



Decision and Reasons for Decision

Citation:	<i>CN18HL and Department of Child Safety, Youth and Women [2018] QICmr 34 (31 July 2018)</i>
Application Number:	313732
Applicant:	CN18HL
Respondent:	Department of Child Safety, Youth and Women
Decision Date:	31 July 2018
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - DISCLOSURE PROHIBITED BY ACT - information about applicant held on departmental files - whether disclosure prohibited by section 186 or section 187 of the <i>Child Protection Act 1999 (Qld)</i> - whether exempt under section 47(3)(a) and section 48 and schedule 3, section 12 of the <i>Right to Information Act 2009 (Qld)</i></p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - access refused to documents available through a court - whether the document is commercially available - whether access may be refused under sections 47(3)(f) and 53(d) of the <i>Right to Information Act 2009 (Qld)</i></p>

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Communities, Child Safety and Disability Services¹ (**Department**) for access under the *Information Privacy 2009 (Qld)* (**IP Act**) to electronic child safety documents about himself as a parent.
2. The Department located 144 pages and decided to:²
 - release 40 full pages

¹ Machinery of government changes in December 2017 transferred relevant responsibility from the Department of Communities, Child Safety and Disability Services to the Department of Child Safety, Youth and Women. Accordingly, existing RTI applications and reviews involving certain applications made to Department of Communities, Child Safety and Disability Services before the machinery of government changes now rest with Department of Child Safety, Youth and Women, including this external review. For ease of reference, I will simply refer to 'the Department'.

² Decision dated 9 January 2018.

- refuse access to 39 full pages and parts of 59 pages on the grounds that it comprised exempt information as its disclosure is prohibited by sections 186-188 of the *Child Protection Act 1999* (Qld) (**Child Protection Act**);³ and
 - refuse access to three page court affidavit on the grounds that other access is available.⁴
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. For the reasons set out below, I affirm the Department's decision.

Background

5. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

6. The decision under review is the Department's decision dated 9 January 2018.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
8. The applicant provided written submissions to OIC setting out his arguments in support of disclosure of the refused information.⁵ I have carefully reviewed all of the applicant's submissions and to the extent they are relevant to the issues in this review, I have taken them into account in reaching my decision.
9. Parts of the applicant's submissions concern issues which are beyond OIC's external review jurisdiction under the IP Act. In particular, the applicant provided submissions raising allegations of corruption with regards to the Department's conduct in not releasing the requested information, complaints about the actions of departmental officers and any potential civil proceedings brought by the applicant against the Department. As these matters fall outside OIC's jurisdiction in this external review, they are not addressed in these reasons for decision.

Information in issue

10. The information in issue comprises 59 part and 42 full pages. While I cannot provide details of the information in issue, it generally comprises:⁶
- a report of suspected harm or risk of harm (**Suspected Harm Information**)
 - portions of Departmental reports, correspondence and file notes (**File Information**); and
 - a three page court affidavit (**Court Affidavit**).

³ Under section 47(3)(a) and section 48 and schedule 3, section 12 of the *Right to Information Act 2009* (Qld) (**RTI Act**), in conjunction with section 67(1) of the IP Act. Section 67 of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent the agency could refuse access to the document under section 47 of the RTI Act.

⁴ Section 47(3)(f) and 53(d) of the RTI Act.

⁵ External review application dated 1 February 2018 and submission dated 29 March 2018.

⁶ Section 121(3) of the IP Act prohibits the Information Commissioner from including information that is claimed to be exempt in reasons for a decision on external review.

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.⁷ However, this right is subject to other provisions of the IP Act and the RTI Act, including the grounds on which an agency may refuse access to documents.⁸ Relevantly, an agency may refuse access to a document to the extent the document comprises exempt information.⁹

Exempt information – Disclosure Prohibited by Act

12. Schedule 3 of the RTI Act sets out 12 categories of information which Parliament has decided are exempt from release. Relevantly, schedule 3 section 12 of the RTI Act provides that information is exempt if its disclosure is prohibited by sections 186 to 188 of the Child Protection Act.
13. In summary, disclosure of information is prohibited under these sections of the Child Protection Act if the information:
 - identifies a person making a notification of a suspicion that a child has been or is likely to be harmed;¹⁰ or
 - is about the affairs of another person and was acquired by a person performing particular functions under the Child Protection Act.¹¹
14. The prohibition on disclosure is subject to the exceptions set out in schedule 3, section 12(2) of the RTI Act and sections 187 and 188 of the Child Protection Act. In summary, the Child Protection Act exception applies where the information is solely about the applicant.¹² In addition to the Child Protection Act exception, the RTI Act exception to nondisclosure applies if the information is the applicant's personal information alone.¹³ This means that where information is *simultaneously* about the applicant and other individuals, or where an applicant's personal information cannot be separated from the personal information of other individuals, the exceptions will not apply, and the information will remain exempt.

Findings

15. Essentially, the applicant contends¹⁴ that:
 - he has a right to be able to *'inquire on all information'* the Department is holding on his behalf and on behalf of his child
 - he has orders of the Family Court that allow him to enquire on behalf of his child for *'any matter concerning [the child's] health and wellbeing'* and that *'these court orders supersede and are superior to anything'* contained within the Child Protection Act or RTI Act allowing access to be refused¹⁵
 - he has a right to know the nature of the complaints [about him]

⁷ Section 40 of the IP Act.

⁸ Section 67(1) of the IP Act and section 47 of the RTI Act.

⁹ Sections 47(3)(a) and 48 of the RTI Act.

¹⁰ Section 186 of the Child Protection Act.

¹¹ Section 187 of the Child Protection Act.

¹² Section 187(4)(a) of the Child Protection Act.

¹³ Schedule 3 section 12(2) of the RTI Act. *Personal information* is defined in section 12 of the IP Act as *information or an opinion 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.*

¹⁴ In written submissions dated 29 March 2018 and submissions attached to the applicant's external review application received by OIC on 1 February 2018.

¹⁵ The applicant has produced no such court order to OIC during the external review.

- he requires access to the information for '*family law court purposes and the ongoing legal wrangling that are happening there*'
 - he is aware of the identities of the third parties contained in the information in issue; and
 - in relying on provisions of the Child Protection Act and the RTI Act to refuse access to the requested information, the Department is '*hiding behind obscure pieces of legislation*' to allow a '*perpetrator*' to provide false reports about the applicant's conduct.
16. These submissions raise issues relevant to public interest factors that may favour disclosure of the information in issue in the context of assessing under the RTI Act whether or not disclosure would, on balance, be contrary to the public interest. However, I am not required to perform a public interest balancing test¹⁶ if the legal requirements of the exemption provision set out above are met.

i. Does the Suspected Harm Information identify a notifier?

17. Yes, for the reasons set out below.
18. I have carefully examined the Suspected Harm Information. It identifies individuals who made a notification under the Child Protection Act that a child has been or is likely to be harmed. I therefore find the Suspected Harm Information is:
- subject to the prohibition on disclosure in section 186(2) of the Child Protection Act; and
 - falls within the exemption in schedule 3, section 12(1) of the RTI Act.

ii. Is the File Information about a person's affairs and received under the Child Protection Act?

19. Yes, for the reasons set out below.
20. The term 'person's affairs' is not defined in the Child Protection Act or the *Acts Interpretation Act 1954* (Qld). The relevant dictionary definitions for 'affair/s' are 'matters of interest or concern' and 'a private or personal concern'.¹⁷
21. I have carefully examined the File Information. I am satisfied that it is about matters of personal interest/concern to other persons.
22. The File Information is information received or obtained by Departmental officers (public servants) under the Child Protection Act. The Child Protection Act lists a public service employee¹⁸ as a person to whom section 187 applies.
23. I am therefore satisfied that the File Information is:
- about other persons' affairs and has been given to or received by a person performing functions under or relating to the administration of the Child Protection Act
 - subject to the prohibition on disclosure in section 187(2) of the Child Protection Act; and

¹⁶ As set out in sections 47(3)(b) and 49 of the RTI Act.

¹⁷ *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [30] and *Capewell and Department of Communities, Child Safety and Disability Services* [2014] QICmr 9 (18 March 2014) at [22].

¹⁸ Section 187(1)(a) of the Child Protection Act.

- subject to the exemption in schedule 3, section 12(1) of the RTI Act.

iii. Do any of the exceptions apply?

24. The exemption in schedule 3, section 12(1) of the RTI Act will not apply if the relevant information comprises only the applicant's personal information.¹⁹
25. Section 187 and 188 of the Child Protection Act contain a number of exceptions where information given or received under the Child Protection Act may be disclosed. In this case, section 187(4)(a) is relevant. It provides that access may be given to another person if the information is about that other person.
26. In some instances the information in issue is about the applicant but that information is intertwined with the information of others. After careful assessment, I find that it is never solely about the applicant.²⁰
27. I am satisfied that:
- the information in issue is about other persons' affairs and concerns other individuals' personal information; and
 - the exceptions in schedule 3, section 12(2) of the RTI Act and section 187(4)(a) of the Child Protection Act do not apply to the information in issue because it is not only about the applicant.

Conclusion

28. As no exceptions to the exemption apply and the other requirements of sections 186 and 187 of the Child Protection Act are met, I find that the information in issue is exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act.
29. As the legal test for exemption that I am required to apply is satisfied, I am unable to consider the submissions raised by the applicant summarised in paragraph 15 above and I have not taken them into account in forming my decision.

Other access available

30. Sections 47(3)(f) and 53(d) of the RTI Act allow an agency to refuse access to a document that is commercially available.
31. I am satisfied that access to the Court Affidavit is reasonably available by means other than an access application under the IP Act.²¹ I am satisfied that as the applicant is a party to the proceeding and the deponent of the affidavit, the applicant can access the document through the Federal Circuit Court of Australia.²² Consequently, I find that access to the Court Affidavit may be refused in full on the basis that other access is available.

¹⁹ Defined in section 12 of the IP Act.

²⁰ In *Hughes and Department of Communities, Child Safety and Disability Services* (Unreported, Queensland Information Commissioner, 17 July 2012), Assistant Information Commissioner Corby considered whether the exception in section 187(4)(a) applies to shared information about the applicant and other persons. She observed at paragraph 26: "The CP Act exception only applies where the information is solely about the applicant. Thus where information is simultaneously about the applicant and others, the CP Act exception will not apply."

²¹ Pursuant to section 53 of the RTI Act which states: For section 47(3)(f), other access if available to a document if – (d) the document is commercially available.

²² For example: <<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/court-forms/form-topics/family+law/form-request-for-file-inspection>>.

DECISION

32. For the reasons set out above, I affirm the Department's decision to refuse access to the information in issue on the basis that:
- access to the Suspected Harm Information and File information may be refused as it comprises exempt information under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 12 of the RTI Act, the disclosure of which is prohibited by sections 186 and 187 of the Child Protection Act; and
 - access to the Court Affidavit may be refused as other access is available under sections 47(3)(f) and 53(d) of the RTI Act.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

S Shanley
Acting Assistant Information Commissioner

Date: 31 July 2018

APPENDIX

Significant procedural steps

Date	Event
1 February 2018	OIC received the external review application and requested relevant procedural documents from the Department.
7 February 2018	OIC received the requested procedural documents from the Department.
19 February 2018	OIC notified the applicant and the Department that the external review had been accepted. OIC requested further information from the Department.
21 February 2018	OIC received the requested information from the Department.
27 February 2018	OIC spoke to the applicant to discuss the external review.
16 March 2018	OIC conveyed a preliminary view to the applicant and requested submissions in response. OIC spoke to the applicant and received submissions.
29 March 2018	OIC received written submissions from the applicant in relation to the preliminary view.