

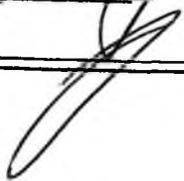
Our reference: 180254
Your reference: 240508
Contact Officer: John Hemsley
Phone: (07) 3513 5860
Email: rti@qed.qld.gov.au



Queensland
Government

Department of
Education

27 February 2018

Queensland Legislative Assembly	
Number: <u>5618T422</u>	
 22 MAR 2018	Tabled <input checked="" type="checkbox"/>
MP: <u>Mr Lecky</u>	By Leave <input type="checkbox"/>
Clerk's Signature: 	

Mr Peter Coulson
Office of the Leader of the Opposition
PO Box 15057
City East QLD 4002

By email only – peter.coulson@opposition.qld.gov.au

Dear Mr Coulson

Decision re application – *Right to information Act 2009 (Qld)*

I refer to your above referenced application for access to documents made to the Department of Education (**Department**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) on behalf of the Office of the Leader of the Opposition.

The purpose of this letter is to notify you of my decision regarding your application.

DECISION ON ACCESS

The Department located **92** relevant documents in response to your application.

In relation to these documents I have decided to refuse you access to all **92** documents because the disclosure of all information in these documents would, on balance, be contrary to the public interest.¹

I made this decision on 27 February 2018 as a Legal Officer, Legal and Administrative Law Branch of the Department, exercising a delegation from the Director-General of the Department as the principal officer.²

An explanation of my decision is set out in **Attachment A**.

NO CHARGES PAYABLE FOR APPLICATION

I have decided that you are not liable to pay any processing or access charges for your application. This is because the time required to process your application was less than 5 hours.³

PUBLIC ACCESS TO THE DOCUMENTS

Under the RTI Act Queensland Government departments and Ministers are required to publish details about RTI applications received and documents released under the legislation on a disclosure log. The disclosure log for the Department and the Minister for Education is available at: <https://qed.qld.gov.au/about-us/rti/disclosure-log>.

A disclosure log is a web page that provides details of applications received under the RTI Act, and

¹ Section 47(3)(b) and section 49 of the *Right to Information Act 2009 (Qld)* (RTI Act).

² Section 30 of the RTI Act.

³ Section 5(1)(a) of the *Right to Information Regulation 2009 (Qld)* (RTI Regulation).

makes the documents that have been released under the RTI Act, available to a wider public audience free of charge.

INFORMATION THAT IS REQUIRED TO BE PUBLISHED ON THE DISCLOSURE LOG

If an applicant accesses a document that does not contain his/her personal information, the Department must include the following on its disclosure log:

- (a) a copy of the document; and
- (b) the applicant's name.

If the applicant does not access the non-personal document within the allowed access period, the Department must include the following on its disclosure log:

- (a) details identifying the document;
- (b) information about how the document may be accessed; and
- (c) any applicable charges.⁴

Any individual who then pays the appropriate charges can access the document, and the document will then be included in the disclosure log.⁵

INFORMATION THAT WILL NOT BE PUBLISHED ON THE DISCLOSURE LOG

The publishing of documents or information on the disclosure log is subject to required deletion of specific information including:

- (a) personal information of the applicant;
- (b) information whose publication is prevented by law;
- (c) information that may be defamatory;
- (d) information whose publication would unreasonably invade an individual's privacy or cause substantial harm to an entity; or
- (e) confidential information.⁶

More information about publication requirements for disclosure logs is available on the Office of Queensland Information Commissioner website at:

<http://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/disclosure-logs/disclosure-logs>

REVIEW RIGHTS

You may apply for internal review *or* external review of my decision.

INTERNAL REVIEW BY THE DEPARTMENT

Internal review is a process conducted within the Department by a person other than the original decision maker who is no less senior than the original decision maker.

Any application for internal review you choose to make must be made in writing and be lodged with the Department within 20 business days of the date of this letter in one of the following ways:

Post: Legal and Administrative Law Branch
 Department of Education
 PO Box 15033
 City East Qld 4002

⁴ Section 78(4) of the RTI Act.

⁵ Section 78(5) of the RTI Act.

⁶ Section 78B of the RTI Act.

Fax: (07) 3513 5897
Email: rti@qed.qld.gov.au

If you do choose to make an application for internal review, you should set out in the application the reasons why you believe a review of the decision is necessary.

EXTERNAL REVIEW BY THE INFORMATION COMMISSIONER

External review is a process which allows decisions made by the Department to be independently and externally reviewed by the Office of the Information Commissioner Queensland (OIC).

Any application for external review you choose to make must be made in writing and be lodged with the OIC within 20 business days of the date of this letter in one of the following ways:

Post: The Information Commissioner
Office of the Information Commissioner Queensland
PO Box 10143
Adelaide Street Brisbane Qld 4000

In person: Level 7, 133 Mary Street Brisbane Qld 4000

Email: administration@oic.qld.gov.au

Online: <http://www.oic.qld.gov.au/>

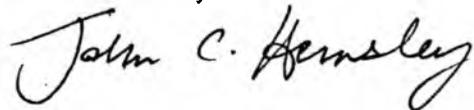
The OIC may be contacted by telephone on (07) 3405 1111.

More information about external reviews conducted by the OIC is available on the OIC's website at: <http://www.oic.qld.gov.au>.

QUESTIONS ABOUT THIS DECISION

If you wish to discuss this decision, please contact me by telephone on (07) 3513 5860 or by email at rti@qed.qld.gov.au.

Yours sincerely



John Hemsley
Legal Officer
Legal and Administrative Law Branch
Office of the Director-General
Department of Education

Attachments:

- A. Explanation of decision.

ATTACHMENT A:**EXPLANATION OF DECISION****BACKGROUND AND SEARCHES**

On 22 January 2018 you applied, on behalf of the Office of the Leader of the Opposition, for access to documents relating to investigations of fraud or irregularity in the expenses of Cavendish Road State High School. The time period/date range listed by your application was January 2014 to November 2017.

Your application was considered to be a valid application from that date.

Following a telephone discussion with you regarding the scope of your application, I advised by email on 1 February 2018 that I had taken your application to be for access to:

Any completed investigation reports held by the Ethical Standards Unit created between 1 January 2014 and 30 November 2016 relating to any investigations of fraud or serious financial irregularity in the expenses of Cavendish Road State High School.

However, on 7 February 2018 I advised you by email that I had subsequently realised that the date range listed by my correspondence of 1 February 2018 did not accurately reflect the date range listed on your application form. I confirmed that I had accordingly taken your application to instead be for access to:

Any completed investigation reports held by the Ethical Standards Unit created between 1 January 2014 and 30 November 2017 relating to any investigations of fraud or serious financial irregularity in the expenses of Cavendish Road State High School.

Consequently, your application was processed in those terms.

In response to your application, a search for relevant documents was undertaken by the Corporate Services Division (CSD). **The Department's Ethical Standards Unit is located within CSD.**

This search identified 92 documents (documents) which fell within the scope of your application.

The documents have been collated into a single file.

REASONS FOR DECISION**MATERIAL TAKEN INTO ACCOUNT**

I have taken the following material into account in making my decision:

- the terms of your application;
- the content of the documents that fell within the scope of the application;
- the Public Service Commission *Managing employee complaints* (Directive 02/17);
- the Department's *Managing Employee Complaints* procedure;
- relevant sections of the RTI Act as identified in this notice;
- the guidelines issued by the OIC as identified in this notice; and
- previous decisions of the OIC and other relevant case law as identified in this notice.

RIGHT TO ACCESS INFORMATION UNDER THE RTI ACT

The RTI Act provides members of the community with a right to be given access to documents of an agency.⁷

⁷ Section 23 of the RTI Act.

A 'document of an agency' is a document, other than a document to which the RTI Act does not apply, which is in possession of or under the control of the agency whether brought into existence by or received in the agency.⁸

The right of access to documents under the RTI Act is subject to other provisions in the RTI Act including the grounds on which access may be refused which are set out in section 47 of the RTI Act.

Relevantly, access may be refused to a document to the extent that it comprises information the disclosure of which would, on balance, be contrary to the public interest.⁹

CONTRARY TO THE PUBLIC INTEREST INFORMATION

Relevant law

Access may be refused to a document to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.¹⁰

The 'public interest' refers to considerations affecting the good order and functioning of the community and governmental affairs for the well-being of citizens. The notion of the public interest is usually treated as separate from matters of purely private or personal interest. Usually, a public interest consideration is one that is available to all members or a substantial segment of the community should they choose to access it. Although in some circumstances public interest considerations can apply for the benefit of particular individuals.¹¹

The RTI Act recognises many factors that may be relevant to deciding the balance of the public interest and explains the steps that a decision-maker must take in deciding the public interest as follows:

- identify any irrelevant factors and disregard them;
- identify relevant public interest factors favouring disclosure and nondisclosure;¹²
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information would, on balance, be contrary to the public interest.¹³

Findings

I have decided to refuse access to certain information contained in the documents because disclosing this information would, on balance, be contrary to public interest.

The contrary to public interest information can be categorised into one of the following distinct types of information:

- (a) the non-routine work information of a public service employee (**category A information**);
- (b) the personal information of various third parties (**category B information**)

I find that disclosing the category A and B information would, on balance, be contrary to the public interest.

⁸ Section 12 of the RTI Act.

⁹ Sections 47(3)(b) and 49 of the RTI Act.

¹⁰ Sections 47(3)(b) and 49 of the RTI Act.

¹¹ *Geary and Australian Health Practitioner Regulation Agency* (310392) Queensland Information Commissioner, 12 September 2011 [17].

¹² The factors identified in schedule 4 of the RTI Act are not an exhaustive list. Other public interest considerations may be identified and taken into account.

¹³ Section 49 of the RTI Act.

My application of the public interest balancing test under the RTI Act to the identified categories of information is explained below:

Category A Information – the non-routine work information of a public service employee

The category A information consists of the non-routine work information of a public service employee in connection with allegations of wrongdoing.

Irrelevant factors

I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied no irrelevant factors arise in relation to the category A information in this case and consequently have not taken any into account in reaching my decision.

Factors favouring disclosure

In my view the applicable public interest factors favouring disclosure of the category A information are that its disclosure could reasonably be expected to:

- promote the open discussion of public affairs and enhance the government's accountability;¹⁴ and
- reveal the reason for a government decision and any background or contextual information that informed the decision.¹⁵

Factors favouring nondisclosure

In my view the applicable public interest factors favouring nondisclosure of the category A information are that its disclosure could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;¹⁶ and
- cause a public interest harm by disclosure of personal information of a person;¹⁷ and
- **prejudice the management function of an agency;**¹⁸ and
- prejudice an agency's ability to obtain confidential information.¹⁹

Balancing the public interest

Government accountability in relation to the management of complaints

The RTI Act is intended to promote greater transparency of, and access to, government held information in a way which protects essential public interests, enhances government accountability and encourages the efficient and effective operation of government. Achieving these objectives will often involve a need for some personal information to be disclosed, particularly that of public service employees. Generally, there is a strong public interest in ensuring the accountability of government for the way it deals with complaints about public service employees who are alleged to have engaged in misconduct, negligence or unlawful conduct – particularly so in relation to the alleged misuse of public funds. Given the nature of the category A information in this case I am of the view that its disclosure would reasonably be expected to promote and advance the Department's accountability in relation to its investigation and resolution of the complaint in question.

Accordingly, I attribute significant weight to the two public interest factors favouring disclosure that relates to government accountability.

¹⁴ Schedule 4 part 2 factor 1 of the RTI Act.

¹⁵ Schedule 4 part 2 factor 11 of the RTI Act.

¹⁶ Schedule 4 part 3 factor 3 of the RTI Act.

¹⁷ Schedule 4 part 4 factor 6 of the RTI Act.

¹⁸ Schedule 4 part 3 factor 19 of the RTI Act.

¹⁹ Schedule 4 part 3 factor 16 of the RTI Act.

Individual's right to privacy

Generally, routine work information relating to the day-to-day work duties and responsibilities of a public service employee may be disclosed under the RTI Act, despite it falling within the definition of personal information.²⁰ This includes information such as a work email address, a work phone number, a professional opinion given wholly in a professional capacity or information about an officer's qualifications required for the position. Disclosure of routine work information of public service employees could reasonably be expected to promote and enhance the Government's accountability.

However, complaints made about a public sector employee, including information revealing the mere fact that a public service employee has, or is suspected of engaging in wrongdoing, falls outside the realm of routine work information. Information which is not wholly related to the routine day to day work activities of a public service employee is known as 'non-routine personal work information'. This information is considered to be the personal information of the relevant public service employee and therefore attracts a certain level of privacy. There is a clear public interest in ensuring that the government protects the privacy of individuals, including its own employees, and treats the personal information that it collects with respect. There is no evidence to indicate that the category A information is known to you or has been openly placed in the public domain. You were not a party to, or have any connection with, the complaint or its investigation. Furthermore, the public service employee concerned has not consented, either expressly or impliedly, to their personal information being disclosed to you and/or the public generally. Nor have you been provided with any authority to act on their behalf in seeking access to their personal information. The public service employee concerned is entitled to a legitimate expectation that their personal information would be afforded protection from unreasonable disclosures outside of the Department that the law affords. I am mindful of the need to protect an individual's right to privacy and ensure that disclosure of information under the RTI Act does not cause a public interest harm. Disclosure of the category A information would be a disclosure of the personal information of an individual and could be reasonably expected to prejudice that individual's right to privacy and cause a public interest harm.

On this basis and given the sensitive nature of the information, I therefore attribute significant weight to the two public interest factors favouring nondisclosure that relate to protecting the privacy of individuals.

Management functions and ability to obtain confidential information

In addition to the harm to personal privacy that could follow from disclosure of the information, I am also satisfied that disclosure of the category A information would adversely impact on the management functions of the Department.

This is because the complaint and its investigation were managed in accordance with the relevant directive issued by the Public Service Commissioner²¹ and the Department's employee complaints policy.²² Complaints made by and against public service employees are required to be managed in a manner that maintains confidentiality and protects privacy. This requires that complaint related information, including information volunteered during the complaint process is treated confidentially, except to the extent that procedural fairness in the investigation and discipline processes, and/or statutory disclosure provisions, require otherwise.

In my view the release of information revealing the personal information of individuals who have participated in an investigation process, when it is not required to be disclosed would adversely affect the Department's ability to:

²⁰ Section 12 of the *Information Privacy Act* (Qld).

²¹ Public Service Commission *Managing employee complaints* (Directive 02/17):

https://www.forgov.qld.gov.au/system/files/documents/directive-02-17-managing-employee-complaints_3.pdf?v=1490336869.

²² Department of Education, Government of Queensland, *Managing Employee Complaints*:

<http://ppr.det.qld.gov.au/corp/hr/management/Pages/Managing-Employee-Complaints.aspx>.

- properly fulfil its management function in relation to complaint processes involving public service employees; and
- obtain similar types of confidential complaint information that is often volunteered to the Department by complainants and others who are asked to participate in any complaint and/or investigative processes pursued by the Department.

This is because, the disclosure of the information:

- (a) could reasonably be expected to make individuals reluctant to privately raise concerns about public service employees with the Department in the future;
- (b) could reasonably be expected to make staff reluctant to participate in complaint investigation processes of the same or similar nature in the future. This, in turn, would significantly impact the effectiveness of future investigations by the Department;
- (c) could reasonably be expected to cause difficulties in the Department securing the cooperation of complainants or relevant parties to an investigation in the provision of confidential information, in that way affecting the integrity of future investigations; and
- (d) would conflict with:
 - the confidentiality considerations placed on all participants in complaint and subsequent disciplinary processes;²³ and
 - the requirement that complaints be managed in a manner that protects the privacy of participants including complainants.

I therefore attribute significant weight to the factors favouring nondisclosure relating to the management functions of the Department and the Department's ability to obtain confidential information in the future.

To summarise, I attribute:

- significant weight to the two pro-disclosure factors relating to government accountability in relation to the management of complaints against public service employees; and
- significant weight to the four nondisclosure factors relating to the protection of the privacy of individuals, the management functions of the Department and the Department's ability to obtain confidential information in the future.

I find that the four factors favouring nondisclosure outweigh the two factors favouring disclosure of the category A information in this case.

Consequently, I am satisfied that disclosure of the category A information would be contrary to the public interest and have therefore decided to refuse access to it under the RTI Act.²⁴

Category B Information – the personal information of various third parties

The category B information in this case consists of the personal information of various third parties – specifically the names, identifying information and other personal details of various students at Cavendish Road State High School (**school**).

Irrelevant factors

I have examined the irrelevant factors in schedule 4 of the RTI Act and am satisfied no irrelevant factors arise in relation to the category B information in this case and consequently have not taken any into account in reaching my decision.

²³ Pursuant to the Discipline Guidelines published by the Public Service Commission.

²⁴ Sections 47(3)(b) and 49 of the RTI Act.

Factors favouring disclosure

In my view the only applicable public interest factor favouring disclosure of the category B information are that its disclosure could reasonably be expected to promote the open discussion of public affairs and enhance the government's accountability.²⁵

Factors favouring nondisclosure

In my view the applicable public interest factors favouring nondisclosure of the category B information are that:

- disclosure of the category B information could reasonably be expected to prejudice²⁶ the protection of an individual's right to privacy;²⁷ and
- the category B information is personal information of a person, which gives rise to a public interest harm factor favouring nondisclosure.²⁸

Balancing the public interest

As advised above in my discussion of the category A information, the intended goals of the RTI Act to promote greater transparency of, and access to, government held information will often involve a need for some information about individuals to be disclosed.

However, given the nature of the category B information in this case – being the personal information of various minors, I am of the view that disclosing this information would not materially advance the public interest in the open discussion of public affairs and government accountability to any significant degree.

I therefore attribute minimal weight to the public interest factor favouring disclosure.

Conversely, as previously stated above in my discussion of the category A information, there is a clear public interest in ensuring that the government protects the privacy of individuals and treats the personal information that it collects from members of the community with respect. This is particularly so in relation to the personal details of minors. The individuals identifiable from the category B information are entitled to a legitimate expectation that personal information about them concerning their private affairs would be afforded protection from unreasonable disclosures outside of the Department that the law affords. I am mindful of the need to protect an individual's right to privacy and ensure that the disclosure of information under the RTI Act does not cause a public interest harm. Disclosure of the category B information would be a disclosure of the personal information of various third parties and could be reasonably expected to prejudice those individuals right to privacy.

I therefore attribute significant weight to the two public interest factors favouring nondisclosure.

To summarise, I attribute:

- minimal weight to the pro-disclosure factor relating to the open discussion of public affairs and enhancement of the government's accountability; and
- significant weight to the two nondisclosure factors relating to the protection of the privacy of the various third parties and their personal information.

I find that the factors favouring nondisclosure outweigh the factor favouring disclosure of the category B information in this case.

²⁵ Schedule 4 part 2 factor 1 of the RTI Act.

²⁶ The word 'prejudice' is not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld). It is therefore assumed its ordinary meaning. The Macquarie Dictionary most relevantly defines 'prejudice' to mean 'resulting injury or detriment' and 'to affect disadvantageously or detrimentally'.

²⁷ Schedule 4 part 3 factor 3 of the RTI Act.

²⁸ Schedule 4 part 4 factor 6 of the RTI Act.

Consequently, I am satisfied that disclosure of the category B information would be contrary to the public interest and have therefore decided to refuse access to it under the RTI Act.²⁹

²⁹ Sections 47(3)(b) and 49 of the RTI Act.