

Our reference: 340/5/3782
Contact Officer: Andrew Smith
Phone: (07) 3405 5679
Email: rti@dete.qld.gov.au



27 April 2016

Department of
Education and Training

Ms Wendy Francis
81 Cranbrook St
Mitchelton Qld 4053

By email – wjfrancis@optusnet.com.au

Dear Ms Francis

Decision in respect of application made under the *Right to Information Act 2009*

I refer to your application for access to documents made to the Department of Education and Training (“the Department”) under the *Right to Information Act 2009* (“the RTI Act”).

The purpose of this letter is to give you notice of the decision I have made about access to the documents that you requested in your application.

BACKGROUND

On 25 February 2016 you applied to the Department for access to:

A transparent list of Queensland schools which have opted in to be part of the Safe Schools Coalition

In response to your application, searches for the relevant list were undertaken by staff within the Department’s State Schooling Division. These searches located 1 relevant document.

On 30 March 2016 I issued you with a notice outlining my estimate of charges payable for the application (“the CEN”). I estimated that you were liable to pay a charge of **\$1098.10** for the application.

On 7 April 2016, in response to the CEN, you confirmed your intention to proceed with the application as framed.

On 8 April 2016 I advised you I would be consulting with relevant third parties regarding the possible disclosure of the document captured by your application.

DECISION ON ACCESS

In relation to the **1** document I have decided to refuse you access to the document pursuant to section 47(3)(a) of the RTI Act because all information in the document is exempt information under section 48 and schedule 3, section 10(1)(d) of the RTI Act (*disclosure could reasonably be expected to result in a serious act of harassment or intimidation*).

Education House
30 Mary Street Brisbane 4000
PO Box 15033 City East
Queensland 4002 Australia
Website www.dete.qld.gov.au
ABN 76 337 613 647

I have also decided that you are liable to pay a processing charge of **\$347.50** (See *Charges payable for application* below).¹

I made these decisions on 27 April 2016 as Senior Policy Officer, Legal and Administrative Law Branch, Department of Education and Training pursuant to a delegation by the Director-General of the Department, as the principal officer, in accordance with section 30 of the RTI Act.

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 document that falls within the scope of the application;
- the views regarding possible disclosure provided by relevant officers within the Department;
- the views regarding possible disclosure provided by three external, third party organisations with which I consulted under section 37 of the RTI Act;
- relevant sections of the RTI Act as identified in this notice;
- the guidelines issued by the Queensland Information Commissioner as identified in this notice; and
- previous decisions of the Queensland Information Commissioner and other relevant case law as identified in this notice.

EXEMPT INFORMATION – Schedule 3, section 10(1)(d) of the RTI Act

Relevant law

The RTI Act provides members of the community with a right to be given access to documents of an agency.²

A ‘document of an agency’ is a document, other than a document to which the RTI Act does not apply³, which is in the agency’s physical possession or legal control or which the agency is entitled to access⁴. The right of access to a document of an agency is subject to other provisions in the legislation including grounds on which access may be refused set out in s 47 of the RTI Act.

Relevantly, access may be refused to a document to the extent it comprises exempt information.⁵

¹ *Right to Information Act 2009*, section 60(1).

² *Right to Information Act 2009*, section 23.

³ *Right to Information Act 2009*, section 11 and schedule 1.

⁴ *Right to Information Act 2009*, section 12.

⁵ *Right to Information Act 2009*, sections 47(3)(a) and 48.

Schedule 3 sets out the types of information which the Parliament has considered to be 'exempt information' as its disclosure generally would on balance, be contrary to public interest.

Schedule 3, section 10(1)(d) of the RTI Act relevantly states:

10 Law enforcement or public safety information

Information is exempt information if its disclosure could reasonably be expected to—

(d) result in a person being subjected to a serious act of harassment or intimidation;

This section is concerned with protecting persons from being subjected to serious acts of harassment or intimidation as a result of the disclosure of information to another person or entity.

In order to satisfy the requirements of this provision and determine that information is exempt under section 10(1)(d), the Department must establish that disclosure of the information could reasonably be expected to result in a serious act of harassment or intimidation.

In determining the meaning of the phrase 'could reasonably be expected to', the Information Commissioner in *Sheridan and South Burnett Regional Council & Others (Unreported, Queensland Information Commissioner, 9 April 2009)* at paragraph 193 identified factors which may be relevant in determining whether an act could reasonably be expected to occur, such as:

- past conduct or a pattern of previous conduct;
- the nature of the relevant information in issue;
- the nature of the relationship between the parties and/or third parties; and
- relevant contextual and/or cultural factors.

In *Sheridan*, the Information Commissioner found that *a serious act of harassment* means an action that 'attacks, disturbs or torments a person and that causes concern or apprehension or has undesired consequences'⁶. The Information Commissioner specifically observed that:

- acts which induce fear or force a person into some action by inducing fear or apprehension are acts of intimidation;
- acts of intimidation which have undesired consequences or cause concern and/or apprehension are serious acts of intimidation;
- acts which persistently trouble, disturb or torment a person are acts of harassment; and

⁶ *Sheridan* at paragraph 199

- acts of harassment which have undesired consequences or cause concern and/or apprehension are serious acts of harassment.

Importantly, the Information Commissioner decided that the exemption can apply even where only a single act of serious harassment is expected to result from disclosure of the information.

When considering whether disclosing information could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation:⁷

- the decision maker does not have to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice;
- the expectation must arise as a result of disclosure, rather than independently or from any other circumstances;
- though a source of harassment or intimidation must be in contemplation, it need not be the applicant; and
- the question of whether disclosing the information in issue could reasonably be expected to result in a serious act of harassment or intimidation must be considered objectively, in light of all relevant information.

Findings

In this matter you seek access to a list of Queensland schools which have opted in to be part of the Safe Schools Coalition.

I am aware that in the past the list of Queensland schools that were part of the Safe Schools Coalition was included on the Safe Schools Coalition Australia's (SSCA) website. The list was removed from the SSCA website in late 2015.

When considering the possible disclosure of the list captured by your application I sought the views the relevant officers within the Department who are responsible for the management of state schools. I also undertook consultation with three external third parties pursuant to section 37 of the RTI Act.

The response received from those individuals and/or organisations that were consulted was unanimous in their objection to the disclosure of the relevant list. They were all of the view that its disclosure would expose both staff and students at the listed schools to harassment, intimidation and/or other negative behaviours that could have a damaging effect on them.

Having regard to the law applicable in this case and the views provided by the relevant Departmental officers and the consulted third parties I am of the view that the disclosure of the list could reasonably be expected to result in a serious act of harassment or intimidation.

As such I am satisfied that the information contained with the document is exempt information under schedule 3, section 10(1)(d) of the RTI Act. Access to the list has therefore been refused pursuant to section 47(3)(a) of the RTI Act.

CHARGES PAYABLE FOR APPLICATION

In accordance with Part 6 of the RTI Act and the *Right to Information Regulation 2009*, I have decided that you are liable to pay **\$347.50** for your application.

⁷ *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012)

You are liable to pay the applicable processing charge even though you have not been given access to the requested document.

BASIS FOR MY ASSESSMENT OF CHARGES PAYABLE

My assessment of the final charges payable for your application is based on the following breakdown of charges:

PROCESSING CHARGE⁸		
Task	Time (hours)	Cost (\$27.80/hour)
Identifying, searching and retrieval of documents	0.25	\$6.95
Consultation undertaken with a number of third parties	6	\$166.80
Examination of documents and preparation for release	0.25	\$6.95
Preparation of notice of decision on access	6	\$166.80
A. Processing charge total	12.5	\$347.50

ACCESS CHARGE⁹		
	No. of pages	Cost
No access given therefore no access charge	n/a	\$0.00
B. Access charge total		\$0.00

TOTAL CHARGES PAYABLE	
TOTAL (total of A and B)	\$347.50

HOW TO PAY CHARGES FOR THE APPLICATION

The charge payable for the application may be paid by cheque or money order made payable to 'Department of Education and Training' forwarded to:

Manager, Information Release
 Legal and Administrative Law Branch

⁸ *Right to Information Act 2009*, section 56 and *Right to Information Regulation 2009*, section 5. The processing charge is \$6.95 per 15 minutes or part of 15 minutes spent processing the application, or nil if the agency spends no more than 5 hours processing the application.

⁹ *Right to Information Act 2009*, section 57 and *Right to Information Regulation 2009*, section 6.

Department of Education and Training
PO Box 15033
City East Qld 4002

Alternatively, payment may also be made over the phone and/or electronically. I have requested that the Department's Finance Branch prepare an invoice that will be forwarded to you within the next day or two. The invoice will provide details in relation to the other methods of payment available.

We look forward to receiving payment of the applicable charge at your earliest convenience.

YOUR 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 and who is no less senior than the original decision maker.

An application for internal review 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 and Training
 PO Box 15033
 City East Qld 4002

Fax: 07 3247 5286

Email: rti@dete.qld.gov.au

Where possible any application for internal review that you may make should also set out reasons why you believe review of the decision is necessary.

EXTERNAL REVIEW BY THE INFORMATION COMMISSIONER

External review is a process which allows decisions made by agencies to be independently and externally reviewed by the Information Commissioner.

An application for external review must be made in writing and be lodged with the Office of the Information Commissioner Queensland 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 8, 160 Mary Street Brisbane Qld 4000

Fax: 07 3405 1122

Email: administration@oic.qld.gov.au

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

The Office of the Information Commissioner may be contacted by telephone on (07) 3405 1111.

More information about external reviews by the Information Commissioner is available on the Office of Queensland Information Commissioner website at: <http://www.oic.qld.gov.au>.

PUBLICATION OF DETAILS OF APPLICATION AND DOCUMENTS TO DISCLOSURE LOG

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 and Training is available at <http://deta.qld.gov.au/right-to-information/disclosure-logs.html>.

A disclosure log is a web page that provides details of applications received under the RTI Act, and makes the documents that have been released under that Act, available to a wider public audience free of charge.

INFORMATION THAT IS REQUIRED TO BE PUBLISHED ON THE DISCLOSURE LOG

In this particular case you have not been given access to any documents so therefore no requirement to publish any information applies.

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>.

QUESTIONS ABOUT THIS DECISION

If you wish to discuss this decision, please contact me on telephone (07) 3513 5879, or by email at 'rti@dete.qld.gov.au'.

Yours sincerely



Andrew Smith
Senior Policy Officer
Legal and Administrative Law Branch
Office of the Director-General