26 July 2019

Ms Elizabeth Hampton

Acting Australian Information Commissioner

Office of the Australian Information Commissioner

By email to: foidr@oaic.gov.au

Dear Ms Hampton

The Queensland Office of the Information Commissioner (**OIC**) welcomes the release of a discussion paper by the Office of the Australian Information Commissioner (**OAIC**) to explore issues relating to disclosure of public servants’ names and contact details when processing or responding to information access requests (**Discussion Paper**).

Thank you for the opportunity to provide comments on the Discussion Paper and share our views on this issue.

As the independent statutory body with responsibility for undertaking merits reviews of decisions of agencies and Ministers in Queensland on access to and amendment of information under the *Right to Information Act 2009* (Qld) (**RTI Act**) and the *Information Privacy Act 2009* (Qld) (**IP Act**), OIC is uniquely positioned to comment on the disclosure of public servants’ names and contact details in the current Queensland information access landscape. We have helped shape that landscape through our decisions that explain OIC’s interpretation of the legislation and our published information resources reflect and reinforce OIC’s views on particular issues. One of the issues we have considered is whether the disclosure of public servants’ names and contact details, in their capacity as public officials, is contrary to the public interest to disclose.

OIC’s comments and feedback about our position regarding disclosure of public servants’ names and contact details under Queensland’s legislative framework are set out in the attached document.

I look forward to learning the outcomes of your Discussion Paper, and welcome the opportunity to discuss our submission should you require any further clarification. Your office is welcome to contact Kathryn Taylor, Manager Information and Assistance on 07 3234 7373 or kathryn.taylor@oic.qld.gov.au for further information.

Yours sincerely



Rachael Rangihaeata

**Information Commissioner**

**Disclosure of public servants’ names and contact details – the Queensland perspective**

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**Summary**

OIC supports the OAIC’s view that it would not be unreasonable to disclose public servants’ personal information, unless special circumstances exist[[1]](#footnote-1).

OIC acknowledges that a public servant’s name and contact details is their personal information.[[2]](#footnote-2) However, we also recognise that there are strong transparency and accountability factors which will usually outweigh an individual officer’s right to privacy if the information relates solely to their routine work activities. There is generally minimal or no harm in disclosing routine workplace information of a public service officer.[[3]](#footnote-3)

1. **Routine personal work information**

In order to differentiate between information that is wholly related to the ordinary work activities of a public servant and other personal information about public service officers that falls outside that scope, OIC has developed the concept of ‘routine personal work information’[[4]](#footnote-4).

This includes information such as:

* a public service officer’s name and classification/job title
* a work email address
* a work phone number
* a professional opinion given wholly in a professional capacity
* a person’s biography on an agency website
* incidental appearances of a person's name in work documents such as their identification as the author of a letter or report

Routine personal work information has a defined scope of application. It is limited to personal information about a public sector employee that relates wholly to their routine day-to-day work duties and responsibilities. It does not extend to non-routine work information about an officer, regardless of the fact that it may arise in or out of a work context. Where the information impinges on the public servant’s personal sphere, even if it is within the context of their work duties, it will not be routine personal work information, and the general view regarding disclosure will not apply as a matter of course.[[5]](#footnote-5)

Examples of public servants’ personal information that would not be routine personal work information include:

* complaints made by or about a public sector employee
* reasons why an officer is accessing leave entitlements of any kind or when they have taken, or intend to take, leave
* opinions expressed at work that are not about work
* the fact that an officer has been unsuccessful in applying for a position
* details of how an officer utilises the agency’s flexible working hours arrangements
* opinions or reports about how well an officer performs their duties.

Given the more sensitive and personalised nature of non-routine personal work information, its disclosure could represent a significant incursion into the privacy of relevant individuals.[[6]](#footnote-6)

1. **Balancing the public interest**

The RTI Act and IP Act give people the right to access documents held or controlled by a Queensland government agency or Minister. Within both Acts, there is a strong pro-disclosure bias so agencies and Ministers are expected to give access to requested documents, unless the document contains information that is either:

* exempt; or
* contrary to the public interest to disclose

Personal information is not considered to be exempt simply because it is personal information so access to it can only be refused where its disclosure would be contrary to the public interest, or where it falls within one of the exempt information categories.

As noted above, OIC’s position is that information relating to the day-to-date work duties and responsibilities of a public service officer will generally be disclosed under the RTI Act, despite it satisfying the definition of personal information.[[7]](#footnote-7)

This view is based on a consideration of agency officers’ names within the context of the public interest balancing test. When considering whether disclosure of information would be contrary to the public interest, the RTI Act sets out lists of factors favouring disclosure and factors favouring non-disclosure which agencies should consider, and then balance to determine where the public interest lies. This also involves a consideration of the potential harm that could be caused by disclosure.

* 1. **Factors against disclosure of public servants’ names and contact details**

The personal information of agency officers generally raises two public interest factors against disclosure: prejudice to the protection of an individual’s right to privacy[[8]](#footnote-8), and harm arising from disclosure of personal information.[[9]](#footnote-9) If an agency is considering disclosure, routine personal work information and other personal information of public service officers may be treated differently because the potential harm from disclosing routine personal work information is, in most circumstances, minimal or non-existent.

The nature of their employment as government employees and the publication of their appointment in the Government Gazette means that reasonable public service officers would expect that purely routine personal work information about them will be made available to the public. In addition, there is a general public expectation that people in the community are entitled to know the identity of the service deliverers, advice givers and decision makers of government (ie, public servants).[[10]](#footnote-10) For these reasons, any infringement of a public sector employee’s right to privacy, and any harm caused by disclosure of routine personal work information, would generally be minimal or non-existent.

* 1. **Factors favouring disclosure of public servants’ names and contact details**

When deciding where the public interest in disclosure of information lies, both factors favouring non-disclosure and those favouring disclosure need to be considered.

Balanced against the factors against disclosure, OIC has found factors favouring disclosure which relate to government accountability and transparency will often be relevant when deciding whether to give access to public service officers’ names and contact details. If disclosure of the information would promote open discussion of public affairs and enhance the Government's accountability[[11]](#footnote-11) or it would reveal the reason for a government decision and any background or contextual information that informed the decision,[[12]](#footnote-12) these factors will generally outweigh the minimal or non-existent harm that could be caused by disclosing the routine personal work information of a public service officer.

* 1. **Where the public interest lies**

In the preamble to the RTI Act, Parliament made clear its reasons for enacting the legislation and introducing a new approach to access to information in Queensland. Chief among these reasons is a recognition that the open discussion of public affairs is a cornerstone of a free and democratic society, and that openness in government enhances its accountability and increases public participation in democratic processes.[[13]](#footnote-13) It is clear that Parliament intended the RTI Act to facilitate greater government openness, accountability and transparency so significant weight is afforded to those public interest factors which promote those outcomes.

When balanced against the minimal weight attached to the factors against disclosing routine personal work information of public service officers, the balancing process usually leads to a conclusion that disclosure would not be contrary to the public interest and therefore names and contact details should be released.

1. **Consultation**

The RTI Act requires us to consult with an agency officer if we are considering disclosing their personal information, and that disclosure may reasonably be expected to be of concern to the officer.[[14]](#footnote-14) However, we generally take the view that disclosure of a public service officer’s routine personal work information would not reasonably be expected to be of concern to them so the threshold for consultation is not met. In reaching this view, we are relying on the routine nature of the information and public servants’ understanding and expectation that documents produced by or referring to them in their professional capacity as government employees are subject to the RTI Act.

1. **Refusing access to public servants’ routine personal work information**

While it is our general view that the names and contact details of public service officers will be disclosed as a matter of course, we also recognise that there will be circumstances when disclosure is not in the public interest. If the agency or the officer involved has presented evidence that raises credible concerns that the applicant will use the information to harass, torment or intimidate, the officer’s name and contact details may be exempt from disclosure.[[15]](#footnote-15) These instances are rare and require significant evidence of malicious intent and past acts of serious harassment or intimidation on the part of the applicant, sufficient for us to be satisfied that disclosure of the information could reasonably be expected to result in the officer being subjected to a serious act of harassment or intimidation.[[16]](#footnote-16)

If the behaviour of the applicant is more querulous than malicious and, as such, we are not satisfied that the officer’s details constitute exempt information as outlined above, it is possible that access may instead be refused based on the balancing of the public interest. Again, this is a unique situation. It has occurred when the conduct of the applicant is querulous, rather than malicious, and/or the information surrounding the public service officer’s name has already largely been released so factors favouring disclosure relating to accountability and transparency have largely been discharged and attract little weight. By contrast, the factors relating to the protection of the officer’s right to privacy and the harm arising from disclosure of their personal information were afforded greater weight as the information being considered was not wholly related to the officer’s routine work so disclosure of the agency officer’s name and contact details was found to be contrary to the public interest.[[17]](#footnote-17)

**Conclusion**

In enacting the RTI Act, it was the Queensland Parliament’s stated intention to provide a right of access to information in the government’s possession or under its control unless, on balance, it is contrary to the public interest to provide the information.[[18]](#footnote-18) OIC’s view on disclosure of public service officers’ names and contact details reflects that pro-disclosure bias. The routine personal work information of public service officers will generally be released in response to an information access request, unless there are exceptional circumstances which make it contrary to the public interest to do so.

1. As stated in the Discussion Paper. [↑](#footnote-ref-1)
2. *Personal information* is defined in section 12 of the IP Act 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’*. [↑](#footnote-ref-2)
3. See *Lichfield-Bennett and Department of Community Safety* (Unreported, Queensland Information Commissioner, 6 March 2013) at [40]. [↑](#footnote-ref-3)
4. See OIC Guideline: [*Routine Personal Work Information of Public Sector Employees*](https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/processing-applications/routine-personal-work-information-of-public-sector-employees)*.* [↑](#footnote-ref-4)
5. See *Hardy and Department of Health* (Unreported, Queensland Information Commissioner, 27 June 2011). [↑](#footnote-ref-5)
6. See *AQU1L6 and the Crime and Misconduct Commission; 7G5BAL (Third Party)* (Unreported, Queensland Information Commissioner, 19 October 2011) at [35]. [↑](#footnote-ref-6)
7. See *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 17 June 2013) at [29]. [↑](#footnote-ref-7)
8. Schedule 4, part 3, item 3 of the RTI Act. [↑](#footnote-ref-8)
9. Schedule 4, part 4, item 6 of the RTI Act. [↑](#footnote-ref-9)
10. See *Australian Broadcasting Corporation and Psychologists Board of Australia* (Unreported, Queensland Information Commissioner, 3 January 2012) at [20]. [↑](#footnote-ref-10)
11. Schedule 4, part 2, item 1 of the RTI Act. [↑](#footnote-ref-11)
12. Schedule 4, part 2, item 11 of the RTI Act. [↑](#footnote-ref-12)
13. See Preamble to the RTI Act. [↑](#footnote-ref-13)
14. Section 37 of the RTI Act. [↑](#footnote-ref-14)
15. Schedule 3, part 10, item(1)(d) of the RTI Act provides that information is exempt information if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation. [↑](#footnote-ref-15)
16. See *Mathews and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 19 September 2014). [↑](#footnote-ref-16)
17. See *J6Q8CH and Office of the Health Ombudsman* (Unreported, Queensland Information Commissioner, 9 April 2019) at [25]. [↑](#footnote-ref-17)
18. See Preamble to the RTI Act. [↑](#footnote-ref-18)