**OMBUDSMAN TASMANIA**
**DECISION**

**Right to Information Act Review** **Case Reference:** R2407-006

**Names of Parties:** Q and Department for Children, Education and Young People

**Reasons for decision:** s48(3)

**Provisions considered:** s36

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## Background

1 The applicant in this matter, Q, made a complaint that they were the victim of a sexual assault while in State care as a child. As an adult, they submitted an assessed disclosure application under s13 of the *Right to Information Act 2009* (Tas) (the Act) to the Department for Children, Education and Young People (the Department) to obtain details of the complaint. Q sought:

> *I would like the whole file from when I entered foster care to when I left*
>
> *…*
>
> *Or any information on me prior to removal …*

2 On 9 May 2024, Ms Alison Scandrett, a delegate under the Act for the Department, issued an initial decision to Q. A large quantity of information was released to Q, either in full or with partial redactions. The Department's decision set out that some information responding to Q's assessed disclosure application was exempt from disclosure under s36 of the Act as personal information relating to other persons. The decision also set out that some information could not be released and was not subject to the Act pursuant to s16 of the *Children, Young Persons and Their Families Act 1997* (the CYPTF Act).

3 On 19 June 2024, Q wrote to the Department seeking an internal review of its original decision in relation to four documents in particular. On 22 June 2024, Q confirmed to the Department they were only seeking a review of the Department's decision not to release information contained within these documents and not a wider review.

4 On 9 July 2024, Ms Louise Brooks, a delegate of the Department under the Act, issued an internal review decision. This decision set out that some information contained in the relevant documents was exempt from disclosure under s36 of the Act. Like the initial decision, this decision also set out that some information could not be released and was not subject to the Act pursuant to s16 of the CYPTF Act.

5 Q was not satisfied with the Department's internal review decision, so on 15 July 2024, wrote to my office seeking external review. Q's application was accepted pursuant to s44 of the Act.

**Issues for Determination**

6 I must first determine whether information not released by the Department is eligible for exemption under s36 of the Act

7 As s36 is contained in Division 2 of Part 3 of the Act, my assessment is subject to the public interest test in s33. If I determine information is prima facie exempt from disclosure under s36, I must then determine whether it would be contrary to the public interest to release it. In making this determination, I must have regard to all relevant matters including those contained in Schedule 1 of the Act.

**Relevant legislation**

8 Copies of ss33, 36 and Schedule 1 of the Act, and ss16 of the CYPTF Act, are attached to this decision.

**Submissions**

*Applicant*

9 The applicant made submissions raising concerns they had been restricted from accessing information which related to significant events in their own life and therefore they should be able to access it.

10 Q also set out that they were seeking information to understand who assaulted them to make an informed choice about risks to their own child.

*The Department*

11 The Department did not make any submissions relating to the substantive issues being considered in the external review, beyond what is set out in its internal review decision, which sets out the following:

> **Section 36 – Personal information of person**
>
> (1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13.
>
> *Personal information is defined under s5 of the Act as:*
>
> **Personal information** means any information or opinion in any recorded format about an individual –
>
> (a) whose identity is apparent or is reasonably ascertainable from the information or opinion; and

(b) who is alive, or has not been dead for more than 25 years.

*Sections of the information provided have been exempted under section 36 of the Act. To disclose personal information of individuals to promote the interests of some individuals would not outweigh the harm to a larger group of individuals. It is essential for the Department to be trusted to responsibly handle the personal information of individuals. For personal information of individuals to be disclosed would cause a loss of trust and potential harm to the individual.*

***Public Interest Test***

*Section 36 – Personal Information of a person - is subject to the public interest test. Schedule1 of the Act lists the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest*

*The sections of Schedule 1 I find relevant are:*

(a) the general public need for government information to be accessible

(m) whether the disclosure would promote or harm the interests of an individual or group of individuals;

(n) whether the disclosure would prejudice the ability to obtain similar information in the future.

*I find that the potential harm to individuals and the impact on the ability of the Department to obtain similar information in the future if there is a loss of trust in the Department to be responsible in handling personal information, outweighs the need for government information to be accessible in this instance. As such I find it contrary to the public interest to release this information.*

**The Children, Young Persons and Their Families Act 1997 (CYPFA)**

*Section 16 of the CYPFA also applies to the information. Section 16 of the CYPFA prohibits the publication of any information which identifies a person who has informed the Department of concerns for welfare of a child, including names, addresses, relationship to applicant, information that only that person would know, or any information that would 'give away' who the notifier was. A notifier is a person who provides the Secretary or a*

*Community-Based Intake Service with a risk notification. As such, this information cannot be released under the RTI Act.*

*Section 103 of CYPFA relevantly provides:*

A person engaged in the administration of this Act who, in the course of that administration, obtains personal information relating to –

(a) a child; or

(b) a guardian of a child; or

(c) a family member of a child; or

(d) any person alleged to have abused, neglected or threatened a child –

must not divulge that information.

(3) This section does not prevent a person –

(a) from divulging information if authorised or required to do so by law

*This means that information may be considered under the RTI Act, but if the conclusion is reached under that Act that the material is exempt from release, then section 103 of CYPFA prevents release.*

*You will see above that I have considered the personal information of siblings and family members under section 36 of the RTI Act and concluded that the material is not able to be released under that Act. Therefore the permission at 103(3) does not operate, and the material remains confidential under CYPFA.*

## Analysis

*Preliminary matter – s16* of the *Children, Young Persons and Their Families Act 1997*

12 Section 16 of the CYPTF Act operates to protect the confidentiality of those who notify the Department that a child is at risk of abuse or neglect. Section 16(7) of the CYPF Act sets out that *the Right to Information Act 2009 does not apply to the identity of a notifier or any information contained in or relating to a risk notification that may lead to the identification of the notifier.*

13 Having reviewed the information not released under s16, I am satisfied the Department's use of this section was valid and the Act does not apply to this information. It has correctly been applied to information which, if released, would reveal the identity of the individual who made a

relevant notification. As such, this information is not subject to the Act and will form no further part of this review.

**Section 36 – Personal Information**

14 For information to be exempt under s36 of the Act, it must reveal the personal information of a person other than the applicant. Section 5(1) of the Act defines personal information as *any information or opinion in any recorded format about an individual:*

> *(a) whose identity is apparent or is reasonably ascertainable from the information or opinion; and*
>
> *(b) who is alive or has not been dead for more than 25 years.*

15 The Department has applied s36 to information contained on 10 of the 13 relevant pages, which comprise four separate documents. The first three documents are titled *Unallocated Closure Record*, *Child History Report* and *Referral and Feedback Form Between Tasmania Police and Child and Family Services*. The fourth is a letter from the Department to Q's father. For ease of reference, I will use the page numbering from the 13 page PDF document provided to my office by the Department, which contains the relevant information.

16 Upon reviewing all the redacted information, I am satisfied that it states the names of people other than the applicant or would make their identities reasonably ascertainable. This information is therefore prima facie exempt from disclosure under s36(1) of the Act.

*Public interest test*

17 I now turn to assess whether it would be contrary to the public interest to release the information I have found to be prima facie exempt from disclosure under s36(1) of the Act.

18 After considering all relevant matters, I find that the key considerations are Schedule 1 matters (h) – *whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government,* and (m) – *whether the disclosure would promote or harm the interests of an individual or group of individuals.*

19 Though this information is contained on the applicant's file, the redacted parts in the majority of the documents relate solely to other people in the applicant's family. The information is highly personal, relating to their behaviour and life circumstances. The information was collected due to the family's involvement with the child safety system and it is vital for the effective functioning of that system that it is only disclosed to others if necessary and appropriate. While there is strong public interest in the applicant being able to access their own file and information about their life, this information solely relates to other people. I am satisfied it would

be contrary to the public interest to release this information and that it is exempt under s36.

20 The exception is information referring to other people but contained in a description of Q's disclosure of abuse. This is the applicant's account of what occurred and it is not contrary to the public interest to provide them with almost all of the details of their own disclosure. However, some minimal redactions of names of other children in the same foster care placement are reasonable due to the harm to their interests in these names being released.

21 Disclosure of the name of the alleged perpetrator and the description of their relationship to Q must also be differently considered. Consistent with my finding in *H and Department for Education, Children and Young People*,[1] absent a relevant charge or conviction, I find that it is contrary to the public interest to release this category of information. My finding may well have been different if the alleged perpetrator had been charged or convicted in relation to this matter, or if their identity in relation to this matter had been reported on publicly in some other way. Absent these circumstances, I find that this information is exempt under s36 and should not be released.

22 Following my assessment of the public interest test, I find that the following information is not exempt and should be released to Q:

- the second redaction on page 3;
- the second redaction on page 5;
- the redaction applied to the last 5 words on page 5;
- the names of the applicant's mother and father in the *Referral and Feedback Form Between Tasmania Police and Child and Family Services*;
- the first name of Q's carer and the suburb under the heading *With Whom Child Lives* on page 8;
- references to the applicant's grand mother and her address on pages 8-10;
- the last six words in the paragraph on page 9 under the heading *What Has The Child Disclosed*; and
- the last 20 words in the third paragraph on page 9 under the heading *Under What Circumstances Did They Disclose*.

23 Though this information relates to individuals other than the applicant, it aligns with other information released in the documents or provides

[1](18 February 2026) at [20], available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions.

details of Q's disclosure of abuse and would not be contrary to the public interest to release.

24 I find that the remainder of the redacted information is exempt under s36.

**Preliminary Conclusion**

25 Accordingly, for the reasons set out above, I determine that exemptions pursuant to s36 should be varied.

**Conclusion**

26 As the above preliminary decision was adverse to the Department, on 22 May 2026 it was made available pursuant to s48(1)(a) of the Act to seek its input before finalisation. On 27 May 2026 the Department confirmed that it did not wish to provide such input.

27 On 4 June 2026 the preliminary decision was also made available to Q to seek their input, in accordance with s48(1)(b) of the Act. Q responded but did not make submissions regarding the substance of my decision.

28 Accordingly, for the reasons set out above, I determine that exemptions claimed pursuant to s36 should be varied.

29 I apologise to the parties for the delay in finalising this decision.

**Dated:** 26 June 2026

Dr Grant Davies
**OMBUDSMAN**

## Attachment 1 – Relevant Legislation

### Section 36 – Personal Information

(1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13 .

(2) If –

> (a) an application is made for information under this Act; and
>
> (b) the information was provided to a public authority or Minister by a third party; and
>
> (c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to be of concern to the third party –
>
> the principal officer or Minister is to, if practicable and before deciding whether the disclosure of the information under this Act should occur, by notice in writing to the third party –
>
> (d) notify that person that the public authority or Minister has received an application for the information; and
>
> (e) state the nature of the information that has been applied for; and
>
> (f) request that, within 15 working days from the date of the notice, the person provide his or her view as to whether the information should be provided.

(3) If a public authority or Minister, after receipt of a person's view referred to in subsection (2)(f) , decides to provide the information, the public authority or Minister must, by notice in writing given to that person, notify that person of the decision.

(4) A notice under subsection (3) is to –

> (a) state the nature of the information to be provided; and
>
> (b) if the decision was made on behalf of a public authority or Minister, state the name and designation of the person who made the decision; and
>
> (c) inform the person to whom the notice is addressed of –
>
> > (i) that person's right to apply for a review of the decision; and
> >
> > (ii) the authority to which the application for review can be made; and
> >
> > (iii) the time within which the application must be made.

(5) A public authority or Minister must not provide the information referred to in a notice given to a person under subsection (3) –

> (a) until 10 working days have elapsed after the date of notification of that person; or
>
> (b) if during those 10 working days the person applies under section 43 for a review of the decision, until that review determines that the information should be provided; or
>
> (c) until 20 working days after notification of an adverse decision under section 43 ; or

(d) if during those 20 workings days the person applies for a review of the decision under section 44 , until that review determines that the information should be provided; or

(e) if the information is information to which a decision referred to in section 45(1A) relates –

(i) during 20 working days after the notification of the decision; or

(ii) where the person applies for a review of the decision under section 45(1A) – until that review determines the information should be provided.

**Schedule 1 – Matters Relevant to Assessment of Public Interest**

1. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:

(a) the general public need for government information to be accessible;

(b) whether the disclosure would contribute to or hinder debate on a matter of public interest;

(c) whether the disclosure would inform a person about the reasons for a decision;

(d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;

(e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;

(f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;

(g) whether the disclosure would enhance scrutiny of government administrative processes;

(h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;

(i) whether the disclosure would promote or harm public health or safety or both public health and safety;

(j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;

(k) whether the disclosure would promote or harm the economic development of the State;

(l) whether the disclosure would promote or harm the environment and or ecology of the State;

(m) whether the disclosure would promote or harm the interests of an individual or group of individuals;

(n) whether the disclosure would prejudice the ability to obtain similar information in the future;

(o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;

(p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;

(q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;

(r) whether the disclosure would be contrary to the security or good order of a prison or detention facility.

(s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;

(t) whether the applicant is resident in Australia;

(u) whether the information is wrong or inaccurate;

(v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;

(w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;

(x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;

(y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.

**Section 16 of the Children, Young Persons and Their Families Act 1997- Confidentiality of person informing of knowledge, belief or suspicion of abuse or neglect or certain behaviour**

(1) In this section –

*law enforcement agency* means –

(a) the Police Service or the police force of another State or a Territory or of an overseas jurisdiction; or

(b) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction;

*notifier* means a person who provides the Secretary or a Community-Based Intake Service with a risk notification.

(2) Subject to this section, a person who receives a risk notification from a notifier, or who otherwise becomes aware of the identity of a notifier because he or she is engaged in the administration of this Act, must not disclose the identity of the notifier to any other person unless the disclosure –

(a) is made in the course of official duties under this Act to another person acting in the course of official duties; or

(b) is made with the consent of the notifier; or

(c) is made by way of evidence adduced with leave granted by a court under subsection (3) ; or

(d) is made to a law enforcement agency.

Penalty:  Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 12 months, or both.

(3)  Evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, must not be adduced in proceedings before any court without leave of that court.

(4)  Unless a court grants leave under subsection (3) , a party or witness in the proceedings must not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.

(5)  A court cannot grant leave under subsection (3) unless –

(a) that court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or

(b) the notifier consents to the admission of the evidence in the proceedings.

(6)  An application to a court for leave to adduce evidence under subsection (3)  –

(a) must not, except as authorised by that court, be heard and determined in public; and

(b) must be conducted in a manner which protects, as far as may be practicable, the identity of the notifier pending the determination of the application.

(7)  The Right to Information Act 2009 does not apply to the identity of a notifier or any information contained in or relating to a risk notification that may lead to the identification of the notifier.