



## Decision and Reasons for Decision

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**Application Number:** 270019

**Applicant:** SYT

**Respondent:** Department of Health

**Decision Date:** 15 March 2010

**Catchwords:** **INFORMATION PRIVACY ACT 2009** — section 67 of the *Information Privacy Act 2009* – grounds on which access may be refused – whether access to a document could be refused under section 47 of the *Right to Information Act 2009*

**RIGHT TO INFORMATION ACT 2009** – section 47 of the *Right to Information Act 2009* – grounds on which access may be refused – whether the document comprises exempt information under section 48 of the *Right to Information Act 2009*

**RIGHT TO INFORMATION ACT 2009** – section 48 of the *Right to Information Act 2009* – exempt information – whether the information in issue is exempt information under schedule 3 of the *Right to Information Act 2009*

**RIGHT TO INFORMATION ACT 2009** – schedule 3 section 12 of the *Right to Information Act 2009* – information disclosure of which is prohibited by Act – whether information is prohibited by one of the provisions listed in schedule 3 section 12 – whether information in issue is personal information for the applicant

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## REASONS FOR DECISION

### Summary

1. The applicant made an application under the *Information Privacy Act 2009 (IP Act)* for access to information held by the Department of Health (also known as Queensland Health) (**QH**) relating to herself.
2. For the reasons set out below, I find that access to the relevant information may be refused under section 47(3)(a) of the *Right to Information Act 2009 (RTI Act)*<sup>1</sup> on the basis that the documents comprise exempt information under schedule 3, section 12 of the RTI Act.

### Background

3. On 9 July 2009 (**Access Application**), the applicant requested access to all QH information concerning herself.
4. By written notice dated 14 September 2009 (**Considered Decision**), QH advised the applicant it had identified 175 documents responsive to the Access Application and had decided to:
  - partially refuse access to page 133 under section 47(3)(b) of the RTI Act<sup>2</sup>
  - partially refuse access to pages 28, 30, 58, 72, 133 and 161 under section 47(3)(a) of the RTI Act<sup>3</sup>
  - refuse access in full to pages 24, 25, 158, 159, 163, 164, 165, 166 under section 47(3)(a) of the RTI Act.<sup>4</sup>
5. By letter dated 15 September 2009, the applicant requested an internal review of the Considered Decision.
6. By written notice dated 25 September 2009 (**Internal Review Decision**), QH advised the applicant it had decided to uphold the Considered Decision.
7. By letter dated 13 October 2009, the applicant applied to the Office of the Information Commissioner (**OIC**) for an external review of the Internal Review Decision.

### Decision under review

8. The decision under review is QH's Internal Review Decision referred to at paragraph 6 above.

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<sup>1</sup> As applied under section 67 of the IP Act.

<sup>2</sup> As applied under section 67 of the IP Act on the basis that disclosure of that information would, on balance, be contrary to the public interest under schedule 4, part 3, section 16 and schedule 4, part 4, section 8 of the RTI Act.

<sup>3</sup> As applied under section 67 of the IP Act) on the basis that the documents comprise exempt information under schedule 3, section 10(1)(i) of the RTI Act.

<sup>4</sup> As applied under section 67 of the IP Act) on the basis that the documents comprise exempt information under schedule 3, section 10(1)(i) of the RTI Act.

### Steps taken in the external review process

9. By letter dated 15 October 2009, the OIC requested that QH provide various initiating documents relevant to this review.
10. By letter dated 20 October 2009, QH provided the requested documents to the OIC.
11. By letter dated 22 October 2009, the OIC advised the applicant that the Internal Review Decision would be reviewed.
12. By letter dated 22 October 2009, the OIC advised QH that the Internal Review Decision would be reviewed and requested that QH provide a copy of the information in issue.
13. By letter dated 11 November 2009, QH provided the requested documents to the OIC.
14. By letter dated 9 February 2010, the applicant wrote to the OIC and stated:

*I am anxious to get a reply from the Department of Mental Health. Please consider my application. I want to know what legislations [the doctor] have made on those documents, that she has made out in her file.*

15. By letter dated 17 February 2010, the applicant was advised of the preliminary view that access to the information in issue could be refused under section 47(3)(a) of the RTI Act (as applied under section 67 of the IP Act) on the basis that the documents comprise exempt information under schedule 3, section 12(1) of the RTI Act. The applicant was invited to provide submissions in support of her case by 3 March 2010 if she did not accept the preliminary view.
16. By letter dated 18 February 2010, the applicant advised the OIC that she did not accept the preliminary view and provided the following submissions in support of her case:

*I think I should be intotal for the documents from Mental Health. I want to know what allegations has [the doctor] has on these documents about me. Why are you holding these documents from me, why do I have to wait for your decision. I disagree with your external review of decision under the Information Privacy Act 2009. The stress and strain that you have put on me not knowing whats on these documents are making me anxious.*

17. In making this decision, I have taken into account the following:
  - the applicant's Access Application, internal review application and external review application
  - QH's Considered Decision and Internal Review Decision
  - the applicant's submissions dated 9 February 2010 and 18 February 2010
  - the information in issue
  - relevant provisions of the IP Act and RTI Act.

### Information in issue

18. The information in issue in this review (**Information in Issue**) comprises parts of the applicant's medical records, specifically:
  - pages 28, 30, 58, 72, 133 and 161 in part
  - pages 24, 25, 158, 159, 163, 164, 165, 166 in full.

## Relevant law

19. Section 67 of the IP Act provides:

### **67 Grounds on which access may be refused**

- (1) *An agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister in the same way and to the same extent the agency or Minister could refuse access to the document under the Right to Information Act, section 47 were the document to be the subject of an access application under that Act.*

20. Accordingly, it is necessary to consider whether access to the Information in Issue may be refused under section 47 of the RTI Act.

21. Section 47(3)(a) of the RTI Act provides:

### **47 Grounds on which access may be refused**

...

- (3) *On an application, an agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister—*
  - (a) *to the extent the document comprises exempt information under section 48; or*

...

22. Section 48 of the RTI Act provides:

### **48 Exempt information**

- (1) *If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.*
- (2) *Schedule 3 sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.*
- (3) *However, despite an agency or Minister being able, under section 47(3)(a), to refuse access to all or part of a document, the agency or Minister may decide to give access.*
- (4) *In this Act—*  
**exempt information** *means the information that is exempt information under schedule 3.*

23. Schedule 3, section 12 of the RTI Act provides:

### **Schedule 3 Exempt information**

section 48

...

### **12 Information disclosure of which prohibited by Act**

- (1) *Information is exempt information if its disclosure is prohibited by 1 of the following provisions -*
  - *Aboriginal Cultural Heritage Act 2003, section 29(2)*
  - *Adoption Act 2009, section 314*

- *Auditor-General Act 2009*, section 53
  - *Australian Crime Commission (Queensland) Act 2003*, sections 19 and 20, to the extent they apply to a summons or notice that includes a notation under section 21 of that Act
  - *Child Protection Act 1999*, sections 186 to 188
  - *Child Protection (Offender Prohibition Order) Act 2008*, section 41
  - *Child Protection (Offender Reporting) Act 2004*, section 70
  - repealed *Debits Tax Act 1990*, section 8, to the extent it applies section 7(2) of the repealed *Debits Tax Administration Act 1982* (Cwlth) because of the *Debits Tax Repeal Act 2005*, section 5
  - *Financial Intermediaries Act 1996*, section 239
  - *Juvenile Justice Act 1992*, section 288
  - *Maintenance Act 1965*, section 129
  - *Taxation Administration Act 2001*, part 8, so far as it applies to personal confidential information under that Act
  - *Torres Strait Islander Cultural Heritage Act 2003*, section 29(2)
  - *Transport Infrastructure Act 1994*, chapter 7, part 6, division 4
  - *Whistleblowers Protection Act 1994*, section 55(1)
  - *Witness Protection Act 2000*, sections 36 and 38.
- (2) *Information is not exempt information under subsection (1) in relation to an access application if it is personal information for the applicant.*

...

## Findings

24. In a decision on external review or in reasons for a decision on external review, I must not include information that is claimed to be exempt information or contrary to public interest.<sup>5</sup> Accordingly, I am restricted in the level of detail that I can provide in these reasons for decision.
25. If the disclosure of information is prohibited by an Act listed in schedule 3, section 12(1) of the RTI Act, then the information will be exempt from disclosure under section 48 of the RTI Act and access may be refused under section 47(3)(a) of the RTI Act.
26. However, information cannot be exempt information under schedule 3, section 12(1) of the RTI Act if it contains only the applicant's personal information.
27. I will consider each of these issues below.
- 1. *Is disclosure prohibited by an Act listed in schedule 3, section 12(1)?***
28. I have carefully considered the Information in Issue and find that:
- disclosure of the Information in Issue is prohibited by an Act listed in schedule 3, section 12(1) of the RTI Act
  - the Information in Issue is exempt information.

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<sup>5</sup> Section 108(3) of the RTI Act and section 121(3) of the IP Act

29. I will now consider whether this exempt information contains only the applicant's personal information and can be released.

**2. Does the personal information only concern the applicant?**

30. Section 12 of the IP Act provides the following definition of 'personal information':

**Personal information** is 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.

31. Personal information can be any information that is associated with an identifiable living individual, including a person's name.

32. I have carefully read and considered the Information in Issue and I am satisfied that:

- the Information in Issue concerns the shared personal information of the applicant and other persons (whose identity I cannot reveal, as this would reveal information claimed to be exempt)
- the applicant's personal information is interwoven with the personal information of other persons to the extent that it cannot be separated.

33. Where one individual's personal information cannot be separated from the personal information of other persons, then:

- severance or deletion of the information from the document under section 89 of the IP Act is not possible
- the schedule 3, section 12(2) exception does not apply
- the information is exempt information.

34. In this case, as the applicant's personal information cannot be separated from the personal information of other persons, I find that the application of schedule 3, section 12(1) of the RTI Act is not excluded by schedule 3, section 12(2) of the RTI Act and the Information in Issue is exempt from disclosure.

**DECISION**

35. For the reasons set out above, I vary the decision under review and find that: access to the relevant information may be refused under section 47(3)(a) of the RTI Act<sup>6</sup> on the basis that the documents comprise exempt information under schedule 3, section 12 of the RTI Act.

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**Julie Kinross**  
**Information Commissioner**

**Date: 15 March 2010**

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<sup>6</sup> As applied under section 67 of the IP Act.