



## Decision and Reasons for Decision

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**Citation:** *V23 and Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts [2023] QICmr 60 (13 November 2023)*

**Application Number:** 316931

**Applicant:** V23

**Respondent:** Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts

**Decision Date:** 13 November 2023

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - personal information of others - shared personal information - personal information and privacy - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - IRRELEVANT INFORMATION - information falling outside the scope of the applicant's request - whether deleted information is irrelevant to the terms of the access application - section 88 of the *Information Privacy Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (**Department**)<sup>2</sup> under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to certain documents relating to their employment with the Department.<sup>3</sup>

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<sup>1</sup> Application dated 21 July 2022.

<sup>2</sup> Following a machinery of government change on 18 May 2023, the agency currently a party to this external review is the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts which has delegated decision making functions under the *Information Privacy Act 2009* (Qld) to the Department of Child Safety, Seniors and Disability Services.

<sup>3</sup> Specifically, the applicant sought access to 'internal memos, meeting minutes, emails, file notes of conversations, file notes of meetings with departmental officers and external agencies, and letters or emails to external agencies or persons' relating to their employment with the Department with a timeframe of November 2018 to the date of the access application.

2. The Department decided<sup>4</sup> to give full access to 305 pages, and to refuse access in full to 24 pages, and in part to 99 pages, on the ground that disclosure would, on balance, be contrary to the public interest. The Department also deleted some information on the ground that it was irrelevant to the terms of the access application under section 88 of the IP Act.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.<sup>5</sup>
4. For the reasons set out below, I affirm the Department's decision.

## Background

5. During the review, the Department agreed to release the bulk of the information contained on the 24 pages to which it had initially refused access in full. As such, that information is no longer in issue in this review.<sup>6</sup>

## Reviewable decision

6. The decision under review is the Department's decision dated 7 September 2022.

## Evidence considered

7. Significant procedural steps relating to the external review are set out in the appendix to this decision. The evidence, submissions, legislation, and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the appendix).
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>7</sup> I consider a decision maker will be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act, when applying the law prescribed in the IP Act.<sup>8</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>9</sup>

## Information in issue

9. The information in issue can be categorised as follows:
  - Category A information – third party personal information or shared personal information;<sup>10</sup> and

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<sup>4</sup> Decision dated 7 September 2022.

<sup>5</sup> External review application received 1 October 2022.

<sup>6</sup> The release of this information by the Department occurred on 4 October 2023 and 25 October 2023. In addition, OIC confirmed to the applicant that a file note created on 8 October 2020, to which the Department had refused access at pages 190-192, had been disclosed to the applicant at pages 105-107.

<sup>7</sup> Section 21(2) of the HR Act.

<sup>8</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 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 OIC's position).

<sup>9</sup> I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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>10</sup> Comprising (i) the information remaining in issue on the 24 pages that were partially released to the applicant on 4 October 2023 and 25 October 2023 and (ii) the segments of information to which access was refused in the original bundle of documents released to the applicant in conjunction with the Department's decision and that was marked by the Department as 'mobile phone numbers' or 'third party personal information'.

- Category B information – irrelevant information.<sup>11</sup>

### Issues for determination

10. The issues for determination in this review are:

- whether access to the Category A information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest; and
- whether access to the Category B information may be deleted on the ground that it is not relevant to the access application.

### Category A information - relevant law

11. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>12</sup> However, this access right is also subject to limitations, including grounds for refusal of access.<sup>13</sup>
12. One ground for refusing access is where disclosure of information would, on balance, be contrary to the public interest.<sup>14</sup> 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.<sup>15</sup>
13. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>16</sup>
- identify factors irrelevant to the public interest and disregard them<sup>17</sup>
  - identify factors in favour of disclosure of information
  - identify factors in favour of nondisclosure of information; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.

### Applicant's submissions

14. In an email on 2 January 2023, the applicant's representative stated:

*My client does not wish to know the personal details such as names, addresses and telephone numbers of the individuals mentioned in the documents but their work history and/or leadership positions are surely relevant to a proper understanding of the documents, particularly in relation to the decision-making process followed by management.*

15. In a second email on the same date, the applicant's representative stated:

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<sup>11</sup> Contained on pages 23, 24 and 34 of File 01. The Department also deleted/excluded duplicated information on this basis. OIC confirmed to the applicant on 27 September 2023 that this information had already been disclosed to the applicant and that it would therefore not be dealt with any further in the review.

<sup>12</sup> Section 40 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>13</sup> The grounds on which access can be refused are set out in section 47 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

<sup>14</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>15</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>16</sup> Section 49(3) of the RTI Act.

<sup>17</sup> I have not taken any irrelevant factors into account in making this decision.

*My client has no interest in private information such as address and telephone number unless such information gives an insight into the [management] process vis a vis staff deployment and promotion.*

16. The applicant's representative also argued that:

- opinions expressed by other individuals about the applicant should be disclosed to allow the applicant to assess their right under the IP Act to apply to have this information amended: *'if the opinion is biased and/or slanderous, it could have a significantly deleterious effect on my client's future employment should any prospective employer seek a reference from the Department'*;<sup>18</sup> and
- there is a public interest in affording natural justice to the information seeker by releasing their personal information where there exist effective measures to protect other individuals' privacy.<sup>19</sup>

### **Discussion**

17. In response to the applicant's submission about work history and leadership positions of Departmental officers, I note that the names and job titles of officers have been disclosed by the Department. There is no information in issue that I consider could reasonably be described as concerning the work history of other Departmental officers.

18. In respect of the applicant's submission regarding *'staff deployment and promotion'* processes, I do not accept that disclosure of address and mobile phone number information would give any insight into such processes. I am unable to identify any public interest factors favouring disclosure of this information. The Information Commissioner has held in numerous previous decisions that:

*...a mobile phone number is different to other contact details (such as email addresses or office phone numbers) in that it allows an individual to be contacted directly and potentially outside of working hours...[and] permits potential contact with an employee when off duty and/or engaged in private activity, which gives rise to a reasonable expectation of intrusion into the officer's private life or "personal sphere".*<sup>20</sup>

19. Some of the third party personal information remaining in issue in the 24 pages that were partially disclosed to the applicant during the course of the review is solely the personal information of other individuals, including, for example, information about clients of the Department (including their health information), and brief references to leave or other personal arrangements of other staff. Again, I am unable to identify any public interest factors favouring disclosure of this information to the applicant, and the applicant has identified none. I am not satisfied that its disclosure would provide any meaningful insight into the Department's dealings with the applicant concerning the applicant's employment by the Department. Given that it is the personal information of persons other than the applicant, I afford strong weight to the public interest in protecting the personal information<sup>21</sup> and right to privacy<sup>22</sup> of the individuals concerned.

20. The applicant has expressed particular interest in obtaining access to the personal opinion information that is in issue. This comprises three brief references in the 24

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<sup>18</sup> Email of 3 November 2023.

<sup>19</sup> Letter dated 18 October 2023.

<sup>20</sup> *Smith and Sunshine Coast Regional Council; Diamond Energy Pty Ltd (Third Party)* [2017] QICmr 42 (5 September 2017) at [16]. See also *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [66]-[68].

<sup>21</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>22</sup> Schedule 4, part 3, item 3 of the RTI Act.

pages that were partially released to the applicant during the course of the review.<sup>23</sup> I consider that this information is properly to be categorised as the shared personal information of the opinion-giver and the applicant. I acknowledge that there is a strong public interest in an individual accessing their own personal information under the IP Act.<sup>24</sup> However, where that information is also the personal information of another individual, and where that information is ‘inextricably intertwined’, an automatic public interest harm in disclosure arises,<sup>25</sup> as well as the associated public interest in protecting the privacy interests of the opinion-giver.<sup>26</sup>

21. The applicant has argued that there is a public interest in obtaining access to this opinion information so that the applicant can seek to have it amended under the IP Act in the event that it is inaccurate, incomplete, out of date or misleading.<sup>27</sup> I note that a public interest factor favouring disclosure arises where disclosure of the information could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>28</sup>
22. Firstly, as I have noted, the information is shared personal information. Secondly, given its nature – the expression of a personal opinion by another person based on their interpretation of, or emotional response to, certain interactions or events – I am not satisfied that its disclosure could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. While the applicant may disagree with the opinion, and hold a different opinion, that, of itself, is not sufficient to give rise to a reasonable expectation that the required revelation will occur.
23. I note the applicant’s argument that there is a public interest in affording natural justice to an applicant by releasing their personal information where there exist effective measures to protect other individuals’ privacy. However, in this case, given the information that has already been disclosed to the applicant by the Department, the identity of the opinion-giver is known to the applicant and it is therefore not possible to protect their privacy interests in respect of the information in question.
24. Furthermore, I am unaware of any adverse action that was taken against the applicant in reliance upon the information in question such that the right to natural justice<sup>29</sup> would apply and necessitate its disclosure to the applicant.<sup>30</sup>
25. In summary, while I afford strong weight to the public interest in an applicant accessing their personal information under the IP Act, in the case of opinion information, it is shared personal information that is inextricably intertwined. I also afford strong weight to the public interest in protecting both the personal information and right to privacy of the third parties, particularly in circumstances where their identity is known to the applicant. Lastly, given its nature as personal opinion information, and the context in which it is recorded, I am not satisfied that its disclosure could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Nor am I satisfied that the requirements of natural justice/procedural fairness apply so as to require its disclosure to the applicant.

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<sup>23</sup> Contained on pages 1 and 4.

<sup>24</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>25</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>26</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>27</sup> See section 44 of the IP Act.

<sup>28</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>29</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>30</sup> Adverse information which is not being relied upon does not trigger a natural justice obligation to provide the person with the information in question.

## Findings

26. For the reasons explained above, I am unable to identify public interest factors weighing in favour of disclosure of the Category A information that would be sufficient to outweigh the public interest factors favouring nondisclosure discussed above and to which I afford strong weight. I am therefore satisfied that its disclosure would, on balance, be contrary to the public interest.

## Category B information - relevant law

27. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it reasonably considers is not relevant to an application. This is a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
28. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>31</sup>

## Applicant's submissions

29. The applicant's representative submitted as follows regarding the information that the Department had deleted on the basis of irrelevance:<sup>32</sup>

*...we are not confident that the information is unrelated to the terms of our client's access application because we do not know what the nature of the deleted information is, such as memoranda, incident reports, opinions, performance reviews etc. The Department need not disclose information about other individuals in order to give our client the skeletal information that he is requesting.*<sup>33</sup>

30. In an email to the applicant's representative on 25 October 2023, I disputed that the nature of the Category B information was not clear to the applicant from an examination of the released information that surrounded the deletions. The applicant's representative did not address this point in their final submission of 3 November 2023, except to state that their client 'does not consider OIC's responses to date either reasonable or adequate and does not consider the matter resolved'.

## Discussion

31. The terms of the access application under the IP Act are set out in paragraph 1 above. Information that is reasonably considered to be irrelevant to those terms may be deleted under section 88 of the IP Act.
32. Having reviewed the Category B information, I am satisfied that it does not relate to the applicant's employment with the Department and therefore does not fall within the scope of the application. It relates to the leave arrangements of other staff, and the names of other staff members attending training sessions.

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<sup>31</sup> O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at [52] which was a decision made under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld).

<sup>32</sup> The Department also deleted/excluded duplicated information. OIC confirmed to the applicant on 27 September 2023 that this information had already been disclosed to the applicant and that it would therefore not be dealt with any further in the review.

<sup>33</sup> Letter dated 18 October 2023.

### ***Finding***

33. I am satisfied that the Department was entitled to delete the Category B information under section 88 of the IP Act because it is irrelevant to the terms of the access application.

### **DECISION**

34. I affirm the decision under review by finding that:
- access to the Category A information may be refused under the IP Act on the ground that its disclosure would, on balance, be contrary to the public interest; and
  - the Department is entitled to delete the Category B information under section 88 of the IP Act because it is not relevant to the access application.
35. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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R Moss  
**Principal Review Officer**

**Date: 13 November 2023**

**APPENDIX**

**Significant procedural steps**

<b>Date</b>	<b>Event</b>
1 October 2022	OIC received the external review application.
4 October 2022	OIC confirmed receipt of the external review application. OIC requested preliminary documents from the Department.
7 October 2022	Department provided preliminary documents.
17 October 2022	OIC advised the applicant and the Department that the external review had been accepted and requested a copy of the information in issue from Department.
21 October 2022	Department provided the Information in Issue.
19 December 2022	OIC advised the applicant that, as the application was made under the IP Act, any documents which did not contain the applicant's personal information would not be considered.
2 January 2023	The applicant clarified the scope of the application.
6 February 2023	OIC provided an update to the applicant and Department.
17 March 2023	OIC requested the Department respond to questions about the information in issue.
19 April 2023	Department provided a response and submission to OIC.
6 June 2023	OIC provided an update to the applicant. OIC asked the Department for further information regarding its submission.
14 June 2023	Department provided a response and further submission to OIC.
11 September 2023	OIC provided a preliminary view to the Department. OIC updated the applicant.
21 September 2023	Department agreed to release further information as outlined in preliminary view.
27 September 2023	OIC updated the applicant and gave a preliminary view about the information remaining in issue.
4 October 2023	Department released information to the applicant.
18 October 2023	Applicant provided a submission to OIC.
25 October 2023	Department agreed to release further information to the applicant. OIC expressed a further preliminary view to the applicant.
3 November 2023	Applicant provided a submission.