



## Decision and Reasons for Decision

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**Application Number:** 210221

**Applicant:** FGP

**Respondent:** Department of Education, Training and the Arts

**Third Party:** LYU

**Decision Date:** 24 December 2007

**Catchwords:** **FREEDOM OF INFORMATION – section 11(1)(y) of the *Freedom of Information Act 1992 (Qld)* - matter in issue excluded from operation of the Act – Queensland Studies Authority Revised Student Report**

**FREEDOM OF INFORMATION – section 50A of the *Freedom of Information Act 1992 (Qld)* – applications on behalf of children and matters affecting personal affairs of children – whether a genuine application has been made under section 50A**

**FREEDOM OF INFORMATION - section 44(1) of the *Freedom of Information Act 1992 (Qld)* – matter affecting personal affairs – school report cards and photos – whether release of information is in the public interest**

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## REASONS FOR DECISION

### Summary

1. The 2 folios which comprise the Queensland Studies Authority Revised Student Report (QSARSR) are excluded from the application of the *Freedom of Information Act 1992* (Qld) (FOI Act) by section 11(1)(y)(ii) of the FOI Act and consequently, this Office has no jurisdiction to conduct an external review in relation to those folios.
2. LYU's (Original Applicant's) freedom of information application (FOI Application) is not an application made on behalf of a child (that is, under section 50A of the FOI Act).
3. The only matter which remains in issue in this review (that is, photos of the relevant child and other students, the child's last name, names of relevant schools and school emblems and names and signatures of relevant teachers and principals as they appear in the various school report cards) is exempt from disclosure in its entirety under section 44(1) of the FOI Act.

### Background

4. By letter dated 9 October 2005, the Original Applicant applied to the Department of Education, Training and the Arts (Department) for copies of all school reports, sporting awards or cultural award certificates, school photographs and any other extracurricular achievement awards in relation to his son backdated to the year he commenced schooling.
5. The Department located responsive material and consulted FGP (External Review Applicant) under section 51 of the FOI Act in relation to the release of relevant documents.
6. By letter dated 13 December 2005, the External Review Applicant provided the Department with objections to the release of the documents.
7. By facsimile dated 14 December 2005, the Original Applicant wrote to the Department stating that he wished to make application on behalf of his son for the relevant school reports and other materials in relation to his son's ongoing achievements.
8. On 19 January 2006, Mr M Woodforth of the Department advised the Original Applicant of his view that the Original Applicant was entitled to:
  - full access to 28 documents
  - partial access to 3 documents as certain matter in these documents concerned the personal affairs of third parties and was exempt from disclosure under section 44(1) of the FOI Act.
9. Also on 19 January 2006, Mr Woodforth advised the External Review Applicant of his view that none of the matter in issue was exempt from disclosure under the FOI Act.
10. By letter dated 13 February 2006, the External Review Applicant applied for internal review of Mr Woodforth's decision and reiterated the objection to the release of any information.
11. On 27 April 2007, Ms S Kalas of the Department made an internal review decision affirming the initial decision of Mr Woodforth which was issued to the External Review Applicant.

12. By letter dated 11 May 2007, the External Review Applicant sought external review of Ms Kalas' internal review decision.

#### **Decision under review**

13. The decision under review is the internal review decision of Ms Kalas dated 27 April 2007.

#### **Steps taken in the external review process**

14. By letter dated 8 June 2007, this Office sought copies of the documents responsive to the Original Applicant's FOI Application and other relevant documentation from the Department.
15. On 21 June 2007, the Department provided copies of the requested documents.
16. The Original Applicant informed this Office on 27 June 2007 that the Original Applicant wished to be a party to the external review.
17. By letter dated 14 November 2007, I advised the parties of the preliminary view that:
  - the two folios comprising the QSARSR were excluded from the application of the FOI Act by section 11(1)(y)(ii) of the FOI Act and consequently, this Office has no jurisdiction to conduct an external review in relation to those folios
  - the 29 folios which comprise various school report cards and photos were exempt from disclosure in their entirety under section 44(1) of the FOI Act.
18. By email dated 21 November 2007, the Original Applicant advised that the preliminary view was not accepted and provided submissions in support of that case.
19. By letter dated 7 December 2007, the Department advised that it contested the preliminary view and provided submissions and supporting documentation in support of that case.
20. I am aware that outside of this formal external review process, the External Review Applicant has provided the Original Applicant with copies of the substance of relevant school reports which set out the child's educational progress. This information is no longer in issue in this external review.
21. In making my decision in this matter, I have taken the following into account:
  - the Original Applicant's FOI Application dated 9 October 2005 and supporting documentation
  - the External Review Applicant's submissions to the Department dated 13 December 2005 and supporting documentation
  - the decision of Mr Woodforth dated 19 January 2006 addressed to the Original Applicant
  - the decision of Mr Woodforth dated 19 January 2006 addressed to the External Review Applicant
  - the External Review Applicant's application for internal review dated 13 February 2006
  - the internal review decision of Ms Kalas dated 27 April 2007 addressed to the External Review Applicant

- the internal review decision of Ms Kalas dated 27 April 2007 addressed to the Original Applicant
- the External Review Applicant's application for external review dated 11 May 2007
- the Original Applicant's submissions dated 21 November 2007
- the Department's submissions dated 7 December 2007 and supporting documentation
- a file note of a conversation between a staff member of this Office and the Original Applicant dated 17 December 2007
- the matter in issue
- relevant legislation and case law.

### **Matter in issue**

22. The Department identified 31 documents which were responsive to the Original Applicant's FOI Application, described by the Department as:
  - File A – 4 documents
  - File B – 27 documents.
23. Those folios can be further categorised in the following manner:
  - a QSARSR (2 folios)
  - various school report cards (26 folios)
  - class photos and photo of the child and other students (3 folios).
24. I am satisfied that the External Review Applicant has provided the Original Applicant with a copy of the 26 folios responsive to the Original Applicant's FOI Application that constitute the various school report cards (being the substance of those school report cards) with the following information deleted:
  - the child's last name
  - the names of relevant schools and school emblems
  - the names and signatures of relevant teachers and principals.
25. Accordingly, it is only the matter in the school report cards which the External Review Applicant has not provided to the Original Applicant which remains in issue, along with the photographs.
26. As set out below, this Office has no jurisdiction to conduct an external review in relation to the two folios which comprise the QSARSR.
27. Therefore, in summary, the matter in issue in this review comprises:
  - the child's last name, the names of relevant schools and school emblems, the names and signatures of relevant teachers and principals as they appear in the various school report cards (26 folios)
  - class photos and photo of the child and other students (3 folios) (Matter in Issue).

## Findings

### **Section 11(1)(y)(ii) of the FOI Act**

28. The nature and extent of the powers and functions of the Information Commissioner in relation to jurisdictional issues of this kind are well established.<sup>1</sup>
29. On this basis, the Information Commissioner (or her delegate) has both the power, and a duty, to consider and determine issues relating to the limits of the Information Commissioner's jurisdiction where they arise in an application for external review made under Part 5 of the FOI Act.
30. In this case, that power extends to deciding whether or not the Department is entitled to refuse access to the QSARSR on the ground that these folios are excluded from the application of the FOI Act by section 11(1)(y)(ii) of the FOI Act.
31. Section 11(1)(y)(ii) of the FOI Act provides:

#### **11 Act not to apply to certain bodies etc.**

(1) *This Act does not apply to—*

...

(y) *education agencies in relation to the following information—*

...

(ii) *individual or systemic information about the performance of students in a test developed or revised under the repealed Education (School Curriculum P-10) Act 1996, section 13 or the Education (Queensland Studies Authority) Act 2002, section 19;*

...

32. Section 11(4) of the FOI Act provides the following definition:

**education agencies means—**

(a) *the Queensland Studies Authority; and*

(b) *the department in which the Education (Queensland Studies Authority) Act 2002 is administered; and*

(c) *the department in which the Education (General Provisions) Act 2006 is administered.*

33. I am satisfied that the Department falls within this definition of an 'education agency'.

34. Section 19(1) of the *Education (Queensland Studies Authority) Act 2002* provides:

#### **19 Tests**

(1) *A regulation may require the authority to develop tests for the assessment of particular skills or knowledge of persons.*

Examples of a test—

1 A test to assess the literacy skills of students in the year 5 year of schooling.

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<sup>1</sup> See *Christie and Queensland Industry Development Corporation* (1993) 1 QAR 1 at paragraphs 5-13, *English and Queensland Law Society Inc* (1995) 2 QAR 714 at paragraphs 9-11 and *Hansen and Queensland Industry Development Corporation* (1996) 3 QAR 265 at paragraphs 12-13.

2 A core skills test.

35. Further, regulation 23(a) of the *Education (Queensland Studies Authority) Regulation 2002* provides:

**23 Development of literacy and numeracy tests—Act, s 19(1)**

*For section 19(1) of the Act, the authority must develop the following tests—*

(a) *a test, for administering in 2002 and each subsequent year, to assess the literacy or numeracy skills of students in the year 3 year of schooling;*

36. The relevant folios comprise a document titled 'Queensland Studies Authority 2003 Queensland Year 3 Tests in Aspects of Literacy and Numeracy Revised Student Report' and relates to a test administered to assess the literacy and numeracy skills of students in year 3.

37. I am satisfied that:

- a) The QSARSR records individual information about the performance of the Child in a test developed under section 19(1) of the *Education (Queensland Studies Authority) Act 2002*.
- b) The QSARSR is excluded from the application of the FOI Act under section 11(1)(y)(ii) of the FOI Act.
- c) The Department is entitled to refuse access to the QSARSR on the ground that it is excluded from the application of the FOI Act by section 11(1)(y)(ii) of the FOI Act.
- d) This Office has no jurisdiction to conduct an external review in relation to the QSARSR as it is excluded from the application of the FOI Act by section 11(1)(y)(ii) of the FOI Act.

38. In its submissions dated 7 December 2007, the Department indicated that it accepted my preliminary view that the two folios comprising the QSARSR were excluded from the application of the FOI Act by section 11(1)(y)(ii) of the FOI Act.

39. The Original Applicant did not make any specific submissions on this point.

**Section 50A of the FOI Act**

40. The Department submits that the Original Applicant made his FOI Application on behalf of a child under section 50A of the FOI Act.

41. Section 50A of the FOI Act provides:

**50A Applications on behalf of children and matters affecting personal affairs of children**

- (1) *Without limiting the ability of persons to make applications on behalf of children, an application may be made under section 25 on behalf of a child by a parent or a person having guardianship of the child.*
- (2) *If an application made under section 25 states that it is made on behalf of a child by a parent or another person having guardianship of the child—*
  - (a) *the application must state the name of the child and the name of the parent or other person; and*

- (b) *the child is the applicant for the purposes of division 1A; and*
- (c) *section 105 does not apply in relation to the application but, if the application is for documents that relate to the personal affairs of the child and that contain matter that would be exempt matter if the application were made by a person (other than the child or the child's agent), an agency or Minister—*
  - (i) *must not give access to the information unless the agency or the Minister is satisfied of the identity of the child and the parent or other person; and*
  - (ii) *must ensure, by the adoption of appropriate procedures, that any information intended for the child is received only by the parent or other person.*
- (3) *If an application is made under section 25 by, or on behalf of a child, then, despite section 44(2), if a document contains information concerning the personal affairs of the child, the agency or Minister may refuse access to all or part of the information if the agency or Minister considers access would not be in the best interests of the child.*
- (4) *If an application is made under section 25 by a child, the agency or Minister, in deciding whether to give the child access to all or part of the information, must consider whether the child has the capacity to—*
  - (a) *understand the information and the context in which it was recorded; and*
  - (b) *make a mature judgment as to what might be in his or her best interests.*
- (5) *In this section—*

**child** *means an individual who is under 18.*

**guardianship** *includes guardianship, whether sole guardianship or otherwise and whether for a particular purpose or otherwise, under a law of the Commonwealth or of a State or Territory.*

**parent** *see the Child Protection Act 1999, section 11(1) to (4).*

Note—

Child Protection Act 1999, section 11(1) to (4)—

#### **11 Who is a parent**

- (1) *A parent of a child is the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child.*
- (2) *However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.*
- (3) *A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.*
- (4) *A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.*

42. In the initial decision by Mr Woodforth dated 19 January 2006 which was sent to the External Review Applicant, Mr Woodforth advised that the Original Applicant's FOI Application had been made pursuant to section 50A of the FOI Act. Mr Woodforth said in relation to section 50A(3) that:

*The Information Commissioner's decision in KNWY and Department of Education exemplifies that an FOI decision-maker should give effect, where appropriate, to a strong public interest in the disclosure to applicant parents of information concerning their children so as to support them in their roles and responsibilities as parents. In my view, the recent addition of s.50A to the FOI Act codifies this public interest. In addition s.50A codifies a similarly strong public interest in ensuring that the best interests of the child are served.*

*In the absence of any binding authority on the interpretation and application of s.50A of the FOI Act, it is my view that the terms of s.50A of the FOI Act prima facie requires that access to documents relating to a child be given where the applicant is a parent or guardian. The only relevant qualification upon the requirement to grant access is provided by the relevant part of s.50A(3) which states that "... the agency or Minister may refuse access to all or part of the information if the agency or Minister considers access would not be in the best interests of the child".*

43. Mr Woodforth then goes on to consider whether release of the documents responsive to the FOI Application were in the best interests of the child.
44. In its further submissions to this Office dated 7 December 2007, the Department submits:

*... the applicant father is a parent for the purposes of s.50A(5) of the FOI Act who has made an application on behalf of his child, [...]. In this regard the Department refers to the following material :-*

- *Initial application from [LYU] dated 9 October 2005 and accompanying documents in relation to [LYU]'s identity and relationship to the child, forwarded to your office on 31 May 2007; and*
- *A facsimile from [LYU] to Mr Matt Woodforth dated 14 December 2007 (copy enclosed)*

*I note that a complete copy of the terms of settlement under the Family Law Act 1975 ("the FLA"), which was attached to the original application has been forwarded to your office ....*

*Further, the Department submits that the applicant father retains parental responsibility for the child. In Re KNWY and the Department of Education (S139/97; 6 January 1998), the Information Commissioner referred to the FLA to determine whether or not the applicant in that case had parental responsibility for the children in question.*

*Section 61B of the FLA provides:-*

**"61B** In this Part, **parental responsibility**, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children."

*The following provisions of the FLA are also relevant:-*

**"61C(1)** Each of the parents of a child who has not turned 18 has parental responsibility for the child.

**61C(2)** Subsection 1 has effect despite any changes in the nature of the relationships of the child's parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or remarrying.

**61C(3)** Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

**61D(2)** A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any):

- (a) expressly provided for in the order; or
- (b) necessary to give effect to the order."

*The Department submits that the terms of settlement that exist in relation to the child do not take away or diminish the parental responsibility of the applicant father's parental responsibility for the child.*



*In Re KNWY, the Information Commissioner expressly referred to **matters concerning the education of the child as matters concerning the long term care, welfare and development of the child.** Further, the Information Commissioner referred to the decision of Justice Nygh of the Family Court in *McEneaney and McEneaney (1980) FLC 90-866 at 75,501* which considered what was comprehended by the concept of guardianship. Justice Nygh considered that this **would include the supply of copies of school reports.** Indeed, it appears on the face of the terms of settlement previously referred to that [the External Review Applicant] has consented to the supply of such reports to the applicant.*

*The Department therefore submits that by operation of ss. 50A(3) and s. 44(2) of the FOI Act, the matter in issue is not exempt under s. 44(1) of the FOI Act. [my emphasis]*

45. By letter dated 7 December 2007, the Department provided me with a copy of the facsimile the Original Applicant sent to the Department dated 14 December 2005. I note this Office had not been provided with a copy of that facsimile prior to 7 December 2007. The facsimile relevantly states:

*Further to the documentation requested I wish to make application on behalf of my son for the relevant school reports and other materials in relation to my son's ongoing achievements in his education. You already have the court orders and my identification on file.*

...

*Further to our telephone conversation I hope the above request is worded correctly.*

46. A staff member of this Office spoke to the Original Applicant by telephone on 17 December 2007 in relation to the statement that the FOI Application was made on behalf of the Child. The Original Applicant advised that:

- he had not applied for the information on behalf of the Child as in his view the Child could access that information independently
- he was applying for the information because it was his right as a father.

47. I have carefully considered the Department's submissions that the Original Applicant's FOI Application was made under section 50A of the FOI Act. On the basis of the matters set out above, I am not satisfied that the Original Applicant's FOI Application is genuinely made under section 50A of the FOI Act. In my view, the Original Applicant was applying for information *about* the child *for his own* information.

48. In any event, given that the External Review Applicant has provided the Original Applicant with a copy of the substance of the relevant school reports, I consider that the Original Applicant has been provided with responsive information concerning the child's educational progress.

### **Section 44(1) of the FOI Act**

#### **Personal affairs**

49. Section 44(1) of the FOI Act provides that:

#### **44 Matter affecting personal affairs**

- (1) *Matter is exempt matter if its disclosure would disclose information concerning the personal affairs of a person, whether living or dead, unless its disclosure would, on balance, be in the public interest.*

Note-

See also section 50A (Applications on behalf of children and matters affecting personal affairs of children).

50. In applying section 44(1) of the FOI Act, one must first consider whether disclosure of the Matter in Issue would disclose information that is properly characterised as information concerning the personal affairs of an identifiable individual, other than the applicant. If that requirement is satisfied, a *prima facie* public interest favouring non-disclosure is established, and the Matter in Issue will be exempt unless public interest considerations favouring disclosure outweigh all identifiable public interest considerations favouring non-disclosure, warranting a finding that disclosure of the Matter in Issue would, on balance, be in the public interest.
51. In *Stewart and Department of Transport*<sup>2</sup>, the Information Commissioner found that information concerns the 'personal affairs of a person' if it concerns the private aspects of a person's life and that, while there may be a substantial grey area within the ambit of the phrase 'personal affairs', that phrase has a well accepted core meaning which includes:
- family and marital relationships
  - health or ill health
  - relationships and emotional ties with other people
  - domestic responsibilities or financial obligations.
52. Whether or not matter contained in a document comprises information concerning an individual's personal affairs is a question of fact, to be determined according to the proper characterisation of the information in question.
53. The Information Commissioner has previously decided that the personal affairs of a child are separate from the personal affairs of their parent or guardian.<sup>3</sup>
54. I also note the Information Commissioner's comment in *FMG and Queensland Police Service*<sup>4</sup> that an applicant's familial relationship to another person does not confer any entitlement to be given access to information concerning the personal affairs of that other person under the FOI Act.
55. With respect to photographs of students, I note the Information Commissioner's comments in *Ferguson and Director of Public Prosecutions*<sup>5</sup> that:
- ... disclosure of the photographs would disclose information concerning the personal affairs of the persons depicted in them, and hence the test for prima facie exemption under s.44(1) of the FOI Act is satisfied.*
56. I am of the view that photos of the child and other students are properly characterised as information concerning the personal affairs of the child and the other students and are *prima facie* exempt from disclosure under section 44(1) of the FOI Act.
57. With respect to matter remaining in issue in relevant school report cards, I note generally the Information Commissioner's comments in *Director-General, Department of Families, Youth & Community Care and Department of Education; Perriman (Third*

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<sup>2</sup> (1993) 1 QAR 227.

<sup>3</sup> *KT and Brisbane North Regional Health Authority* (1998) 4 QAR 287 at paragraph 31 referring with approval to *Haines v Neves and Another* (1987) 8 NSWLR 442 and *Gillick and West Norfolk and Wisebeck Area Health Authority* [1986] 1 AC 112.

<sup>4</sup> (S69/97; 24 April 1998) at paragraph 22.

<sup>5</sup> (1996) 3 QAR 324 at paragraph 47.

Party)<sup>6</sup> that information relating to a student's performance or behaviour at school is information which concerns the student's personal affairs, and is *prima facie* exempt from disclosure under section 44(1) of the FOI Act.

58. I note that the Original Applicant has been provided with the substance of the relevant school report cards responsive to the FOI Application with the child's last name, the names of relevant schools and school emblems and the names and signatures of relevant teachers and principals deleted.
59. Therefore I must consider whether the child's last name, the names of relevant schools and school emblems and the names and signatures of relevant teachers and principals are properly characterised as personal affairs information.
60. I acknowledge that ordinarily, the names and signatures of teachers and principals in the context of school report cards would be characterised as information relating to employment rather than personal affairs.<sup>7</sup> Similarly, the name of a school and school emblem would not ordinarily be considered to comprise a person's personal affairs under the FOI Act.
61. However, I note that the Information Commissioner, in *Pearce and Queensland Rural Adjustment Authority*<sup>8</sup>, commented, in relation to a name, that:

*... while disclosure of a person's name, in the abstract, would not ordinarily be a disclosure of information concerning that person's personal affairs, disclosure of that name in the context in which it appears may disclose information concerning the person's personal affairs (or it may not - there is always a question of the proper characterisation of the matter in issue, in its context, which must be addressed in each particular case).*

62. On this basis, it is appropriate to consider whether disclosure of the child's last name, the names of relevant schools and school emblems and the names and signatures of relevant teachers and principals in the context in which they appear, may disclose information concerning the child's personal affairs.
63. After careful consideration of this issue, I am satisfied that disclosure of this information in the context of the school report cards, which combined with the substance of the report cards that has been provided to the Original Applicant, is properly characterised as the child's personal affairs as it would identify the child and the location of the child's schools.<sup>9</sup>
64. I note the Department's submission dated 7 December 2007 that:

*The Department accepts [my] preliminary view that the matter in issue concerns the personal affairs of the child rather than the applicant.*

65. On the basis of the matters set out above, I am satisfied that:
- a) The personal affairs of the child are separate to the personal affairs of the Original Applicant.

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<sup>6</sup> (1997) 3 QAR 459 at paragraph 17.

<sup>7</sup> *Stewart* at paragraphs 91 – 102.

<sup>8</sup> (1999) 5 QAR 242 at paragraph 23.

<sup>9</sup> The Original Applicant confirmed, in a conversation with a staff member of this Office on 17 December 2007, that he does not know the location of the child's school.

- b) Photographs of the child and other students are properly characterised as information concerning the personal affairs of the child and the other students and are *prima facie* exempt from disclosure under section 44(1) of the FOI Act.
- c) The child's last name, the names of relevant schools and school emblems, the names and signatures of relevant teachers and principals as they appear in the various school report cards are properly characterised as information concerning the personal affairs of the child and are *prima facie* exempt from disclosure under section 44(1) of the FOI Act.

### **Public interest balancing test**

66. When matter is *prima facie* exempt from disclosure under section 44(1) of the FOI Act, it is exempt *'unless its disclosure would, on balance, be in the public interest'*. Accordingly, I must:
- consider any public interest considerations favouring disclosure of the Matter in Issue
  - determine whether these public interest considerations outweigh the public interest in the protection of personal privacy and any other public interest considerations favouring non-disclosure of the Matter in Issue.
67. On the information available to me, it is appropriate to consider the following public interest considerations in favour of disclosure:
- the public interest in persons having access to information held by government
  - the public interest in a particular applicant having access to particular matter.
68. I will examine each of these considerations in turn.

### ***The public interest in persons having access to information held by government***

69. I am of the view that there is a general public interest in persons having access to information held by government. However, this public interest carries less weight when the matter in issue constitutes personal information concerning private individuals (as is the case in this review), rather than information held by the government about the government.
70. Accordingly, in my view, this public interest consideration carries less weight than it might in other circumstances.

### ***The public interest in a particular applicant having access to particular matter***

71. I acknowledge the specific public interest recognised at section 4(2)(c) of the FOI Act, that is, the public interest *'that, in a free and democratic society ... members of the community should have access to information held by government in relation to their personal affairs...'*, is, in some circumstances, a public interest consideration favouring disclosure.
72. This public interest consideration only applies, however, where the matter in issue relates to the personal affairs of the applicant. As I have indicated above, the Matter in Issue in this review does not concern the personal affairs of the Original Applicant. I note that the Department agrees that the Matter in Issue concerns the personal affairs of the child rather than the Original Applicant.

73. Therefore, the public interest in an applicant having access to information about their personal affairs, is not relevant in this instance.
74. In *Pemberton and The University of Queensland*,<sup>10</sup> the Information Commissioner concluded that there may be appropriate cases for the application of a principle that the nature of a particular applicant's involvement in, and concern with, particular information, can be such as to give the applicant a justifiable need to know that is more compelling than for other members of the public, and which can be taken into account in the application of a public interest balancing test.
75. I note that the Original Applicant refers to a Consent Order of the Family Court of Australia in the FOI Application which deals with matters including the provision of certain material to him.
76. Specifically, the Consent Order provides:  
...  
3. *That the Mother provide to the Father as and when the originals become available, copies of all school reports, sporting awards or cultural award certificates, school photographs and any other extracurricular achievement awards in relation to the child.*  
...  
77. The Original Applicant, in his email to this Office dated 21 November 2007, submits:  
*I must appeal your decision in regards to releasing my son's school reports. My one and only reason that I have for this is the fact that [the child] is my son and the final orders that both myself and my former wife agreed to, stated that she would send me copies of all [the Child]'s school reports etc ...*
78. In its submissions dated 7 December 2007, the Department submits that:  
... *disclosure would, on balance, be in the public interest.*  
*Section 21 of the FOI Act creates a legally enforceable right, subject to the deletion of exempt matter, to documents of an agency. The orthodox approach to the application of exemption provisions is set out in Pemberton and the University of Queensland (1994) 2 QAR 293 at paragraph 165 as follows:-*  
*"That orthodox approach ordinarily requires that the motives of a particular applicant for seeking the documents in issue are to be disregarded, and the effects of disclosure were to be evaluated as if disclosure was to any person entitled to apply for the documents."*  
*The Information Commissioner found, in that decision, that it is possible in appropriate cases to find that a legitimate public interest in disclosure of the matter in issue to a particular applicant as opposed to disclosure to the world at large (see paragraphs 164-204).*  
*The Department submits that disclosure to the father of a child with parental responsibility for the child, matter comprising school reports and class photographs about the educational progress of the child, is such a case. Such an approach would be consistent with the reasoning of the Information Commissioner in Re KNWY.*  
...  
*... the Department submits there is an overriding public interest consideration favouring disclosure set out in Re KNWY at paragraph 18 as follows:-*

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<sup>10</sup> (1994) 2 QAR 293 at paragraph 193.

“So long as he [the father] has not had his responsibilities removed from him by the Family Court, I consider that there is a public interest in [the access applicant] having access to sufficient information to be properly informed of [KNWY’s] educational progress. I consider that the public interest in the [access applicant] having access to the matter in issue ... is sufficiently strong to outweigh the public interest in protecting the privacy of that information, and warrants a finding that disclosure to [the access applicant] of the matter remaining in issue, would, on balance, be in the public interest. I therefore find that the matter remaining in issue is not exempt from disclosure to [the access applicant] under s. 44(1) of the FOI Act.”

*Accordingly the Department submits that the public interest in disclosure to the applicant of the matter in issue outweighs the public interest in non-disclosure of the matter in issue.*

79. The Department has referred me to the decision of the Information Commissioner in *‘KNWY’ and the Department of Education*.<sup>11</sup> In that external review, the applicant father sought access to certain information about the education of his children. The Information Commissioner found that the matter in issue consisted of information concerning the personal affairs of those children and went on to consider the public interest considerations favouring disclosure of the matter in issue. The Information Commissioner decided that, as long as the applicant had not had his responsibilities removed from him by the Family Court, there was a public interest in him having access to sufficient information to be properly informed of the educational progress of the children.
80. I acknowledge that a similar public interest to that identified in *KNWY* may be relevant in this case. However, as the Original Applicant has been provided with a copy of the substance of the child’s school report cards, I am satisfied that the Original Applicant has been provided with information relevant to the educational progress of the child (which is responsive to the FOI Application).
81. After careful consideration of this issue, it is my view that disclosure of the Matter in Issue (that is, class photos, photos of the child and other students, the child’s last name, the names of relevant schools and school emblems, the names and signatures of relevant teachers and principals as they appear in the various school report cards) to the Original Applicant would not further any public interest in the Original Applicant having access to sufficient information to be properly informed of the child’s educational progress.
82. I also note that disclosure of matter under the FOI Act is considered to be disclosure to the world at large rather than disclosure to a particular applicant, there being no restriction on the use or further dissemination of the information. In this respect I also note the strong public interest in protecting third parties’ personal affairs from disclosure to another person and potentially to the world at large.<sup>12</sup>

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<sup>11</sup> (S139/97, 6 January 1998) (*KNWY*).

<sup>12</sup> *Dwyer and Department Of Finance* (1985) 8 ALD 474 (*Dwyer*) at page 482. The object of the Queensland FOI Act is similar to that of the Commonwealth FOI Act in that it creates a right of the community to have access to information. The proposition in *Dwyer* that disclosure under the FOI Act is disclosure to the world at large has long been accepted in Queensland by the Information Commissioner. Further, in the decisions of *Campillo and Australian Customs Service* [2005] AATA 1196 (2 December 2005) and *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142, it was also considered that the release of a document under the FOI Act amounts to a release to the world at large, not just the applicant and that a request for information does not depend upon the particular nature or motivation of the applicant for disclosure.

83. I note also the *Dwyer*<sup>13</sup> decision in which the Administrative Appeals Tribunal (AAT) relevantly held that:

*If Dr Dwyer is correct in his submission that he has an equitable right of access to the documents in dispute, that right may be enforced in the general courts of the land. The FOI Act is not the appropriate vehicle by which to enforce private rights or compel the performance of private obligations.*

84. I am of the view that the Original Applicant has a private right to be provided with copies of certain documents in accordance with the Family Court Consent Order set out above, which is enforceable in the Family Court of Australia. In accordance with the AAT's view in *Dwyer*, I am of the view that the FOI Act is not the appropriate vehicle to enforce private rights or compel the performance of private obligations.

**Where does the balance of public interest considerations lie?**

85. In summary, I am satisfied that:

- a) There is a strong public interest in protecting the personal privacy of the child and other students, given that the Matter in Issue is *prima facie* exempt from disclosure under section 44(1) of the FOI Act.
- b) There is a general public interest in information held by government being accessible but it carries less weight when the matter in issue constitutes personal information concerning private individuals.
- c) The Original Applicant may have a justifiable need to know sufficient information to be properly informed of the child's educational progress. However, this must be balanced against the fact that disclosure of the Matter in Issue is considered to be disclosure to the world at large.
- d) The Original Applicant has been provided with information setting out the child's relevant educational progress.
- e) The Original Applicant has a private right to be provided with copies of certain documents in accordance with the Family Court Consent Order, enforceable in the Family Court of Australia. The FOI Act is not the appropriate vehicle to enforce that private right.

86. I have carefully weighed all of the matters set out above and it is my view that:

- a) The public interest in the protection of personal privacy of the child and other students is a highly significant consideration that should be accorded a very substantial amount of weight.
- b) The public interest considerations favouring disclosure of the Matter in Issue should be accorded less weight.
- c) The public interest considerations favouring disclosure of the relevant Matter in Issue do not outweigh the public interest in the protection of the personal privacy of the child and other students.

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<sup>13</sup> (1985) 8 ALD 474 at page 482.

- d) The Matter in Issue, comprising the class photos, the photo of the child and other students, the child's last name, the names of relevant schools and school emblems, the names and signatures of relevant teachers and principals as they appear in the various school report cards, is exempt from disclosure under section 44(1) of the FOI Act.

### **Conclusion**

87. I am satisfied that

- a) The 2 folios which comprise the QSARSR are excluded from the application of the FOI Act by section 11(1)(y)(ii) of the FOI Act and consequently, this Office has no jurisdiction to conduct an external review in relation to those folios.
- b) The Original Applicant's FOI Application is not made under section 50A of the FOI Act.
- c) The Matter in Issue is exempt in its entirety under section 44(1) of the FOI Act.

### **DECISION**

- 88. For the reasons set out above, I set aside the internal review decision of Ms Kalas dated 27 April 2007.
- 89. I have made this decision as a delegate of the Information Commissioner, under section 90 of the *Freedom of Information Act 1992* (Qld).

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**F Henry**  
**Assistant Commissioner**

**Date: 24 December 2007**