance, be contrary to the public interest - whether access to CCTV footage may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant, a prisoner, applied to the Department of Community Safety (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to incident reports, officer reports and video footage relating to an incident involving him and other prisoners which occurred at Arthur Gorrie Correctional Centre (**AGCC**) on 1 January 2011.
2. The Department granted the applicant access to the majority of information contained in written reports about the incident.¹ The Department refused access to parts of written reports containing other prisoners' personal information, and to closed circuit television (**CCTV**) footage of the incident, on the basis that disclosure would, on balance, be contrary to the public interest.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to refuse access to the CCTV footage and the report information. During the review, OIC resolved the issue of access to the report information with the applicant and therefore, it is not considered in this decision.
4. The applicant submits that he should be given access to the CCTV footage as it has been made available to a legal representative for another prisoner involved in the incident. He also considers that disclosure will show that the Department and AGCC failed in their duty of care.
5. I affirm the Department's decision to refuse access to the CCTV footage under section 67(1) of the IP Act on the basis that disclosure would, on balance, be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

Significant procedural steps

6. These are set out in the Appendix to these reasons.

Reviewable decision

7. The decision under review is the Department's decision dated 2 December 2011 refusing access to information requested by the applicant, including the CCTV footage.

Material considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

9. The CCTV footage to which access was refused is contained on a compact disc containing four video files of the incident (**Information in Issue**). The four files were obtained from various CCTV cameras within the areas of AGCC in which the incident occurred.

¹ Access was granted to five whole pages and seven part pages.

² Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

Relevant law

10. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain that person's personal information.³ However, this right is subject to other provisions of the IP Act including the grounds for refusal of access.⁴ One of the grounds on which access may be refused is where disclosure would, on balance, be contrary to the public interest.⁵
11. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of a particular individual.
12. In deciding the public interest question, the RTI Act requires⁶ a decision-maker to:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosing the information would, on balance, be contrary to the public interest.
13. Schedule 4 of the RTI Act sets out various public interest factors that may be relevant in determining the public interest.⁷

Findings

14. In reaching this decision I have not taken into account any irrelevant factors, including those listed in schedule 4, part 1 of the RTI Act. The relevant factors which I consider favour disclosure and nondisclosure of the Information in Issue are discussed below.

Factors favouring disclosure

Enhanced government accountability

15. The applicant has stated that releasing the Information in Issue will demonstrate that the Department and operator of AGCC⁸, failed in their duty of care.
16. If disclosing information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability, a public interest factor favouring disclosure arises.⁹ I also consider that there is a public interest in ensuring that government owned correctional facilities are accountable for the activities that occur within their facilities and that their reporting mechanisms are thorough and transparent.

³ Section 40 of the IP Act.

⁴ Section 67 of the IP Act provides that the grounds for refusal of access set out in section 47 of the RTI Act apply in the same way, and to the same extent, under the IP Act.

⁵ Sections 47(3)(b) of the RTI Act and 49 of the RTI Act.

⁶ Under section 49(3) of the RTI Act.

⁷ This is a non-exhaustive list and therefore, other factors not included in schedule 4 may be relevant in a particular case.

⁸ GEO Group Australia privately manages and operates AGCC under contract to the Department. Documents created by GEO Group Australia in managing and dealing with prisoners are documents of the Department. See *Scott and Queensland Corrective Services* (Unreported, Queensland Information Commissioner, 5 June 2007).

⁹ Schedule 4, part 2, item 1 of the RTI Act.

17. As the CCTV footage shows an incident involving prisoners at a government owned corrective services facility in which weapons were used and injuries sustained, I consider these public interest factors are relevant.
18. The Department released 12 pages of reports about the incident to the applicant, subject only to the deletion of information relating to other prisoners. The information disclosed to the applicant sets out:
 - details of the incident as recorded by corrective service officers who witnessed the incident
 - a description of what the CCTV footage shows¹⁰
 - actions that were taken by corrective service officers during and after the incident; and
 - recommendations which were made about disciplinary action and ongoing monitoring as a result of the incident.
19. I acknowledge that the CCTV footage shows the actual incident and actions of people involved as opposed to a written description which appears in the reports. For this reason, I consider that releasing the CCTV footage may, to some extent, further enhance government accountability. However, given the significant amount of information already released to the applicant about the incident, AGCC's reporting mechanisms and resulting actions taken by AGCC, I am satisfied that this factor can only be given limited weight in favour of disclosure.

Administration of justice

20. The applicant submits that the Information in Issue has been disclosed to another prisoner's solicitor¹¹ and that by not affording him the same opportunity, his procedural fairness is being compromised.¹²
21. If disclosing information could reasonably be expected to contribute to the administration of justice for a person or generally, including procedural fairness, public interest factors favouring disclosure will be raised.¹³ In *Willsford and Brisbane City Council*¹⁴ the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor can arise if an applicant demonstrates that:
 - they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.¹⁵
22. In his submissions, the applicant has named another prisoner involved in the incident and states that the other prisoner's legal representative was allowed to view the CCTV footage under the IP Act. The Department explained to OIC that, in some cases, a prisoner's legal representative may be allowed supervised viewing access of video footage from a correctional centre for the purpose of a legal proceeding and/or to provide legal services to their client. The Department has confirmed that in such

¹⁰ This appears in an Incident Report (document no. 9).

¹¹ Submissions dated 12 November 2011, 6 December 2012 and 13 March 2012.

¹² Submission dated 13 March 2012.

¹³ Schedule 4, part 2, item 16 and item 17 of the RTI Act.

¹⁴ (Unreported, Queensland Information Commissioner, 27 August 1996) (*Willsford*). This decision was recently affirmed under the RTI Act in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

¹⁵ *Willsford* [17].

cases, copies of video footage are not provided under the IP Act and that access is granted by way of inspection only.

23. A decision on access to information under the IP Act will be decided based on the facts of the particular application. It *may* be the case that the other prisoner has obtained legal representation for the purpose of a legal proceeding relating to the incident and that, in considering the application, the Department *may* have decided that this raised a strong administration of justice factor favouring disclosure of the CCTV footage to the legal representative.¹⁶
24. The applicant however, has not specified any legal remedies he is pursuing in relation to the incident for which he would require a copy of the CCTV footage. He has also not provided OIC with any evidence that he has sought legal representation in relation to the incident. Based on the information available in this review, I am satisfied that the *Willsford* requirements for establishing a public interest in the administrative of justice, as set out at paragraph 21 of these reasons, are not met in this case. Therefore, I consider that no weight can be given to these factors in favour of disclosure.

Personal information of the applicant

25. If disclosing information could reasonably be expected to disclose the personal information¹⁷ of the applicant, this raises a public interest factor favouring disclosure.¹⁸
26. The CCTV footage contains images of the applicant during the incident. I am satisfied that these images comprise the applicant's personal information and that this factor carries moderate weight favouring disclosure.

Factors favouring nondisclosure

Security and good order of a corrective service facility

27. The RTI Act recognises a public interest harm in disclosing information brought into existence for the security or good order of a corrective services facility.¹⁹ Specifically, the RTI Act identifies this harm arises in relation to information that is:
- (i) in the possession of, or brought into existence by, the Department²⁰; and
 - (ii) a visual recording of a corrective services facility or part of a corrective services facility.²¹
28. The above public interest harm factor was recognised as an exemption in the repealed *Freedom of Information Act 1992 (Qld) (FOI Act)*.²² When the previous exemption was enacted²³, Parliament explained that:
- visual recordings are one category of recording that is necessary to maintain the security and good order of corrective services facilities; and
 - the public interest in maintaining the security and good order of corrective services facilities outweighs the right of offenders to obtain audio or visual

¹⁶ OIC does not have any specific information available to it about the circumstances of the other prisoner's access application to confirm this was the case. Even if such information was available, for privacy reasons, I would be prevented from disclosing it in these reasons.

¹⁷ Section 12 of the IP Act defines 'personal information' as *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.*

¹⁸ Schedule 4, part 2, item 7 of the RTI Act.

¹⁹ Schedule 4, part 4, item 5 of the RTI Act.

²⁰ Which currently administers the *Corrective Services Act 2006 (Qld)*.

²¹ Schedule 4, part 4, item 5(1)(b)(iii) of the RTI Act.

²² Section 42AA of the repealed FOI Act.

²³ By the *Corrective Services Act 2006 (Qld)*.

recordings of themselves where the recordings are brought into existence for security purposes.²⁴

29. As set out in paragraph 9 of these reasons, the Information in Issue comprises CCTV footage of areas of AGCC in which the incident occurred. I am satisfied that the Information in Issue meets the requirements in (i) and (ii) above and that therefore, this public interest factor applies in this case. I am also satisfied that, due to the important security function which video recording systems perform in correctional facilities that this factor carries very significant weight in favour of nondisclosure.

Personal information and privacy of other individuals

30. The RTI Act provides that disclosing an individual's personal information to someone other than that individual will cause a public interest harm.²⁵ In addition, if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy a public interest factor favouring nondisclosure will arise.²⁶
31. The CCTV footage contains images of other prisoners involved in the incident. Under the repealed FOI Act, the Information Commissioner found that information concerning what happens to a prisoner, while in prison, concerns the *personal affairs* of a prisoner.²⁷ I am satisfied that images of the other prisoners are sufficiently clear to comprise their personal information. I am also satisfied that the images attract a high privacy interest as they show incarcerated individuals involved in an incident in which weapons were used and injuries sustained.
32. In his submissions, the applicant has provided details of another prisoner who appears in the video. Given that the applicant was previously held in the facility with the other prisoners, I consider it is likely that the applicant also knows the identities of some, if not all, of the other prisoners involved in the incident.²⁸ Where information is already known to an applicant, this reduces, to an extent, the privacy interest attaching to the information.
33. Given the nature of the Information in Issue and the extent to which it contains clear images of other individuals and their involvement in the incident, I consider that the privacy interest and public interest harm factor regarding personal information should be given significant weight in favour of nondisclosure.

Balancing the public interest

34. I am satisfied that there is a public interest in the applicant accessing his personal information and that this should be afforded moderate weight in favour of disclosure. I also recognise that releasing the CCTV footage may, to an extent, further enhance government accountability and transparency in relation to incidents in correctional facilities. Balanced against these factors however, is the public interest harm factor attaching to visual recordings of corrective services facilities which carries significant weight in favour of nondisclosure. I am also satisfied that there is a strong public interest in protecting the privacy of the other prisoners and their personal information.

²⁴ In the Explanatory Notes to the *Corrective Services Bill 2006* (Qld). Parliament also recognised that while a limit was being placed on the availability of audio and video recordings under the freedom of information regime, offenders would still retain the ability to request access to recordings by subpoena if the recordings are necessary and relevant to court proceedings.

²⁵ Schedule 4, part 4, item 6 of the RTI Act.

²⁶ Schedule 4, part 3, item 3 of the RTI Act.

²⁷ In *Stewart and Department of Transport* (1993) 1 QAR 227, the Information Commissioner confirmed the approach taken in *Re Lapidos and Office of Corrections (No.2)* (unreported, Victorian Administrative Appeals Tribunal, Jones J, 19 February 1990). *Stewart* was decided under the repealed FOI Act in relation to the meaning of 'personal affairs'. I consider that the reasoning in that case can be applied to the meaning of 'personal information' under the IP Act.

²⁸ Submissions dated 12 November 2011, 6 December 2012 and 13 March 2012.

35. On balance, I am satisfied that the factors favouring disclosure of the CCTV footage are outweighed by the factors favouring nondisclosure, and that therefore, disclosure would, on balance, be contrary to the public interest.

DECISION

36. I affirm the decision of the Department to refuse access to the CCTV footage under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
37. I have made this decision, as a delegate of the Information Commissioner, under section 139 of the IP Act.

K Shepherd
Assistant Information Commissioner

Date: 11 May 2012

APPENDIX**Significant procedural steps**

| Date | Event |
|------------------|---|
| 13 October 2011 | The Department received the applicant's IP Act access application. |
| 15 November 2011 | The Department asked the applicant for an extension of time until 5 December 2011 to make its decision. |
| 2 December 2011 | The Department issued its decision to the applicant granting full access to five pages, partial access to seven pages and refusing access to the CCTV footage. |
| 6 December 2011 | OIC received the applicant's external review application. The applicant stated he had not yet received a copy of the Department's decision and that therefore he considered the Department to have made a "deemed decision" refusing him access to information. |
| 6 December 2011 | OIC asked the Department to provide a copy of application material and its decision. |
| 14 December 2011 | OIC notified the applicant and the Department that the external review application had been accepted. |
| 19 December 2011 | The applicant notified OIC that he received the Department's decision letter on 9 December 2011 and confirmed he was seeking external review of all information to which access was refused. |
| 13 January 2012 | The Department provided OIC with a copy of the information to which access was refused. |
| 9 March 2012 | OIC conveyed a preliminary view to the applicant that access to (i) information in seven pages of reports and (ii) the CCTV footage, could be refused on the basis that disclosure would, on balance, be contrary to the public interest. OIC invited the applicant to provide submissions to OIC by 29 March 2012 if he did not accept the preliminary view. |
| 20 March 2012 | The applicant requested OIC to reconsider the preliminary view regarding the CCTV footage on the basis that the information had been made available to another prisoner. The applicant did not contest the preliminary view on the report information. |
| 22 March 2012 | OIC confirmed with the applicant that, based on his submissions, the remaining issue on external review was his entitlement to access the CCTV footage. |
| 26 March 2012 | OIC made enquiries with the Department in relation to release of the CCTV footage to other prisoners involved in the incident. |
| 2 April 2012 | OIC wrote to the applicant to convey additional information provided by the Department about the CCTV footage. OIC also confirmed the preliminary view that access to the CCTV footage may be refused as disclosure would, on balance, be contrary to the public interest under the RTI Act. OIC invited the applicant to provide submissions to OIC by 20 April 2012 if he wished to contest the preliminary view. |
| 17 April 2012 | The applicant requested OIC to proceed with the external review and provided further submissions in support of his reasons for seeking access to the CCTV footage. |