



## **Decision and Reasons for Decision**

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**Application Number:** 310068  
**Applicant:** Mr S Flavell  
**Respondent:** Department of Premier and Cabinet  
**Third Party:** Department of Education and Training  
**Decision Date:** 10 November 2010

**Catchwords:**

**RIGHT TO INFORMATION**

**Section 47(3)(a) of the RTI Act – Grounds on which access may be refused – to the extent the document comprises exempt information under section 48 – whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege – whether disclosure would found an action for breach of confidence**

**Section 47(3)(b) of the RTI Act – Grounds on which access may be refused – to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49**

### **Contents**

|                                      |    |
|--------------------------------------|----|
| Summary .....                        | 2  |
| Decision under review .....          | 2  |
| Submissions .....                    | 2  |
| Sufficiency of search .....          | 3  |
| Legal professional privilege.....    | 4  |
| Breach of confidence .....           | 8  |
| Public interest considerations ..... | 9  |
| DECISION .....                       | 11 |

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Department of Premier and Cabinet (**DPC**) for information concerning Careers Australia Group (**CAG**) and himself in connection with a complaint made to the Crime and Misconduct Commission.<sup>1</sup>
2. DPC refused access to 76 pages of information under the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that legal professional privilege attached to 45 pages and that disclosure of the remaining 31 pages would found an action for breach of confidence.
3. After reviewing all of the information available to me, I am satisfied that:
  - 55 entire pages and 2 part pages comprise exempt information subject to legal professional privilege
  - the remaining information should be released as it is neither exempt nor is its disclosure contrary to the public interest.

### Decision under review

4. The decision under review is DPC's internal review decision dated 18 December 2009.

### Evidence relied on

5. In reaching this decision, I have taken the following into account:
  - the applications made by the applicant
  - the decisions issued by DPC
  - the information provided by the applicant, DPC and the Department of Education and Training (**DET**)
  - the information sought by the applicant
  - relevant decisions and provisions of the RTI Act.

### Submissions

6. In summary, the applicant submits that:

*[T]hese matters have been part of an extremely public investigation where much information has been presented in the public domain. The Government obtained advice at the start of a CMC investigation on allegations made against me and other individuals. The Government acted on this advice before the allegations had been tested. Given the allegations and evidence has been presented in a public forum it is rather inconsistent for the Government to claim that the information I am seeking relates to confidential matters. Clearly it does not.*

*The fact that it would appear the Government has received and acted upon incorrect advice, does not make it exempt from legal professional privilege on the basis of confidentiality.*

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<sup>1</sup> In particular, the applicant sought 'All documents (draft and final) including emails, briefing notes, letters, submissions and all other communication in the period October 2007 – January 2008 relating to Careers Group Australia (CAG), the CAG User Choice Agreement, the CMC investigation concerning the former Director General of the Department of Employment and Training and meetings between officers of the Department and Premier and Cabinet and CAG during this period. Special reference is made to any advice or document concerning reference to Scott Flavell (or any of his former positions) and the user choice agreement of CAG'.

*Much of the information in question relates to me and allegations against me yet has been communicated with third parties. Such disclosure waives the right to claim legal professional privilege. Much of the information relates to discussions held between DPC and CAG, neither party represented me. To the extent there have been discussions and disclosures about me and the allegations against me, then this constitutes a breach of confidence and a waiver of legal professional privilege should apply.*

*To the extent the material relates to the development of a Deed of between the Government and CAG then it is difficult to claim an element of confidentiality when the existence of this Deed and its broad contents have been released by the Premier to the media.*

*Further, public comments by the former Minister for Education in July 2008 about my conduct, comments which ultimately proved to be false, also demonstrate that confidentiality relating to the information I am seeking has been breached. As the Minister made these comments prior to the conclusion of the CMC investigation, it must have been based on information provided to him by the Government legal officers, information which in part, is the subject of this application.*

And

*I have been further advised by Mr Somerville, a Director of CAG, following a meeting he held with the former Premier, Mr Beattie, that certain legal advice may have been distributed to Mr Beattie. At the time, Mt Beattie had resigned and was not yet employed as a public servant. ...*

*I have no reason to believe Mr Somerville would have any incentive to misrepresent this discussion to me (which occurred in November 2007). If the legal advice in question had been distributed to Mr Beattie then this is clearly a breach of confidentiality and the exempt for LPP should be waived.*

7. In summary, DPC submits that:
  - legal professional privilege attaches to certain information
  - it does not wish to make further submissions and
  - it will abide by this Office's decision.
8. DET advises that it wishes to participate in the external review and relies on DPC's submissions.
9. CAG advises that it does not wish to participate in the review and does not object to release of documents related to CAG.

### **Sufficiency of search**

10. This Office asked DPC to conduct further searches for a finalised copy of the relevant deed and any covering document. DPC advises that:
  - it has undertaken the requested searches, however, no further documents were located
  - it appears that DPC was not provided with a copy of the finalised documents
  - the State of Queensland was a party to the relevant deed through the then Department of Education, Training and the Arts (**DETA**) rather than through DPC.
11. On the basis of the above information, I am satisfied that DPC's further searches and explanation are adequate in the circumstances.

## Legal professional privilege

12. Under section 47(3)(a) of the RTI Act, access can be refused to information on the basis that it is exempt information that would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>2</sup>
13. In summary, I am satisfied that some of the information sought comprises communications which are subject to legal professional privilege (**Privileged Communications**).<sup>3</sup>
14. In making this determination, I have considered whether the following requirements are satisfied:
  - (a) was the communication made in the course of a lawyer-client relationship
  - (b) was the communication confidential, and does it remain confidential
  - (c) was the communication for the dominant purpose of seeking or providing legal advice.
15. In relation to the Privileged Communications involving the Solicitor-General, Crown Solicitor and Crown Law lawyers, I am satisfied that:
  - these lawyers were, at the relevant time, in a position to provide professional legal advice of an independent character, and capable of attracting legal professional privilege
  - in each instance, the communications that constitute the information in issue occurred in the context of this lawyer-client relationship.
16. In relation to Privileged Communications involving lawyers from the Legal and Administrative Law Branch of DETA, I am satisfied that:
  - these lawyers were, at the relevant time, in a position to provide professional legal advice of an independent character, and capable of attracting legal professional privilege, to DETA
  - the communications do not provide policy advice
  - the communications constitute legal advice
  - the legal advice does not relate to law reform or public policy issues
  - the legal advice sets out legal implications and requirements of different actions
  - in each instance, the communications occurred in the context of a lawyer-client relationship.
17. As to the requirement for the Privileged Communications to have been confidential and to remain so, I am satisfied that:
  - while certain information regarding the circumstances that prompted and surrounded the relevant communications may be in the public domain, or may have been discussed in meeting/s involving DPC and CAG, on the evidence before me, the actual communications themselves were confidential at the time of communication and remain so

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<sup>2</sup> Schedule 3, section 7 of the RTI Act.

<sup>3</sup> That is, the pages numbered 1-7, 9-21, 47-55, 59-72 and 88-99 in their entirety and parts of the pages numbered 8 and 73.

- whether or not the legal advice recorded in relevant communications is correct does not impact upon the issue of its confidentiality.<sup>4</sup>
18. With respect to the applicant's submissions that:
- in November 2007<sup>5</sup>, Mr Somerville told him that Mr Beattie said that he had “*seen the legal advice on Flavell and Wills ...*”, and
  - this distribution of legal advice to the former Premier was ‘... *a breach of confidentiality and the exemption for LPP should be waived*’,

I am satisfied that there is no evidence before me which establishes that relevant legal advice was distributed to Mr Beattie, nor is there evidence as to the timing of any alleged distribution. In this respect, I also note that a complaint regarding the applicant was made to the Crime and Misconduct Commission on 29 May 2007 and Mr Beattie resigned as Premier on 13 September 2007.

19. With respect to the requirement that the Privileged Communications be made for the dominant purpose of seeking or providing legal advice, on the information before me I am satisfied that:
- communications from DETA to its various lawyers<sup>6</sup> were made for the dominant purpose of seeking legal advice and
  - communications from DETA's various lawyers to DETA were made for the dominant purpose of providing legal advice.

20. In summary, I am satisfied that the Privileged Communications between DETA and its various lawyers:
- (a) were made in the course of a lawyer-client relationship
  - (b) were and remain confidential
  - (c) were for the dominant purpose of seeking or providing legal advice,

and are therefore subject to legal professional privilege.

21. With respect to the applicant's submission that distribution of some information may amount to a waiver of legal professional privilege, I note that some of the Privileged Communications comprise:
- briefs for the Premier
  - an email to an adviser to the Premier and
  - emails to and from the Director-General of DPC.

22. These communications do not involve lawyers. Instead, they forward, relay or summarise the communications between DETA and its various lawyers.

23. The High Court considers that limited disclosure of the existence and effect of legal advice can be consistent with maintaining confidentiality, and therefore legal professional privilege.<sup>7</sup> Case law recognises that where a person's legal advice is disclosed to another party for a limited and specific purpose, legal professional

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<sup>4</sup> However, communications will not be subject to legal professional privilege if they are made in furtherance of a crime, fraud, illegal purpose, or deliberate abuse of statutory power. This issue is considered below.

<sup>5</sup> After Mr Beattie had resigned as Premier of Queensland.

<sup>6</sup> That is, the Solicitor-General, Crown Solicitor, Crown Law lawyers and lawyers of DETA's Legal and Administrative Law Branch.

<sup>7</sup> *Mann v Carnell* (1999) 201 CLR 1 at [29]; *Goldberg v Ng* (1995) 185 CLR 83 at 96 (**Goldberg**); and *Osland v Secretary to the Department of Justice* (2008) 234 CLR 275 at [48]-[50].

privilege as against other parties is not waived.<sup>8</sup> The ‘common interest privilege’ principle also provides that where a person’s legal advice is provided to ‘*persons standing alongside him—who have the selfsame interest as he*’,<sup>9</sup> legal professional privilege is not waived.<sup>10</sup> Similarly, the circulation of privileged communications among officers of a corporation does not constitute waiver of legal professional privilege.<sup>11</sup>

24. After carefully considering this point, I am satisfied that:

- In the particular circumstances, informing the Premier<sup>12</sup> and the Director-General of DPC of communications between DETA and its various lawyers is analogous to circulating privileged communications to senior officers within a corporation. Accordingly, the case law regarding the circulation of privileged communications among officers of a corporation supports the view that disclosure of this nature (that is, within the Crown) does not constitute waiver of legal professional privilege.
- Even if it was accepted that DETA is not part of the same ‘corporation’ as the Premier and/or the Director-General of DPC, it was implicit that the privileged communications were provided to the Premier and the Director-General of DPC on a confidential basis for a limited and specific purpose<sup>13</sup> and were not to be further disseminated. Accordingly, the disclosures would constitute a limited and specific purpose waiver of legal professional privilege with respect to those parties—that is, parties to whom the ‘common interest privilege’ principle applies. On this basis, dissemination of the communications to the Premier and Director-General of DPC is not capable of constituting a waiver of privilege with respect to other parties.

25. The applicant also submits that the improper purpose exception is made out.

26. The ‘improper purpose exception’ is considered in the decision of *Murphy and Treasury Department*.<sup>14</sup>

*... in order to establish the ‘improper purpose exception’, it will be necessary for me to find prima facie evidence that the client, or an agent of the client, had embarked on a deliberate course of action knowing that the proposed actions were contrary to law, and had made the relevant communications in furtherance of that illegal or improper purpose.*

27. The following five requirements to establish the exception can be drawn from the case law - prima facie evidence is required that the actual communication was in furtherance of wrongdoing;<sup>15</sup> the knowledge of wrongdoing must be the client’s or an agent of the

<sup>8</sup> *Goldberg* above n 6 at 96, 106-109 and 116; *Australian Rugby Union Ltd v Hospitality Group Pty Ltd* [1999] FCA 1061 at paragraph 42.

<sup>9</sup> *Buttes Gas & Oil Co. v Hammer (No. 3)* [1981] QB 223 at 243.

<sup>10</sup> *Bulk Materials (Coal Handling) Services Pty Ltd v Coal & Allied Operations Pty Ltd* (1988) 13 NSWLR 689 at 691, 696; *Thiess Contractors Pty Ltd v Terokell Pty Ltd* [1993] 2 Qd R 341; *South Australia v Peat Marwick Mitchell* (1995) 65 SASR 72 at 75-77; *South Australia v Peat Marwick Mitchell* (1995) 65 SASR 72 at 75-77; *Network Ten Ltd v Capital Television Holdings Ltd* (1995) 36 NSWLR 275 at 279-280; and *Southern Cross Airlines Holdings Ltd (in liq.) v Arthur Anderson & Co.* (1998) 84 FCR 472 at 480.

<sup>11</sup> *Komacha v Orange City Council* (unreported, Supreme Court of New South Wales, 30 August 1979); *Brambles Holdings Ltd v Trade Practices Commission (No. 3)* (1981) 58 FLR 452 at 458-459; *GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* [2000] FCA 593 at [9]-[10]; *Arrow Pharmaceuticals Ltd v Merck & Co Ltd* [2004] FCA 1131; *Seven Network Ltd v News Ltd* [2005] FCA 864 at [56]; and *Seven Network Ltd v News Ltd* [2005] FCA 1342 at [26].

<sup>12</sup> Directly or via her ministerial adviser.

<sup>13</sup> That is, informing the Premier and Director-General of DPC of legal advice sought and obtained by DETA regarding yourself and CAG.

<sup>14</sup> *Murphy and Treasury Department* (1998) 4 QAR 446 (*Murphy*) at paragraphs 31-42.

<sup>15</sup> *Ibid* at paragraphs 35 and 37, discussing *Attorney-General (NT) v Kearney* (1985) 158 CLR 500 (*Kearney*) at 516 and *Commissioner, Australian Federal Police v Propend Finance Pty Ltd* (1997) 71 ALJR 327 and 353.

client's;<sup>16</sup> there must be a deliberate course of action – mere inadvertence will not ground the exemption;<sup>17</sup> the exception applies in respect of a wide range of "improper" conduct;<sup>18</sup> and the relevant communications must be made in furtherance of the illegal or improper purpose.<sup>19</sup>

28. Specifically, the applicant submits that the following information supports the improper purpose exception to legal professional privilege:

- legal advice received by him that *'the action of Government constitute a potential case of misfeasance'* and *'the principle of Natural Justice has been breached'*
- a comment made during another investigation which *'reflects standard process and protocol'*, and the applicant's view that *'in the circumstances relating to CAG and me, this protocol has been breached'*
- information he has *'already received under RTI from DET provides evidence that the improper purpose exception could apply'*.<sup>20</sup>

29. After carefully considering this information, I am satisfied that:

- the applicant's submissions regarding alleged breaches of natural justice and protocol by the Government do not constitute *prima facie* evidence of a relevant wrongdoing
- even if such breaches occurred, they do not amount to an improper purpose for the purpose of this exception
- the evidence before me does not establish that the relevant communications were made in furtherance of any improper purpose, therefore the improper purpose exception does not operate to prevent legal professional privilege from attaching to the Privileged Communications.

30. In summary, in respect of Privileged Communications, I find that:

- these communications are subject to legal professional privilege
- limited disclosure of some of the communications to the Premier and/or Director-General of DPC does not constitute waiver of the privilege
- the improper purpose exception does not apply in the circumstances of this review
- access to this information may be refused under section 47(3)(a) of the RTI Act as it is exempt information which would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>21</sup>

31. Next I will consider whether the remaining information can be released (**Remaining Information**).<sup>22</sup>

32. On the information available to me, I am satisfied that the Remaining Information:

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<sup>16</sup> Above n 13 at paragraph 38, discussing *R v Cox and Railton* (1884) 14 QBD 153 at 165 and *R v Bell: ex parte Lees* (1980) 146 CLR 141 at 145.

<sup>17</sup> *Freeman v Health Insurance Commission and Ors* (1998) 157 ALR 333 at 342. Note—there was a successful appeal against parts of this judgment (see *Health Insurance Commission and Anor v Freeman* (1998) 158 ALR 26), but no issue was taken with the above statement of principle.

<sup>18</sup> *Kearney* above n 14 at 514; *Crescent Farm v Stirling Offices* (1972) Ch 553 at 565; *Seanar Holdings v Kupe Group* (1995) 2 NZLR 274; *Freeman v Health Insurance Commission* (1997) 78 FCR 91 at 94-95; and *Southern Equities Corporation (In Liq) v Arthur Anderson & Co* (1997) 70 SASR 166 at 174.

<sup>19</sup> Above n 13 at 38; and *Watson v McLernon* [2000] NSWSC 306 at [116]

<sup>20</sup> The applicant provided no further detail regarding this submission.

<sup>21</sup> Schedule 3 section 7 of the RTI Act.

<sup>22</sup> That is, pages 45-46, 56-58 and 74-87 in their entirety and parts of pages 8 and 73.

- does not comprise or record confidential communications made in the course of a lawyer-client relationship or for the dominant purpose of seeking or providing legal advice
- does not satisfy the requirements for establishing legal professional privilege at common law
- is not exempt information under section 47(3)(a) of the RTI Act as it would not be privileged from production in a legal proceeding on the ground of legal professional privilege.

### Breach of confidence

33. Under section 47(3)(a) of the RTI Act, access can be refused to information on the basis that it is exempt information, the disclosure of which would found an action for breach of confidence.<sup>23</sup>
34. In summary, I am satisfied that the Remaining Information is not exempt on the basis that its disclosure would found an action for breach of confidence.
35. With respect to pages 45-46 and 56-58 in their entirety and part of page 8, I am satisfied that this information:
  - comprises emails between DPC and DETA, the solicitors for CAG and DETA and staff of the offices of the Premier and Minister for Education
  - involves information regarding media statements and CAG shareholders
  - was communicated by ‘a member of staff of ... a Minister’ or ‘an officer of an agency’ and comprises information that discloses a “consultation” and/or a “deliberation” that has taken place during the “deliberative processes” involved in the functions of the Queensland government<sup>24</sup>
  - is therefore precluded by factor 8(2) of schedule 3 from being exempt information, the disclosure of which would found an action for breach of confidence.
36. With respect to pages 74-87 in their entirety and part of page 73, I am satisfied that this information:
  - comprises an email from DETA to DPC and attachments (comprising a copy of a letter and deed already forwarded to the solicitor for CAG) and emails between the solicitors for CAG and DETA
  - does not appear to have been communicated pursuant to any particular conditions regarding confidentiality or in circumstances where such conditions are usually implied, and therefore does not appear to have been communicated in circumstances in which equity would find that the recipient should be fixed with an enforceable obligation of confidence not to use the information in a way not authorised by the confider
  - does not satisfy one of the five cumulative elements required to establish that disclosure of the information would found an action for breach of confidence<sup>25</sup>
  - is not exempt information of the type set out in schedule 3, factor 8(1) as its disclosure would not found an action for breach of confidence.

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<sup>23</sup> Schedule 3, section 8 of the RTI Act.

<sup>24</sup> Schedule 3, factor 8(3)(b) of the RTI Act. Note—This view renders it necessary for me to also consider the public interest factor relating to deliberative process information (set out in schedule 4, part 4, factor 4), which is discussed under the heading ‘Public interest considerations’ below.

<sup>25</sup> As identified in *Callejo v Department of Immigration and Citizenship* [2010] AATA 244—see, in particular, paragraphs 163-166.



37. On the basis of the matters set out above, I am satisfied that DPC may not refuse access to the Remaining Information under section 47(3)(a) of the RTI Act on the ground that it is exempt information, the disclosure of which would found an action for breach of confidence.
38. Next I will consider whether disclosure of the Remaining Information would, on balance, be contrary to the public interest.

### Public interest considerations

39. To decide whether disclosure of the Remaining Information would be contrary to the public interest, I must:
  - identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure
  - decide whether disclosure of the information, on balance, would be contrary to the public interest.
40. No irrelevant factors have been identified.
41. In my view, disclosure of the Remaining Information could reasonably be expected to advance the public interest by:
  - promoting open discussion of an aspect of public affairs and contributing to debate on this issue
  - enhancing Government accountability by revealing background and contextual information related to Government action and decisions
  - allowing or assisting the applicant to inquire into possible or perceived deficiencies in the conduct or administration of an agency or official and to advance his fair treatment in accordance with the law in his dealings with them, contributing to the administration of justice, including procedural fairness, both generally and with respect to the applicant.
42. On this basis, I am satisfied that significant weight should be afforded to the above public interest factors favouring disclosure of the Remaining Information.
43. With respect to factors favouring non-disclosure, I am satisfied that the deliberative processes public interest harm factor:<sup>26</sup>
  - applies in relation to pages 45-46 in their entirety and part of pages 8 and 56
  - does not apply to the remainder of page 56 and pages 57-58 in their entirety, as this information constitutes *'factual material'*<sup>27</sup>
  - does not apply to pages 74-87 in their entirety and part of page 73, as this information relates to the implementation of a decision after it has been made and therefore does not comprise *'deliberative process information'*.<sup>28</sup>

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<sup>26</sup> Identified in schedule 4, part 4, factor 4.

<sup>27</sup> Schedule 4, part 4, factor 4(3)(b).

<sup>28</sup> *Re Waterford and Department of Treasury (No. 2)* (1984) 5 ALD 588 at 606, first applied in Queensland in *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 at paragraphs 28-30. See also *Re Chapman and Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 43 ALD 139 at paragraph 21.

44. In this respect, I am also satisfied that the confidential communications public interest harm factor:<sup>29</sup>

- does not apply to pages 45-46 and 56-58 in their entirety and part of page 8 as it is deliberative process information<sup>30</sup>
- does not apply to pages 74-87 in their entirety and part of page 73, as disclosure of this type of information could not reasonably be expected to prejudice the future supply of such information.<sup>31</sup>

45. It is also my view that disclosure of the Remaining Information could not reasonably be expected to prejudice the public interest through:

- prejudice to the private, business, professional, commercial or financial affairs of entities such as the Government or CAG or trade secrets, business affairs or research of an agency or person
- prejudice to an agency's ability to obtain confidential information, its management functions or its conduct of industrial relations
- any public interest harm associated with disclosure of deliberative process material,<sup>32</sup>

to any significant degree, given that:

- the relevant matter is resolved (evidenced by the execution of a deed more than two years ago)
- issues related to the information are already in public domain<sup>33</sup>
- any sensitivity that may have attached to the information is diminished by the passing of time and the presence of related material in the public domain, and
- it is not apparent that disclosure of the Remaining Information would impede or have an adverse effect upon the administration or performance of any agency or Minister or the Government as a whole.

46. On balance and in accordance with the matters set out above, I am satisfied that that the factors favouring disclosure of the Remaining Information outweigh those favouring its non-disclosure.

47. On this basis, I am satisfied that disclosure of the Remaining Information is not contrary to the public interest and access may not be refused under section 47(3)(b) of the RTI Act.

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<sup>29</sup> Identified in schedule 4, part 4, factor 8.

<sup>30</sup> And factor 8(2) of schedule 4 precludes its application to deliberative process information.

<sup>31</sup> Whether or not such information is disclosed, members of staff of Ministers and officers of agencies will continue to produce such information as and when required in accordance with their job requirements, and entities such as CAG will continue to supply such information, as not doing so would prevent the resolution of matters of the type which resulted in the generation of the Information in Issue in this review. On this basis, disclosure of such information could not reasonably be expected to prejudice the future supply of information of this type and the requirement set out at factor 8(1)(b) is not met.

<sup>32</sup> Mentioned in schedule 4, part 4, factor 4—which, as set out above, is relevant regarding pages 45-46 in their entirety and part of pages 8 and 56 only.

<sup>33</sup> For example, Queensland Crime and Misconduct Commission, *Public Duty, Private Interests: Issues in pre-separation conduct and post-separation employment for the Queensland public sector – A report arising from the investigation into the conduct of former Director-General Scott Flavell*, December 2008.

## **DECISION**

48. I vary the decision under review by finding that:

- Access may be refused to pages 1-7, 9-21, 47-55, 59-72 and 88-99 in their entirety and parts of pages 8 and 73 under section 47(3)(a) of the RTI Act, as they comprise exempt information of the type set out in schedule 3, section 7.
- Access to pages 45-46, 56-58 and 74-87 and parts of pages 8 and 73 may not be refused under section 47(3)(a) or (b) of the RTI Act as they comprise neither exempt information nor is their disclosure contrary to the public interest under section 49 of the RTI Act.

49. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

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**Clare Smith**  
**Right to Information Commissioner**

**Date: 10 November 2010**