



Decision and Reasons for Decision

Citation:	<i>Davis and Department of Justice and Attorney General</i> [2015] QICmr 22 (1 September 2015)
Application Number:	312464
Applicant:	Davis
Respondent:	Department of Justice and Attorney-General
Decision Date:	1 September 2015
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to prisoner phone access - whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(a) and 48 and schedule 3, section 10(1)(i) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Justice and Attorney-General (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to information relating to the removal of phone numbers from his ARUNTA (prison phone) account (**Information in Issue**).
2. The Department refused the applicant access to the Information in Issue under section 47(3)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**)¹ on the basis that it comprised exempt information as its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment under schedule 3, section 10(1)(i) of the RTI Act.
3. The applicant applied for internal review of the Department's decision and the Department affirmed its decision on internal review.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.

¹ Section 67(1) of the IP Act provides that access to a document may be refused in the same way and to the same extent access may be refused to the document under section 47 of the RTI Act.

5. For the reasons set out below, I affirm the Department's decision to refuse access to the Information in Issue.

Background

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

Reviewable decision

7. The decision under review is the Department's internal review decision dated 13 May 2015.

Evidence considered

8. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).
9. The applicant provided submissions to OIC supporting his case. Whilst I have carefully considered all of the submissions, not all matters raised are relevant to the issues for determination. I have summarised and addressed the applicant's submissions in these reasons to the extent they are relevant to the issues for determination.

Information in Issue

10. The Information in Issue appears on two pages and comprises correspondence that can be described as intelligence provided to prison staff in relation to the applicant's phone usage. Section 121(3) of the IP Act prevents me from revealing information in this decision that is claimed to be exempt information or contrary to the public interest. I am therefore unable to describe the intelligence in any more detail or explain its origin and content.

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.² However, this right is subject to other provisions of the IP Act and RTI Act,³ including the grounds on which access may be refused to documents.
12. Relevantly, access may be refused to exempt information.⁴ Information is exempt if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.⁵
13. Three elements must be satisfied for this exemption to apply:⁶

² Section 40 of the IP Act.

³ Section 67(1) of the IP Act provides that access to a document may be refused in the same way and to the same extent access may be refused to the document under section 47 of the RTI Act.

⁴ Sections 47(3)(a) and 48 of the RTI Act.

⁵ Schedule 3, section 10(1)(i) of the RTI Act.

⁶ As set out in *Ferrier and Queensland Police Service* (1996) 3 QAR 350 [27]-[36] under the equivalent provision in the repealed *Freedom of Information Act 1992* (Qld), and summarised in *I3C1ST and Department of Community Safety* (Unreported, Queensland Information Commissioner, 30 August 2011) [12] in the context of the RTI Act.

- there exists an identifiable system or procedure
- it is a system or procedure for the protection of persons, property or the environment; and
- disclosure of the information could reasonably be expected to prejudice that system or procedure.

Findings

Is there an identifiable system or procedure?

14. Yes. Having carefully considered the Information in Issue, I am satisfied that the Information in Issue was communicated as part of a procedure for gathering prison intelligence.

Is the system or procedure for the protection of persons, property or environment?

15. Yes. I am satisfied that the relevant procedure in this case allows for the gathering of prison intelligence in order to protect individuals who come into phone contact with prisoners and to further the general security of the prison system.

Could disclosing the Information in Issue reasonably be expected to prejudice that system or procedure?

16. Yes. I consider that disclosure of the Information in Issue could reasonably be expected to prejudice a particular procedure by which prison intelligence is gathered.
17. The applicant contends that:⁷
- the disclosure of the Information in Issue could not reasonably be expected to prejudice the relevant system or procedure as the procedure by which the information was communicated has been disclosed to him
 - the content of the Information in Issue is already known to him as he was told the information by prison staff; and
 - he requires the information for production in court proceedings.
18. Having carefully assessed the content of the Information in Issue and made specific additional inquiries to the Department and prison staff identified by the applicant,⁸ I consider that the Information in Issue has not been communicated to the applicant.
19. Accordingly, I am satisfied that the applicant has not had access to the Information in Issue and the disclosure of it could reasonably be expected to prejudice a procedure for gathering prison intelligence. This is because in this case prison staff have obtained intelligence regarding the applicant and the disclosure of this intelligence to him could reasonably be expected to weaken the procedure by which it was obtained by prison authorities. Given the nature of the intelligence, I am unable to provide any further details as to its content and origins.⁹

⁷ Applicant submissions received on 21 July 2015, 11 August 2015 and external review application received on 26 May 2015.

⁸ Department submissions dated 23 July 2015.

⁹ Section 121(3) of the IP Act prevents me from revealing information in this decision that is claimed to be exempt information or contrary to the public interest.

20. I acknowledge the applicant's reasons for seeking access to the Information in Issue, but in deciding whether the Information in Issue is exempt, the RTI Act does not permit me to take this into account. Exempt information is a category of information which Parliament has decided would be contrary to the public interest to release however compelling the applicant's personal motivations in seeking the information may be. As the criteria for the exemption to apply are satisfied for the reasons explained above, I do not have the power to direct that access to the Information in Issue is to be given.¹⁰

DECISION

21. For the reasons set out above, I am satisfied that the Information in Issue meets each of the requirements of schedule 3, section 10(1)(i) of the RTI Act.
22. I affirm the Department's decision and find that the Department is entitled to refuse access to the Information in Issue under section 67 of the IP Act and section 47(3)(a) of the RTI Act on the basis that it is exempt information.¹¹
23. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

L Lynch
Assistant Information Commissioner

Date: 1 September 2015

¹⁰ Section 118(2) of the IP Act.

¹¹ Section 48 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
26 February 2015	The Department received the access application.
30 March 2015	The Department issued its initial decision.
12 April 2015	The applicant applied to the Department for an internal review of its decision.
13 May 2015	The Department issued its internal review decision.
26 May 2015	OIC received the applicant's application for external review of the Department's decision.
9 June 2015	OIC notified the applicant and the Department that the application had been accepted for external review.
7 July 2015	OIC conveyed a preliminary view to the applicant.
21 July 2015	OIC received submissions from the applicant.
21 July 2015	OIC sought submissions from the Department in relation to communications between the applicant and prison staff.
23 July 2015	The Department responded to OIC's request for submissions with additional information from the relevant prison staff.
28 July 2015	OIC wrote to the applicant and conveyed the submissions made by the Department and confirmed the preliminary view.
11 August 2015	OIC received submissions from the applicant.