



**QUEENSLAND
COURTS**

COPY

CHAMBERS OF JUSTICE ROSLYN ATKINSON AO

28 May 2015

Ms Anne Edwards
Director
Right to Information and Privacy Unit
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BRISBANE QLD 4001

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Brisbane QLD 4000

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Dear Ms Edwards

Thank you for providing me with the documents attached to your letter of 25 May 2015. I make the following comments.

I am unable to comment on the documents you have omitted altogether. However unfortunately I have formed the view that the omission of many relevant documents and the redaction of many documents for reasons which seem unsustainable mean that the disclosure intended to be made is uninformative and misleading and arguably does not comply with the Act.

I will address each request in turn but the comments above apply to all of the requests.

RTI 151295

- (1) You have redacted a number of passages from a memorandum from the Chief Justice to Jackson J and I dated 20 February 2015 on the basis that the passages are out of scope. The request is for, "correspondence between Chief Justice Tim Carmody and Judges relating to the Chief Justice's court sitting arrangements."

I believe in addition to what you have disclosed this part of the redacted portion of the document is within the scope of the request.

"The SJA's responsibilities will be reinstated except:

- He will not control my calendar."

That passage should not be redacted since his calendar relates to the Chief Justice's court sitting arrangements.

- (2) Content of email from Byrne SJA to the Chief Justice dated 11 February 2015

This should not be redacted as it relates to the administration of the Court and who should do certain of that work, rather than the Court's judicial functions.

- (3) The attached response from the Chief Justice itself refers to the "administration of the Court" but has not been disclosed. The exemption in Schedule 2 Part 2 Clause 1 does not appear to apply to it.
- (4) You have not disclosed any of the memo attached to the email from me to the Chief Justice and Trial Division Judges even though some of it is clearly disclosable and has been disclosed. (see item 1)
- (5) You have not disclosed the attachments to Justice MA McMurdo's first email to me of 6 March 2015 even though the attachments deal with the administrative functions of the Court.
- (6) You have not disclosed the attachments to Justice MA McMurdo's email to me of 10 March 2015 even though the attachments deal with the administrative functions of the Court.
- (7) With reference to my email of 16 March 2015, without the attachments sent by Justice MA McMurdo to me on that date to which that email is a reply, my email makes no sense. The attachments which should be disclosed if you are to disclose my email are the many memos dated 13 March 2015 from the Chief Justice to the President of the Court of Appeal. If you do not propose to disclose the attachments then I object to your disclosing my email on the basis of the exemption found in Schedule 4/3/3 on the basis that prejudices my privacy, by revealing a personal opinion about a matter which has not been disclosed. The same objection applies to each time it is proposed to be disclosed.

RTI151297 Correspondence between Chief Justice Tim Carmody and Judges relating to the Court of Disputed Returns and the Electorate of Ferny Grove

- (1) Minutes of the meeting of the Judges of both Divisions of the Court 10 February 2015. You redacted the reference to the Court of Disputed Returns. This is an administrative matter related to protocol for the appointment of the Judges to constitute the Court of Disputed Returns and the exemption which you have applied to redact it does not apply. I agree that the rest of the Minutes are out of scope.
- (2) There is much correspondence between the Chief Justice and Judges relating to the Court of Disputed Returns prior to the next document which is the email from Justice Daubney to Justice MA McMurdo on 11 February 2015 at 2.02pm.
- (3) Email from Justice Byrne to Justice MA McMurdo with copies to Chief Justice Carmody and the Trial Division Judges. You have not attached the email sent by Justice Byrne to the Chief Justice which is not covered by the exemption in Schedule 2/2(1) nor have you attached the Chief Justice's email which again in my view is not covered by the exemption in Schedule 2/2(1).

- (4) In my view this response comprehensively fails to deal with the request in RTI151297.

RTI151326 Minutes of all meetings of Supreme Court Judges, with or without their District Court colleagues, excluding any case related information, for the period 31 January to 27 March 2015

- (1) The redacted part of the Minutes of 10 February 2015 is in my view disclosable as it relates to administrative function of the Court.
- (2) Minutes of 19 February 2015. In my view all of the Minutes are disclosable as they relate to the administrative functions of the Court.

RTI151327

- (1) Email from Justice Byrne to the Trial Division Judges of 11 February 2015. The attached email from Justice Byrne to the Chief Justice together with the Chief Justice's responses deal with the administrative function of the Court in determining the composition of the Court of Disputed Returns. It is not about the judicial function of the Court and as so is not exempt.
- (2) You have failed to disclose the Minutes of the Meeting of the Trial Division Judges held on 19 February 2015 dealing with the appointment process for the Court of Disputed Returns which appear to me to be disclosable under this RTI application.
- (3) Also disclosable is the memo sent to Jackson J and me by the Chief Justice as a result of our giving the resolutions passed at the meeting to him. That is the attachment to my email of 20 February 2015 sent at 1.02pm.
- (4) The emails between Justice North and myself as to the resolutions at the meeting make no sense without a copy of the Minutes of the meeting. There can be no reason to disclose them without disclosing the Minutes.
- (5) The emails from Justice McMurdo to myself dated 6 March 2015 make no sense without the memoranda which were attached to them. They are clearly disclosable under the terms of the application that was made.
- (6) Minutes of Meeting of the Judges of 10 February 2015. The redacted part said to be exempted under Schedule 2/2 (1) is in my view disclosable under the request and not exempt for that reason.
- (7) You have not included my memo to the Chief Justice of 13 February 2015 which is in my view clearly disclosable. Neither do you include Chief Justice Carmody's response which is also disclosable. You have not included Chief Justice Carmody's memorandum to Byrne SJA of 16 February 2015 nor Chief Justice Carmody's memo to me of 16 February 2015 or my response.
- (8) You have failed to include the resolutions passed by the Judges at their meeting of 19 February 2015 and the Minutes of that Meeting.
- (9) You have failed to include the memorandum sent by the Chief Justice to Jackson J and myself in response to those resolutions and yet you have included some but not all of our response to the Chief Justice dated 23 February 2015 without the memorandum from him dated 20 February 2015 which sets out what we were responding to. You have also redacted the part of the memo that deals with a purely administrative function of the Court and that is the Chief Justice's decision to reverse his action of 13 February 2015 when he informed the SJA that he intended to take over the responsibilities of the SJA and oversee the Trial Division calendar and manage the lists. This is, I would have thought, clearly an administrative function of the Court.

- (10) So far as the emails between myself and Justice North on 23 to 24 February 2015 are concerned they are disclosable but make no sense whatsoever without the resolutions of the meeting to which they relate if the Minutes are not disclosable then neither is the discussion as to the Minutes.
- (11) 20 February 2015 email from me to Chief Justice Carmody and the Trial Division Judges. You have not included the memo sent to Jackson J and me which was attached to that memo.
- (12) You have redacted the portion of the memorandum of 23 February 2015 which deals with the administrative functions of the Court.
- (13) You have excluded from the email sent by me on 23 February 2015 to all Supreme Court Judges including that received by Chief Justice Carmody the Minutes of the Meeting of 19 February 2015 which were attached.

RTI 151328

All the comments I have made with regard to the previous RTI requests apply to this as well. The disclosure is incomplete, inadequate and does not comply in my view with the request.

RTI 151329

All the comments I have made apply equally to this request which in my view has not been answered in a satisfactory way.

RTI 151330

For similar reasons to that previously set out in my view you have failed to comply with this request. In particular you have failed to disclose many relevant documents including the memorandum from Chief Justice Carmody to Justice Byrne SJA of 13 February 2015 in which he purported to take over the Senior Judge Administrator's administrative responsibilities. You have failed to disclose my memoranda to the Chief Justice asking him to reconsider that action, his memorandum to me in response and his memoranda to me and Byrne SJA on 16 February 2015 which are the reasons why the Judges were obliged to meet on 19 February 2015. Again you have failed to disclose the resolutions of 19 February 2015 and failed to disclose the memo from the Chief Justice in which he reinstated the Senior Judge Administrator to his administrative responsibilities.

RTI 151341

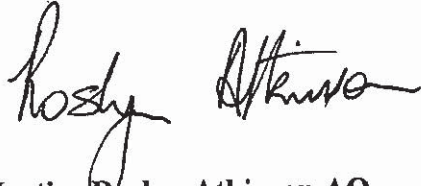
You have failed to disclose all of the documents relating to the composition of the Court of Disputed Returns including but not limited to the memorandum sent to the Chief Justice of 10 February 2015 by Byrne SJA setting out the administrative manner of appointing a Judge to constitute the Court of Disputed Returns. Once again for reasons already set out it appears to me that your response to the request has failed to deal with it in a comprehensive and candid way.

RTI 151345

I note that this request is not identical to the request in RTI 151297.

I must inform you that if you intend to release the documents as they are I object to the whole of the release because it will not be informative, will misrepresent what has happened at the Court and is, in those circumstances, likely to severely damage the administration of justice in this State.

Yours faithfully

A handwritten signature in black ink, appearing to read "Roslyn Atkinson". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Justice Roslyn Atkinson AO

Our reference No: 151295, 151297, 151326, 151327, 151328, 151329, 151330, 151341
Your reference No: 219494/2658816



15 June 2015

Department of
Justice and Attorney-General

Justice Atkinson
Supreme Court of Queensland
Delivered by hand

Dear Justice Atkinson

Right to Information access application – Contrary to Views

Thank you for your letter of 28 May 2015 concerning applications made under the *Right to Information Act 2009* (the RTI Act) by several media organisations and by Mr Alex McKean seeking access to correspondence between judges.

As you will no doubt know by this stage, I have refused access by the applicants to a number of documents that I sent you attached to my letter of 25 May 2015, on grounds that I considered some of the material related to the holder of a judicial office in relation to the court's judicial functions. Other grounds that I decided were relevant public interest factors for consideration included the right to privacy of some individuals, including the Chief Justice, and the potential for the material to undermine public confidence in the judiciary. I have appended to this letter my decision letter of 5 June 2015 addressed to one of the applicants for your information.

As part of my decision-making process, I noted that you identified a number of passages that you did not consider were exempt or that they contained 'contrary to public interest' information. I also noted that you objected to the non-disclosure of many of the documents.

In coming to my decision I carefully considered all the relevant factors under the RTI Act. Particularly, and ultimately, my decision aims to serve the public interest.

Review rights

I have reviewed the meaning of a reviewable decision under Schedule 6 of the RTI Act and have noted that, where a review may be lodged by a relevant third party whose views have been obtained under section 37 of the Act, the right of review is defined as follows:

A decision: (i) to disclose a document contrary to the views of a relevant third party obtained under section 37; or (ii) to disclose a document if an agency or Minister should have taken, but has not taken, steps to obtain the views of a relevant third party under section 37.

As you have not objected to the disclosure of the information, and in fact have clearly supported its release, and you are not the applicant for access to the documents, I note you have no review rights under the RTI Act in relation to my decision.

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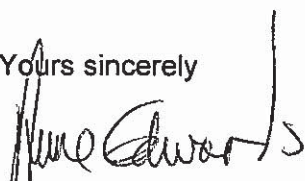
However, I advise that several of the applicants have lodged an external review request with the Office of the Information Commissioner already, and you may well be considered under section 89(2) to be a person affected by the decision the subject of an external review, as a person consulted under section 37 of the RTI Act, in which case you may apply to the Information Commissioner to participate in any external review relating to this subject matter.

Any application you wish to make in relation to participating in an existing external review should be addressed to:

Office of the Information Commissioner
PO Box 10143
Adelaide Street
BRISBANE QLD 4000
Phone: 3405 1111

For further enquiries please contact this office on telephone number 3239 3439 quoting reference number **151295**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Arne Edwards', with a long vertical flourish extending upwards from the end of the signature.

Arne Edwards
Director

Right to Information and Privacy Unit