



Decision and Reasons for Decision

Application Number:	311111
Applicant:	Lis-Con Concrete Constructions Pty Ltd
Respondent:	Queensland Treasury and Trade
Decision Date:	13 November 2012
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – DISCLOSURE PROHIBITED BY ACT – applicant sought access to information held by Office of State Revenue – taxation information – whether access can be refused under section 47(3)(a) of the <i>Right to Information Act 2009</i> (Qld) – whether disclosure of information is prohibited by schedule 3 section 12(1) of the <i>Right to Information Act 2009</i> (Qld) and part 8 of the <i>Taxation Administration Act 2001</i> (Qld).

REASONS FOR DECISION

Summary

1. The applicant applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Office of State Revenue (**OSR**) for documents concerning or relating to the applicant or its director which were sent, received or created by OSR to, from or relating to specified persons.
2. Queensland Treasury and Trade (**Treasury**)¹ identified 252 pages in response to the access application (**Information in Issue**) and, on internal review, refused access to all documents on the basis that the information was exempt because its disclosure:
 - was prohibited under the *Taxation Administration Act 2001* (Qld) (**TA Act**); and
 - could reasonably be expected to prejudice a person's fair trial.
3. Treasury also found that disclosure of the Information in Issue would, on balance, be contrary to the public interest.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Treasury's decision.
5. Treasury's decision is affirmed and access to the Information in Issue is refused on the basis that it comprises exempt information as its disclosure is prohibited by part 8 of the TA Act.

¹ OSR forms part of Treasury.

6. Significant procedural steps relating to the application are set out in the appendix to this decision.

Reviewable decision

7. The decision under review is Treasury's internal review decision dated 6 July 2012.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

Scope

9. The applicant sought to limit the scope of the external review² to information provided to OSR:
 - without any threat of compulsion (**unsolicited information**); and/or
 - for a collateral purpose not relating to the administration of a taxation law (**collateral purpose information**).
10. I do not consider it is possible for me to determine whether persons have provided information to OSR for a collateral purpose not relating to the administration of a taxation law. In addition, reducing the scope of the external review as requested by the applicant may reveal details of information which Treasury claims is exempt, by indicating to the applicant whether or not there is unsolicited information or collateral purpose information contained within the 252 pages identified by Treasury as responsive to the access application.³
11. Accordingly, I have not limited the scope of the external review as requested by the applicant but have reviewed Treasury's internal review decision to refuse access to the 252 pages.⁴

Information in Issue

12. The Information in Issue is the information identified at paragraph 2 above.

Relevant law

13. Access must be given to a document unless disclosure would, on balance, be contrary to the public interest.⁵ Schedule 3 of the RTI Act sets out information which Parliament considers is exempt from disclosure on the basis that disclosure would, on balance, be contrary to the public interest.⁶ Schedule 3, section 12(1) of the RTI Act provides that information is exempt if its disclosure is prohibited by a number of listed provisions, including:

² In its external review application dated 19 July 2012 and submission to OIC dated 31 October 2012.

³ Sections 107 and 108 of the RTI Act require the Information Commissioner to ensure that information that is claimed to be exempt is not disclosed to an applicant or an applicant's representative during the external review or in the reasons for a decision on an external review.

⁴ Section 85 of the RTI Act provides that a person affected by a reviewable decision may apply to have the decision reviewed by the Information Commissioner. Schedule 6 of the RTI Act provides that a 'reviewable decision' includes a decision refusing access to a document under section 47 of the RTI Act.

⁵ Sections 44(1) and 48(1) of the RTI Act.

⁶ See also section 48 of the RTI Act.

Taxation Administration Act 2001, *part 8, so far as it applies to personal confidential information under that Act.*

14. The main purpose of the TA Act is to make general provision about the administration and enforcement of revenue laws.⁷ Part 8 of the TA Act relates to confidentiality of information. Relevantly, section 111(1) of the TA Act provides that an official⁸ must not disclose confidential information acquired by the official in the official's capacity to anyone else other than under part 8 of the TA Act.

15. Schedule 2 of the TA Act sets out the following definitions used in part 8 of the TA Act:

confidential information means information disclosed to, obtained by, or otherwise held by, an official under or in relation to a tax law.

personal confidential information, for a person, means confidential information that—

- (a) identifies, or is likely to identify, the person; or
- (b) discloses matters about the person's affairs.

16. As noted above, I am constrained in the extent to which I can discuss the Information in Issue in these reasons because Treasury maintains that it is exempt.⁹ However, the Information in Issue is generally made up of documents held by OSR which relate to the applicant.

17. To be exempt under schedule 3, section 12 of the RTI Act, the Information in Issue must:

- (a) be 'personal confidential information' as defined in schedule 2 of the TA Act
- (b) be prohibited from disclosure under part 8 of the TA Act; and
- (c) not be subject to the exception listed in schedule 3, section 12(2) of the RTI Act.

Findings

Is Treasury entitled to refuse access to the Information in Issue?

18. Yes, for the reasons that follow.

Application of part 8 of the TA Act

Is the Information in Issue 'personal confidential information'?

19. Having carefully reviewed the Information in Issue, I am satisfied it comprises information disclosed to, obtained by or otherwise held by officials within OSR under, or in relation to a tax law and is therefore 'confidential information' for the purposes of the TA Act.

20. I am also satisfied that the Information in Issue:

- identifies or is likely to identify persons—both individuals and corporations; and/or
- discloses matters about the affairs of those persons, such as their financial, taxation and business affairs.

⁷ Section 3(1) of the TA Act.

⁸ Defined in schedule 2 of the TA Act as 'a person who is, or has been a public service employee or other person, performing functions under or in relation to the administration or enforcement of a tax law.'

⁹ Section 108(3) of the RTI Act.

21. The *Acts Interpretation Act 1954* (Qld) (**AI Act**) provides that the term ‘person’ includes an individual and a corporation.¹⁰ The AI Act further provides that it applies to all Acts¹¹ and that its operation may be displaced, wholly or partly, by a contrary intention appearing in any Act.¹² The operation of the relevant provisions of the AI Act has not been expressly displaced for the purposes of the definition of ‘personal confidential information’, nor do I find any evidence of a contrary intention in the provisions of the TA Act.
22. The applicant submits that unsolicited information and collateral purpose information does not relate to OSR’s investigation into the applicant, and therefore, cannot be considered ‘confidential information’ for the purposes of the TA Act.
23. I cannot confirm whether the Information in Issue relates to an investigation by the OSR, nor can I confirm whether the Information in Issue contains unsolicited information or collateral purpose information.¹³ I am satisfied that there is no requirement that information relate to an investigation in order to fall within the definition of ‘confidential information’. I am also satisfied that the TA Act does not exclude unsolicited information or collateral purpose information from the definitions of ‘confidential information’ or ‘personal confidential information’.
24. Accordingly, I am satisfied that the Information in Issue is ‘personal confidential information’ for the purposes of Part 8 of the TA Act.

Does part 8 of the TA Act prohibit disclosure?

25. Section 111(1) of the TA Act prohibits an official from disclosing confidential information acquired by the official in the official’s capacity other than under part 8.
26. I am satisfied that the Information in Issue was acquired by OSR officials in their official capacity.
27. The Commissioner of State Revenue has the discretion to disclose confidential information under the TA Act in specified circumstances, as set out in section 111(2)-(4) of the TA Act. However, there is no provision under the TA Act or the RTI Act which allows the Information Commissioner to exercise this discretion on behalf of the Commissioner of State Revenue.
28. I am therefore satisfied that disclosure of the Information in Issue is prohibited by part 8 of the TA Act.

Application of schedule 3, section 12 of the RTI Act

Does the exception in schedule 3, section 12(2) of the RTI Act apply?

29. No. Schedule 3, section 12(2) of the RTI Act permits disclosure of otherwise exempt information if the information is personal information for the applicant.
30. Personal information is defined in section 12 of the *Information Privacy Act 2009* (Qld)¹⁴ as follows:

¹⁰ Sections 36 and 32D(1) of the AI Act.

¹¹ Section 2 of the AI Act.

¹² Section 4 of the AI Act.

¹³ Section 108 of the RTI Act.

¹⁴ Schedule 6 of the RTI Act adopts this definition.

*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.*

[emphasis added]

31. Section 36 of the AI Act provides that the term 'individual' means a natural person. Accordingly, only individuals can have personal information for the purpose of the RTI Act. As the applicant is a corporation, not a natural person, the exception in schedule 3, section 12(2) of the RTI Act cannot apply.
32. The applicant submits that the sole director and shareholder of the applicant was personally involved in making the access application and should be given the benefit of the exception in section 12(2) of the RTI Act. While I acknowledge the applicant's director personally authorised the making of the access application, the access applicant was the corporation, Lis-Con Concrete Constructions Pty Ltd, rather than the individual director. Accordingly, I am satisfied that the exception in schedule 3, section 12(2) of the RTI Act does not apply.

Is the Information in Issue exempt from release under schedule 3 section 12(1) of the RTI Act?

33. Yes. On the basis of the matters set out above, I am satisfied that the Information in Issue is personal confidential information for the purposes of part 8 of the TA Act, and that its disclosure is prohibited by section 111(1) of the TA Act. The Information in Issue is therefore exempt from disclosure under schedule 3, section 12(1) of the RTI Act.
34. As I am satisfied that the Information in Issue is exempt under schedule 3, section 12(1) of the RTI Act, it is not necessary for me to consider the remaining exemption and public interest claim raised by Treasury.

DECISION

35. For the reasons set out above, I affirm Treasury's decision and find that access may be refused on the basis that the Information in Issue comprises exempt information in accordance with schedule 3, section 12 of the RTI Act.
36. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Lisa Meagher
Acting Assistant Information Commissioner

Date: 13 November 2012

APPENDIX**Significant procedural steps**

Date	Event
29 March 2012	Treasury received the access application.
21 May 2012	Treasury refused access to the Information in Issue under section 47(3)(a) of the RTI Act (initial decision).
14 June 2012	The applicant applied to Treasury for internal review of the initial decision.
6 July 2012	Treasury varied the initial decision and refused access to the Information in Issue under sections 47(3)(a) and 47(3)(b) (internal review decision).
19 July 2012	The applicant applied to OIC for external review of the internal review decision.
23 July 2012	OIC notified the applicant and Treasury that the external review application had been accepted and asked Treasury to provide OIC with a copy of the Information in Issue.
7 August 2012	OIC received a copy of the Information in Issue.
10 August 2012	OIC requested Treasury provide an additional document relevant to the review, and Treasury provided the additional document to OIC.
11 October 2012	OIC conveyed to the applicant the preliminary view that the Information in Issue comprises exempt information under schedule 3, section 12 of the RTI Act. OIC invited the applicant to make submissions.
31 October 2012	The applicant advised OIC that it did not accept the preliminary view and provided submissions.