



Decision and Reasons for Decision

Application Number: 310942

Applicant: Collins

Respondent: Department of Justice and Attorney-General

Decision Date: 4 June 2012

Catchwords: **RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – Grounds on which access may be refused – section 47(3)(b) of the *Right to Information Act 2009* (Qld) – information identifying individuals who raised concerns about a colleague in the workplace – disclosure would, on balance, be contrary to the public interest under section 49(1) of the *Right to Information Act 2009* (Qld)**

Contents

REASONS FOR DECISION	2
Summary	2
Reviewable decision	2
Evidence considered	2
Relevant law	2
Findings	3
Where does the balance of the public interest lie in this matter?	3
Factors favouring disclosure of the documents	3
Factors favouring nondisclosure of the documents	4
Balancing factors favouring disclosure and nondisclosure in the public interest.....	5
DECISION	5

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Justice and Attorney-General (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for documents concerning a workplace investigation.
2. The Department located a number of documents and provided partial access to some and full access to others. Relevantly, it deferred access to several documents due to third party objections.
3. On 13 December 2011, the applicant sought internal review of the Department's decision to refuse him access to portions of six pages subject to third party objections.
4. The Department affirmed its decision on internal review.¹ The applicant now seeks external review of that decision.
5. The information deleted from the six pages are the names and identifying information of individuals who raised concerns about the applicant's workplace behaviour with management personnel (**information in issue**).
6. Having considered the evidence before me, I am satisfied that disclosing the information in issue would, on balance, be contrary to the public interest.

Reviewable decision

7. The decision under review is the Department's internal review decision of 11 January 2012.

Evidence considered

8. Evidence, submissions, legislation and other material that I have considered in reaching my decision is disclosed in these reasons (including footnotes and appendix).

Relevant law

9. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.
10. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest. In determining whether disclosure of the information sought would, on balance, be contrary to the public interest I must:²
 - identify and disregard irrelevant factors
 - identify factors favouring disclosure of the information in the public interest
 - identify factors favouring nondisclosure of the information in the public interest
 - balance the relevant factors favouring disclosure and nondisclosure; and

¹ On 11 January 2012.

² Section 49(3) of the RTI Act.

- decide whether disclosure of the information would, on balance, be contrary to public interest.

Findings

Where does the balance of the public interest lie in this matter?

11. I am satisfied that disclosure of the information in issue would, on balance, be contrary to the public interest for the reasons that follow.
12. I have examined the irrelevant factors in schedule 4, part 1, of the RTI Act and do not consider that any irrelevant factors arise here.

Factors favouring disclosure of the documents

13. After carefully considering all of the information before me, I am satisfied that the public interest factors favouring disclosure include that disclosure of the information in issue could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability³
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;⁴ and
 - contribute to the administration of justice generally including procedural fairness.⁵
14. I also agree with the applicant that some of the information in issue is his personal information, in that it discloses information or an opinion about him⁶ and that this is a factor favouring disclosure.⁷ However, this information is interwoven with the personal information of other people in such a way that it cannot be separated and is properly characterised as 'mutual personal information'. As this information cannot be separated, the applicant's personal information cannot be released without also releasing the personal information of others. Therefore this factor favouring disclosure should be given lesser weight.
15. The applicant has argued that if he can obtain access to the information in issue, which discloses the identity of the individuals who made workplace complaints or concerns about him, he would be better able to test and respond to those complaints or concerns. In other words, disclosure of the information in issue could afford him procedural fairness. Specifically, the applicant has submitted:

In the interests of Natural Justice I have the right to know who has made allegations against me so that I can refute the allegations. The Public Service Act 1998 does not provide employees with the right to anonymity when making a complaint against another employee.⁸

[The RTI decision maker] claims that my request for disclosure would not be in the public's interests. I am not a member of the public and members of the public service are not privileged to confidentiality when lodging complaints against their fellow workers. I can not see how releasing information gathered about me could affect the public.

³ Schedule 4, part 2, item 1 of the RTI Act.

⁴ Schedule 4, part 2, item 10 of the RTI Act.

⁵ Schedule 4, part 2, item 16 of the RTI Act.

⁶ Section 12 of the *Information Privacy Act 2009* (Qld).

⁷ Schedule 4, part 2, item 7 of the RTI Act.

⁸ Application for internal review dated 13 December 2011.

I find it disturbing that [the RTI decision maker] believes that people who are accused of wrongdoing have no right to know who their accuser is and what they are being accused of. That is not justice, defies the departments own policies of natural justice and does not promote a positive work culture. ...

The views and opinions expressed by people who have made complaints to management against me are about me. ... I have evidence to suggest that the Management of [Department] had acted on these complaints and found me guilty without ever approaching me at the time to ask for my response to the allegations.⁹

16. The applicant has been provided, in the documents released to him by the Department, information which discloses in general terms the nature of the concerns raised about him. The only information in the information in issue that has been withheld is information that would reveal the identity of the individuals who raised those concerns. I consider that the information already disclosed to the applicant discharges the public interest in procedural fairness in this case. I therefore give this factor favouring disclosure minimal weight.
17. I also find that the information already disclosed to the applicant advances the public interest in government agencies being accountable for investigating allegations against staff. It also contributes towards advancing the fair treatment of individuals in their dealings with agencies. I find that disclosure of the information in issue, which is the personal information of third parties, would not further advance the public interest in government accountability nor would it further advance the fair treatment of individuals. I therefore also afford these two factors minimal weight.

Factors favouring nondisclosure of the documents

18. I have also carefully considered factors favouring nondisclosure. I am satisfied that the factors favouring nondisclosure include that disclosure of the information in issue could reasonably be expected to:
 - prejudice the protection of an individual's right to privacy¹⁰
 - cause a public interest harm by disclosing the personal information of a person, whether living or dead;¹¹ and
 - prejudice the management function of the Department.¹²
19. The personal information contained in the information in issue consists of names of, and identifying information about individuals who raised concerns about the applicant's workplace behaviour. This personal information is recorded in file notes and emails written by management personnel to document private discussions held by them with staff members. I find that releasing this information would be a disclosure of the personal information of the third parties, and could be reasonably expected to prejudice the protection of the third parties' right to privacy. I place considerable weight on the protection of the personal information and right to privacy of the individuals whose identities are apparent from the information in issue.
20. I find that releasing the identities of the individuals who raised these concerns could reasonably be expected to prejudice the management function of the Department.

⁹ Application for external review dated 6 February 2012.

¹⁰ Schedule 4, part 3, item 3 of the RTI Act.

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

¹² Schedule 4, part 3, item 19 of the RTI Act.

21. Disclosure could reasonably be expected to result in staff being reluctant to privately raise concerns about their colleagues with management personnel. To promote effective workplace management, it is important that employees be able to raise such concerns confidentially, so that workplace issues can be expeditiously addressed.
22. I also find that disclosure of the information in issue could reasonably be expected to harm the Department's management function because of the adverse effect its release may have on workplace relationships, particularly because the applicant continues to be employed at the same workplace . I therefore give this factor considerable weight.

Balancing factors favouring disclosure and nondisclosure in the public interest

23. I find that disclosure of the information in issue will do little to contribute to the administration of justice and procedural fairness or enhancement of government accountability and fair dealings with individuals in circumstances where the applicant already holds information about the concerns raised against him. Whereas, I find that the public interest in the protection of individuals' privacy and the prejudice to the management function of the Department should be afforded significant weight. I therefore find that the factors favouring nondisclosure outweigh those favouring disclosure.
24. Accordingly, I find that the disclosure of the information in issue would, on balance, be contrary to the public interest.

DECISION

25. I affirm the decision under review by finding that the Department is entitled to refuse access to the information in issue under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
26. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Louisa Lynch
Acting Assistant Information Commissioner

Date: 4 June 2012

APPENDIX**Significant procedural steps**

Date	Event
28 September 2011	Applicant applied to Department for access to all documents relating to a workplace complaint made by him.
6 December 2011	Department made a decision on the applicant's request.
13 December 2011	Applicant applied to Department for internal review in relation to the Department's decision to refuse access to parts of six identified pages.
11 January 2012	Department affirmed its earlier decision.
6 February 2012	Applicant applied to OIC for external review.
20 February 2012	Department provided OIC with information in issue.
13 March 2012	OIC provided oral preliminary view to applicant.
13 March 2012	Applicant provided submissions to OIC.
15 March 2012	Applicant provided further submissions to OIC.
20 April 2012	OIC provided written preliminary view to applicant.
8 May 2012	Applicant provided final submissions to OIC.