



Decision and Reasons for Decision

Citation:	<i>Hon Tim Mulherin MP and Minister for Education, Training and Employment [2014] QICmr 11 (26 March 2014)</i>
Application Number:	311852
Applicant:	Hon Tim Mulherin MP
Respondent:	Minister for Education, Training and Employment
Decision Date:	26 March 2014
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – applicant seeks access to identity of author of email to Minister – whether disclosure would, on balance, be contrary to the public interest – section 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Minister for Education, Training and Employment under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to documents concerning a proposed kindergarten facility in Gordonvale.
2. By decision dated 4 December 2013 (**Decision**), an officer of the Department of Education, Training and Employment directed to deal with RTI access applications on behalf of the Minister released various documents to the applicant. The Decision relevantly¹ refused access to an email address identifying the author of an email,² on the grounds disclosure of this information would, on balance, be contrary to the public interest.
3. The Decision is affirmed. Disclosure of information identifying the relevant individual would, on balance, be contrary to the public interest.

Background

4. Significant procedural steps relating to the access application and external review are set out in the appendix.

¹ Access was also refused to two mobile telephone numbers appearing on two documents otherwise released to the applicant (numbered '6' and '7'); the applicant does not seek review of the Decision insofar as it refuses access to this information and it is not in issue in this review.

² The text of which was otherwise released to the applicant.

Reviewable decision

5. The decision under review is the Decision, dated 4 December 2013.

Evidence considered

6. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).

Information in issue

7. The information in issue in this review consists of two segments of information appearing on an email dated 18 April 2013,³ comprising an email address identifying the email's author (**Information in Issue**).

Relevant law

8. Section 23 of the RTI Act confers a general right to access documents of an agency. This right, however, is subject to a number of exclusions and limitations, including grounds for refusal of access prescribed in section 47 of the RTI Act.

9. Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁴

Findings

Does the Information in Issue comprise information the disclosure of which would, on balance, be contrary to the public interest?

10. Yes, for the reasons that follow.

11. 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.

12. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁵ and explains the steps that a decision-maker must take⁶ in deciding the public interest, as follows:

- identify any irrelevant factors and disregard them
- identify any relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.⁷

³ 'Document 10' as numbered by the Department.

⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁵ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

⁶ Section 49(3) of the RTI Act.

⁷ As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

Irrelevant factors

13. No irrelevant factors arise on the information before me, and I have taken none into account in making my decision.

Factors favouring disclosure

14. The Information in Issue comprises the name of an individual who emailed the Minister's staff, asking that the Minister be made aware a 'second' kindergarten was proposed for Gordonvale, despite there being one in existence.
15. The applicant submits that disclosure of the Information in Issue could reasonably be expected to advance several of the accountability, transparency and oversight factors favouring disclosure enumerated in schedule 4 of the RTI Act.⁸ The proposed kindergarten was reportedly not proceeded with, and the applicant speculates that the author may be an individual with a material interest in the issue.⁹ The applicant submits that:

By protecting the identity of the author, we cannot determine whether or not there may have been undue political pressure placed on the Minister to overturn his earlier decision to construct a new kindergarten.¹⁰

16. I am not satisfied that release of the Information in Issue would advance two of the various public interest factors invoked by the applicant. Certainly, there is nothing before me to suggest any negligence or wrongdoing on the part of any public official or agency standing to be substantiated by disclosure of the name of a private individual.¹¹ Additionally, I cannot see how disclosure of such an individual's name could reasonably be expected to ensure effective oversight of expenditure of public funds,¹² particularly as in this case the proposed kindergarten was not proceeded with, thus presumably sparing any (or any additional) expenditure.
17. However, as well as recognising the general public interest in furthering community access to government held information, I also acknowledge that disclosing the identity of an individual who raised an issue concerning the proposed establishment of a facility intended to serve the public may arguably assist in giving a 'complete picture' of the circumstances surrounding any decision not to proceed with that proposal. Disclosure may thus arguably enhance government accountability,¹³ contribute to debate¹⁴ and reveal background/contextual information informing a government decision.¹⁵ Accordingly, I am prepared to take these three public interest factors into account in balancing the public interest in this case. For reasons discussed further below, however, I do not consider they warrant a weighting sufficient to tilt the balance of the public interest in favour of disclosure.

⁸ Relevantly, schedule 4, part 2, item 1 – promote open discussion of public affairs and enhance Government accountability; item 2 – contribute to positive and informed debate on important issues/serious matters; item 4 – ensure effective oversight of expenditure of public funds; item 6 – reveal/substantiate agency or official misconduct or negligent/improper/unlawful conduct; and item 11 – reveal reason for government decision and any background or contextual information informing same.

⁹ The applicant speculates this individual is the same person quoted in a newspaper article supplied by the applicant stating that introduction of another kindergarten would 'undermine' an existing facility: 'Pitt slams Langbroek's "poor judgment" over kindy', *Cairns Post*, 20 September 2013, p. 10.

¹⁰ Applicant's submission dated 12 February 2014.

¹¹ Schedule 4, part 2, item 6 of the RTI Act.

¹² Schedule 4, part 2, item 4 of the RTI Act.

¹³ Schedule 4, part 2, item 1 of the RTI Act.

¹⁴ Schedule 4, part 2, item 2 of the RTI Act.

¹⁵ Schedule 4, part 2, item 11 of the RTI Act.

Factors favouring nondisclosure

18. The individual's name comprises their personal information.¹⁶ In accordance with the RTI Act, disclosure could therefore reasonably be expected to cause a public interest harm.¹⁷
19. Additionally, I consider that by identifying the individual as a person who has raised an issue with a public official, disclosure of the Information in Issue could reasonably be expected to prejudice the individual's right to privacy.
20. The concept of 'privacy' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others.¹⁸
21. In this case, the author of the email is an individual exercising a citizen's right to make a private approach to an elected representative about a public matter. Identification of that individual – as would occur were the Information in Issue to be released – would therefore intrude upon the individual's 'personal sphere' and thus prejudice their right to privacy.

Balancing the public interest

22. Having identified the public interest factors telling for and against disclosure, I consider that the public interest in:
 - safeguarding personal information, and
 - protecting an individual's right to privacy,should each be afforded significant weight, and preferred to considerations favouring disclosure of the Information in Issue.
23. As noted, I recognise the public interest in furthering access to government information. I also recognise the public interest in releasing information enhancing government accountability and transparency, and which may allow the community to fully scrutinise and debate the reasons for a government decision. However, relevant public interest considerations have in my view been sufficiently served by disclosure of the body of the email, which discloses the substance of the matter – the fact a kindergarten facility already existed – the author sought to bring before the Minister. I am not satisfied disclosure of author's identity would materially advance these public interest factors, and certainly not to a degree sufficient to warrant the incursion into personal privacy that would result.
24. In this regard, I note that even if the applicant's speculations are correct, and it were the case that the relevant individual arguably had some vested interest, I am not persuaded that release of the name in issue would be justified in view of the public interest harm and invasion of personal privacy such release would occasion. The email does no more than raise the fact a kindergarten already operated in the Gordonvale area, and even if its author was involved with that existing facility, it would seem something of an amplification to suggest that his or her approach to the

¹⁶ Given the context in which it appears.

¹⁷ Schedule 4, part 4, item 6 of the RTI Act.

¹⁸ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [27], paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

Minister – framed as it is in concise, temperate and factual terms – could be said to amount to ‘*undue political pressure*’.

25. For these reasons, I consider that the factors favouring nondisclosure outweigh the factors favouring disclosure and access to the Information in Issue may be refused on the basis that disclosure would, on balance, be contrary to the public interest

DECISION

26. I am satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest under section 49 of the RTI Act, and access to the Information in Issue may therefore be refused under section 47(3)(b) of the RTI Act. Accordingly, I affirm the decision under review.
27. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

JS Mead
Right to Information Commissioner

Date: 26 March 2014

APPENDIX

Significant procedural steps

Date	Event
7 November 2013	The Minister received the application for access under the RTI Act.
4 December 2013	The Decision was issued to the applicant.
16 December 2013	OIC received the applicant's application for external review.
19 December 2013	OIC wrote to the participants accepting the application for external review.
29 January 2014	OIC wrote to the applicant conveying a preliminary view that the Minister was entitled to refuse access to the Information in Issue. The applicant was invited to provide submissions in the event he did not accept this preliminary view.
14 February 2014	The applicant's representative wrote to OIC advising the applicant did not accept OIC's preliminary view and setting out submissions in support of the applicant's case for access.