



Decision and Reasons for Decision

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| Citation: | <i>K95 and Department of Education [2019] QICmr 28 (9 August 2019)</i> |
| Application Number: | 314372 |
| Applicant: | K95 |
| Respondent: | Department of Education |
| Decision Date: | 9 August 2019 |
| Catchwords: | ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - complainant's information - student witness statements - third party personal information - personal information and privacy - prejudice agency's ability to obtain confidential information - administration of justice and procedural fairness - 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 applied¹ to the Department of Education (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a range of information relevant to his employment with the Department, including complaints made against him and procedural documents.
2. The Department located 539 pages and decided² to refuse access to 90 pages and parts of 76 pages on the basis that disclosure would, on balance, be contrary to the public interest.
3. The applicant sought³ internal review. The Department varied⁴ the decision on some pages and affirmed its decision to refuse access to 84 pages in full and parts of 81 pages.
4. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of the internal review decision.⁶

¹ Valid access application received 24 July 2018.

² On 4 October 2018.

³ On 31 October 2018.

⁴ On 28 November 2018.

⁵ On 28 December 2018.

⁶ The applicant also contended that the Department did not identify all relevant information in its decisions. This issue was resolved informally on external review and is not considered in this decision. See footnote 12.

5. For the reasons set out below, I affirm the internal review decision and find that access may be refused to information on the ground that disclosure would, on balance, be contrary to the public interest.

Background

6. Appendix A to these reasons for decision sets out the significant procedural steps taken during the external review.

Reviewable decision

7. The decision under review is the Department's internal review decision dated 28 November 2018.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision is referred to in these reasons (including footnotes and Appendix).

Information in issue

9. The information sought by the applicant on external review⁷ comprises 84 pages in full and parts of 69 pages (**Information in Issue**). While the RTI Act limits the extent to which I can describe the content of those pages,⁸ it generally comprises the personal information⁹ of staff, school students and parents¹⁰ connected to schools where the applicant was employed.
10. Generally, the Information in Issue can be divided into two categories for consideration. The first category relates to allegations against the applicant including statements made by students about incidents involving the applicant (**Complaint Information**).
11. The second category of information records observations and opinions of student behaviour and correspondence with parents and other staff about students recorded in the students' OneSchool¹¹ records and in correspondence between school staff and parents (**Student Information**).

Issue for determination

12. The issue for determination¹² is whether access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act, on the basis that its disclosure would, on balance, be contrary to the public interest.

⁷ In submissions dated 10 May 2019 and 14 June 2019 the applicant advised OIC that he did not seek the private information of other individuals such as names and telephone numbers, however he continued to seek any information about himself.

⁸ Section 108 of the RTI Act.

⁹ Section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**) defines 'personal information' as follows: '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'.

¹⁰ Reference to *parents* in this letter is taken to include reference to all student relatives / guardians / caregivers.

¹¹ A departmental internal record keeping system to assist student education and behaviour management.

¹² In the application for external review dated 28 December 2019, the applicant raised the issue of missing Departmental procedural documents regarding investigation of employees. OIC provided a preliminary view dated 11 April 2019 that access to the requested policy documents may be refused as they do not exist. The applicant did not raise this issue in his submission dated 2 May 2019, responding to OIC's preliminary view. OIC confirmed in a second preliminary view dated 17 May 2019, that sufficiency of search concerns were no longer at issue in the review. Accordingly, the existence of this information will not be considered in these reasons for decision.

13. Some of the applicant's submissions raises concerns that he holds about the Department's investigation into his conduct.¹³ In making this decision under section 110 of the RTI Act, I have considered whether access to the information requested by the applicant may be granted. I have not made findings about the Department's investigation processes. I have considered the applicant's submissions in this regard to the extent that it relates to the public interest factors relating to disclosure of the Information in Issue.

Relevant law

14. The RTI Act confers on an individual a right to access documents of an agency.¹⁴ This right of access is subject to certain limitations, including grounds for refusal of access.¹⁵ Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.¹⁶ The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and explains that a decision maker must take the following steps in deciding the public interest:
- identify any irrelevant factors and disregard them
 - identify any relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and decide whether disclosure would, on balance, be contrary to the public interest.¹⁷

Findings

15. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.¹⁸
16. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant to determining where the balance of the public interest lies in a particular case. I have carefully considered these factors, the RTI Act's pro-disclosure bias¹⁹ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly²⁰ in reaching this decision

Factors favouring disclosure

17. There is a general public interest in promoting access to government-held information. Revealing information about the Department's complaint management processes could reasonably be expected to enhance the Department's accountability for the outcomes of those processes,²¹ and provide the applicant with the relevant background or contextual information that informed any decisions.²² I also acknowledge that the public interest is advanced by the disclosure of information that allows or assists inquiry into possible deficiencies in the conduct or administration of an agency or official.²³

¹³ Applicant submissions of 2 May, 13 June and 14 June 2019.

¹⁴ Section 23 of the RTI Act.

¹⁵ Grounds for refusal of access are set out in section 47 of the RTI Act.

¹⁶ Section 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.

¹⁷ As set out in section 49 of the RTI Act.

¹⁸ Set out in schedule 4, part 1 of the RTI Act.

¹⁹ Section 44 of the RTI Act.

²⁰ Section 47(2) of the RTI Act.

²¹ Schedule 4, part 2, item 1 of the RTI Act.

²² Schedule 4, part 2, item 11 of the RTI Act.

²³ Schedule 4, part 2, item 5 of the RTI Act.

18. In considering whether these factors apply, I note that the Department has released to the applicant, information about its decision-making processes where it appears separate to the personal information of other individuals. The Information in Issue provides limited detail about the steps taken by the Department and the reasons for why it made particular decisions. The Information in Issue comprises the personal information²⁴ of the students, parents and other members of the school community. In these circumstances, I am satisfied that the factors favouring disclosure relating to the Department being open and accountable, and disclosure allowing inquiry into any deficiencies in the Department's conduct would only be slightly advanced by disclosure. Therefore, I afford these factors favouring disclosure low weight.²⁵
19. Some of the Information in Issue comprises the applicant's personal information, which raises a factor favouring disclosure.²⁶ Generally, this factor carries high weight as one of the purposes of the RTI Act is to provide individuals with a mechanism to access their personal information held by government. However, the nature of the Information in Issue is such that the applicant's personal information is intertwined with that of others, including students, and gives rise to factors favouring nondisclosure of personal information as discussed below.²⁷ I am satisfied that the intertwined nature of the personal information lessens the weight of this factor. Accordingly, I afford moderate weight to this factor.
20. On external review, the applicant's submissions have mainly focussed on his request to access the information so that he can defend himself from what he believes to be false allegations.²⁸ In his submissions, the applicant makes clear that he is aware of the circumstances of those allegations and requires the Complaint Information to refute those allegations. The applicant's submissions in this regard raise the issue of procedural fairness in relation to two allegations made against him.²⁹ I have also considered whether disclosure of the Complaint Information would assist with the administration of justice for the applicant.³⁰
21. I acknowledge the applicant was the subject of the allegations and that he has concerns that his employment and reputation may be impacted by these allegations. The applicant submits that access to *witness statements* would assist him to be able to lodge a further review with the Integrity and Employee Relations Unit (**IERU**) in relation to its findings that the relevant allegations were substantiated.³¹
22. I have considered the significant amount of information that has been released to the applicant by the Department in response to this application (**Released Documents**) as well as the information that the applicant has indicated he is already aware of in his submissions to OIC.³² The released documents demonstrate that the Department advised the applicant of reported incidents and the substance of the allegations and the applicant was provided an opportunity to respond to the allegations and supplied detailed written statements in response to what was alleged.
23. The Released Documents further demonstrate that the applicant communicated with the IERU about the investigation process and has been advised of his opportunity to request an internal review. I acknowledge that should the applicant seek to review the adverse

²⁴ See paragraph 9.

²⁵ Schedule 4, part 2, items 1 and 11 of the RTI Act.

²⁶ Schedule 4, part 2, item 7 of the RTI Act.

²⁷ In the section '*Factors favouring nondisclosure*'.

²⁸ Applicant submissions dated 2 May 2019 and in the application for external review dated 28 December 2018.

²⁹ Schedule 4, part 2, items 10 and 16 of the RTI Act.

³⁰ Schedule 4, part 2, item 17 of the RTI Act.

³¹ Submissions dated 2 May 2019.

³² Applicant submissions dated 2 May, 13 June and 14 June 2019.

findings that have been made by the Department, having full access to the Complaint Information may assist him in preparing his case. However, having carefully examined the applicant's and Department's submissions, the Information in Issue and the background and contextual information provided by the Department and the applicant, I am satisfied that the weight of the public interest factors concerning procedural fairness and the administration of justice carry only moderate weight in the particular circumstances of this case.³³

24. The applicant also submitted³⁴ that he was instructed by the IERU to seek access to information through the RTI Act process. While an agency may refer an individual to seek access to information through the RTI process, where other administrative processes are not appropriate, this is not an assurance that all requested information will be disclosed. While I acknowledge the applicant's frustration about being refused access to information following a process that he was advised to follow by the IERU, this in itself, does not raise any further factor in favour of disclosure.

Factors favouring nondisclosure

Complaint Information

25. Given the nature of the Complaint Information, I find that the following factors favouring nondisclosure are relevant:
- disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person³⁵
 - disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy,³⁶ and
 - disclosure of the information could reasonably be expected to prejudice the flow of information to a law enforcement or regulatory agency.³⁷
26. I am satisfied the Complaint Information comprises the personal information of other individuals involved in the investigations into allegations made against the applicant, including complainant(s), witness(es) and staff. Information provided by complainant(s) and witness(es) to the school and Department setting out their version of events, opinions and emotions, also comprises their personal information. Given the nature of the Complaint Information, I am satisfied that disclosing the personal information of other individuals, could reasonably be expected to lead to a public interest harm.
27. Information that details an individual's interactions with a government agency attracts a level of privacy where that information forms part of an individual's private and personal sphere.³⁸ In this case, the relevant communications with the Department occurred within the context of an investigation into incidents at school involving students. I consider that the personal information of the students and parents, as it appears in this particular circumstance, attracts a very high level of privacy. Accordingly, I afford this factor high weight in favour of nondisclosure of the Complaint Information.

³³ Schedule 4, part 2, items 10 and 16.

³⁴ Submission dated 2 May 2019 and 13 June 2019.

³⁵ Schedule 4, part 4, section 6 of the RTI Act.

³⁶ Schedule 4, part 3, item 3 and the RTI Act.

³⁷ Schedule 4, part 3, item 13 of the RTI Act.

³⁸ The concept of 'privacy' is not defined in the IP Act or RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others. See *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22] paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" *Australian Law Reform Commission Report No. 108* released 11 August 2008, at paragraph 1.56, available: <https://www.alrc.gov.au/publications/report-108>.

28. The applicant submitted³⁹ that he understood some documents would need to be redacted but disagreed, saying that he thought the witness statements can be meaningfully redacted, that *if necessary completely redact all witness statements, incident reports etc., so that there is absolutely no risk of me viewing the personal information of other people.*
29. The applicant is likely to know the identities of the other individuals through his involvement in the particular incidents. The Complaint Information comprises their written version of events, including expression of feelings and emotions associated with the complaints. I find that disclosure of such information, even if names and personal details were to be redacted, would be an unwarranted intrusion into the personal sphere of these other individuals. For this reason, I consider that the Complaint Information cannot meaningfully be redacted and still protect the personal information and privacy of the other individuals involved.
30. Lastly, there is a recognised public interest in ensuring the Department's functions are not prejudiced through disclosure of information provided by individuals involved in a complaint process.⁴⁰ The Department relies on students and other members of the school community to provide information which enables it to administer and enforce relevant laws for the protection of children.
31. The applicant submits⁴¹ that the OIC is naïve regarding what actually happens in schools regarding the dynamic between students and teachers. That '*...not all teenage students are honest. Sometimes they lie, for a variety of reasons.*' The applicant contends that '*the OIC choose to completely ignore the possibility that some students are not ignorant and develop an ability to act in their own best interests within the system...*' The applicant further submitted⁴² an example of an incident which he advised would prove that even young students '*are savvy enough to coordinate their stories in such as (sic) manner as to avoid known consequences for being disruptive and non-compliant in class. Student protection policy and procedure can be weaponized against teachers...*'
32. In reaching this decision, I have not made any judgement as to the accuracy of the student statements. Comments made in witness statements are for the consideration of the investigator and subsequent decision maker in testing the evidence.⁴³ It is important that the flow of information is not prejudiced so that information can be gathered and assessed.
33. I am satisfied that routinely disclosing information identifying and/or provided by complainant(s) and witness(es) under the RTI Act would discourage individuals from coming forward with information and cooperating with the Department. This, in turn and irrespective of the veracity of the statements, could reasonably be expected to negatively the Department's ability to obtain this information in future. In this case, the potential negative impact is further heightened by the fact that some of the relevant witness(es) are school children who could reasonably be expected to be deterred from making complaints against teachers, should their identities and the information that they provide be disclosed through processes such as disclosure under the RTI Act. I have accordingly afforded this factor significant weight in favour of nondisclosure.

³⁹ Submission dated 13 June 2019, similarly raised in submission dated 2 May 2019 and reference to *anonymised incident reports and witness statements* in the application for external review dated 28 December 2018.

⁴⁰ Schedule 4, part 3, item 13 of the RTI Act.

⁴¹ Applicant submission dated 2 May 2019.

⁴² Submission dated 14 June 2019.

⁴³ *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017), at [92].

Student Information

34. The Student Information comprises OneSchool information from three schools at which the applicant was employed. This includes:
- Information about contact with parents about students - created by the applicant
 - Information about behaviour incidents - created by the applicant
 - Information about behaviour incidents not created by the applicant but that mention his name in the details of the incident; and
 - emails between the applicant and parents.
35. Whilst this information includes some of the applicant's personal information, it essentially comprises information about student behaviour and performance. I consider that such information is *about* the students and is therefore the personal information of those students and, in some cases, their parents.
36. I acknowledge that the applicant has had access to the OneSchool information during his employment at the relevant schools. However, on the evidence before me, the applicant no longer has access to this information. I also consider that the disclosure of student information stored on the OneSchool system under the RTI Act process, where there are no limits on the use of this information, could reasonably be expected to prejudice the privacy of the relevant students and their families. As such, the factors favouring nondisclosure relating to personal information and privacy, apply to this Information in Issue and carry significant weight.⁴⁴
37. I have also considered whether disclosure of the Student Information could reasonably be expected to prejudice the management function of the Department.⁴⁵ The OneSchool system provides a platform to record information relating to student behaviour and parental contact, for use within schools. I consider that schools must be able to create, store and manage the personal information of students and their families for the purposes of education and behaviour management with confidence that it will not be released through the RTI process with no restrictions on dissemination. I consider that disclosure of the sensitive student information recorded in OneSchool, outside of the context in which it is created and used, would prejudice the ability of schools to effectively collect and record information for the purposes of managing student behaviour and parental contact. I assign this factor favouring nondisclosure significant weight.

Balancing the public interest factors

38. In balancing the relevant public interest factors, I have had specific regard to the nature of the Information in Issue. It is information that comprises the shared personal information of the applicant and students, parents and other third parties. This information includes allegations made by students about the applicant.
39. I have identified a number of factors in favour of disclosure of the Information in Issue.⁴⁶ I have afforded low weight to the factors relating to the Department's accountability and transparency⁴⁷ and moderate weight to the factors relating to advancing the fair treatment of individuals and procedural fairness. I have also afforded moderate weight

⁴⁴ Schedule 4, part 3, item 3 and schedule 4, part 4, item 6 of the RTI Act.

⁴⁵ Schedule 4, part 3, item 19 of the RTI Act.

⁴⁶ Noting, for the sake of completeness, that having carefully considered both the list of factors favouring disclosure in schedule 4, part 2 of the RTI Act and the applicant's submissions, I can identify no other public interest factors or considerations that might arise to favour disclosure of the Information in Issue.

⁴⁷ Including the factor relating to whether disclosure could assist or allow enquiry into possible deficiency in the conduct or administration of the department.

to the factor relating to disclosing the applicant's own personal information.⁴⁸ I consider that the weight to be attributed to the factors favouring disclosure of the information in issue is significantly reduced by the volume of information that has been released to the applicant about the relevant allegations and the Department's investigation of these allegations.

40. On the other hand, given the nature of the Information in Issue, I have afforded significant weight to the nondisclosure factors safeguarding personal information and privacy, as well as the flow of information to, and the management function of, the Department. I am satisfied that the factors favouring nondisclosure carry greater weight and accordingly find that disclosure of the Information in Issue would, on balance, be contrary to the public interest.⁴⁹

DECISION

41. I affirm the Department's internal review decision to refuse access to the Information in Issue under section 47(3)(b) of the RTI Act.
42. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Shiv Martin
Assistant Information Commissioner

Date: 9 August 2019

⁴⁸ Additionally, and in any event, even if I were wrong in the findings expressed – and one or more of the factors which I have not attributed any weight to could be said to apply and carry low weight in this case – I am nevertheless of the view the factors favouring nondisclosure are of sufficient gravity to tip the balance of the public interest in favour of nondisclosure.

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

APPENDIX A**Significant procedural steps**

| Date | Event |
|------------------|--|
| 28 December 2018 | OIC received the application for external review of the Department's internal review decision. |
| 4 January 2019 | OIC requested procedural documents from the Department. |
| 8 January 2019 | OIC received the requested procedural documents from the Department. |
| 22 January 2019 | The applicant requested OIC provide an update on the status of his application. |
| 31 January 2019 | OIC notified the applicant and the Department that the external review had been accepted. OIC requested further information from the Department. |
| 8 February 2019 | The Department responded to OIC's request for information. |
| 22 February 2019 | The applicant emailed OIC and requested OIC provide an update about the status of his application. |
| 22 February 2019 | OIC phoned the applicant about the status of the review, however he requested this be provided in writing and that all updates be via email in the first instance. |
| 25 February 2019 | OIC emailed the applicant and confirmed the update on the status of the application. |
| 29 March 2019 | OIC emailed the applicant and provided an update on the progress of the application. |
| 11 April 2019 | OIC conveyed a written preliminary view to the applicant. |
| 2 May 2019 | OIC received the applicant's submission, responding to the preliminary view. |
| 10 May 2019 | Applicant requested acknowledgement of receipt of his submission. |
| 14 May 2019 | OIC confirmed receipt of applicant's submission. |
| 16 May 2019 | OIC requested and received documents from the Department. |
| 17 May 2019 | OIC responded to the applicant's submissions and confirmed OIC's view. |
| 13 June 2019 | OIC received the applicant's further submissions. |
| 14 June 2019 | OIC received the applicant's further submissions. |
| 18 June 2019 | OIC confirmed receipt of the applicant's submissions. |
| 31 July 2019 | OIC provided the applicant with an update on the status of the review. |