



Decision and Reasons for Decision

Citation:	<i>Y18 and Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence</i> [2024] QICmr 19 (21 May 2024)
Application Number:	317565
Applicant:	Y18
Respondent:	Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence
Decision Date:	21 May 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - where the applicant seeks access to documents about his complaints - personal information and privacy of third parties - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ under the *Information Privacy Act 2009* (Qld) (**IP Act**) to the Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (**Minister**) to access documents regarding the applicant's complaints about employees of the current and former Attorney-General.
2. Under direction from the Minister,² the Department of Justice and Attorney-General (**Department**) decided to refuse access³ to parts of 44 pages on the ground that the information would, on balance, be contrary to the public interest to disclose.⁴
3. The decision was affirmed on internal review.⁵
4. The applicant applied to the Information Commissioner for review of the decision.⁶
5. For the reasons set out below, I affirm the decision under review.

¹ Application emailed on 13 July 2023.

² Section 50(3) of the IP Act.

³ Decision dated 11 August 2023.

⁴ Section 67(1) of the IP Act and section 47(3)(b) of the *Right to Information Act 2009* (Qld).

⁵ Decision dated 18 September 2023.

⁶ Application dated 19 September 2023.

Background

6. Significant procedural steps relating to this review are set out in the Appendix. The evidence, submissions,⁷ legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁸ particularly the right to seek and receive information.⁹ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).¹⁰ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent Victorian legislation,¹¹ that '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹²

Reviewable decision

8. The application was processed by the Department under direction from the Minister.¹³ The decision under review is the Department's internal review decision dated 18 September 2023.

Information in issue

9. The refused information appears on parts of 44 pages, within emails to and from the applicant and internal emails by Minister employees regarding the applicant's complaints (**Information in Issue**).¹⁴ The Information in Issue can be described as the names, direct email addresses, phone numbers, pronouns and work patterns of public sector employees and private individuals.

Issue for determination

10. The issue for determination is whether access to the Information in Issue may be refused under the IP Act on the basis that disclosure would, on balance, be contrary to the public interest.¹⁵

Relevant law

11. An individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information, subject to the other provisions of the

⁷ Including the applicant's submissions (to the extent that these are relevant to the issues to be determined) dated 19 September 2023 (the application for external review) and 15 February 2024, and the Department's submissions dated 21 September 2023.

⁸ Relevant provisions of which commenced on 1 January 2020.

⁹ Section 21(2) of the HR Act.

¹⁰ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹¹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹² XYZ at [573]. This approach, in the context of the IP Act and RTI Act, was endorsed by McGill J in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious* [of the right to seek and receive information] *and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

¹³ Section 50(3) of the IP Act.

¹⁴ Though the applicant appears to contend that the Department refused access to some full pages (in his application for review dated 19 September 2023, and his submission dated 15 February 2024), the Department's decision does not refer to full page refusals, nor are any full pages marked for redaction in the 110 relevant pages provided to OIC by the Department. As such, I am satisfied that there are no full page refusals in issue in this review.

¹⁵ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

IP Act.¹⁶ Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.¹⁷

12. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹⁸
 - identify and disregard any irrelevant factors
 - identify any factors favouring disclosure
 - identify any factors favouring nondisclosure; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
13. Schedule 4 of the RTI Act sets out a non-exhaustive list of factors that may be relevant in determining where the balance of the public interest lies in a particular case.
14. It is Parliament's intention that the IP Act be administered with a pro-disclosure bias¹⁹ and the grounds for refusing access to information are to be interpreted narrowly.²⁰

Findings

15. No irrelevant factors arise in the circumstances of this case and I have not taken any into account.

Factors favouring disclosure

16. The RTI Act recognises the public interest in disclosure of information which will enhance the Government's accountability, inform the community about the Government's operations and reveal reasons for a government decision and any background or contextual information that informed a decision.²¹ I acknowledge that the applicant submits that disclosure will advance the Government's transparency and recognise that disclosing the Information in Issue would provide the applicant with a complete record of information held by the Minister in relation to complaints he made.
17. However, the substance of the emails has been released to the applicant, including information that demonstrates the steps taken in responding to the applicant's complaints and the identity and position of the sender or recipient of the emails, which largely discharges these public interest considerations. In addition, as some of the refused information appears in emails sent to and from the applicant, the Government's accountability and transparency would not be furthered in any meaningful way through the release of the Information in Issue. Accordingly, I afford these factors low weight.
18. For the sake of completeness, I also note the public interest in allowing an individual access to their own personal information.²² However, the applicant has been given access to his personal information, and the Information in Issue (as described at paragraph 9) does not comprise information that is about or identifies the applicant.²³ As such, this factor does not arise in the circumstances of this case.

¹⁶ Section 40(1)(a) of the IP Act.

¹⁷ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹⁸ Section 49(3) of the RTI Act.

¹⁹ Section 64 of the IP Act.

²⁰ Section 67(2) of the IP Act and section 47(2) of the RTI Act.

²¹ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²² Schedule 4, part 2, item 7 of the RTI Act.

²³ Section 12 of the IP Act defines personal information as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.*'

19. The applicant submits that ongoing court matters '*would be best served by way of the fullest release*'.²⁴ A factor relating to the administration of justice for a person²⁵ will apply when:²⁶
- the applicant has suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
20. While the applicant submits that '*matters are in court presently*'²⁷ it is not clear how disclosure of the very limited Information in Issue would assist the applicant in any ongoing proceedings or to evaluate the potential of any other proceeding. As a result, I consider that this factor does not apply.

Factors favouring nondisclosure

21. Disclosure of an individual's personal information to another person can reasonably be expected to cause a public harm²⁸ and a factor favouring non-disclosure will arise where disclosure will prejudice the protection of an individual's right to privacy.²⁹ While the concept of privacy is not defined in the IP Act or the RTI Act, it may be viewed as the right of an individual to keep their personal sphere free from the interference of others.³⁰
22. A small amount of Information in Issue relates to private individuals (including names). As these individuals are not public sector employees, and given that the information appears in the context of the applicant's complaints, I consider that there is moderate public interest in protecting their personal information and privacy.
23. The remaining Information in Issue is the direct email addresses, direct telephone numbers, work patterns and preferred pronouns of public sector employees. In ordinary circumstances, low weight is afforded to protecting a public sector employees' personal information and privacy in the context of their routine employment.³¹ While the Information in Issue relates to their public sector employment, I consider that the context and nature of this information—that is, complaints—means the information is *not* routine personal work information and these factors are deserving of moderate weight.
24. From the information before me, it also appears that the applicant's complaints are unsubstantiated allegations of misconduct or improper conduct, the disclosure of which would prejudice the fair treatment of the subject individuals, which heightens the privacy considerations and also raises a further factor favouring non-disclosure.³²

Balancing the relevant factors

²⁴ Submission dated 19 September 2023.

²⁵ Schedule 4, part 2, item 16 of the RTI Act.

²⁶ *Willsford and Brisbane City Council* (Unreported, Queensland Information Commissioner, 27 August 1996) at [17].

²⁷ Submission dated 19 September 2023.

²⁸ Schedule 4, part 4, section 6 of the RTI Act.

²⁹ Schedule 4, part 3, item 3 of the RTI Act.

³⁰ 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 12 August 2008, at [1.56].

³¹ *O52 and Queensland Ombudsman* [2020] QICmr 31 (11 June 2020) at [66].

³² Schedule 4, part 3, item 6 of the RTI Act.

25. In reaching my decision, I have given no weight to the factors favouring disclosure relating to the release of an applicant's own personal information or the administration of justice, and low weight to the public interest factors favouring disclosure of information that would advance the Government's accountability and transparency. On the other hand, the public interest in safeguarding the privacy and personal information of other individuals and refusing access to unsubstantiated allegations is moderate.
26. On balance, I am satisfied that the applicable factors favouring disclosure have largely been discharged by the information released by the Department, whereas the non-disclosure factors carry moderate weight. Therefore, disclosure of the Information in Issue would be contrary to the public interest and access may be refused on that basis.

DECISION

27. I affirm the Department's decision to refuse access to the Information in Issue under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
28. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Jane Williams
Assistant Information Commissioner

Date: 21 May 2024

APPENDIX

Significant procedural steps

Date	Event
19 September 2023	OIC received application for external review. OIC requested relevant procedural documents from the Department.
21 September 2023	OIC received the procedural documents from the Department.
25 October 2023	OIC notified the applicant and the Department that the external review application had been accepted and asked the Department to provide a copy of the information in issue.
26 October 2023	OIC received the information in issue from the department.
13 February 2024	OIC issued a preliminary view to the applicant. OIC provided an update to the Department.
15 February 2024	OIC received correspondence from the applicant disagreeing with preliminary view.