



## Decision and Reasons for Decision

---

<b>Citation:</b>	<i>P45 and Department of Child Safety, Seniors and Disability Services [2023] QICmr 46 (5 September 2023)</i>
<b>Application Numbers:</b>	317203, 317315, 317316 and 317317
<b>Applicant:</b>	P45
<b>Respondent:</b>	Department of Child Safety, Seniors and Disability Services
<b>Decision Date:</b>	5 September 2023
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - information concerning a child known to the applicant - whether disclosure is prohibited by sections 186A(1) and/or 187(2) of the <i>Child Protection Act 1999</i> (Qld) - sections 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and 47(3)(a) and 48 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant made four related access applications to the Department of Children, Youth Justice and Multicultural Affairs (**Department**)<sup>1</sup> under the *Information Privacy Act 2009* (Qld) (**IP Act**) seeking access to the following documents containing references to them within certain files:
  - first application – emails between named staff officers in relation to a complaint made by the applicant<sup>2</sup>
  - second application – documents containing references to the applicant in certain files sent to Court<sup>3</sup>
  - third application – documents in relation to a complaint file<sup>4</sup>; and
  - fourth application – documents in relation to certain files and child protection concerns reported since 31 August 2020.<sup>5</sup>

---

<sup>1</sup> Following a machinery of government change on 18 May 2023, the agency currently responsible for these external reviews is the Department of Child Safety, Seniors and Disability Services.

<sup>2</sup> Received on 3 February 2023. The applicant identified file C22-262/M22-2461.

<sup>3</sup> Received on 11 April 2023. The applicant identified a court file number.

<sup>4</sup> Received on 25 March 2023. The applicant identified file C22-2074.

<sup>5</sup> Received on 25 March 2023. The applicant identified files C22-0409; C21-1707; C22-1922; C19-2479; C19-1178 and C22-1922.

2. The Department dealt with the applications as follows:
  - for the first application – the Department located 137 pages and decided<sup>6</sup> to give full access to 47 pages, refuse to deal with 18 pages,<sup>7</sup> and refuse access to 5 pages and parts of 85 pages on the grounds the information comprises exempt information or information the disclosure of which would, on balance, be contrary to the public interest to disclose
  - for the second application – the Department located 303 pages and decided<sup>8</sup> to give full access to 20 pages and refuse access to 239 pages and parts of 44 pages on the ground the information comprises exempt information
  - for the third application – the Department located 29 pages and decided<sup>9</sup> to give full access to 16 pages and refuse parts of 13 pages on the grounds the information comprises exempt information; and
  - for the fourth application – the Department located 166 pages and decided<sup>10</sup> to give full access to 42 pages and refuse 42 pages and parts of 83 pages on the grounds the information comprises exempt information or information the disclosure of which would, on balance, be contrary to the public interest to disclose.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's above four decisions,<sup>11</sup> and OIC commenced **External Reviews No. 317203, 317315, 317316 and 317317**.<sup>12</sup>
4. In External Review No. 317315 (the second application) the Department agreed to release some additional information to the applicant.
5. During the external reviews, the applicant advised that they did not seek access to the personal information of employees of the Department the release of which was refused in the Department's decisions.<sup>13</sup> The applicant maintains that the remaining information identified as exempt information in the Department's four decisions, should be released.
6. Given the information remaining in issue identified in the four external reviews is characterised as exempt information of the same nature – that is, information the disclosure of which is prohibited by sections 186A(1) and/or 187(2) of the *Child Protection Act 1999* (Qld) (**CP Act**) – I will make a decision on the four review applications concurrently.
7. For the reasons set out below, I affirm the Department's decisions and find that access to the information remaining in issue may be refused on the grounds that it comprises exempt information.<sup>14</sup>

---

<sup>6</sup> Decision dated 10 March 2023, Department No. 2023/2502.

<sup>7</sup> This information which was excluded by the Department on the basis it relates to a previous application or that is irrelevant under section 88 of the IP Act is not part of this review.

<sup>8</sup> Decision dated 12 May 2023, Department No. 2023/3395.

<sup>9</sup> Decision dated 28 April 2023, Department No. 2023/3198.

<sup>10</sup> Decision dated 28 April 2023, Department No. 2023/3196.

<sup>11</sup> On 25 March 2023 (regarding the decision about the first application) and 19 May 2023 (regarding the decisions about the second, third and fourth applications).

<sup>12</sup> Regarding the first, second, third and fourth decisions respectively.

<sup>13</sup> Email dated 16 July 2023.

<sup>14</sup> Under section 67(1) of the IP Act and sections 47(3)(a), 48 and schedule 3, section 12(1) of the RTI Act.

## Background

8. Significant procedural steps in the external reviews are set out in the Appendix.
9. The applicant raised a number of concerns about the welfare of the child and Departmental actions which are outside the Information Commissioner's external review jurisdiction.<sup>15</sup> In making my decisions in these external reviews, I have considered the applicant's submissions to the extent they are relevant to the issues for determination in the context of the information in issue.

## Reviewable decision

10. The decisions under review are the Department's decisions dated 10 March 2023, 12 May 2023 and two decisions dated 28 April 2023 refusing access to information on the ground that it comprises exempt information.

## Evidence considered

11. The evidence, submissions, legislation and other material I have considered in reaching this decision are set out in these reasons (including the footnotes and Appendix).
12. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to seek and receive information, and the protection of families and children.<sup>16</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' those rights, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>17</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between similar pieces of Victorian legislation<sup>18</sup> that '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.<sup>19</sup>

## Information in issue

13. In External Review No. 317315, the Department agreed to release some additional information to the applicant.<sup>20</sup> In External Reviews No. 317203 and 317317, the applicant accepted<sup>21</sup> OIC's preliminary view<sup>22</sup> that some information could be refused.<sup>23</sup> Therefore, the information remaining in issue in these four reviews is limited to the information which the Department's four decisions decided comprise exempt information to which access may be refused (**Information in issue**).<sup>24</sup>

<sup>15</sup> Emails dated 16 July 2023 and 1 August 2023.

<sup>16</sup> Sections 21(2) and 26 of the HR Act.

<sup>17</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from this position).

<sup>18</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>19</sup> *XYZ* at [573].

<sup>20</sup> Email dated 31 July 2023.

<sup>21</sup> By email dated 16 July 2023.

<sup>22</sup> Conveyed by letters dated 7 July 2023 and 26 July 2023.

<sup>23</sup> This information comprised personal information such as mobile numbers, email addresses and other non-routine personal work information of departmental staff.

<sup>24</sup> Specifically, for:

- External Review No. 317203 – information contained in pages numbered 1, 3, 6, 10, 11, 13, 15, 18, 20, 21, 26, 28, 29, 32, 36, 37, 39, 40, 43, 44, 45, 48, 49, 58, 59, 61, 62, 63, 66, 67, 68, 69, 71, 72, 74, 77, 78, 83, 84, 85, 89, 90, 92, 93, 94, 122, 123, 128, 131, 133, 135, 139, 140, 141, 142, 143, 146, 148, 153, 154, 159, 160, 162, 163

## Issues for determination

14. In these reviews, the issue for determination is whether access to the Information in Issue may be refused on the ground that its disclosure is prohibited by sections 186A(1) and/or 187(2) of the CP Act, and it is therefore exempt information.<sup>25</sup>

## Relevant law

15. An individual has a right to access documents of an agency to the extent they contain the individual's personal information.<sup>26</sup> However, this right is subject to some limitations under the IP Act and RTI Act.<sup>27</sup>
16. Relevantly, an agency may refuse access to a document to the extent the document comprises exempt information.<sup>28</sup> Exempt information includes information the disclosure of which is prohibited by a number of provisions listed in schedule 3, section 12(1) of the RTI Act, such as sections 186 to 188 of the CP Act.<sup>29</sup>
17. Section 186A(1) of the CP Act prohibits the disclosure of the identity of a notifier, or information from which the identity of the notifier could be deduced, to another person. For section 186A(1) to apply, the following elements must be satisfied:
- a person has notified a specified person<sup>30</sup> of harm or suspected harm to a child or unborn child<sup>31</sup>
  - release of the information could disclose the identity of the notifier, or information from which their identity could be deduced; and
  - none of the exceptions in section 186A(2) apply.
18. Section 187(2) of the CP Act prohibits the disclosure of information about another person's affairs<sup>32</sup> obtained by specified individuals or entities involved in the administration of the CP Act.<sup>33</sup> For section 187(2) to apply, the following elements must be satisfied:
- the information was received by a person listed in section 187(1) performing functions under or in relation to the administration of the CP Act
  - the information is about another person's affairs; and
  - none of the exceptions in section 187(3) or (4) apply.

- 
- External Review No. 317315 information contained in pages numbered 1-13, 15-26, 27-35, 37-45, 47-54, 56-69, 71-86, 88-119, 121-125, 127-132, 134-176, 178-179 – 181-184, 186-195, 197-207, 209-219, 221-231, 233-244, 246-258, 260-270, 272-281, 283-285, 287-303
  - External Review No. 317316, information contained in pages 4, 5, 9, 12, 16, 17, 18, 19, 20, 21, 25, 28 and 29; and
  - External Review No. 317317, information contained in pages 1-4, 6-40, 43-45, 49, 50, 53-65, 66-68, 70, 71, 75, 77, 78, 81-86, 90, 111-120, 123, 125, 126, 129-139, 141, 143, 144, 146-153, 155-164.

<sup>25</sup> Under section 67(1) of the IP Act and sections 47(3)(a), 48 and schedule 3, section 12(1) of the RTI Act.

<sup>26</sup> Section 40(1)(a) of the IP Act. *Personal information* is defined in section 12 of the IP Act 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'.

<sup>27</sup> Section 67(1) of the IP Act sets out that an agency may refuse access to a document in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

<sup>28</sup> Section 47(3)(a) of the RTI Act.

<sup>29</sup> Section 48 of the RTI Act.

<sup>30</sup> That is, the chief executive, an authorised officer, a police officer, a doctor or a nurse – see section 186 of the CP Act.

<sup>31</sup> Sections 186(a) and (b) of the CP Act.

<sup>32</sup> The term 'person's affairs' is not defined in the CP Act or the *Acts Interpretation Act 1954* (Qld). *Macquarie Dictionary* (online at 26 June 2023) 'affair/s' (matters of interest or concern) (a private or personal concern), adopted in *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30].

<sup>33</sup> As listed in section 187(1)(a) of the CP Act.

19. However, information does not qualify as exempt information under schedule 3, section 12(1) of the RTI Act if the exception in schedule 3, section 12(2) of the RTI Act applies: *'if it is only personal information of the applicant'*.

## Findings

### **Section 186A(1) and section 187(2) of the CP Act**

20. Section 186A(1) prohibits the disclosure of a notifier *to another person*. I have carefully considered the Information in Issue and am satisfied that *some* parts of it identify a person/s who made a notification/s under the CP Act. Accordingly, I am satisfied that these parts of the Information in Issue are subject to the prohibition on disclosure in section 186A(1) of the CP Act and qualify as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).
21. Further, I am satisfied that the *entirety* of the Information in Issue comprises information about the 'affairs' of individuals other than the applicant – that is, matters of private or personal interest or concern to them. While these individuals may be known to the applicant, this does not impact on my assessment that this information comprises the personal affairs of these other individuals. I am satisfied also that this information was received or obtained by Departmental officers who were performing functions under or in relation to the administration of the CP Act, and note that public service employees are among the persons to whom section 187 of the CP Act applies.<sup>34</sup> Accordingly, I am satisfied that the Information in Issue is subject to the prohibition on disclosure in section 187(2) of the CP Act and qualifies as exempt information under schedule 3, section 12(1) of the RTI Act – unless any of the exceptions apply (as discussed below).

## Exceptions

22. Sections 186A(2) and 187(3) and (4) of the CP Act contain a number of exceptions to the prohibitions on disclosure of information given or received under the CP Act. Of relevance to these reviews, section 187(4)(a) provides that access may be given to another person to the extent that the information is about the other person. Additionally, schedule 3, section 12(2) of the RTI Act provides that information is not exempt information under schedule 3, section 12(1) if the information is only personal information of the applicant. Where information is not about the applicant, or where the information is about the applicant but is not solely about the applicant,<sup>35</sup> or where an applicant's personal information cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.
23. I have carefully considered the Information in Issue and am satisfied that all of it is about individuals other than the applicant. I note that frequently, this information is also about the applicant, but the information about the applicant is intertwined with the information of the other individuals. I therefore find that the Information in Issue is not solely about the applicant or only the personal information of the applicant. I am therefore satisfied that the exceptions in section 187(4)(a) of the CP Act and schedule

---

<sup>34</sup> Section 187(1)(a)(i) of the CP Act.

<sup>35</sup> In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) of the CP Act applies to shared information about the applicant and other persons. She observed at [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'*. See also the note to section 187(4) of the CP Act, which states *'[f]or the disclosure of information that is about the person and a third party, see section 188C'*. Section 188C of the CP Act provides that the chief executive may disclose information that is about a person and *'also about someone else'* to the person, except in certain specified circumstances.

3, section 12(2) of the RTI Act do not apply to the Information in Issue because it is not only about the applicant.

### **Conclusion**

24. As set out above, I consider the requirements of sections 186A(1) and/or 187(2) of the CP Act are met and no exceptions in the CP Act or schedule 3, section 12(2) of the RTI Act apply.
25. The applicant's submissions detail significant concerns for the welfare of the child and Departmental actions. While I acknowledge these submissions, the Information Commissioner's external review jurisdiction is limited to reviewing the decisions of government agencies regarding access to information under the RTI Act. The types of information set out in schedule 3 of the RTI Act are exempt information – that is, information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.<sup>36</sup> Once I am satisfied that the information qualifies as exempt information, as is the case here, there is no scope for me to take the matters raised by the applicant into account.
26. For the above reasons, I find that the Information in Issue is exempt information under schedule 3, section 12(1) of the RTI Act and access to it may be refused on this ground.

### **DECISION**

27. In External Reviews No. 317203, 317315, 317316 and 317317, relating to the Department's four decisions about the first, second, third and fourth applications respectively, I affirm each of the Department's decisions and find that access to the Information in Issue may be refused on the ground that it comprises exempt information the disclosure of which is prohibited by the CP Act.<sup>37</sup>
28. I have made these decisions under section 123(1) of the IP Act, as a delegate of the Information Commissioner under section 139 of the IP Act.

---

**A Rickard**  
**Assistant Information Commissioner**

**Date: 5 September 2023**

---

<sup>36</sup> Section 48(2) of the RTI Act.

<sup>37</sup> Under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12(1) of the RTI Act.

## APPENDIX

### Significant procedural steps

#### External Review 317203

Date	Event
25 March 2023	OIC received the application for external review.
27 March 2023	OIC requested preliminary documents from the Department.
29 March 2023	OIC received preliminary documents from the Department.
19 May 2023	OIC advised the applicant and the Department that the external review application had been accepted. OIC requested the information in issue from the Department.
13 June 2023	OIC received information in issue from the Department.
7 July 2023	OIC conveyed a preliminary view to the applicant.
16 July 2023	OIC received submissions from the applicant accepting OIC's preliminary view in relation to some of the information in issue.

#### External Review 317315

Date	Event
19 May 2023	OIC received the application for external review.
22 May 2023	OIC requested preliminary documents from the Department.
30 May 2023	OIC received preliminary documents from the Department.
16 June 2023	OIC advised the applicant and the Department that the external review application had been accepted. OIC requested the information in issue from the Department.
21 June 2023	OIC received information in issue from the Department.
26 July 2023	OIC conveyed a preliminary view to the applicant and the Department.
31 July 2023	The Department confirmed it was prepared to release further information to the applicant.
1 August 2023	OIC received submissions from the applicant.
2 August 2023	OIC requested the Department release the further information to the applicant.
7 August 2023	OIC received confirmation from the Department that the further information had been released to the applicant.

#### External Review 317316

Date	Event
19 May 2023	OIC received the application for external review.
22 May 2023	OIC requested preliminary documents from the Department.

Date	Event
30 May 2023	OIC received preliminary documents from the Department.
16 June 2023	OIC advised the applicant and the Department that the external review application had been accepted. OIC requested the information in issue from the Department.
21 June 2023	OIC received information in issue from the Department.
7 July 2023	OIC conveyed a preliminary view to the applicant.
16 July 2023	OIC received submissions from the applicant.

**External Review 317317**

Date	Event
19 May 2023	OIC received the application for external review.
22 May 2023	OIC requested preliminary documents from the Department.
15 June 2023	OIC received preliminary documents from the Department.
16 June 2023	OIC advised the applicant and the Department that the external review application had been accepted. OIC requested the information in issue from the Department.
21 June 2023	OIC received information in issue from the Department.
26 July 2023	OIC conveyed a preliminary view to the applicant.
1 August 2023	OIC received submissions from the applicant. .