



Decision and Reasons for Decision

Application Number: 310324
Applicant: 94NNEZ
Respondent: Department of Community Safety
Decision Date: 29 November 2010

Catchwords: **ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – application for access to information relating to an audio recording of a call made to Queensland Ambulance Service in relation to the applicant – section 67(1) of the *Information Privacy Act 2009* (Qld) – grounds on which access may be refused**

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – access refused under section 47(3)(a) and schedule 3 section 10(1)(i) of the *Right to Information Act 2009* (Qld) – whether disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment

ADMINISTRATIVE LAW – RIGHT TO INFORMATION ACT – access refused under section 47(3)(b) and section 49 of the *Right to Information Act 2009* (Qld) – whether documents comprise information the disclosure of which would, on balance, be contrary to the public interest

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REASONS FOR DECISION

Summary

1. The applicant made an access application under the *Information Privacy Act 2009* (Qld) (**IP Act**) to the Department of Community Safety (**Department**) for the audio recording of a triple zero call that was made to the Queensland Ambulance Service (**QAS**) about her (**Audio Recording**) and any related documents.
2. The Department refused the applicant access to the Audio Recording under section 47(3)(a) and section 47(3)(b) of the *Right to Information Act 2009* (Qld) (**RTI Act**) on the basis that:
 - it comprises exempt information under section 48 and schedule 3 section 10(1)(i) of the RTI Act; and/or
 - its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
3. During the external review, the applicant indicated to the Office of the Information Commissioner (**OIC**) that she knows who made the call to QAS and that the caller provided false and misleading information about her. The applicant is aggrieved that, as a result of the call to QAS, she was taken to hospital for a period of nine days before being assessed as not having a mental illness. The applicant submits that the procedures set out in the *Mental Health Act 2000* (Qld) were not properly followed and that she has suffered great distress from the experience.
4. The applicant has been given a copy of the report created by QAS in relation to the incident (**QAS Report**).¹ The QAS Report contains reasons for the decision by QAS and police officers to transport the applicant to hospital and a summary of the reasons given by the caller for asking QAS to attend on the applicant.
5. For the reasons set out below, I affirm the Department's decision to refuse access to the Audio Recording.

Background

6. Significant procedural steps relating to the application are set out in the Appendix.

Reviewable decision

7. The decision under review is the Department's internal review decision refusing access to the Audio Recording on the basis that:
 - it comprises exempt information under section 48 and schedule 3 section 10(1)(i) of the RTI Act; and/or
 - its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

Information in issue

8. The information in issue in this review is the Audio Recording as referred to at paragraph 1 above.

¹ This was released to her on a previous occasion by the Department, subject to the deletion of other individuals' personal information.

Evidence considered

9. In making this decision, I have considered the following:
- access application and internal review application
 - external review application to the OIC
 - Department's initial decision and internal review decision
 - applicant's submissions to OIC dated 22 October 2010
 - file notes of telephone conversations held between OIC staff members and the applicant and officers of the Department during the external review
 - Audio Recording
 - QAS Report
 - relevant sections of the RTI Act
 - previous decisions of the Information Commissioner as referred to in this decision.

Does the Audio Recording comprise exempt information?

10. The answer to this question is 'yes' for the reasons set out below.

Relevant law

11. Access must be given to a document unless it contains exempt information or its disclosure would, on balance, be contrary to the public interest.²
12. Schedule 3 section 10(1)(i) of the RTI Act provides that information is exempt information if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment. This provision will apply if each of the following requirements are met:³
- a) there exists an identifiable system or procedure
 - b) it is a system of procedure for the protection of persons
 - c) disclosure of the information could reasonably be expected to prejudice that system or procedure.

Findings

13. I am satisfied that the system which allows people to request emergency services by calling triple zero is an identifiable system for the protection of persons. Accordingly, requirements a) and b) as set out at paragraph 12 are satisfied.
14. The internal review decision maker explained that:
- The provision of ambulance services, including treatment at the scene and transport to a hospital or other appropriate place, is a system implemented by the [QAS] for the protection of persons in need of care, assessment or treatment. For that system to function effectively, members of the community must be willing to contact the QAS to request assistance for themselves or on behalf of persons who are unable to do so.*
15. Having reviewed the relevant evidence in this case, I am satisfied that:
- the caller does not wish to be identified
 - releasing the Audio Recording would identify the person who made the call to QAS

² Sections 44, 48 and 49 of the RTI Act.

³ *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at paragraphs 27 – 36.

- releasing details about triple zero calls in circumstances where the caller wants to remain anonymous, could reasonably be expected to:
 - discourage people from making emergency calls in the future
 - have serious negative consequences for people who genuinely need emergency assistance from QAS.

16. Accordingly, I consider requirement c) as set out at paragraph 12 is satisfied.
17. For the reasons set out above I am satisfied that the Audio Recording comprises exempt information under section 48 of the RTI Act on the basis that its disclosure could reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.

Would disclosure of the Audio Recording, on balance, be contrary to public interest?

18. The answer to this question is 'yes' for the reasons set out below.

Relevant law

19. In making this decision, I have also considered whether disclosure of the Audio Recording would, on balance, be contrary to the public interest under section 49 of the RTI Act. To decide whether disclosure of the Audio Recording 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.⁴

Findings

20. No irrelevant factors arise in this case.
21. I will now consider the relevant public interest factors which favour disclosure and nondisclosure of the Audio Recording.

Personal information and protection of the right to privacy

22. I accept that there is a public interest in the applicant obtaining access to documents which are held by the Department containing her personal information.⁵ However, the fact that a person makes a call to QAS and provides certain information about a perceived emergency also comprises their personal information. Accordingly, in this case, I must consider whether maintaining the caller's privacy is outweighed by the applicant obtaining access to her personal information.
23. In this case, I am satisfied that disclosure of:
- the caller's voice or any information provided by the caller to QAS would identify the caller and disclose the caller's personal information; and
 - the Audio Recording could reasonably be expected to prejudice the protection of the caller's right to privacy.⁶

⁴ Section 49(3) of the RTI Act.

⁵ Schedule 4 part 2 item 7 of the RTI Act.

⁶ Schedule 4 part 3 item 3 of the RTI Act and schedule 4 part 4 section 6 of the RTI Act.

Whether information provided to QAS is incorrect or misleading

24. The RTI Act recognises that where disclosure of information could reasonably be expected to reveal that the information was incorrect or misleading, this will establish a public interest factor favouring disclosure.⁷ In this case, the applicant believes that the caller provided false and misleading information to QAS about her.
25. Section 47(1) of the *Ambulance Service Act 1991* (Qld) provides that it is an offence to request an ambulance service for a person unless that person is sick or injured and requires an ambulance service. In this regard, the internal review decision maker reasoned that:
- It may be, however, that a person whom the [QAS] is called to attend refuses assistance, does not in fact need assistance, or is not as seriously unwell as the caller believed. This does not mean that the caller did not genuinely believe, when making the call, that the person about whom the call was made was in need of help at [the] time.*
26. Staff of the OIC have listened to the Audio Recording. I am satisfied that:
- the call was genuine and based on valid concerns the caller had about the applicant's wellbeing; and
 - disclosure of the Audio Recording could not reasonably be expected to reveal that the information provided to QAS was incorrect or misleading.
27. I have therefore afforded no weight to this public interest factor in this case.

Providing reasons for a government decision

28. I consider that the public interest in allowing people to understand reasons for a government decision and any background or contextual information that informed the decision is relevant in this case.⁸ I also accept that this public interest factor will carry significant weight where decisions affect a person's freedom or wellbeing.
29. In this case, the Department has already provided the applicant with the QAS Report which contains:
- reasons for the decision by QAS officers and police to transport the applicant to hospital; and
 - a summary of the reasons given by the caller for asking QAS to attend.
30. Given the information the Department has already provided to the applicant about the call and the subsequent action taken by QAS, I am satisfied that the weight of this public interest factor is reduced in this case.

Protecting the ability of QAS to obtain information

31. I consider that there is a strong public interest in protecting QAS' ongoing ability to obtain information from members of the public requiring the services of QAS in a perceived emergency.
32. Having reviewed the relevant evidence in this case, I am satisfied that:
- the caller objects to the disclosure of their identity to the applicant;
 - identifying the caller could reasonably be expected to:

⁷ Schedule 4 part 2 item 12.

⁸ Schedule 4 part 2 item 11 of the RTI Act.

- discourage members of the public from making calls to triple zero in the future
- prejudice QAS' ability to obtain information in relation to emergency situations and provide necessary emergency assistance.

33. Accordingly, I consider this public interest factor should be afforded significant weight.

Balancing the relevant public interest factors

34. I am satisfied that there is a public interest in the applicant accessing her personal information and in ensuring QAS is accountable for its actions taken against the applicant. However, having reviewed the relevant evidence in this case, I am satisfied that these disclosure factors are outweighed by the strong public interests in safeguarding the caller's privacy and personal information and protecting QAS' ongoing ability to obtain information from members of the public requiring emergency services.

35. Accordingly, I find that the public interest favours nondisclosure of the Audio Recording in this case.

DECISION

36. For the reasons set out above, I affirm the Department's decision to refuse access to the Audio Recording under section 47(3)(a) and section 47(3)(b) of the RTI Act.

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

Clare Smith
Right to Information Commissioner

Date: 29 November 2010

APPENDIX**Significant procedural steps**

Date	Event
29 April 2010	The applicant applies to the Department for access to the Audio Recording under the IP Act.
15 June 2010	The Department decides to refuse access to the Audio Recording on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
30 June 2010	The applicant applies to the Department for internal review of the decision.
26 July 2010	On internal review the Department decides to refuse the applicant access to the Audio Recording under section 47(3)(a) and/or section 47(3)(b) of the RTI Act.
9 August 2010	The applicant applies to OIC for external review.
25 August 2010	The Department provides OIC with copies of documents relating to the application.
25 August 2010	OIC informs the Department and the applicant that the external review application has been accepted for review.
26 August 2010	The Department provides OIC with a copy of the Audio Recording.
5 October 2010	OIC conveys to the applicant the preliminary view that disclosure of the Audio Recording would, on balance, be contrary to the public interest under section 49 of the RTI Act.
22 October 2010	The applicant advises OIC that she contests the preliminary view and provides submissions in support of her case.