



Decision and Reasons for Decision

Citation:	<i>EF9TO8 and Department of Transport and Main Roads [2016] QICmr 19 (3 June 2016)</i>
Application Number:	312785
Applicant:	EF9TO8
Respondent:	Department of Transport and Main Roads
Decision Date:	3 June 2016
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - agency consulted external review applicant as a third party under section 37 of the <i>Right to Information Act 2009 (Qld)</i> - external review applicant objected to disclosure - whether a decision not to disclose is justified - section 87(2) of the <i>Right to Information Act 2009 (Qld)</i></p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - registered garaging address of a vehicle - whether disclosure would, on balance, be contrary to the public interest - section 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i></p>

REASONS FOR DECISION

Summary

1. An access applicant sought from the Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) the last garaged address (**registered garaging address**) of a vehicle over which its client, a financial institution, holds a registered security interest.
2. The Department located one document (two pages) identified as the Registered Garaging Address screen print. The Department consulted with the current owner of the vehicle (the review applicant in this external review), seeking his view on the Department's proposed release of the registered garaging address.
3. The review applicant purchased the vehicle in a private sale unaware of the registered security interest. He objected to the Department's proposed disclosure. The Department decided to grant access to the registered garaging address contrary to the review applicant's objections.

4. The review applicant applied for internal review and the Department affirmed its original decision to release the registered garaging address contrary to the review applicant's objections. The review applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.
5. For the reasons set out below, I affirm the Department's decision to disclose the registered garaging address to the access applicant, as its disclosure would not, on balance, be contrary to the public interest under the RTI Act.¹

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 16 February 2016.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).

Information in issue

9. The information in issue in this review is the registered garaging address of the vehicle.

Relevant law

Onus on external review

10. The participant in the external review application who opposes the disclosure decision has the onus of establishing that a decision not to disclose the information is justified, or that the Information Commissioner should give a decision adverse to the person who wishes to be given access to the information.²
11. Therefore, the review applicant bears the onus of establishing that, under the provisions of the RTI Act, the registered garaging address should not be disclosed to the access applicant.

Right of access to information

12. Under the RTI Act, a person has a right to be given access to documents of an agency.³ However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access.⁴
13. One ground of refusal is where disclosure would, on balance, be contrary to the public interest.⁵ The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This

¹ Sections 47(3)(b) and 49 of the RTI Act.

² Section 87(2) of the RTI Act.

³ Section 23 of the RTI Act.

⁴ Section 47(3) of the RTI Act.

⁵ Section 47(3)(b) and 49 of the RTI Act.

means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

14. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest⁶ and explains the steps that a decision maker must take when deciding whether disclosure would, on balance, be contrary to the public interest, which are:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.⁷

Findings

Irrelevant factors

15. I do not consider any irrelevant factors arise in this review.⁸

Factors favouring disclosure

Administration of justice

16. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to contribute to the administration of justice for a person.⁹
17. In *Willsford and Brisbane City Council*¹⁰ the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor arises if an access applicant demonstrates:
- they have 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 in issue would assist the applicant to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.¹¹
18. The access applicant has demonstrated that loss has been suffered in respect of which a legal remedy is available and that it has a reasonable basis for seeking to pursue the remedy because, on the evidence before me, its client:
- provided finance to a third party for the purchase of the vehicle
 - has suffered damage by the failure of the third party to make the agreed repayments on the loan

⁶ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, (section 47(3) sets out that) this list is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

⁷ Section 49(3) of the RTI Act.

⁸ Schedule 4, Part 1 of the RTI Act.

⁹ Schedule 4, Part 2, item 17 of the RTI Act.

¹⁰ (1996) 3 QAR 368 (*Willsford*).

¹¹ *Willsford* at paragraph 17. This approach was recently affirmed in *10S3KF and the Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

- holds a registered security interest over the vehicle in accordance with that loan contract; and
 - requires the registered garaging address of the vehicle in order to pursue a lawful remedy, or to consider pursuing such remedy.
19. I am satisfied that the facts of this case meet the requirements set out in *Willsford* and that disclosure of the registered garaging address could reasonably be expected to contribute to the administration of justice for the access applicant's client by enabling it to pursue the legal remedy of enforcing its rights under the loan contract.
20. On this basis, I afford significant weight to this factor favouring disclosure of the registered garaging address.

Factors favouring nondisclosure

Personal information and privacy

21. The RTI Act recognises that:
- where disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy, this will give rise to a factor favouring nondisclosure;¹² and
 - disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information¹³ of a person, whether living or dead.¹⁴
22. I am satisfied that disclosing the registered garaging address to the access applicant could reasonably be expected to prejudice the review applicant's right to privacy and will disclose personal information of the review applicant. However, I find that the registered garaging address is not especially sensitive information, in comparison to information such as medical records, and as a result, the prejudice to privacy and extent of any public interest harm as a result of disclosure is limited. I attribute moderate weight to the nondisclosure factors relating to protection of personal information and privacy.

Private and financial affairs

23. Another factor favouring nondisclosure will arise where disclosure of information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.¹⁵
24. The review applicant submits that being deprived of the primary method of transport to and from work for he and his wife will cause substantial grief both emotionally and financially. Also, a significant amount of family savings were used to purchase the vehicle.¹⁶ I accept the applicant's submission that he was unaware of the encumbrance at the time of purchase, and note his acknowledgment that he should have done a Personal Property Securities Register (PPSR) search to ensure there were no encumbrances over the vehicle before it was purchased. The review applicant submits that he was unaware that a PPSR search was possible and that in the country he comes

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

¹³ As defined in section 12 of the *Information Privacy Act 2009* (Qld) 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 reasonably be ascertained, from the information or opinion.*

¹⁴ Schedule 4, part 4, item 6 of the RTI Act.

¹⁵ Schedule 4, part 3, item 2 of the RTI Act.

¹⁶ Applicant's internal and external review applications.

from registration of a vehicle cannot be transferred if there is an encumbrance on the vehicle.¹⁷

25. In regards to a PPSR search, I note that the Australian Financial Security Authority maintains a searchable register - the PPSR - of security interests¹⁸ that have been registered on motor vehicles. The website maintained by the Authority states:¹⁹

Before you buy a motor vehicle from a private seller you should check that there are no existing security interests on it by searching the PPSR. If a security interest has been registered against the vehicle, it may not be debt-free and may be repossessed, even after you have bought it.

Motor vehicles include cars, trucks, tractors, motorbikes, trailers, caravans, or any vehicle capable of travelling at more than 10 km/h that has a total motor power of more than 200 W.

Make sure you search the PPSR on the day, or the day before, you intend to make your purchase, to protect yourself against repossession.

26. I acknowledge that disclosure of the registered garaging address may result in the access applicant exercising its client's right to take possession of the vehicle. I accept the applicant's submissions that this would have an adverse impact on both financial and private affairs and that accordingly, the private and financial affairs factor favouring nondisclosure applies.
27. As previously stated, I also accept that the review applicant was unaware of the encumbrance over the vehicle at the time it was purchased. However, it is clear on the information before me that the legal rights of the access applicant's client pre-exist the purchase of the vehicle and processes (such as PPSR searches) are available to identify such legal rights and so prevent these unfortunate situations arising. I therefore attribute moderate weight to this factor favouring nondisclosure.

Balancing the public interest

28. I am satisfied that the significant weight attributed to the administration of justice factor favouring disclosure outweighs the nondisclosure factors related to personal information, privacy and financial affairs.
29. I find that the administration of justice factor is determinative in this matter and disclosure of the registered garaging address would not, on balance, be contrary to the public interest.

Conclusion

30. Based on the information before me, and for the reasons set out above, I am not satisfied that the review applicant has discharged the onus, imposed by section 87(2) of the RTI Act, of establishing that access to the registered garaging address should be refused.

¹⁷ Applicant's external review application.

¹⁸ Defined on the website maintained by the Australian Financial Security Authority as an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation. See: <https://www.ppsr.gov.au/security-interest>

¹⁹ See: <https://www.ppsr.gov.au/searching-motor-vehicles>

DECISION

31. I affirm the Department's decision to grant access to the registered garaging address of the vehicle to the access applicant.
32. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

L Lynch
Assistant Information Commissioner

Date: 3 June 2016

APPENDIX

Significant procedural steps

Date	Event
4 November 2015	The Department received the access application.
11 November 2015	The Department consulted the third party.
19 November 2015	The third party responded to the consultation letter by telephone call, advising of their objection to the disclosure of the registered garaging address.
17 December 2015	The Department issued its decision to the access applicant, and the third party, granting access to the registered garaging address (original decision).
18 January 2016	The third party applied to the Department for internal review of the original decision.
16 February 2016	The Department issued its internal review decision affirming the original decision to release the registered garaging address to the access applicant (internal review decision).
15 March 2016	OIC received an application for external review from the third party (external review applicant).
15 March 2016	OIC notified the Department that the third party had applied for external review of the Department's internal review decision. OIC asked the Department to provide procedural documents by 23 March 2016. OIC advised the external review applicant that the external review application had been received.
17 March 2016	The Department provided requested procedural documents.
18 March 2016	OIC informed the Department and the external review applicant that the application for external review had been accepted.
4 April 2016	The Department provided OIC with a copy of the information in issue and supporting documents.
14 April 2016	OIC conveyed a written preliminary view to the external review applicant and invited the external review applicant to provide submissions by 29 April 2016 in support of their case if they did not accept the preliminary view.
29 April 2016	The external review applicant provided OIC with a written submission, advising that they did not accept OIC's preliminary view.
13 May 2016	OIC wrote to the external review applicant and advised that its preliminary view remained unchanged and the next step was to issue a formal decision.
16 May 2016	OIC advised the Department the external review applicant had not accepted the preliminary view and that the next step was to issue a formal decision.