



Decision and Reasons for Decision

Citation:	<i>Green and Department of State Development</i> [2016] QICmr 14 (21 April 2016)
Application Number:	312491
Applicant:	Green
Respondent:	Department of State Development
Decision Date:	21 April 2016
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF ACCESS APPLICATION - information relating to leases of state owned land - whether documents are the subject of the access application under the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - information relating to leases of state owned land - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of State Development (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to certain lease documents relating to state owned land and associated fact finding reports, for the period July 2014 to April 2015.
2. The Department located 256 pages of responsive information and refused access to all located information on the ground that its disclosure would, on balance, be contrary to the public interest. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's refusal of access to lease documents, which comprised 233 of the 256 pages.¹
3. During the external review, the Department agreed to disclose the majority of the 233 pages to the applicant, except for information that did not fall within the date range of the access application and information that the Department considered would, on balance, be contrary to the public interest information to disclose.

¹ The remaining 23 pages are, therefore, not in issue in this review.

4. For the reasons set out below, I vary the Department's decision and find that two documents are not within the scope of the access application and the CTPI Information (as defined in paragraph 11 below) can be refused as its disclosure would, on balance, be contrary to the public interest.

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.
6. On external review, the applicant confirmed that she is seeking access to information about the use to which certain land is being put and the terms and conditions imposed by any lease upon that land, but does not seek access to information of a personal nature.

Reviewable decision

7. The decision under review is the Department's decision dated 26 May 2015.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
9. While I have carefully considered all of the applicant's submissions, not all matters raised are relevant to the issues for determination. I have summarised and addressed the applicant's submissions below to the extent they are relevant to the issues for determination. In respect of the applicant's submissions that are not relevant to the issues for determination, these generally relate to the applicant's concerns with the lease tendering processes and the impact of the Department's lease allocation decisions on the applicant and her family. OIC's jurisdiction under the RTI Act relates only to decisions about access to documents held by agencies, and does not extend to any consideration of these matters.²

Information in issue

10. During the external review, the Department agreed to partially release three documents to the applicant, which comprise 146 of the 233 pages.³
11. The information remaining in issue on external review is:
 - the remaining 87 pages comprising two documents (**Document One**⁴ and **Document Two**⁵); and
 - the information deleted from the three documents released to the applicant, as referred to in paragraph 10 above (**CTPI Information**), comprising:
 - names and personal information (including addresses, contact details and signatures) of individuals other than the applicant
 - certain lease information (such as real property descriptions, plans of the leased areas and their access)
 - lease Reference Schedule details for livestock and rent; and
 - the Department's bank account details.

² As explained to the applicant in OIC's letter dated 10 February 2016.

³ Being pages 1-7 and 95-233 of 233 pages.

⁴ Pages 8-32 of 233 pages.

⁵ Pages 33-94 of 233 pages.

Documents One and Two

Relevant law

12. A person who wishes to be given access to a document of an agency under the RTI Act may apply to the agency for access to the document. Section 24(2) of the RTI Act sets out the criteria which an applicant must meet in order to have a valid RTI application, which relevantly requires the applicant to give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents.

Findings

13. The access application sought documents within the specified date range of July 2014 to April 2015.
14. OIC conveyed preliminary views to the applicant⁶ that Documents One and Two did not fall within the date range specified in the access application and therefore could not be considered on external review. The applicant's submissions have not addressed these preliminary views.
15. I have carefully considered Documents One and Two and I am satisfied that these documents do not fall within the date range specified in the access application. Accordingly, I consider that Documents One and Two are not within the scope of the access application and cannot be considered in this review.

CTPI Information

Relevant law

16. Under the RTI Act, a person has a right to be given access to documents of an agency, unless access would, on balance, be contrary to the public interest.⁷ There are some limitations on this right of access, including grounds for refusal of access.⁸
17. An agency may refuse access to information if its disclosure would, on balance, be contrary to the public interest.⁹ In assessing the balance of the public interest, the RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹⁰ and explains the steps that a decision-maker must take¹¹ in deciding the public interest as follows:
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring nondisclosure; and

⁶ By letters dated 4 December 2015 (in respect of Document Two) and 29 January 2016 (in respect of Document One).

⁷ Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.

⁸ Set out in section 47(3) of the RTI Act.

⁹ Sections 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, 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 an individual.

¹⁰ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive; in other words, factors that are not listed may also be relevant.

¹¹ Section 49(3) of the RTI Act.

- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Analysis

18. No irrelevant factors arise in the circumstances of this case.

Factors favouring disclosure

19. The applicant's submissions have emphasised the need for government transparency. The applicant submitted that she is entitled to be informed as to what use government owned land is being put and upon what terms and conditions.¹²
20. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability;¹³ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.¹⁴
21. I accept that releasing information regarding the lease arrangements for state owned land would enhance the Department's accountability and transparency. However, as noted in paragraph 3 above, the Department agreed to disclose the majority of the 233 pages to the applicant. Most of that released information identifies the use to which the subject land could be put and the substantive terms and conditions relating to that land use. This is the information the applicant identified on external review that she wished to access.
22. Given the extent of information that has been released to the applicant and the nature of the CTPI Information, I do not consider these public interest factors would be advanced to any significant extent by disclosing the CTPI Information to the applicant. I therefore afford moderate weight to these factors.

Factors favouring nondisclosure

23. The RTI Act gives rise to factors favouring non-disclosure in circumstances where disclosing information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy¹⁵
 - cause a public interest harm by disclosing the personal information¹⁶ of other individuals;¹⁷ and
 - prejudice the private, business, professional, commercial or financial affairs of entities.¹⁸
24. As noted in paragraph 6 above, the applicant confirmed on external review that she did **not** seek access to information of a personal nature and, more specifically, that she

¹² External review application and submissions dated 3 February, 22 February and 2 March 2016.

¹³ Schedule 4, part 2, item 1 of the RTI Act.

¹⁴ Schedule 4, part 2, item 11 of the RTI Act.

¹⁵ Schedule 4, part 3, item 3 of the RTI Act.

¹⁶ 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*'.

¹⁷ Schedule 4, part 4, item 6 of the RTI Act.

¹⁸ Schedule 4, part 3, item 2 of the RTI Act.

would 'happily receive documents which have the tenant's signatures, addresses and telephone numbers removed'.¹⁹

25. However, the applicant has since also submitted²⁰ that, as she is the holder of a lease within the same state owned land area, she requires information to make and receive notifications associated with her lease²¹ and to take action to address matters such as the escape of noxious substances or fire (including taking action for negligence or nuisance). This submission appears to indicate that the applicant is seeking access to certain personal information of other individuals. The applicant's submissions do not address the other information which comprises the CTPI Information.
26. The information sought in the access application relates to short term leases of state owned land that were entered as a result of closed and limited tender processes. The applicant participated in those tender processes and has also been a lessee in the same state owned land area for some years.
27. Disclosing the names, addresses, contact details and signatures of other individuals in the released documents would directly reveal the personal information of those individuals. Further, given the closed and limited nature of the tender processes and the nature of the released documents,²² disclosing real property descriptions, lease plans and details and, in one document, the identities of parties other than the lessee, would effectively enable the applicant (and others) to identify the lessees of each released document, and thus indirectly reveal personal information about those individuals.
28. The Department's bank account details comprise business, commercial and financial information of the Department. This information is not published by the Department but appears in the context of formal leasing arrangements with private individuals. Disclosing the Department's bank account details would directly reveal business, commercial and financial information of the Department.
29. I accept that some of the CTPI Information may be known to the applicant as a result of her participation in the tender processes and as a result of her being a lessee in the same state owned land area. This reduces, but does not negate, the weight to be attributed to the personal information, privacy and business information factors in respect of that particular information. Some of the CTPI Information may not be known to the applicant and therefore, that information retains a high privacy interest.
30. For these reasons, I am satisfied that disclosing the CTPI Information would reveal the personal information of other individuals and the business, commercial or financial information of the Department. Accordingly, I find that the public interest factors favouring nondisclosure to protect personal information and privacy and to also protect business, commercial and financial information carry significant weight in favour of nondisclosure of the CTPI Information.

Balancing the public interest

31. I have carefully considered the factors for and against disclosure of the CTPI Information. I have identified that public interest factors related to advancing accountability and transparency are relevant and should be afforded moderate weight. However, public interest factors related to protecting the personal information and privacy of the other

¹⁹ External review application.

²⁰ Submission dated 2 March 2016.

²¹ Such as notifications relating to the lighting of fires and straying livestock.

²² Cf. the information considered in *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011).

individuals and protecting the business, commercial and financial information of the Department also apply and warrant significant weight. For these reasons, I find that:

- disclosing the CTPI Information would, on balance, be contrary to the public interest; and
- access to it may therefore be refused under sections 47(3)(b) and 49 of the RTI Act.

DECISION

32. For the reasons set out above, I vary the Department's decision and find that:

- Documents One and Two are not within the scope of the access application; and
- access to the CTPI Information in Issue can be refused on the basis that its disclosure would, on balance, be contrary to the public interest.²³

33. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

A Rickard
Acting Assistant Information Commissioner

Date: 21 April 2016

²³ Sections 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
15 April 2015	The Department received the access application.
26 May 2015	The Department issued its decision to the applicant.
15 June 2015	OIC received the external review application. OIC notified the Department that the external review application had been received and requested relevant procedural documents by 22 June 2015.
16 June 2015	OIC received the requested documents from the Department.
25 June 2015	OIC notified the applicant and the Department that it had accepted the external review and requested the Department provide a copy of the documents in issue by 9 July 2015.
7 July 2015	OIC received the requested documents from the Department.
31 July 2015	OIC requested the Department provide additional information.
14 August 2015	OIC received the requested information from the Department.
1 September 2015	OIC asked the applicant to confirm her contact details, as her nominated agent in the review had advised they had received no instructions from the applicant.
26 October 2015	OIC conveyed a preliminary view to the Department and requested submissions by 9 November 2015.
5 November 2015	OIC granted the Department's requested extension to 16 November 2015 to provide submissions.
18 November 2015	OIC granted the Department's requested extension to 30 November 2015 to provide submissions.
30 November 2015	OIC received the Department's submissions.
4 December 2015	OIC conveyed a preliminary view to the applicant and requested submissions by 18 December 2015. OIC requested that the Department release certain documents to the applicant by 11 December 2015.
18 December 2015	OIC requested the Department provide additional information.
8 January 2016	OIC received the requested information from the Department and the Department's further submissions.
15 January 2016	OIC conveyed a preliminary view to the Department and requested submissions by 29 January 2016.
29 January 2016	OIC conveyed a preliminary view to the applicant and requested submissions by 8 February 2016.
4 February 2016	OIC received the applicant's submissions.
10 February 2016	OIC confirmed its preliminary views to the applicant and requested submissions by 17 February 2016.
22 February 2016	OIC received the applicant's further submissions.
2 March 2016	OIC received the applicant's further submissions.
18 March 2016	OIC confirmed its preliminary views to the applicant and requested submissions by 24 March 2016. OIC requested that the Department release certain information by 18 March 2016.
24 March 2016	OIC confirmed its preliminary views to the applicant and requested submissions by 30 March 2016.