



Decision and Reasons for Decision

Application Number: 311031

Applicant: Hughes

Respondent: Department of Communities, Child Safety and Disability Services

Decision Date: 17 July 2012

Catchwords: ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – EXEMPT INFORMATION – applicant sought access to information held by agency about him – whether access is prohibited by an Act – whether access can be refused under section 67(1) of the *Information Privacy Act 2009 (Qld)* and sections 47(3)(a) and 48 of the *Right to Information Act 2009 (Qld)* on the ground set out in schedule 3, section 12 of the *Right to Information Act 2009 (Qld)* and section 187 of the *Child Protection Act 1999 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Communities, Child Safety and Disability Services (**Department**)² for access to all documents relating to him held by the Department from 1 September 2009 to 19 January 2012, including any reference to himself as flatmate, carer or support person of a woman with whom he shared accommodation (**Access Application**).
2. The Department decided to refuse the applicant access to information which it considered was either not relevant to the Access Application (**Category A Information**) or comprised the personal information of persons other than the applicant (**Category B Information**).³
3. The applicant sought external review by the Office of the Information Commissioner (**OIC**) of the Department's decision to refuse access.

¹ By application dated 19 January 2012.

² Machinery of government changes in April 2012 transferred relevant responsibility from the Department of Communities (**Communities**) to the Department of Communities, Child Safety and Disability Services. Accordingly, existing RTI applications and reviews involving certain applications made to Communities before the machinery of government changes now rest with the Department of Communities, Child Safety and Disability Services (here in after referred to as 'the Department'), including this external review.

³ On internal review, the Department decided to release some additional information to the applicant.

4. The Department's decision is varied and access to both the Category A Information and the Category B Information is refused on the basis that the information is exempt from disclosure under section 67(1) of the *Information Privacy Act 2009 (Qld)* (**IP Act**) and sections 47(3)(a) and 48 of the *Right to Information Act 2009 (Qld)* (**RTI Act**) on the ground that disclosure is prohibited by schedule 3, section 12 of the RTI Act and section 187 of the *Child Protection Act 1999 (Qld)* (**CP Act**).

Background

5. Significant procedural steps relating to the application are set out in Appendix A to this decision.

Reviewable decision

6. The decision under review is the Department's Internal Review Decision dated 18 April 2012.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendices).

Information in issue

8. The information in issue comprises:
 - 208 full pages and parts of 157 pages that the Department claimed were irrelevant to the Access Application, the Category A Information; and
 - parts of 155 pages comprising information which the Department claimed was personal information of persons other than the applicant, the Category B Information.

Disclosure Prohibited by Act

Category A Information

9. The terms of the access application seek all documents relating to the applicant from 1 September 2009 to 19 January 2012, including any reference to the applicant as flatmate, carer or support person of a woman with whom he shares accommodation.
10. The Department decided that 208 full pages and parts of another 157 pages were not relevant to the access application.
11. The IP Act provides that where giving access to a document will disclose to the applicant information that an Agency reasonably considers is not relevant to the access application, an Agency may give access to a copy of the document with the irrelevant information deleted.⁴ An Agency may only give access in this way if it considers from the terms of the application, or after consultation with the applicant, that the applicant would accept the copy and it is reasonably practicable to give access to the copy.⁵

⁴ Section 88 of the IP Act.

⁵ Section 88(3) of the IP Act.

12. I have carefully considered the 208 full pages and the parts of the additional 157 pages that the Department blacked out on the basis of irrelevance and I am satisfied that:
- while the deleted information is not relevant to the applicant's access application—the information is predominantly to do with the applicant's flatmate, her children and their father; not the applicant;
 - the information is more appropriately categorised as information obtained under the CP Act, which Act makes it an offence to disclose such information.
13. Accordingly, I am satisfied that it is more appropriate to consider the Category A Information in light of schedule 3, section 12 of the RTI Act.⁶ Thus, the issue to be considered in relation to the Category A Information is whether access should be refused on the basis that it is exempt information. I will deal with the issue of whether access may be refused to the Category A Information in my consideration of the application of schedule 3, section 12 of the RTI Act to the Category B Information below.

Category B Information

14. The Department decided that access to the Category B Information should be refused on the grounds that release would, on balance, be contrary to the public interest. I have carefully reviewed the Category B Information, the relevant law, the Department's decision and the applicant's submission and I am satisfied that it is more appropriate to consider the application of schedule 3, section 12 of the RTI Act to the Category B Information.
15. Additionally, as noted above, I will consider the application of schedule 3, section 12 of the RTI Act to the Category A Information here.

Relevant law

16. Access must be given to a document unless disclosure would, on balance, be contrary to the public interest.⁷ Schedule 3 of the RTI Act sets out information which Parliament considers is exempt information on the basis that disclosure would, on balance, be contrary to the public interest.⁸ Schedule 3, section 12 of the RTI Act provides that information is exempt if its disclosure is prohibited by a number of listed provisions, including section 187 of the CP Act.⁹
17. Section 187 of the CP Act makes it an offence to disclose certain information obtained under the CP Act. If this provision applies to the Category B Information and the Category A Information, that information will be exempt from disclosure under the RTI Act.
18. To be exempt from disclosure, the Category B Information and the Category A Information must:
- a) be information about a person's affairs
 - b) have been received by a listed person performing functions under or relating to the administration of the CP Act; and

⁶ Please note that section 67(1) of the IP Act provides that an agency (such as the Department) may refuse access to a document under that Act in the same way it would be entitled to do so under the RTI Act were the application made under the RTI Act.

⁷ Section 44(1) and 48(1) of the RTI Act.

⁸ See also, section 48 of the RTI Act.

⁹ See Appendix B for the text of the relevant parts of section 187 of the Child Protection Act.

- c) not be subject to an exception in section 187 of the CP Act.

(a) Is the information about a person's affairs?

19. I have examined the Category A Information and the Category B Information and I am satisfied that it contains information about the personal affairs of the applicant's flatmate, her children and their father.

(b) Was the information received under the Child Protection Act?

20. The Category A Information and the Category B Information is information received by Departmental officers (public service employees) under the CP Act.
21. Section 187 of the CP Act lists a public service employee as a person to whom section 187 applies.
22. I have examined the Category A Information and the Category B Information and am satisfied that it was received by Departmental officers in the course of performing functions under or relating to the CP Act.

(c) Do any of the exceptions listed in section 187 of the Child Protection Act apply?

23. Section 187 of the CP Act contains a number of exceptions where information received under the CP Act may be disclosed.
24. In this case, section 187(4)(a) is relevant. It provides that a person may disclose the information or give access to the document to another person, to the extent that the information or document is about the other person. **(the CP Act exception)**
25. The Category B Information and the Category A Information is predominantly about the applicant's flatmate, her children and their father, not the applicant; some of the Category B Information and the Category A Information is about the applicant. However, where the Category B Information or the Category A Information is about the applicant, it is, in all instances, also about the flatmate, her children or their father.
26. The CP Act exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the CP Act exception will not apply.
27. I am satisfied that in this case the CP Act exception does not apply and therefore neither the Category A Information nor the Category B Information can be disclosed.
28. In addition to the CP Act exception, section 12 of schedule 3 of the RTI Act also contains an exception to nondisclosure. Section 12(2) of schedule 3 of the RTI Act states that the exemption provided for in section 12 does not apply if the relevant information comprises only the applicant's personal information **(the RTI Act exception)**.¹⁰
29. Like the CP Act exception, the RTI Act exception only applies if the information is the applicant's personal information alone. That is not the case here as the personal

¹⁰ Schedule 3 section 12(2) of the RTI Act. *Personal information* is defined in section 12 of the IP Act as *information or an opinion 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.*

information of the individuals other than the applicant cannot be separated from the personal information of the applicant. Accordingly, I am satisfied that the RTI Act exception does not apply to either the Category A Information or the Category B Information and therefore access to it should be refused.

30. I note that in his submission dated 18 June 2012 the applicant provided the OIC with a written consent to release the personal information of the applicant's flatmate and her children, signed by his flatmate. The applicant argued that in light of such consent there was no longer any barrier to release of the Category B Information or the Category A Information.
31. I consider that the terms of the RTI Act are not such that they can be overridden by consent. As previously noted, schedule 3, section 12 of the RTI Act sets out information which Parliament considers is exempt information. Thus it is Parliament's intention that if information satisfies the criteria in schedule 3, section 12 of the RTI Act (as is the case here with the Category A Information and the Category B Information) then it is exempt information to which access is refused.
32. I note that while the Department has some discretion to release documents that it considers are exempt, and therefore may have been at liberty to disclose the exempt matter had the applicant provided such a consent document to it, I do not have the same discretion. I am bound by the provisions of the IP Act and the RTI Act and can not exercise any discretion to release documents that I decide are exempt,¹¹ regardless of the existence of consent. I am satisfied that the Category A Information and the Category B Information is exempt information and that access to it must be refused. The consent purported to be given by the flatmate does not alter this outcome.

DECISION

33. I vary the Department's Internal Review Decision by finding that the Department is entitled to refuse access to the Category A Information and the Category B Information pursuant to section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act on the ground that disclosure is prohibited by schedule 3, section 12 of the RTI Act and section 187 of the CP Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner V Corby

Date: 17 July 2012

¹¹ Section 118(2) of the IP Act states: (2) *If it is established that a document is an exempt document or a contrary to public interest document, or contains exempt information or contrary to public interest information, the commissioner does not have power to direct that access to the document, or the document to the extent of the information, is to be given.* Section 105(2) of the RTI Act is stated in identical terms.

APPENDIX A**Significant procedural steps**

Date	Event
19 January 2012	The Department of Communities, Child Safety and Disability Services (Department) receives the applicant's request for access (Access Application).
26 March 2012	The Department decides (Decision) to: <ul style="list-style-type: none"> • omit 216 pages and parts of 157 pages which are not relevant to the scope of the Access Application • partially release 145 pages; and • give full access to 97 pages.
2 April 2012	The applicant seeks internal review of the Department's Decision.
18 April 2012	The Department decides to vary the Decision by (Internal review Decision): <ul style="list-style-type: none"> • giving full access to 95 pages • omitting 208 pages and parts of 157 pages which contain information which is not relevant to the scope of the Access Application; and • partially release 155 pages.
27 April 2012	The applicant seeks external review of the Department's Internal Review Decision.
10 May 2012	OIC informs the applicant and the Department that the external review application has been accepted.
22 May 2012	OIC receives relevant documents from the Department.
6 June 2012	OIC conveys a preliminary view to the applicant and invites the applicant to provide a submission in support of his case by 21 June 2012 if the view is contested.
12 June 2012	The applicant seeks an extension to provide a written submission.
13 June 2012	OIC grants the applicant an extension until 28 June 2012 to provide a written submission.
18 June 2012	The applicant provides a written submission and signed consent to release information from the applicant's flatmate.

APPENDIX B

Section 187 of the Child Protection Act relevantly provides:

187 Confidentiality of information obtained by persons involved in administration of Act

- (1) *This section applies to a person who—*
 - (a) *is or has been—*
 - (i) *a public service employee; and*
 - ...
 - (b) *in that capacity acquired information about another person’s affairs or has access to, or custody of, a document about another person’s affairs.*
- (2) *The person must not use or disclose the information, or give access to the document, to anyone else.*
 - ...
- (4) *Also, the person may disclose the information or give access to the document—*
 - (a) *to another person, to the extent that the information or document is about the other person;*