



## Decision and Reasons for Decision

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**Citation:** *Z98 and Queensland Building and Construction Commission [2025] QICmr 68 (10 October 2025)*

**Application Number:** 316690

**Applicant:** Z98

**Respondent:** Queensland Building and Construction Commission

**Decision Date:** 10 October 2025

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - IRRELEVANT INFORMATION - whether information falls outside the scope of the application - whether information may be deleted on the basis it is irrelevant - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PARLIAMENTARY PRIVILEGE - Parliamentary briefing documents and associated correspondence - whether disclosure would infringe the privileges of Parliament - whether exempt information - sections 47(3)(a) and 48 and schedule 3, section 6(c)(i) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications with agency's internal legal advisers - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - waiver and improper purpose - whether access to information may be refused on the basis that it is exempt - sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - accountability, transparency, fair treatment and administration of justice - personal information, privacy, flow of information and business affairs - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS** - applicant considers particular documents have not been located by agency - whether access to those further documents can be refused on the ground they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO FURTHER DEAL WITH ACCESS APPLICATION - EFFECT ON AGENCY'S FUNCTIONS** - whether work involved in further dealing with application would, if carried out, substantially and unreasonably divert resources of agency from their use by agency in performing the agency's functions - section 41 of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Building and Construction Commission (**QBCC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access a broad range of documents (listed as items 1-42). Most of the documents sought by the applicant relate to QBCC's investigations of certain complaints made by the applicant in connection with building works undertaken at a particular property.<sup>1</sup>
2. On 13 September 2021, QBCC issued a notice of intention to refuse to deal with the access application (**Notice**), as QBCC considered the work involved in dealing with it would, if carried out, substantially and unreasonably divert QBCC's resources from their use in the performance of QBCC's functions.<sup>2</sup> Consultation then occurred between the applicant and QBCC about the terms of the access application and the applicant agreed to exclude certain documents and certain types of documents.
3. QBCC located 6872 pages and 16 audio files as relevant to the narrowed terms of the access application (**Located Documents**). Although QBCC purported to make a decision on 1 February 2022 in respect of the application (**Original Decision**),<sup>3</sup> they did not make that decision within the required statutory timeframe. QBCC was therefore taken to have made a deemed decision refusing access to the requested information (**Deemed Decision**).<sup>4</sup>

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<sup>1</sup> Access application dated 9 August 2021. On 1 July 2025, key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's access application was made before this change, the RTI Act and IP Act as in force prior to 1 July 2025 remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts as in force prior to 1 July 2025.

<sup>2</sup> The Notice was issued pursuant to section 42 of the RTI Act and in it QBCC: noted that the application 'encompasses a large number of individual cases, in addition to a number of other subjects including phone calls, records of phone calls, policy and procedure-type documents, as well as other administrative documents' noted that initial searches of only four complaint files nominated in the access application had located in excess of 6000 pages, and in excess of four hours of video and audio recordings

indicated that these documents represented 'only a small proportion of the likely documents as a whole'; and considered that 'dealing with these cases alone represents a substantial and unreasonable diversion of the QBCC's resources'.

<sup>3</sup> In the Original Decision, QBCC gave access to 5013 pages and 6 audio files and decided to delete irrelevant information and fully, or partially, refuse access to the remaining Located Documents.

<sup>4</sup> Under section 46 of the RTI Act. I notified this assessment to QBCC on 27 June 2024 (and QBCC did not contest it) and to the applicant on 17 October 2024.

4. Notwithstanding this, the applicant applied for internal review of the Original Decision<sup>5</sup> and QBCC purported to affirm the Original Decision pursuant to section 83(2) of the RTI Act.<sup>6</sup>
5. The applicant then applied<sup>7</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Internal Review Decision. The applicant sought access to all information within the Located Documents that had not been disclosed by QBCC (**Undisclosed Information**) and he also raised concerns that QBCC had not located all relevant documents.
6. For the reasons set out below, I set aside the Deemed Decision and find that:
  - some of the Undisclosed Information is not relevant to the narrowed terms of the access application
  - access to some of the Undisclosed Information may be refused on the basis it comprises exempt information
  - access to the remaining Undisclosed Information may be refused on the basis its disclosure would, on balance, be contrary to the public interest
  - QBCC may refuse to further deal with the narrowed access application, on the basis that the work involved in further dealing with it would substantially and unreasonably divert QBCC's resources from their use in the performance of QBCC's functions
  - some of the documents the applicant considered to be missing have been disclosed to the applicant or form part of the Undisclosed Information; and
  - access to the remaining documents the applicant considered to be missing may be refused on the basis that they do not exist.

## Background

7. OIC accepted the External Review Application on 26 May 2022. After completing an assessment of the reviewable issues, OIC conveyed a preliminary view<sup>8</sup> to the applicant on 18 August 2022 and invited the applicant to respond if he disagreed with the preliminary view.<sup>9</sup> At the applicant's request, OIC granted the applicant a three-month extension of time for provision of any response he wished to make to the preliminary view.<sup>10</sup>
8. In the absence of any response from the applicant within that extended response timeline, the external review was finalised on 20 December 2022.<sup>11</sup>
9. On 17 January 2024, OIC received the applicant's second application seeking external review of the Internal Review Decision.<sup>12</sup> After I notified the applicant that an external

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<sup>5</sup> By email dated 1 March 2022 (**Internal Review Application**).

<sup>6</sup> Under section 83(2) of the RTI Act, where an agency does not notify an applicant of its internal review decision within 20 business days after receiving an internal review application, the agency is taken to have made a decision affirming its original decision. QBCC notified the applicant of this by letter dated 29 March 2022 (**Internal Review Decision**).

<sup>7</sup> On 29 April 2022 (**External Review Application**). It is noted that the External Review Application incorporated, by reference, significant portions of the Internal Review Application.

<sup>8</sup> It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or their delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

<sup>9</sup> OIC nominated 7 September 2022 as the due date for the applicant's response.

<sup>10</sup> By letter dated 14 September 2022, OIC confirmed to the applicant that the due date for the applicant's response had been extended to 7 December 2022.

<sup>11</sup> In accordance with OIC's then standard processes for resolution of external review applications.

<sup>12</sup> The document was titled '2024.01.17 [applicant name] – External Review 2 of RTI Application RTIIP-1014(2)' (**Second External Review Application**).

review concerning the same decision had been completed in 2022, the applicant clarified that he was, in 2024, seeking a re-opening of that external review.<sup>13</sup>

10. Following that clarification, I invited<sup>14</sup> the applicant to provide any further submission he wished to make in support of his request for the external review to be re-opened. Three extensions of time were then, at the applicant's request, granted for the provision of that submission.<sup>15</sup>
11. The applicant wrote to the Information Commissioner (by letter dated 6 May 2024)<sup>16</sup> making a complaint against various OIC officers. The letter also made further submissions on this matter.<sup>17</sup> In response, the Information Commissioner wrote to the applicant on 3 June 2024 to, inter alia:
  - confirm that, as a result of an identified, administrative oversight associated with the 20 December 2022 closure correspondence, the external review would remain open;<sup>18</sup> and
  - invite the applicant to provide, by 24 June 2024, any submission he wished to make in response to the preliminary view that had been previously sent to him on 18 August 2022.
12. At the applicant's request, a one-month extension of time (to 22 July 2024) was granted for provision of the submission referenced in the preceding paragraph.<sup>19</sup>
13. Following receipt of the applicant's submissions (on 22 July 2024 and 27 August 2024),<sup>20</sup> I conveyed a preliminary view to the applicant concerning the Undisclosed Information.<sup>21</sup> I invited the applicant to respond to the preliminary view by 29 October 2024. Although OIC received an email from the applicant on 12 November 2024,<sup>22</sup> that correspondence did not include any submission which addressed the preliminary view about the Undisclosed Information.
14. A further preliminary view was then conveyed to the applicant about the documents which he considered had not been located by QBCC and his concerns relating to QBCC's searches.<sup>23</sup> The applicant was again invited to provide a submission responding to that preliminary view, however, no response was received from the applicant.

## Reviewable decision

15. Although the External Review Application sought review of the Internal Review Decision, the decision under review is the Deemed Decision.<sup>24</sup>

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<sup>13</sup> I confirmed this clarification in an email to the applicant dated 20 March 2024.

<sup>14</sup> By emails dated 20 and 27 March 2024. OIC asked the applicant to provide any submission he wished to make by 5 April 2024.

<sup>15</sup> Namely, by email dated 3 April 2024, the due date for the response was extended to 19 April 2024; by email dated 22 April 2024, the due date was further extended to 26 April 2024; and by email dated 29 April 2024, the due date was further extended to 3 May 2024.

<sup>16</sup> Which was attached to an email dated 7 May 2024.

<sup>17</sup> This correspondence was also sent to the email address not nominated for submissions on this matter and I proceeded on the basis that the applicant had not provided any further submission supporting his re-opening request. In those circumstances, on 9 May 2024, I confirmed to the applicant that the review remained closed, on the basis that the Second External Review Application had not raised issues of sufficient merit to justify re-opening the external review.

<sup>18</sup> I notified QBCC of the Information Commissioner's decision on 4 June 2024.

<sup>19</sup> The granted extension was confirmed by email to the applicant dated 25 June 2024.

<sup>20</sup> The emails in which these submissions appear addressed a number of external review matters being progressed by OIC at that time.

<sup>21</sup> Letter dated 17 October 2024.

<sup>22</sup> This email also addressed a number of external review matters.

<sup>23</sup> As set out in the Appendix.

<sup>24</sup> Taken to have been made in October 2021 (section 46(1)(a) of the RTI Act).

16. External review is a merits review process.<sup>25</sup> Accordingly, I have considered afresh the applicant's entitlement to access the documents requested in the narrowed terms of the access application. Notwithstanding the merits review nature of the review, the applicant's 6 May 2024 letter:
- submitted that specific QBCC RTI Officers had no delegated authority to deal with the access application, 'issue a s42 notice' or 'decide the Application'
  - submitted that 'at law the Application was deemed' and he was therefore entitled to a refund of the application fee; and
  - questioned whether QBCC should, for not refunding the application fee, be penalised with 'an interest component for consequential damages'.
17. In respect of the applicant's contention that the Notice was issued by a QBCC officer who did not hold a relevant delegated authority, I note that the officer was delegated to approve access to documents requested under the RTI Act.<sup>26</sup> Therefore, on a factual basis, I find that the Notice (which was sent before the end of the standard processing period) was signed by an appropriately delegated QBCC officer.
18. As noted above, both QBCC and the applicant were notified during the external review that the Deemed Decision had been identified as the decision under review.<sup>27</sup> As a result, I confirmed to the applicant that:<sup>28</sup>
- while he was entitled to a refund of the applicant fee pursuant to section 46(1)(b) of the RTI Act, there is no provision in the RTI Act for the levying of interest or consequential damages; and
  - because the Deemed Decision was the decision under review, his submissions contesting the delegated authority of QBCC's officers to make decisions regarding the access application were not relevant to the reviewable issues and would not be further addressed.<sup>29</sup>
19. While my factual findings above are relevant to the issue of the applicant's entitlement to a refund of the application fee, I note that they are of no practical consequence to the reviewable issues in this matter, given the merits review nature of the external review.

## Evidence considered

20. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). The significant procedural steps taken by OIC in conducting this review are set out in the Appendix.

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<sup>25</sup> That is, external review is an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to reach the correct and preferable decision. The Court of Appeal noted in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [12] that section 118 of the IP Act 'provides for the relevant form of review to be merits review'. Similarly, in *Mokbel v Queensland Police Service* [2023] QCATA 158 (*Mokbel*) at [12] and *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2], Judicial Member DJ McGill SC confirmed that external review under the IP Act is a merits review process. While these decisions concerned access applications made under the IP Act, they are relevant to the external review process under the RTI Act.

<sup>26</sup> I also note section 27A(5) of the *Acts Interpretation Act 1954* (Qld), which provides that 'The delegate may, in the performance of a delegated function or in the exercise of a delegated power, do anything that is incidental to the delegated function or power'. I provided details about this provision to the applicant when I notified him (on 17 October 2024) that the decision under review was the Deemed Decision.

<sup>27</sup> As QBCC had not made a decision within the required statutory timeframe.

<sup>28</sup> By letter dated 17 October 2024.

<sup>29</sup> Notwithstanding this, the applicant made further submissions on 12 November 2024, contesting the delegated authority of the officers who made the Original Decision and the Internal Review Decision.

21. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression<sup>30</sup> (which includes the right to seek and receive information) and the right to privacy and reputation.<sup>31</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' these rights, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.<sup>32</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent Victorian legislation,<sup>33</sup> that '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.<sup>34</sup>
22. The applicant provided a number of submissions to OIC,<sup>35</sup> including in the External Review Application (which incorporated, by reference, significant parts of the Internal Review Application) and the Second External Review Application. I have summarised and addressed the applicant's submissions below, to the extent they are relevant to the issues for determination.
23. In respect of the applicant's submissions that are not relevant to the issues for determination, these primarily relate to the applicant's dissatisfaction with the manner in which the access application was dealt with.<sup>36</sup> OIC's external review jurisdiction under the RTI Act relates only to decisions made about access to documents<sup>37</sup> held by government agencies.<sup>38</sup> Although section 113 of the RTI Act empowers the Information Commissioner, in certain circumstances, to notify an agency at the completion of an external review about an agency's officer conduct in the administration of the RTI Act, that section does not empower, or obligate, the Information Commissioner, in a decision issued pursuant to section 110 of the RTI Act, to address or make findings about alleged conduct deficiencies of agency officers in dealing with an access application. Accordingly, the applicant's submissions which are not relevant to the issues for determination are not dealt with in these reasons for decision.

### Information in issue

24. As noted in paragraph 5 above, the applicant seeks access to all of the Undisclosed Information, as well as specific additional documents which he considered had not been located by QBCC and were relevant to the narrowed access application.<sup>39</sup> The schedules to the Original Decision identify the general nature of the Undisclosed Information and confirm that it comprises:

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<sup>30</sup> Section 21 of the HR Act.

<sup>31</sup> Section 25 of the HR Act.

<sup>32</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>33</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>34</sup> *XYZ* at [573]. This approach was endorsed by Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

<sup>35</sup> As set out in the Appendix.

<sup>36</sup> For example, in the External Review Application the applicant raised concerns about QBCC delays in processing the access application and the provision of documents. Further, in the External Review Application and the Second External Review Application, the applicant raised concerns about the nonpublication of certain types of documents on QBCC's disclosure log.

<sup>37</sup> And, where relevant, amendment of documents.

<sup>38</sup> This is reflected in section 110(1) of the RTI Act, which requires the Information Commissioner, after conducting an external review of an agency's decision (in circumstances where the review is unable to be resolved without a formal decision), to decide, in a written decision, whether the agency's decision should be affirmed, varied or set aside.

<sup>39</sup> In the interests of resolution, QBCC disclosed one further audio recording to the applicant, notwithstanding its position on external review that the recording was not responsive to the narrowed terms of the access application. As a result, the applicant's submissions concerning that document are not addressed in this decision.

- information to which QBCC purported to refuse access, appearing on 1304 full pages, 9 full audio recordings, parts of 555 pages and part of one audio recording (**Refused Information**); and
- information which QBCC considered to be irrelevant to the narrowed terms of the access application.

25. While the RTI Act prevents me from describing the Refused Information in any detail,<sup>40</sup> it broadly comprises:

- information which QBCC considered comprised exempt information under schedule 3, section 6(c)(i) of the RTI Act (**Category A Information**)
- information which QBCC considered comprised exempt information under schedule 3, section 7 of the RTI Act (**Category B Information**); and
- information which QBCC considered would, on balance, be contrary to the public interest to disclose (**Category C Information**).

### Issues for determination

26. The issues for determination are whether:

- the applicant is entitled under the RTI Act to access the information which QBCC deleted as irrelevant to the narrowed terms of the access application
- the Category A Information comprises exempt information and access to it may be refused on that basis<sup>41</sup>
- the Category B Information comprises exempt information and access to it may be refused on that basis<sup>42</sup>
- disclosure of the Category C Information would, on balance, be contrary to the public interest and access to it may be refused on that basis;<sup>43</sup> and
- the applicant is entitled under the RTI Act to access to the additional documents he considers have not been located by QBCC.<sup>44</sup>

### Applicant's general submissions about the external review process

27. In addition to the matters referenced in the 'Background' section of this decision, the applicant raised generalised concerns about how the external review was conducted.

28. Under the RTI Act:

- the procedures to be followed on external review are, subject to the Act, within the discretion of the Information Commissioner and external review proceedings are required to be conducted with as much expedition as the requirements of the Act and a proper consideration of the matters before the Information Commission allow;<sup>45</sup> and
- the RTI Act permits the Information Commissioner to delegate all or any of the Commissioner's powers under the Act.<sup>46</sup>

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<sup>40</sup> Section 108 of the RTI Act requires the Information Commissioner (or delegate) to avoid disclosure of information which is claimed to be exempt information or contrary to the public interest information.

<sup>41</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>42</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>43</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>44</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

<sup>45</sup> Section 95(1)(a) of the RTI Act.

<sup>46</sup> Section 145 of the RTI Act.

29. I accept that the time taken to complete this review may not have met the applicant's expectations. The circumstances giving rise to this are evident in the information provided in the Appendix.
30. I also confirm that I am the appropriately delegated decision-maker in this review. I can identify no actual, perceived or potential conflict of interest that should preclude me acting as the decision-maker in this matter.<sup>47</sup>
31. I will now turn to consideration of the substantive issues to be determined in this review.

### Irrelevant Information

32. In the Original Decision, QBCC described the information it had deleted as irrelevant to the narrowed access application as comprising—'*information which relates to personal matters and personal information of other individuals that are unrelated to [identifying detail] property or the complaint investigations as well as other unrelated QBCC matters*'; information that relates to '*other individuals and businesses*' which was used in '*examples*' within partially disclosed QBCC procedural manuals; and case notes that were outside the '*date scope*' of the narrowed access application. Page 14 of Schedule B to the Original Decision identifies the pages on which this redacted information appears and, in the documents disclosed to the applicant, this redacted information was marked 's73'.
33. There are three broad types of information which QBCC deleted as irrelevant:
  - portions of information redacted from partially disclosed QBCC procedural manuals (**Manual Deletions**)<sup>48</sup>
  - portions of information which generally relate to the personal circumstances of individuals other than the applicant (**Personal Circumstance Information**),<sup>49</sup> and
  - the remaining information which QBCC deleted on the basis it was irrelevant to the narrowed access application (**Irrelevant Information**)<sup>50</sup>—this includes case note information which was created after the access application was received, and information which concerns matters other than those listed in the narrowed access application.<sup>51</sup>
34. Given the nature of the Manual Deletions and Personal Circumstance Information, I have separately addressed them in later sections of this decision. My findings regarding the Irrelevant Information are set out below.

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<sup>47</sup> To the extent the applicant's concerns about the external review process could be interpreted as raising an issue of apprehended bias, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias—refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

<sup>48</sup> Appearing on pages 29, 30, 32, 34, 36, 38, 61, 63, 64, 71, 75, 77, 78, 98, 100, 102, 105, 108, 110, 112, 113, 118, 119, 120, 121, 123, 124, 141, 142, 143, 185, 186, 187, 189, 190, 192, 193, 195, 450, 454, 456, 461 and 473 in the File titled '*Compliance Investigations Unit Procedures Manual*' and pages 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 237, 238, 239, 240, 241, 242 and 243 in the File titled '*F[number] Certification – [name] ZIP file*'. In order to remove potentially identifying information, references to file names and file numbers in this decision have been partially anonymised.

<sup>49</sup> Pages 106 and 107 in the File titled '*F[number] Certification – without zip files*'; and page 1007 in the File titled '*F[number] Certification – [name] ZIP file*'.

<sup>50</sup> Appearing on pages 4 and 5 in the File titled '*[number]\_6 Case Notes*'; pages 427, 430 and 578 in the File titled '*F[number] Certification – without zip files*'; pages 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 237, 238, 239, 240, 241, 242, 243 and 1007 in the File titled '*F[number] Certification – [name] ZIP file*'; pages 144, 158, 165, 172, 180, 189, 197, 205, 215, 225, 235, 262, 273, 277, 281, 287, 288, 291, 320, 339, 343, 677, 678, 681, 683, 686, 687, 688, 691, 692, 697, 698, 699, 700, 701, 703, 704, 705, 707, 708, 710, 711, 712, 713, 716, 717, 718, 721, 722, 723, 728, 729, 730, 736, 738, 739, 740 and 741 in the File titled '*FOL20-[number]-02 – [name] emails*'; pages 91, 93, 94, 111 and 112 in the File titled '*FOL21-[number]-001 with FOL21-[number]-combined-Legal*'; and pages 324, 416, 418, 419, 420, 450 and 451 in the File titled '*FOL20-[number] Compliance ECM*'.

<sup>51</sup> That is, the information concerns complaints made to QBCC by other individuals.

### **Relevant law**

35. Under the RTI Act, an individual has a right to access documents of an agency.<sup>52</sup>
36. Section 27 of the RTI Act confirms that an access application is taken to apply to documents that are, or may be, in existence on the day the application is received.
37. Section 73 of the RTI Act also permits information that is not relevant to the access application to be deleted from the document before giving access to a copy of the document. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.<sup>53</sup>
38. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the relevant access application.<sup>54</sup>

### **Findings**

39. In the External Review Application, the applicant submitted that QBCC '*Did not ask what was relevant and was advised that everything was to be treated as relevant given the misconduct*'.<sup>55</sup> The applicant has not otherwise explained why he considers the Irrelevant Information is relevant to the narrowed terms of the access application.
40. Having considered the narrowed terms of the access application and carefully reviewed the Irrelevant Information, I can confirm that this information either post-dates the access application or it otherwise concerns matters which are not relevant to the narrowed terms of the access application.<sup>56</sup>
41. For these reasons, I find that the applicant is not entitled under the RTI Act to access the Irrelevant Information, as it is not relevant to the narrowed terms of the access application and has been validly deleted from the documents disclosed to the applicant.<sup>57</sup>

### **Category A Information**

42. Schedule B to the Original Decision describes the Category A Information as being a '*Parliamentary brief/draft Parliamentary brief*'<sup>58</sup> and part of an '*Email*'.<sup>59</sup>
43. It is QBCC's position on external review that the exemption in schedule 3, section 6(c)(i) of the RTI Act applies to the Category A Information.

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<sup>52</sup> Section 23 of the RTI Act.

<sup>53</sup> *Wyeth and Queensland Police Service* [2015] QICmr 26 (18 September 2015) at [12].

<sup>54</sup> *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) (*Van Veenendaal*) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>55</sup> This submission was embedded as a comment in an the attachment to the External Review Application titled '*RTIIP-0000001014 Attachment A*'. I also note that, in the Internal Review Application, the applicant submitted that '[name of officer] *wilfully and unilaterally "decided" for herself what relevance the documents had (instead of just asking us)*'.

<sup>56</sup> For example, it relates to complaint matters/investigations which are unrelated to the applicant.

<sup>57</sup> Under section 73 of the RTI Act.

<sup>58</sup> Appearing on pages 433-436, 451-455 and 466-470 in the File titled '*FOL20-[number]-02 – [name] emails*'.

<sup>59</sup> Appearing on page 457 in the File titled '*FOL20-[number]-02 – [name] emails*'.

### **Relevant law**

44. Although the RTI Act is to be administered with a pro-disclosure bias,<sup>60</sup> the right of access is subject to certain limitations, which include that access may be refused to exempt information.
45. Under schedule 3, section 6(c)(i) of the RTI Act, information will qualify as exempt if its public disclosure would infringe the privileges of Parliament (**Parliamentary Exemption**). For this exemption to apply:
  - the information must have been prepared for the purposes of, or incidental to, the transacting of business of the Parliament; and
  - public disclosure of the information would hinder, impede or impair the making of similar communications in the future for the purpose of transacting the business of the Parliament.
46. Where information meets the requirements of an exemption under the RTI Act, it is not necessary to then proceed to also consider the public interest balancing steps set out in section 49 of the RTI Act.<sup>61</sup>

### **Findings**

47. In the Internal Review Application, the applicant submitted the Parliamentary Exemption was misused by QBCC because he considered QBCC officers were making fraudulent statements to the Minister in Hot Issues Briefs.<sup>62</sup> The Category A Information does not comprise Hot Issues Briefs.<sup>63</sup> The applicant has not otherwise addressed the application of the Parliamentary Exemption to the Category A Information.
48. Having carefully reviewed the Category A Information, I am satisfied that:
  - it comprises documents prepared for the purposes of, or incidental to, transacting Parliamentary business; and
  - its public disclosure would hinder, impede or impair the preparation or assembly of documentary information for future debates and proceedings in the Parliament.<sup>64</sup>
49. There is no evidence before me to indicate that this privilege in the Category A Information has been waived by Parliament (as the holder of that privilege).
50. For these reasons, I find that the Category A Information comprises exempt information and access to it may be refused on that basis.<sup>65</sup>

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<sup>60</sup> Section 44 of the RTI Act.

<sup>61</sup> This was confirmed by the Queensland Civil and Administrative Tribunal (**QCAT**) in *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [10] and *Mokbel* at [30]. On external review, the Information Commissioner also has no discretion to disclose exempt or contrary to the public interest information (as specifically stated in section 105(2) of the RTI Act).

<sup>62</sup> In a copy of the Original Decision attached to the External Review Application, the applicant embedded a comment 'What items is this' against QBCC's reasons for claiming the Parliamentary Exemption.

<sup>63</sup> For completeness, I also confirm that there is nothing in the information before me which supports the applicant's assertions about fraudulent statements.

<sup>64</sup> In reaching this conclusion, I note that similar types of documents were found to satisfy the exemption requirements in *Waratah Coal Pty Ltd and Department of State Development, Infrastructure and Planning* (Unreported, Queensland Information Commissioner, 10 December 2012) and *Hart MP and Queensland Building and Construction Commission* [2022] QICmr 7 (18 February 2022). I have also noted the findings of the New South Wales Supreme Court in *Re OPEL Networks Pty Ltd (in liq)* (2010) 77 NSWLR 128 at [118], when considering a request for disclosure of analogous Commonwealth Parliament briefing documents.

<sup>65</sup> Pursuant to sections 47(3)(a) and 48 and schedule 3, section 6(c)(i) of the RTI Act.

## Category B Information

51. The Category B Information is described in Schedule B to the Original Decision as being parts of 'Emails',<sup>66</sup> part of a 'File Slip page',<sup>67</sup> 'Draft Information Notices, Legal Advice Documents, Emails',<sup>68</sup> 'part of an 'Internal file slip page',<sup>69</sup> and 'Emails and attachments'.<sup>70</sup>
52. QBCC maintains that the Category B Information is exempt.
53. The applicant disagrees. In an attachment to the External Review Application, the applicant submitted:<sup>71</sup>

*Legal Professional Privilege does not apply to Model Litigants (which QBCC has previously admitting to being). QBCC is required by law (QCAT Act) and the Model Litigant principles to provide ALL relevant materials associated with the decision. We formally requested compliance with the Model Litigant role by [name of legal firm] and they refused and instead corruptly referred us to RTI. We now understand that [name of legal firm] also provide law advice to QBCC regarding RTI releases. Given [name of legal firm]'s involvement in providing legal representation this precludes them (Conflict of Duty) from also providing advice to QBCC regarding RTI releases. Eccleston Case Para 187 & 189 confirms that conversation between legal officers are not automatically LPP (as [name of QBCC officer] would corruptly claim). It has to be done in a true client and client's lawyer relationship.*

54. The applicant further submitted that QBCC was a 'Regulator not a litigator'<sup>72</sup> and he asserted that QBCC had falsely claimed legal professional privilege 'where it did not apply, such as when legal advice was sought and then disclosed as part of a Decision Notice (therefore LPP was waived)'.<sup>73</sup>
55. Noting the restrictions placed upon me under section 108 of the RTI Act, I can confirm that there is a notable level of duplication within the Category B Information, and it does not, as the applicant asserted, comprise external legal advice. Instead, it broadly comprises:
  - internal QBCC communications requesting the provision of legal advice (and references to such requests); and
  - internal QBCC communications providing legal advice<sup>74</sup> (and references to the providing of advice or the provided advice).

<sup>66</sup> On pages 432, 433, 434, 436, 439, 440, 442, 445, 446, 448, 454, 455, 457, 459, 461, 464, 465, 468, 470, 568, 569, 570, 572, 576 in File titled '[number] Certification case – without zip files'; pages 86, 87, 89, 90, 91, 93, 94, 95, 98, 99, 100, 349 and 472 in File titled 'FOL20-[number] – [name] emails', pages 27, 83, 84, 89, 91, 93, 94, 111, 112, 121, 122, 202, 203, 204, 230, 231, 233, 235, 236, 267, 270, 272, 302, 303, 387 and 442 in File titled 'FOL21-[number] with FOL21-[number] combined – Legal', page 300 in File titled 'FOL21-[number] with FOL21-[number] combined – Legal', and page 2130 in File titled 'FOL20-[number] Compliance ECM'.

<sup>67</sup> On page 567 in File titled '[number] Certification case – without zip files'.

<sup>68</sup> On pages 351-390, 395-418, 475-514, 519-542, 544-582, 595-675 in File titled 'FOL20-[number]-02 – [name] emails'.

<sup>69</sup> On pages 1 and 299 in File titled 'FOL21-[number] with FOL21-[number] combined – Legal'.

<sup>70</sup> On pages 2-25, 29-68, 95-109,<sup>70</sup> 124-187, 205-228, 238-261, 273-296, 305-385, 388-427, 445-484, 502-525, 528-566, 568-572, 574-578 and 580-581 in File titled 'FOL21-[number] with FOL21-[number] combined – Legal'.

<sup>71</sup> Being an attachment titled 'RTIIP-0000001014 Attachment A'. The applicant made a similar submission in the Internal Review Application, which contained the following additional statement: 'It has to be done in a true client and client's lawyer relationship and must be in regards to current or future litigation (something which QBCC Officers would have been unable to know during the decision making process). Further [officer name] dishonestly claims that the documents represent Advice Privilege despite QBCC being a Regulator (and primarily not a litigator) and there being no court cases on foot or planned regarding the outcome of the Certifier Complaint. It should also be noted that the Certifier Complaint is also a standard regulatory function that should have been conducted according to the Procedures & Law by a suitably qualified and authorised Decision-Maker (something which [officer name] is acutely aware did not happen)'.

<sup>72</sup> Attachment to the External Review Application.

<sup>73</sup> Email dated 22 July 2024.

<sup>74</sup> Including drafts of provided legal advice.

## Relevant law

56. Information will be exempt from disclosure under the RTI Act where it would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>75</sup>
57. Legal professional privilege protects confidential communications between a lawyer and their client, made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or, for use in legal proceedings either on foot or reasonably anticipated, at the time of the relevant communication.<sup>76</sup> The privilege:
- will extend to copies of unprivileged documents made for the dominant purpose of obtaining legal advice;<sup>77</sup> and
  - may protect communications between salaried employee legal advisers of a government department or statutory authority and his/her employer as the client (including communications through other employees of the same employer) provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character, notwithstanding the employment.<sup>78</sup>
58. Qualifications and exceptions to legal professional privilege<sup>79</sup> may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore whether it comprises exempt information under the RTI Act.

## Findings

59. QBCC's status as a model litigant and regulator is irrelevant to the issue of whether the Category B Information attracts legal professional privilege and may be refused under the RTI Act on that basis. Similarly, any prior refusal to supply information that may have been made by QBCC's representatives in separate QCAT proceedings is also irrelevant to the issue of whether access to the Category B Information may be refused under the RTI Act on the basis it comprises exempt information. Further, the fact that documents may be required to be produced pursuant to court disclosure processes does not, of itself, mean that an agency is not entitled to rely upon the refusal grounds in the RTI Act when dealing with an access request for the same documents.
60. As I have referenced above, there are two broad limbs to legal professional privilege—these are commonly referred to as legal advice privilege and litigation privilege. Accordingly (and contrary to the applicant's assertions), legal professional privilege may apply to documents even in the absence of '*current or future litigation*', or where there are '*no court cases on foot or planned*'.<sup>80</sup>

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<sup>75</sup> Schedule 3, section 7 of the RTI Act. This exemption reflects the requirements for establishing legal professional privilege at common law.

<sup>76</sup> *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] HCA 26 at [23]-[25].

<sup>77</sup> As confirmed by the High Court in *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 (**Propend**).

<sup>78</sup> *Waterford v Commonwealth* (1987) 163 CLR 54 at 95 per Mason and Wilson JJ.

<sup>79</sup> Such as waiver or improper purpose. At common law, a person who would otherwise be entitled to the benefit of legal professional privilege may waive the privilege (*Mann v Carnell* (1999) 201 CLR 1 at [28]). Waiver may be express or implied, however, merely communicating privileged legal advice internally within an agency will not, of itself, deprive the agency of the benefit of that privilege (*Thiess Contractors Pty Ltd v Terokell Pty Ltd* [1993] 2 Qd R 341 and *Jones and Queensland Police Service* [2015] QICmr 15 (26 June 2015) at [38]). The other exception operates to displace legal professional privilege where evidence exists that the relevant client has embarked on a deliberate course of action knowing that the proposed actions were contrary to law, and has made the relevant communications in furtherance of '*some illegal or improper purpose*'. A person alleging legal professional privilege is lost for illegality must do more than make vague or generalised contentions of crimes or improper purpose (*Propend* at 591).

<sup>80</sup> Internal Review Application.

61. There is no evidence before me to indicate that the Category B Information has been disclosed outside of the lawyer-client relationship. Having carefully reviewed this information, I am satisfied that it comprises confidential communications between lawyer and client, prepared for the dominant purpose of giving or receiving legal advice or assistance. As these communications relate to the giving or receiving of legal advice from QBCC's internal legal advisers, I am also satisfied that the necessary professional relationship exists between QBCC (as the client) and their internal legal advisers.
62. Contrary to the applicant's assertion, the Category B Information was not '*disclosed as part of a Decision Notice*'—I am satisfied that QBCC's identification of the general nature of the Category B Information in the Original Decision (including as referenced in paragraph 51 above) has not waived the privilege in it. There is also nothing before me which suggests that the improper purpose exception arises in this matter to displace legal professional privilege in any of the Category B Information.
63. For these reasons, and based on the information which is currently before me, I am satisfied that the Category B Information meets the requirements for legal professional privilege and that that no qualification or exception to the privilege arises in respect of that information. Accordingly, I find that access to the Category B Information may be refused, as it comprises exempt information.<sup>81</sup>

### Category C Information

64. QBCC maintains that access may be refused to the Category C Information. The applicant submitted that he is entitled to access the Category C Information because:
- QBCC did not ask him to provide reasons why he applied to access documents '*but clearly this is required before any balancing test can be applied by RTI or OIC Officers*'<sup>82</sup>
  - there had been an '*Incorrect balancing process by leaving out positive disclosure factors while listing negative factors*'<sup>83</sup>
  - the public interest factors in schedule 4, part 2, items 1, 4 and 5 of the RTI Act apply and deserve significant weight in favour of disclosure<sup>84</sup>
  - '*at least*' the public interest factors listed in schedule 4, part 2, items 2, 3, 6, 10, 11, 12, 14, 16, 17 and 18 also apply to favour disclosure;<sup>85</sup> and
  - '*Despite claiming that Public Interest harm could reasonably result*', QBCC failed to identify any such harm.<sup>86</sup>
65. In the Original Decision, QBCC described the Category C Information as including names, mobile telephone numbers, email addresses, other personal information and business information.<sup>87</sup> Again, I am constrained<sup>88</sup> as to the level of detail I can provide about the Category C Information in this decision, however, it broadly comprises:
- names (or parts of them) and contact details of individuals other than the applicant (including mobile telephone numbers, residential addresses and email addresses)

<sup>81</sup> Under sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

<sup>82</sup> External Review Application.

<sup>83</sup> Submission dated 6 May 2024.

<sup>84</sup> Submission dated 6 May 2024.

<sup>85</sup> Internal Review Application.

<sup>86</sup> Internal Review Application.

<sup>87</sup> Schedule B to the Original Decision identifies the pages on which these types of Undisclosed Information appear.

<sup>88</sup> By section 108 of the RTI Act.

- information about the personal circumstances of individuals other than the applicant
  - Undisclosed Information within case notes; and
  - information obtained by QBCC about other individuals, and information provided to QBCC by other individuals, for the purpose of QBCC's complaint investigations and information summarising or referencing such obtained or provided information (including initial, internal drafts of a particular complaint decision).
66. There is a notable level of duplication within each component of the Category C Information.
67. It is convenient in this decision to deal with the broad components of the Category C Information set out in paragraph 65, particularly as the applicant's submissions separately address some (but not all) of these components. However, before doing so, I wish to address the applicant's more generalised submissions referenced above.
68. When applying to access government information under the RTI Act, an applicant is not required to provide the reasons for making the access request. In the External Review Application, the applicant submitted that he had applied to access the requested documents for '*legal proceedings*' and he specifically referenced an expectation that documents would be released to him prior to a QCAT compulsory conference which occurred in early 2022. When identifying and having regard to relevant public interest factors in accordance with section 49 of the RTI Act (as referenced below), I have taken into account the applicant's submissions about documents being requested for legal proceedings.
69. A number of public interest factors listed in schedule 4, part 4 of the RTI Act recognize that a public interest harm will arise in certain circumstances.<sup>89</sup> A decision-maker is therefore not required, as the applicant asserted, to provide '*evidence of what the harm is*'<sup>90</sup> when balancing the public interest. In this regard, I also note that, in *Kelson v Queensland Police Service & Anor*,<sup>91</sup> Justice Daubney relevantly observed the following in respect of one public interest factor of this nature:

*Having regard to the plain, ordinary meaning of the text, in particular, the use of the conditional 'if' clause, the provision should be read as indicating that where the condition is satisfied (i.e., where disclosure would disclose personal information of a person), then a reasonable expectation of public interest harm is established.*

...

*The intention of the legislature seems clear. Under Schedule 4, Part 4, s 6(1), disclosure of personal information is deemed a 'harm factor' and it is clearly stated that where a harm factor is present, disclosure could reasonably be expected to cause a public interest harm.*

...

*The natural consequence of this conclusion is that the IC is not required to reason how the disclosure of the personal information could amount to a public interest harm; that harm is caused by the very disclosure of the information itself.*<sup>92</sup>

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<sup>89</sup> This is reflected in section 49(4) of the RTI Act, which relevantly states that the factors mentioned in schedule 4, part 4 of the RTI Act '*are factors where disclosure could reasonably be expected to cause a public interest harm*'.

<sup>90</sup> Internal Review Application.

<sup>91</sup> [2019] QCATA 67.

<sup>92</sup> At [90], [92] and [94].

### **Relevant law**

70. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>93</sup>
71. In deciding whether disclosure of information would, on balance, be contrary to the public interest, section 49 of the RTI Act sets out the process a decision-maker must take, namely:
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
72. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered all of these listed factors. I have also kept in mind the pro-disclosure bias of the RTI Act and that the refusal grounds are to be interpreted narrowly.<sup>94</sup>
73. I confirm that I have taken no irrelevant factors into account in reaching the findings detailed below about each component of the Category C Information.<sup>95</sup>

### **Findings – names and contact details**

74. It is apparent from Schedule B to the Original Decision (and the documents which were partially disclosed by QBCC) that a large portion of the Category C Information comprises information of this nature. On most pages where information of this nature has been redacted, all other information on the page has been disclosed. The nature of the refused information is also mostly evident from the surrounding information which has been disclosed—for example, it is clear from the partially disclosed documents that mobile telephone numbers are the *only* Undisclosed Information on 269 of those pages. I again confirm that there is a notable level of duplication within this component of the Category C Information.
75. As the applicant's submissions do not specifically address this component of the Category C Information, the applicant has not explained how he considers the public interest factors referenced in his submissions apply to favour disclosure of this information. Those referenced public interest factors will arise where information is the applicant's personal information<sup>96</sup> and where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>97</sup>

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<sup>93</sup> Sections 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>94</sup> Section 47(2)(a) of the RTI Act.

<sup>95</sup> In this regard, I specifically confirm that I have taken none of the irrelevant factors identified in schedule 4, part 1 of the RTI Act into account.

<sup>96</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>97</sup> Schedule 4, part 2, item 1 of the RTI Act.

- contribute to positive and informed debate on important issues or matters of serious interest<sup>98</sup>
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community<sup>99</sup>
- ensure effective oversight of expenditure of public funds<sup>100</sup>
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official<sup>101</sup>
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct<sup>102</sup>
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies<sup>103</sup>
- reveal the reason for a government decision and any background or contextual information that informed the decision<sup>104</sup>
- reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant<sup>105</sup>
- reveal environmental or health risks or measures relating to public health and safety<sup>106</sup>
- the administration of justice generally, including procedural fairness<sup>107</sup>
- contribute to the administration of justice for a person;<sup>108</sup> and
- contribute to the enforcement of the criminal law.<sup>109</sup>

76. Most of the refused mobile numbers are the work-related telephone numbers of QBCC staff. On the pages where these numbers appear, QBCC has disclosed the names and titles of these QBCC staff, together with other contact details for these staff (that is, email addresses and/or landline telephone numbers). Given this, while the government accountability factor<sup>110</sup> may apply to favour disclosure, I afford it no weight. Taking into account the limited nature of this refused information, I am satisfied that the other public interest factors referenced in the preceding paragraph do not apply to favour disclosure of these mobile telephone numbers.

77. QBCC redacted a small number of names (or parts of names) of non-public sector individuals from the partially disclosed documents. The residential and email addresses and remaining refused mobile telephone numbers also relate to non-public sector individuals. On most (but not all) of the pages where this Category C Information appears, the title/identity of the individual about whom it relates has been disclosed by QBCC. Taking into account the nature of this Category C Information and the surrounding information which has been disclosed, I am not satisfied that disclosure of these names, addresses and mobile telephone numbers would further advance government accountability in any way. Accordingly, I do not consider the related public interest factor applies.<sup>111</sup> Further, I do not consider the remaining public interest factors referenced in paragraph 75 above apply to this information.

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<sup>98</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>99</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>100</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>101</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>102</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>103</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>104</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>105</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>106</sup> Schedule 4, part 2, item 14 of the RTI Act.

<sup>107</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>108</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>109</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>110</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>111</sup> Schedule 4, part 2, item 1 of the RTI Act.

78. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, I do not consider that any other public interest factors apply to favour disclosure of this information.<sup>112</sup>
79. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>113</sup> and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.<sup>114</sup>
80. In respect of the work mobile telephone numbers of QBCC officers, I am satisfied that they comprise the personal information of those officers.<sup>115</sup> I also consider that disclosure of this type of contact information would allow these officers to be directly contacted, potentially outside of business hours, and this could prejudice the privacy of those officers. Taking into account the context in which these mobile telephone numbers appear, I afford the factors concerning personal information and privacy moderate weight in favour of nondisclosure.<sup>116</sup> While the applicant may have some awareness about the contact details of various QBCC officers, particularly as a result of his interactions with QBCC, I do not consider this negates the prejudice and harm that could be expected to arise from disclosure of these mobile telephone numbers under the RTI Act, where there can be no restriction placed upon their use, dissemination or publication.
81. For the names and the remaining mobile numbers, residential addresses and email addresses, I am satisfied these form part of the personal information of the non-public sector individuals about whom they relate. This information appears in the broad context of QBCC's complaint investigations. In these circumstances, I am satisfied the factors concerning personal information and privacy apply and are deserving of significant weight in favour of nondisclosure.
82. On balance, I am satisfied that the public interest factors favouring nondisclosure of this component of the Category C Information outweigh the applicable factors favouring disclosure. Accordingly, I find that disclosure of this information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>117</sup>

### ***Findings - information about the personal circumstances of other individuals***

83. Due to the restrictions placed upon me by the RTI Act,<sup>118</sup> I cannot describe this component of the Category C Information in any detail. In generalised terms, it includes information about matters such as leave arrangements, age/date of birth, living arrangements and family circumstances.
84. The applicant's submissions do not specifically address this component of the Category C Information—as a result, the applicant has not explained how he considers the public

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<sup>112</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of this Category C Information.

<sup>113</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>114</sup> Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

<sup>115</sup> Section 12 of the IP Act relevantly defines 'personal information' 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'.

<sup>116</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>117</sup> Under section 47(3)(b) of the RTI Act.

<sup>118</sup> Section 108 of the RTI Act.

interest factors referenced in his submissions apply to favour disclosure of this information.

85. I am satisfied this Category C Information comprises the personal information of individuals other than the applicant. It is highly personal in nature, and I note that it appears in the context of QBCC's complaint investigations. I consider disclosing this information under the RTI Act would significantly intrude upon the privacy of the individuals about whom it relates (again noting the RTI Act places no restriction on how information disclosed in response to an access application is used or published). In these circumstances, I am satisfied the public interest factors concerning personal information and privacy<sup>119</sup> apply and are deserving of significant weight in favour of nondisclosure, as the prejudice and harm that could reasonably be anticipated from disclosure would be significant.
86. Taking the nature of this component of the Category C Information into account, I am not satisfied that any public interest factors (including those outlined in paragraph 75 above) apply to favour its disclosure.<sup>120</sup>
87. For these reasons, I am satisfied that the public interest factors favouring nondisclosure of this component of the Category C Information are determinative of the public interest. Accordingly, I find that disclosure of this information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>121</sup>

#### **Findings – Undisclosed Information in case notes**

88. The applicant's submissions do not address the refusal of information in the case notes located by QBCC. The applicant has therefore not explained how he considers the public interest factors referenced in his submissions apply to favour disclosure of this information.
89. In six, partially disclosed case note documents, QBCC refused the same portion of information. I can confirm that the same portion of information was also redacted from a further six partially disclosed documents.<sup>122</sup> While I am unable to describe this refused information portion in any detail, it generally relates to the business and commercial affairs of an entity.
90. In most cases where this refused portion of information appears, all other information within the case note document has been disclosed by QBCC. Taking this and the limited nature of this refused information portion into account, I do not consider its disclosure could be expected to further advance government accountability and transparency factors in any meaningful way. On that basis, I afford no weight to the public interest factors in schedule 4, part 2, items 1 and 11 of the RTI Act. Having carefully considered all the other public interest factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions, I do not consider that any of the other public interest factors (including those referenced in the applicant's submissions) apply to favour disclosure of this refused portion of the Category C Information.<sup>123</sup>

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<sup>119</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>120</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of this Category C Information.

<sup>121</sup> Under section 47(3)(b) of the RTI Act.

<sup>122</sup> Pages 119, 2016, 2021, 2034, 2042 and 2051 in *File FOL20-[number] Compliance ECM*.

<sup>123</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of this Category C Information.

91. Public interest factors which favour nondisclosure of information will arise where disclosure could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities<sup>124</sup> and prejudice business affairs of a person.<sup>125</sup> The RTI Act also recognises that disclosing information could reasonably be expected to cause a public interest harm because disclosure of the information would disclose information concerning the business, professional, commercial or financial affairs of a person and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.<sup>126</sup>
92. Given the nature of this refused information portion, I am satisfied these nondisclosure factors apply. However, given the relatively limited nature of this information, I consider only a low level of prejudice and harm could be expected to arise from its disclosure. Accordingly, I afford only low weight to these factors.
93. For the above reasons, I find that, on balance, the factors favouring nondisclosure outweigh the applicable disclosure factors. Accordingly, I find that disclosure of this refused information portion within the Category C Information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>127</sup>
94. Three additional portions of information were redacted from two, partially disclosed case note documents. Again, I cannot describe this information in any detail in this decision, however, I can confirm that it identifies (or is about) individuals other than the applicant.
95. Within one of these portions there is a very small amount of the applicant's personal information, which gives rise to a factor favouring disclosure of that personal information.<sup>128</sup> While I afford this disclosure factor high weight (taking into account the limited nature of the information), the manner in which this personal information of the applicant appears means that it cannot be disclosed without also disclosing the personal information of the other individual about whom it relates.
96. Other information within the case note documents in which these refused portions appear has been disclosed by QBCC. Given this and the limited nature of these three remaining refused information portions, I do not consider their disclosure could be expected to further advance government accountability and transparency factors in any meaningful way. On that basis, I afford no weight to the public interest factors in schedule 4, part 2, items 1 and 11 of the RTI Act.<sup>129</sup> Having carefully considered all the other public interest factors listed in schedule 4, part 2 of the RTI Act (including those specified in paragraph 75 above) and the applicant's submissions, I do not consider that any of the other public interest factors apply to favour disclosure of this remaining case note information.<sup>130</sup>
97. On the other hand, I am satisfied this remaining case note information comprises the personal information of those other individuals. This information appears in the context of QBCC's complaint investigations, and I consider there is a reasonable expectation that its disclosure would prejudice the privacy of these individuals. I am therefore satisfied the personal information and privacy factors apply to favour nondisclosure of

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<sup>124</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>125</sup> Schedule 4, part 3, item 15 of RTI Act.

<sup>126</sup> Schedule 4, part 4, section 7(1)(c) of the RTI Act.

<sup>127</sup> Under section 47(3)(b) of the RTI Act.

<sup>128</sup> For clarity, I confirm that the other two portions of case note information do not contain any of the applicant's personal information.

<sup>129</sup> Taking the nature of this information portion into account, I do not consider its disclosure could be expected to contribute to an informed debate on important issues or inform the community of government operations. On that basis, I find that the factors in schedule 4, part 2, items 2 and 3 of the RTI Act do not apply.

<sup>130</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of this Category C Information.

this information. While some level of prejudice and harm would be expected to arise from disclosure of this information, I afford these nondisclosure factors moderate weight to take into account the somewhat limited nature of this information.

98. For two portions of this case note information, I am satisfied that the public interest factors favouring nondisclosure outweigh the applicable factors favouring disclosure. While I acknowledge that, in respect of the remaining portion of case note information, an additional disclosure factor does apply to part of it, I consider the disclosure factors for that portion of information are also outweighed by the nondisclosure factors.
99. Accordingly, for all of this remaining case note information, I find that disclosure would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>131</sup>

**Findings – information obtained about, or provided by, other individuals for the purpose of QBCC’s complaint investigations**

100. In respect of this remaining component of the Category C Information, the applicant submitted that:

- he considered QBCC’s *‘claims that statements made by various contractors would prejudice their business affairs is untrue, since they all elected to provide the information freely and were not compelled to disclose the information as part of the Certifier investigation’* and without access to this information he considered *‘it is impossible to hold the contractors accountable for the false statements or to alert the QBCC when they have been provided false/misleading information’*<sup>132</sup>
- QBCC’s decision-maker falsely claimed *‘QBCC had engaged in a deliberative process’*<sup>133</sup>
- a certifier is a *‘special type of Public Official’* and *‘It is an important element of [the certifier’s] accountability as a Public Official that any of his statements to the Regulator be accessible for the Public to inspect. As the Complainant who caused the investigation by QBCC to commence it is also important that [the certifier’s] responses and evidence be available to us so that we can challenge/test them’*<sup>134</sup>
- *‘Revelation of the Builder’s corruption/misconduct is certainly in the Public Interest, the public have a right to know if a builder is complying with the law or making representations to the contrary’*<sup>135</sup>
- *‘Prosecution of Criminal Conduct is a highly weighted positive disclosure’*<sup>136</sup>
- *‘Some Defects of which the Builder/Certifier are responsible are Health & Safety Risks – disclosure will ensure that risks are able to addressed instead of concealed by corrupt QBCC Officers’*,<sup>137</sup> and
- he considers his right to procedural fairness is to *‘respond to the submissions of the Certifier/Builder regarding [identifying] property. In addition the information will be presented to QCAT for proper determination’* and disclosure will allow him to *‘attempt to correct fraudulent statements made by dishonest individuals to the QBCC’*.<sup>138</sup>

<sup>131</sup> Under section 47(3)(b) of the RTI Act.

<sup>132</sup> Applicant’s email dated 22 July 2024 (which I note addressed a number of the applicant’s external review matters). I also note that similar submissions were made in the Internal Review Application.

<sup>133</sup> Applicant’s email dated 22 July 2024. The applicant made similar submissions in the External Review Application, where he stated: the QBCC decision-maker made *‘fraudulent statements about QCAT Proceeding to avoid the required disclosure of documents – No Disciplinary Proceeding is underway at QCAT’*. I also note that similar submissions were made in the Internal Review Application and the applicant’s 6 May 2024 submission.

<sup>134</sup> External Review Application.

<sup>135</sup> Internal Review Application.

<sup>136</sup> Internal Review Application.

<sup>137</sup> Internal Review Application.

<sup>138</sup> Internal Review Application.

## Factors favouring disclosure

101. As I have noted above, this component of the Category C Information includes information which was provided to/obtained by QBCC as part of its investigations of the applicant's complaints referenced in the access application. It does, in this context, contain some information about the applicant, which I consider comprises his personal information. I afford significant weight to the public interest factor<sup>139</sup> which favours disclosure of the applicant's personal information, where it appears within this component of the Category C Information. For clarity, I confirm that this factor does not apply to a substantial amount of this Category C Information, which does not include the applicant's personal information.
102. As the regulator of the building and construction industry in Queensland, QBCC must be transparent in how it deals with complaints it receives about residential building work and licensed entities. Here, QBCC disclosed a significant volume of documents in response to the narrowed access application. The applicant was also formally notified about the investigation decisions QBCC made in respect of his complaints and the applicant's submissions reference proceedings before QCAT, in which he is involved, that relate to some of those QBCC decisions.<sup>140</sup> In these circumstances, I consider the information which has already been disclosed to the applicant has substantially enhanced government accountability and transparency, as it has enabled scrutiny of QBCC's complaint investigation processes and provided additional background information to its investigation decisions. However, I am satisfied that disclosing this component of the Category C Information may, to some extent, further advance government accountability and transparency and the public interest factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act apply to favour disclosure. Having reviewed all the information before me (including the disclosed information, this Category C Information and the applicant's submissions<sup>141</sup>), I afford moderate weight to these factors.
103. When submitting that the public interest factor in schedule 4, part 2, item 2 of the RTI Act applies, the applicant stated: *Whether QBCC is performing their statutory duty (among other things) would be relevant to debate in the current QBCC Governance Review (that was announced last year).*<sup>142</sup> As noted in paragraph 1, the information requested in the access application relates (generally) to complaint matters associated with building works undertaken at a specific property. While I acknowledge these matters are of particular importance to the applicant, I am not satisfied that disclosing this Category C Information could, given its nature, reasonably be expected<sup>143</sup> to contribute to positive and informed debate on important issues or matters of serious interest. Accordingly, I do not consider this public interest factor applies.
104. The applicant submitted, in respect of the factor in schedule 4, part 2, item 4 of the RTI Act that '*Clearly QBCC Funds are being spent and Officers are engaging in misconduct.*'<sup>144</sup> Having carefully reviewed this Category C Information, I do not consider

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<sup>139</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>140</sup> To avoid identifying the applicant, I cannot describe those QCAT proceedings in any further detail.

<sup>141</sup> Including his submission that the public interest factor in schedule 4, part 2, item 1 of the RTI Act is deserving of significant weight.

<sup>142</sup> Internal Review Application.

<sup>143</sup> The term '*could reasonably be expected to*' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. Refer, for example, to *Tol and The University of Queensland* [2015] QICmr 4 (18 February 2015) at footnote [8], citing with approval *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

<sup>144</sup> Internal Review Application.

disclosing any of it could reasonably be expected to ensure effective oversight of expenditure of public funds. For this reason, I find that this factor does not apply.

105. The applicant submitted that the public interest factors in schedule 4, part 2, items 5 and 6 of the RTI Act apply to this component of the Category C Information. However, the applicant has not explained how he considers disclosure of information provided by, or obtained about, other individuals (including the subjects of the applicant's complaints) in the course of QBCC's investigations could be expected to allow or assist inquiry into, reveal or substantiate, agency conduct deficiencies. I note that the applicant has been notified of QBCC's investigation decisions about his complaints. In his submissions, the applicant has identified his dissatisfaction with how QBCC handled his complaints, the complaint outcomes and the actions of certain QBCC officers—this, of itself, does not give rise to these public interest considerations. I have carefully reviewed this Category C Information (together with the applicant's submissions) and I am satisfied that there is nothing within this information which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. For this reason, I do not consider these factors apply.
106. The public interest factor relating to fair treatment is about providing information to advance fair treatment in an applicant's future dealings with agencies.<sup>145</sup> I also note that the fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.<sup>146</sup> Here, the applicant is the complainant, not the subject of the complaints. As the applicant's submissions about procedural fairness also reference the requested information being presented to QCAT, I note that the access right in the RTI Act is not meant to replicate, or serve as an adjunct to, court disclosure processes. In all these circumstances and taking the particular nature of this component of the Category C Information into account, I am not satisfied that there is a reasonable expectation its disclosure would, in any notable way, advance the fair treatment of the applicant (or any other individual) or contribute to the general administration of justice, including procedural fairness. On this basis, while these factors may apply,<sup>147</sup> I afford them only low weight due to the particular nature of this Category C Information.
107. In determining whether the public interest factor in schedule 4, part 2, item 17 of the RTI Act applies, I must consider whether:<sup>148</sup>
- the applicant has suffered loss, damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law<sup>149</sup>
  - the applicant has a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
108. I have mentioned above that QBCC notified the applicant of its decisions about his complaints referenced in the narrowed access application. Certain review rights existed in respect of those decisions and the applicant's submissions confirm that he is involved in proceedings before QCAT in relation to some of those decisions. It therefore appears that, based upon information the applicant already possesses, he is pursuing certain

<sup>145</sup> *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [101].

<sup>146</sup> *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J. Accordingly, the person who is the subject of a decision must be provided with an opportunity to deal with adverse information that is credible, relevant and significant to the decision (*Kioa* at 629 per Brennan J citing *Bushell v Environment Secretary* [1981] A.C., at p. 97. (Lord Diplock)).

<sup>147</sup> Schedule 4, part 2, items 10 and 16 of the RTI Act.

<sup>148</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16]-[17].

<sup>149</sup> In *Deemal-Hall v Office of the Director of Public Prosecutions* [2024] QCATA 131, Judicial Member McGill confirmed, at [12], that this public interest factor 'refers to the ordinary processes for the administration of justice for a person'.

remedies that were available to him, or he is otherwise involved in court proceedings where he will have an opportunity to put forward his views. While the applicant submitted that he requires certain parts of this Category C Information to '*attempt to correct fraudulent statements*' of other individuals,<sup>150</sup> he has not identified any particular remedy that disclosure of this information would allow or assist him to pursue. In these circumstances and taking the nature of this Category C Information into account, I do not consider its disclosure is required to assist the applicant in the proceedings he is already involved in or assist him to pursue, or evaluate, any other remedy that may be available. On this basis, I do not consider that the factor in schedule 4, part 2, item 17 of the RTI Act applies to favour disclosure of this component of the Category C Information.

109. Having reviewed this Category C Information, there is nothing within it which indicates that disclosing this information would reveal it to be incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Although I cannot describe this information in any detail, as this Category C Information includes information provided to QBCC in response to the applicant's complaints, it is reasonable to expect that it includes the opinions and recollections of other individuals. I consider information of this particular nature will be shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not mean that such information is necessarily incorrect or unfairly subjective. Having carefully considered the information before me, I find that the public interest factor in schedule 4, part 2, item 12 of the RTI Act does not apply.
110. In support of his position that the public interest factor in schedule 4, part 2, item 14 of the RTI Act applies to this Category C Information, the applicant submitted '*disclosure will ensure that risks are able to addressed instead of concealed by corrupt QBCC Officers*'.<sup>151</sup> The applicant has not otherwise explained how he considers disclosure of this Category C Information could be expected to reveal environmental or health risks or measures relating to public health and safety. I have carefully reviewed this information and the applicant's submissions. There is nothing within this Category C Information which gives rise to an expectation that its disclosure would reveal environmental or health risks or measures relating to public health and safety. Accordingly, this public interest factor does not apply.
111. In respect of the public interest factor in schedule 4, part 2, item 18 of the RTI Act, the applicant submitted that '*Disclosure of evidence so that QBCC Officer conduct (including criminal conduct) can be prosecuted by Law Enforcement*'.<sup>152</sup> However, the applicant has not explained how disclosure of this Category C Information is required to enable prosecution of any specific offence. I acknowledge the applicant is dissatisfied with QBCC's complaint investigations and their outcome but this, of itself, is insufficient to give rise to this public interest factor. Having considered the information before me (including this Category C Information and the applicant's submissions), I am satisfied this public interest factor does not apply to favour disclosure.
112. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, and given the nature of this component of the Category C Information, I cannot identify any other public interest considerations favouring its disclosure.<sup>153</sup>

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<sup>150</sup> Internal Review Application.

<sup>151</sup> Internal Review Application.

<sup>152</sup> Internal Review Application.

<sup>153</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of the Category C Information.

## Factors favouring nondisclosure

113. I am satisfied that most of this component of the Category C Information is the personal information of other individuals—it includes other individuals' personal opinions, views and recollections about matters relevant to the complaints referenced in the access application. Some of this personal information also appears intertwined with the applicant's personal information. For this intertwined personal information, I am satisfied that disclosing the personal information of the applicant would necessarily also disclose the personal information of individuals other than the applicant.<sup>154</sup>
114. I consider that individuals who participate in regulatory investigations would expect that the information they provided would be used for the relevant investigation (and any regulatory action taken as an outcome of the investigation) but they would not have expected that the supplied information would be provided under the RTI Act, where there can be no restriction on its use, dissemination or publication. In the circumstances of this matter and taking the nature of this Category C Information into account, I consider the extent of the public interest harm in disclosing this personal information is significant, and that its disclosure under the RTI Act would also significantly impact the privacy of these other individuals. On this basis, I afford significant weight to the public interest factors relating to personal information and privacy.<sup>155</sup>
115. The RTI Act recognises that disclosing information about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct, could reasonably be expected to prejudice the fair treatment of individuals.<sup>156</sup> Not all of the applicant's complaints referenced in the access application were substantiated in QBCC's notified complaint outcomes. Accordingly, I consider this public interest factor applies to some, but not all, of this Category C Information. I also note that some of QBCC's decisions are the subject of ongoing proceedings before QCAT. Noting the RTI Act places no restriction on how information disclosed in response to an access application may be used, disseminated or published, I consider disclosure of the Category C Information relating to unsubstantiated allegations could be expected to cause a significant level of prejudice to the subject individuals. On this basis, I afford this factor significant weight in respect of that type of Category C Information.
116. I am also satisfied that this component of the Category C Information includes some information which relates to the business and commercial affairs of entities. This information was obtained by, or provided to, QBCC for the purpose of QBCC's complaint investigations. Some of that information is not generally known and is not otherwise publicly accessible information about the relevant business entities. For information of this nature, I consider its disclosure under the RTI Act could be expected to cause some level of prejudice to commercial and business affairs of the entities about whom it relates. Having carefully reviewed this information, I afford moderate weight to the public interest factors which concern business and commercial affairs.<sup>157</sup>
117. If disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency, a public interest factor favouring nondisclosure arises.<sup>158</sup> The efficient and effective use of public resources is facilitated by regulatory agencies being able to seek and obtain information

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<sup>154</sup> Although the applicant, in his 6 May 2024 submission, contested the refusal of documents containing his personal information and submitted that this was '*dishonestly claiming it was unable to be "intertwined" from other parties' information*', I have reached my factual finding about the manner in which the applicant's personal information appears within this Category C Information after careful review of the Category C Information.

<sup>155</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>156</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>157</sup> These factors appear in schedule 4, part 3, items 2 and 15 and schedule 4, part 4, section 7(1)(b) and (c) of the RTI Act.

<sup>158</sup> Schedule 4, part 3, item 13 of the RTI Act.

from members of the community, whether they are complainants, witnesses, informers or the subjects of complaint. Routinely disclosing these types of information would tend to discourage persons from coming forward with relevant information, or providing information at the request of a regulator when it is conducting its investigation. This would negatively impact the regulator's ability to effectively discharge its functions. I therefore consider this factor applies to significantly favour nondisclosure of this Category C Information.

### **Balancing the public interest**

118. After carefully reviewing this component of the Category C Information, I have identified and considered above the public interest factors which are relevant to that information.
119. For the applicant's personal information within this Category C Information, I have afforded significant weight to the public interest factor which favours disclosure of an applicant's personal information<sup>159</sup> (noting that this personal information of the applicant appears in a manner which means its disclosure would also disclose the personal information of other individuals). I have also identified further public interest factors relating to government accountability and transparency, fairness and the general administration of justice which favour disclosure of this Category C Information. For the reasons addressed above, I afford moderate and low weight to these factors.
120. On the other hand, I have identified a number of factors favouring nondisclosure of the Category C Information. For most of this information, I afford significant weight to the nondisclosure factors relating to the personal information and privacy. For some parts of this Category C Information, I have also afforded significant weight to the public interest factors concerning unsubstantiated allegations and moderate weight to considerations relating to business and commercial affairs. I also consider that the factor relating to the flow of information to regulatory agencies is deserving of significant weight.
121. On balance, I am satisfied that the public interest factors favouring nondisclosure of this component of the Category C Information outweigh the applicable factors favouring disclosure. Accordingly, I find that disclosure of this Category C Information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>160</sup>

### **Manual Deletions**

122. The Located Documents included a number of QBCC's internal, procedural manuals (**Manuals**). The Manuals included scenarios, example forms, example screenshots from QBCC's case management/record keeping systems, example screenshots from third party websites, example screenshots from court/third party search sites; and example advertisements (**Components**).
123. Almost all the information within the Manuals was disclosed to the applicant, however, the Manual Deletions (that is, the information which QBCC redacted from the Components) comprises the following types of information—names of individuals, entities and QBCC officers; ABNs; file numbers; contact details (addresses, email addresses and phone numbers); dates; signatures; and log in and password details for various applications/websites used by QBCC officers. This redacted information does not, in any way, relate to the subject matter of the narrowed access application.
124. The applicant's submissions do not specifically address the Manual Deletions.

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<sup>159</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>160</sup> Under section 47(3)(b) of the RTI Act.

## Findings

125. I consider the information which QBCC has disclosed to the applicant in the Manuals has substantially advanced government accountability and transparency. Given the nature of the Manual Deletions, I do not consider their disclosure would further advance government accountability and transparency in any way. Accordingly, I do not consider the factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act.
126. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, I do not consider that any other public interest factors apply to favour disclosure of this information.<sup>161</sup>
127. To the extent the Manual Deletions contain the names, contact details, signatures and other identifying information about individuals other than the applicant, I consider the personal information and privacy factors<sup>162</sup> are enlivened to favour nondisclosure. Given the limited nature of this type of information within the Manual Deletions, I afford these factors only low weight.
128. Some of the Manual Deletions comprise business related information. I consider the public interest factors relating the business and commercial information apply to favour nondisclosure of this redacted information.<sup>163</sup> In respect of the log in and password details, I note that QBCC had obtained (at its cost) subscriptions from third parties to enable its officers to access certain commercially available information via such subscriptions—in these circumstances, I consider the disclosure of the associated login and password details under the RTI Act (where there can be no restriction on their use or publication) could be expected to lead to substantial prejudice and harm to the entities from whom the subscriptions were obtained. I therefore afford high weight to these public interest factors for those log in and password details. For the remaining business related information, I afford these public interest factors only low weight, due to its limited nature.
129. For the above reasons, I am satisfied that the public interest factors favouring nondisclosure are determinative of the public interest for the Manual Deletions. Accordingly, I find that disclosure of the Manual Deletions would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>164</sup>

## Personal Circumstance Information

130. The Personal Circumstance Information is of the same nature as the component of the Category C Information which I have addressed in paragraphs 83-87 above.
131. I repeat and rely upon my reasons in paragraph 85 for finding that the public interest factors concerning personal information and privacy<sup>165</sup> apply to information of this nature and are deserving of significant weight in favour of nondisclosure. Taking the nature of the Personal Circumstance Information into account, I am not satisfied that any public interest factors (including those outlined in paragraph 75 above) apply to favour its disclosure.

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<sup>161</sup> In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of this Category C Information.

<sup>162</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>163</sup> Schedule 4, part 3, items 3 and 15 and schedule 4, part 4, section 7(1)(b) of the RTI Act.

<sup>164</sup> Under section 47(3)(b) of the RTI Act.

<sup>165</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

132. For these reasons, I am satisfied that the public interest factors favouring nondisclosure of the Personal Circumstance Information are determinative of the public interest. Accordingly, I find that disclosure of this information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>166</sup>

### Unlocated documents

133. As mentioned in paragraph 2 above, following the Notice, the terms of the access application were, by agreement, narrowed. The consultation which led to this narrowing was extensive and it focussed, significantly, on QBCC's responsive document estimates—that is, in agreeing that it would be able to process a narrowed form of the access application, QBCC was primarily focussed on the estimated volume, and nature, of responsive documents it had identified, during this period, as responsive to the access application.
134. In the Internal Review Application, the applicant listed 10 types of documents he considered had not been located by QBCC. The applicant also submitted that QBCC had refused to provide documents held by 16 specific QBCC staff and staff within three QBCC work units.
135. On external review, the applicant referenced the missing documents identified in the Internal Review Application and listed a further four types of documents he considered to be missing.<sup>167</sup>
136. After careful review of the applicant's submissions, it is my understanding that the applicant contends the following types of documents are relevant to the narrowed access application and have not been located by QBCC:
- (i) additional audio recordings
  - (ii) additional salesforce records
  - (iii) appendices to the disclosed Certification Manual
  - (iv) certain emails and other correspondence
  - (v) records relating to certain meetings/discussions (such as minutes, agendas and notes)
  - (vi) certifier engagement forms
  - (vii) records of internal allocations
  - (viii) conflict of interest documents
  - (ix) a conduct complaint; and
  - (x) the '*referenced associated documents*' requested in Items 30 and 31 of the narrowed access application (**Referenced Associated Documents**).<sup>168</sup>
137. The applicant also submitted that QBCC did not conduct '*true searches*'<sup>169</sup> and he considered that:

*Searches under the RTI Act are not intended to be requests of the Agency Officers to provide relevant documents themselves since this enables the involved Officers to simply "fail" to produce the documents where it benefits themselves or others. RTI Decision-makers are required to conduct the searches themselves and independently of the Officers who are potentially the subject of the RTI Applications.*<sup>170</sup>

<sup>166</sup> Under section 47(3)(b) of the RTI Act.

<sup>167</sup> External Review Application.

<sup>168</sup> In the Internal Review Application, the applicant listed 28 documents (including internal QBCC manuals and procedures such as Delegations Manual, Infringement Notices Procedures Manual, Records Management Procedure, Certification Prosecution of Offence Procedures and Certification Mediation Procedures) as comprising the Referenced Associated Documents.

<sup>169</sup> Submission dated 22 July 2024.

<sup>170</sup> Submission dated 6 May 2024.

138. For the reasons that follow, I find that:

- QBCC did not fail to locate the type (vi) documents and some of the type (i) and (iv) documents, as they either form part of the Category C Information or have been disclosed to the applicant
- QBCC may refuse to deal with the Referenced Associated Documents, on the basis that the work involved in dealing with those documents would substantially and unreasonably divert QBCC's resources from their use in the performance of the QBCC's functions;<sup>171</sup> and
- to the extent the remaining documents referenced in paragraph 136 above are relevant to the narrowed access application, QBCC has taken all reasonable steps to locate them and access may therefore be refused on the basis they do not exist.<sup>172</sup>

### ***Terms of the narrowed access application***

139. When notifying the applicant that the decision under review was the Deemed Decision, I asked the applicant to confirm whether he agreed with my understanding of the narrowed terms of the access application which had been agreed to that point in time. Those narrowed terms were as follows:

#### ***Item 2 – Builder Compliance Investigation***

*All documents from the Builder's Compliance investigation of a nominated entity regarding the applicant's property, including but not limited to:*

- All emails & phone communications between the contractor and the compliance investigators*
- All documents supplied by the contractor to the compliance Investigators*
- All case notes*
- All phone calls made by the Compliance Investigator to any party (internal/external) in relation to the investigation (it was confirmed to us that all the phone calls are recorded)*
- All emails sent/received by the Compliance Investigator in relation to the investigation*
- All process forms/paperwork/checklists*
- All outcome documents created for the investigation*
- All documents between any QBCC Staff regarding our property/this investigation. Including (but not limited to) all correspondence between ICB, QBCC Executives & QBCC Commissioner)*

#### ***But specifically excluding***

- *correspondence between [two nominated officers] and other QBCC officers with [the applicant]; Correspondence between [nominated officer] and [the applicant]; and printout/copy [a specified] website pages (213 pages) as highlighted in red in table sent to QBCC on 29 September 2021*
- *as confirmed in an email sent to QBCC on 29 September 2021: [the applicant's] Reports [identified by name]; [the applicant's] own claim lodgements (Defect Claims, Non-Completion Claim, EDR Application Forms); decision notices for Resolution Services decisions; [the applicant's] original correspondence sent to Resolution Services (excluding forwarded email threads and commentary as discussed below); and emails sent to us by Resolution Services*

#### ***Item 3 – Certifier complaint***

*All documents from the Certifier Complaint investigation of a specified individual*

*a. Including but not limited to:*

- [Officer WB's] Draft decision dated 11/03/21*
- Electronic copies of all documents sent between [two specified officers]*

<sup>171</sup> Under section 41 of the RTI Act.

<sup>172</sup> Under section 47(3)(e) of the RTI Act.

- iii. All documents, correspondence, meeting minutes, meeting notes, notes from phone calls between any QBCC Staff (including the Commissioner, Assistant Commissioners, all Managers, any ICB Staff, IRU Staff, Certification Unit Staff, All Compliance Staff, QBC Board Members) where [the applicant's] complaint is mentioned in any way
  - iv. All emails & phone communications between the certifier and the investigators
  - v. All conflict of interest declarations by any QBCC staff involved in the allocation or assessment of the complaint
  - vi. All documents showing how conflicts of interest would be managed and by who
  - vii. All documents/emails supplied by the certifier to the Complaint Investigator
  - viii. All case notes
  - ix. All phone calls made by the Complaint Investigator to any party in relation to the investigation
  - x. All emails sent/received by the Complaint Investigator in relation to the investigation
  - xi. All process forms/paperwork/checklists
- But specifically excluding** copies of correspondence with [the applicant] re complaint as highlighted in red in table sent to QBCC on 29 September 2021

Item 13 Other Case Notes/documents

- i. Case Notes entered by [identified officer] on 07/02/19 at ~2:00pm
- ii. Case Notes entered by [identified officer] on 07/02/19 at ~3:00pm
- iii. Feedback complaint about [specified officer] misconduct that [Officer M] stated would be lodged during the recorded phone call on 07/02/19 ~2pm.

30. Certification Unit Procedure Manual

All Certification Unit Procedure Manuals and any referenced associated documents

31. Compliance Investigation Manual (both Builder Compliance and Plumbing Compliance)

All Compliance Investigation Manuals and any referenced associated documents

- ii. Both Building Compliance and Plumbing Compliance

**With the following general exclusions –**

- any documents that [the applicant] have provided to QBCC (ie. Applications, Claims, Documents, Photos, Videos, Emails sent from us to QBCC officers)
- where a QBCC Officer has forwarded an email from us we do not require a copy of any of our original attachments
- [a specified] report
- where documents are duplicated between different QBCC Units we only need 1 copy of the document
- recordings numbered as items 5-11, 13-14, 17, 20-25, 27-28, 32,35, and 38 and highlighted in red in an excel spreadsheet sent to QBCC on 29 September 2021

140. On 12 November 2024, the applicant confirmed that my understanding of the narrowed application terms was accurate.

141. QBCC also subsequently confirmed those narrowed terms. However, when doing so, QBCC submitted<sup>173</sup> that, notwithstanding the wording of Items 30 and 31, they considered that those Items were intended to be limited to the specified manuals themselves, and did not extend to 'any referenced associated documents'. In support of this position, QBCC pointed to the specific page estimates for the documents which were provided to the applicant as the basis for the scope negotiations—in those estimates,

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<sup>173</sup> Submission dated 3 April 2025.

the responsive Items 30 and 31 documents were consistently estimated to comprise 75 pages, plus the Certification and Compliance procedures.<sup>174</sup>

### Relevant law

142. Access may be refused to a document where the document is nonexistent or unlocatable.<sup>175</sup>
143. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:<sup>176</sup>
- the administrative arrangements of government
  - the agency's structure
  - the agency's functions and responsibilities<sup>177</sup>
  - the agency's practices and procedures (including but not limited to the agency's information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
144. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.<sup>178</sup> However, searches may be relied on to satisfy the decision-maker that a document does not exist—if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.<sup>179</sup> What constitutes reasonable steps will vary from case to case.<sup>180</sup>
145. To determine whether a document exists, but is unlocatable, requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find it.<sup>181</sup> In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.<sup>182</sup>
146. Under section 130(2) of the RTI Act, the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable

<sup>174</sup> The document estimate was initially provided to the applicant in QBCC's email dated 29 September 2021, in which the QBCC officer stated 'I have attached a revised file list, along with a more detailed breakdown of the types of documents which exist in relation to the various matters. Also attached is a spreadsheet of the numerous audio recordings with a brief description. In several cases I am still waiting to receive copies of procedure manuals, however I do not anticipate these will substantially add to the total number of documents'. After the applicant agreed to exclude certain documents, QBCC sent an updated document estimate to the applicant by email dated 30 September 2021 (in which the estimate for Items 68 30 and 31 had not changed and the QBCC officer stated 'I still haven't received the Certification or Compliance procedures').

<sup>175</sup> Sections 47(3)(e) and 52(1) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act.

<sup>176</sup> These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (*PDE*). These factors were more recently considered in *Van Veenendaal* at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

<sup>177</sup> Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

<sup>178</sup> For example, where a particular document was not created because the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document.

<sup>179</sup> As set out in *PDE* at [49].

<sup>180</sup> As the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

<sup>181</sup> Section 52(1)(b) of the RTI Act.

<sup>182</sup> *Pryor* at [21].

steps to identify and locate documents applied for by applicants.<sup>183</sup> The RTI Act does not specify the manner in which an agency is to search for documents requested in an access application. QCAT has also confirmed that the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.<sup>184</sup>

147. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>185</sup> However, where an external review involves the issue of missing documents and the decision under review indicates the conducted searches encompassed record-keeping systems where the requested documents would likely be stored,<sup>186</sup> there is a practical onus placed on the applicant to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.<sup>187</sup>
148. In assessing an agency's searches, the Information Commissioner has confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.<sup>188</sup>

### **QBCC's searches**

149. QBCC relies on the searches conducted by QBCC officers, and their understanding of the narrowed terms of the access application, to justify their position that reasonable steps have been taken to locate documents relevant to the narrowed access application.
150. In the Original Decision, QBCC stated that searches for documents relevant to the narrowed access application were conducted of QBCC's Records and Contractor Management System (**CMS**), Salesforce Databases and QBCC's Electronic Content Manager (**ECM**) and that requests for documents were also sent to relevant QBCC business units/individuals.
151. On external review, OIC asked QBCC for a copy of their search records and for a response concerning the specific documents the applicant had identified as missing in the External Review Application (and the referenced sections of the Internal Review Application).
152. The received search records confirmed that, in addition to searches of the CMS, Salesforce and ECM databases:
- search requests were sent to multiple QBCC business units—including Internal Review, Ministerial and Executive Services, the Offices of both the Commissioner and Assistant Commissioner, Certification, Compliance and Enforcement, Technical Services, Plumbing Investigations Unit, Compliance Investigations/Resolution Services and the Customer Service Improvement Unit—requiring searches (including of email records) to identify any documents relevant

<sup>183</sup> The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review.

<sup>184</sup> *Webb v Information Commissioner* [2021] QCATA 116 at [6].

<sup>185</sup> Section 87(1) of the RTI Act.

<sup>186</sup> In reviewing such information, the Information Commissioner (or delegate) may form a view that an agency has taken reasonable steps to identify and locate requested documents.

<sup>187</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

<sup>188</sup> *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

to the Narrowed Application which may not have been saved to the above listed databases; and

- those searches were conducted using various combinations of the applicant's name, the name of the individual the subject of the applicant's complaint and the relevant file number as the key search terms.

153. As noted above, the RTI Act does not require searches to be conducted in any particular way. While the applicant argued that searches should have been undertaken in a different manner, I have carefully reviewed the search information provided by QBCC. Having done so, there is nothing before me which calls into question either the efficacy of QBCC's searches or the accuracy of the QBCC's provided search records and certifications.

### **Findings – Type (i) documents - additional audio recordings**

154. The applicant submitted that a number of audio recordings should have been located by QBCC, but were not.<sup>189</sup> More specifically, the applicant submitted that instead of providing 13 audio files, QBCC only provided four audio files<sup>190</sup> and the following documents were missing:

- (a) audio of a specific meeting held between Officer BB and another individual '*when Certifier Complaint Outcome is provided*'<sup>191</sup>
- (b) audio of phone calls from Officer WB to 'all parties', including of two specific calls (on 21 and 27 January 2021)<sup>192</sup>
- (c) audio recordings of other phone calls from Officer PB to 'any party' including QBCC officers;<sup>193</sup> and
- (d) phone calls from certification investigators to any parties.<sup>194</sup>

155. During the scope negotiations, QBCC sent the applicant a spreadsheet of located audio recordings and asked the applicant to identify any recordings he would agree to exclude from the scope of the access application. The applicant notified QBCC of the recordings he agreed to exclude<sup>195</sup>—16 identified recordings then remained, being three Plumbing Compliance audio recordings and 13 Building Compliance audio recordings. The applicant subsequently agreed to remove the Plumbing Compliance audio recordings during further scope negotiations.<sup>196</sup>

156. As a result of these agreed exclusions, only 13 Building Compliance audio recordings fell within the narrowed terms of the access application.

157. Regarding the applicant's submission that these 13 audio recordings were not provided, I note that QBCC dealt with the 13 Building Compliance audio recordings in the Original Decision—that is, QBCC refused access to nine of them, partially disclosed one of them and disclosed the remainder.<sup>197</sup> For this reason, I find that QBCC did locate the 13

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<sup>189</sup> As mentioned above, during the review, QBCC disclosed one additional audio recording to the applicant in the interests of resolving the external review application and, for that reason, the applicant's submissions about that disclosed audio recording are not dealt with in this decision.

<sup>190</sup> Paragraph 2) b) in the External Review Application.

<sup>191</sup> Paragraph 2) d) v in the External Review Application.

<sup>192</sup> Paragraph 1c in the Internal Review Application.

<sup>193</sup> Paragraph 1d in the Internal Review Application. In support of his position, the applicant submitted that Officer PB had confirmed that '*ALL his phone calls were recorded*' (Internal Review Application).

<sup>194</sup> Paragraph 1f in the Internal Review Application. In support of his position, the applicant submitted that '*Phonecalls are required to be recorded as per the Compliance procedures*' (Internal Review Application).

<sup>195</sup> These were highlighted in red on the spreadsheet which the applicant attached to his 29 September 2021 email responding to QBCC.

<sup>196</sup> Applicant's email to QBCC dated 8 October 2021.

<sup>197</sup> Six full audio recordings were disclosed, which included three Building Compliance audio recordings.

Building Compliance audio recordings which fell within the scope of the narrowed access application.

158. QBCC submitted that the remaining audio recordings referenced in paragraph 154 above would, if they existed, fall outside the narrowed terms of the access application. In respect of each type of recording, QBCC further submitted that:<sup>198</sup>

- as QBCC does not record meetings of the nature specified in paragraph (a), such an audio recording does not exist
- certification phone calls are not required to be recorded<sup>199</sup> and, if they existed, they would have been saved to the Certification investigation file and located by prior searches
- phone calls between QBCC officers are not recorded and all responsive audio recordings that exist have been located in the Compliance file; and
- the applicant was informed during the scope negotiations that, apart from the audio recordings identified in the spreadsheet provided during those negotiations, no further audio recordings relevant to his request existed.

159. Based upon QBCC's explanations about the types of meetings/phone calls that it records, I consider it is reasonable to conclude that the audio recordings between QBCC officers and the audio recordings identified in paragraphs (a) and (d) above do not exist. I also consider that any additional recordings that may be responsive to the narrowed access application would have been located by the searches that were undertaken by QBCC. I am therefore satisfied that the applicant's submissions do not raise any reasonable expectation that the audio recordings described in paragraph 154(a)-(d) above (and any additional audio recordings relevant to the narrowed access application) exist.

160. Having considered all the information before me (including the scope negotiation correspondence), I am satisfied that QBCC has undertaken all reasonable searches for, and located, all relevant audio recordings that exist and access to any additional audio recordings relevant to the narrowed access application may be refused on the basis they do not exist.<sup>200</sup>

### ***Findings – Type (ii) documents - additional salesforce records***

161. The applicant submitted that the following salesforce documents are missing:

- a salesforce file '*that was specifically requested and was confirmed to exist by a recorded phonecall*';<sup>201</sup> and
- casenotes entered by a specified officer during a recorded telephone call on 7 February 2019.<sup>202</sup>

162. In the Original Decision, QBCC stated:

*Note, there were only two Salesforce cases opened around the date of 7/2/19 – [file number] and [file number], both of which have been included in the scope. No feedback complaint was opened around that date. Please see 'GE Case\_[file number]\_Salesforce' for details. For*

<sup>198</sup> Submissions dated 26 May 2022 and 3 April 2025.

<sup>199</sup> QBCC also noted that, as the certification unit was not part of the compliance unit, they have different processes and procedures for phone calls.

<sup>200</sup> Section 47(3)(e) of the RTI Act.

<sup>201</sup> Paragraph 2) c) in the External Review Application.

<sup>202</sup> Paragraph 1g in the Internal Review Application.

*completeness I have provided a list of Salesforce cases with dates opened entitled '[applicant name]SFCASES'.*

163. I also note that Schedule B to Original Decision identified that QBCC had located eight pages in the file titled 'Case\_[file number]\_Salesforce' and a further two pages in a fully disclosed file titled '[applicant name]SFCASES'.
164. On external review, QBCC has confirmed that no additional, relevant salesforce files existed within the timeframe of the narrowed access application.
165. Taking the above information into account, I am satisfied that:
- the applicant's submissions do not raise any reasonable expectation that salesforce files/documents described in paragraph 161 above (and any additional salesforce files/documents responsive to the narrowed access application) would exist
  - QBCC has undertaken all reasonable searches for, and located, all relevant salesforce files/documents that exist; and
  - access to any additional salesforce records relevant to the narrowed access application may be refused on the basis they do not exist.<sup>203</sup>

#### ***Findings – Type (iii) documents - appendices to the disclosed Certification Manual***

166. In the External Review Application,<sup>204</sup> the applicant submitted that Appendices A and B to the Certification Manual were not provided by QBCC. In this regard, I note that the contents page of the disclosed manual states (where the appendices are listed): 'A: *[insert title]*; B: *[insert title]*'.
167. OIC asked QBCC to address to this submission. In response, QBCC submitted that:
- no information existed within those Appendices in this version of the manual that was responsive to the narrowed access application; and
  - a complete copy of the manual had therefore been disclosed.
168. There is nothing before me which brings into question QBCC's response, and I consider QBCC's response is supported by the contents page of the disclosed Certification Manual. On this basis, I am satisfied that the applicant's submission has raised no reasonable expectation that the Appendices are missing from the disclosed manual.
169. I am, in these circumstances, satisfied that QBCC has conducted all reasonable searches for, and located, the Certification Manual relevant to the narrowed access application and access to further appendices of that disclosed manual may be refused on the basis they do not exist.<sup>205</sup>

#### ***Findings – Type (iv) documents - certain additional emails and other correspondence***

170. The applicant identified the correspondence he considered to be missing as follows:
- (a) QBCC officer responses to specific correspondence<sup>206</sup>

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<sup>203</sup> Section 47(3)(e) of the RTI Act.

<sup>204</sup> At paragraph 2) d) iii.

<sup>205</sup> Section 47(3)(e) of the RTI Act.

<sup>206</sup> Paragraphs 2) d) xiii and xiv in the External Review Application.

- (b) 'CCC Referrals/Correspondence/Outcomes' related directly to the applicant's Certifier Complaint and all 'ICB Documents' related to that complaint (including 'assessment/investigations/commentary between Officers')<sup>207</sup>
- (c) emails from other parties included in conversations (which the applicant submitted were 'evidenced by email headers')<sup>208</sup>
- (d) 'Correspondence with Board members regarding [the applicant's] Certification/Building Compliance cases'<sup>209</sup>
- (e) emails from a specified officer 'prior to 21/1/2021 (regarding Certification)'<sup>210</sup>
- (f) emails from a specified officer 'to any party (including QBCC officers) regarding the Compliance investigation'<sup>211</sup>
- (g) emails from the Certification investigators 'to any parties';<sup>212</sup> and
- (h) correspondence with Ministerial Office personnel.<sup>213</sup>

171. The applicant also more generally submitted that documents 'that are part of the Certification/Compliance scopes' from 16 nominated officers and 'various members of the ICB' had not been provided.<sup>214</sup>

172. It is QBCC's position that all emails which exist and are relevant to narrowed access application were located by the searches they have conducted.<sup>215</sup> QBCC also relevantly explained that:

- Board members only communicate via the Commissioner or Board Secretary and correspondence relevant to the narrowed access application would be located in the Commissioner's file, which was searched by QBCC during their processing of the narrowed access application (as evidenced by the schedule to the Original Decision)
- certain of the response correspondence which the applicant had identified with specificity had been fully disclosed to the applicant;<sup>216</sup> and
- other response correspondence which the applicant had identified with specificity formed part of the Category C Information.<sup>217</sup>

173. I note that, while the original terms of the access application sought Integrity Complaint Branch (ICB) documents and Corrupt Conduct disclosures/referrals,<sup>218</sup> the applicant agreed to exclude these items during the scope consultations which occurred following QBCC's issue of the Notice. The schedule to the Original Decision also identifies the specific certification case files in which the Located Documents were stored. However, the applicant's submissions concerning the types of documents referenced in paragraph 170(b) above do not explain why the applicant considers any specific documents of this nature exist or how such specific documents would be relevant to the narrowed terms of the access application.

174. In respect of the remaining types of additional documents listed in paragraph 170, the applicant has not identified the specific additional emails/correspondence he considers to be missing or explained how such additional emails/correspondence would be relevant

<sup>207</sup> Paragraphs 2) d) i, ii and viii in the External Review Application.

<sup>208</sup> Paragraph 2) d) ix in the External Review Application.

<sup>209</sup> Paragraphs 1j and 6k in the Internal Review Application.

<sup>210</sup> Paragraph 1b in the Internal Review Application.

<sup>211</sup> Paragraph 1e in the Internal Review Application.

<sup>212</sup> Paragraph 1f in the Internal Review Application.

<sup>213</sup> Paragraph 6k xviii in the Internal Review Application.

<sup>214</sup> Paragraph 6k in the Internal Review Application.

<sup>215</sup> I also note that the search records QBCC provided confirm that multiple email records were searched by QBCC during the processing of the narrowed access application.

<sup>216</sup> By letter dated 30 July 2025, I notified the applicant of the pages on which these documents had been disclosed.

<sup>217</sup> By letter dated 30 July 2025, I notified the applicant of the pages on which these documents had been refused.

<sup>218</sup> At items 14 and 39 respectively.

to the narrowed access application. In this regard, I also note that the narrowed access application excluded *documents duplicated between different QBCC Units*.

175. In these circumstances, I am satisfied that all reasonable searches for emails and other correspondence relevant to the narrowed access application have been conducted and access to any further documents of this nature (including the types of documents described in paragraph 170 above) may be refused on the basis they do not exist.<sup>219</sup>

***Findings – Type (v) documents - records relating to certain meetings/discussions (such as minutes, agendas and notes)***

176. The applicant submitted that:

- (a) minutes for Officer BB's meetings with QBCC officers and executives regarding the applicant's certifier complaint were missing;<sup>220</sup> and
- (b) '*Meeting/Discussion agenda & notes & minutes all missing*'.<sup>221</sup>

177. In respect of the applicant's submission referenced in paragraph (b) above, I note that the applicant has not identified any specific agendas, notes or minutes which he considers to be missing or explained how such additional documents would be relevant to the narrowed access application.

178. QBCC has submitted that if further documents of the nature outlined in paragraph 176 existed, they would have been stored in locations that were searched by QBCC (such as Sharepoint and ECM) and located by the searches that QBCC has already undertaken. There is nothing before me which indicates that QBCC's position in this regard is not correct or that any further documents of the nature described by the applicant would be stored in any location that has not been searched by QBCC.

179. Therefore, based on the information before me, I am satisfied that the applicant's submissions have not raised any reasonable expectation that further meeting minutes, agendas and notes relevant to the narrowed access application (including those described in paragraph 176) exist and have not been located.

180. In these circumstances, I am satisfied that all reasonable searches for meeting minutes (and associated agendas and notes) relevant to the narrowed access application have been conducted and access to any further documents of this nature may be refused on the basis they do not exist.<sup>222</sup>

***Findings – Type (vi) document - certifier engagement form***

181. The applicant submitted that a '*Certifier Engagement Form (Statutory Form) from FOL[file number] Compliance ECM*' had not been provided by QBCC.<sup>223</sup>

182. In the Original Decision, access to this document was refused and it forms part of the Category C Information. Accordingly, this submission does not identify any additional document relevant to the narrowed access application that has not been located by QBCC.

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<sup>219</sup> Section 47(3)(e) of the RTI Act.

<sup>220</sup> Paragraph 2) d) iv in the External Review Application.

<sup>221</sup> Paragraph 2) d) x in the External Review Application.

<sup>222</sup> Section 47(3)(e) of the RTI Act.

<sup>223</sup> Paragraph 2) d) vi in the External Review Application.

**Findings – Type (vii) documents - records of internal allocations**

183. In the External Review Application, the applicant submitted<sup>224</sup> that QBCC had not provided ‘Allocation of Certifier Complaint documents (showing allocations & reallocations to each officer and when)’ and ‘Allocation of Compliance Investigation documents (showing allocations & reallocations to each officer and when)’.
184. It is QBCC’s position that, to the extent these types of documents may exist, they have been located and disclosed to the applicant.
185. The applicant has not identified any specific, additional documents of this type which he believes exist and have not been located. Nor has he explained how he considers any such documents would be relevant to the narrowed access application. In the absence of such details, I do not consider the applicant has raised any reasonable expectation that further documents of this nature, which are relevant to the narrowed access application, exist.
186. Based on the limited information before me, I am satisfied that all reasonable searches for internal allocation records relevant to the narrowed access application have been conducted and access to any further documents of this nature may be refused on the basis they do not exist.<sup>225</sup>

**Findings – Type (viii) documents - conflict of interest documents**

187. In the Internal Review Application,<sup>226</sup> the applicant submitted that conflict of interest documents were missing for four specified QBCC officers.
188. As noted above, the narrowed terms of the access application included a request for conflict of interest declarations, however, the request was limited to declarations by officers involved in the assessment or allocation of the certifier complaint.
189. OIC asked QBCC to respond to the applicant’s submission. In response, QBCC:
- explained that, if the conflict of interest documents existed for these nominated officers, they would not have been saved in the Certification files, but would instead have been saved to ECM; and
  - searches were undertaken of ECM and conflict of interest documents for these officers were not located.
190. There is nothing before me which indicates that QBCC’s position in this regard is not correct or that the further conflict of interest documents the applicant seeks would be stored in a location which has not been searched by QBCC. On the basis of the information before me, I consider that further conflict of interest documents relevant to the narrowed access application, if they exist, would have been located by the searches that QBCC has already undertaken. Accordingly, I am satisfied that all reasonable searches for conflict of interest documents relevant to the narrowed access application (including conflict of interest documents for the officers specifically identified by the applicant) have been conducted and access to any further documents of this nature may be refused on the basis they do not exist.<sup>227</sup>

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<sup>224</sup> Paragraphs 2) d) xi and xii in the External Review Application.

<sup>225</sup> Section 47(3)(e) of the RTI Act.

<sup>226</sup> At paragraph 1i.

<sup>227</sup> Section 47(3)(e) of the RTI Act.

### **Findings – Type (ix) documents - a conduct complaint**

191. As noted above, Item 13(iii) of the narrowed access application requested a ‘*Feedback complaint about [specified officer’s] misconduct that [Officer M] stated would be lodged during the recorded phone call on 07/02/19 ~2pm*’. On internal review, the applicant submitted<sup>228</sup> that this document was missing, however, the applicant described it as follows:

*Complaint about [specified officer’s] misconduct (entered by [Officer M] on 07/02/19 but refused to be submitted) and then submitted by [a different officer] on 30/09/19’.*

192. QBCC conducted searches for the complaint specified in Item 13(iii) of the narrowed access application and did not locate that document. There is nothing before me which indicates that the requested complaint would be stored in a location which has not been already searched by QBCC. It is also unclear from the applicant’s submission whether he is seeking documents relevant to a complaint that is different to the complaint specified in the narrowed access application (given his reference to the complaint being submitted by a different officer on 30 September 2019).

193. On the basis of the information before me, I consider that QBCC has conducted all reasonable searches for documents relevant to the complaint specified in the narrowed access application and access to further documents relevant to that request may be refused on the basis they do not exist.<sup>229</sup>

### **Findings - Type (x) documents – Referenced Associated Documents**

194. It is not in dispute that, following QBCC’s issue of the Notice, there was extensive negotiation between the applicant and QBCC, seeking to agree a narrowed scope that QBCC considered it would be able to process. On the information before me, it is also clear that the primary tools used in those negotiations were the document listing provided to the applicant<sup>230</sup> and an audio recording spreadsheet.<sup>231</sup>

195. Having considered the content of correspondence exchanged during those scope negotiations, it appears that, when the Deemed Decision was taken to have been made by QBCC in October 2021:

- there was no mutual understanding between the applicant and QBCC as to what documents Items 30 and 31 encompassed; and
- QBCC’s focus, in determining whether they were able to process the narrowed terms of the access application, was the document estimates that they had provided to the applicant, as referenced in the preceding paragraph.

196. In respect of the Referenced Associated Documents, QBCC submitted that:

- based upon the content of the disclosed manuals specified in Items 30 and 31, there are approximately 70 documents linked or referenced within those manuals<sup>232</sup>
- some of the Referenced Associated Documents are linked to QBCC intranet pages which no longer exist (due to QBCC system changes) and, as a result,

<sup>228</sup> Paragraph 1h in the Internal Review Application.

<sup>229</sup> Section 47(3)(e) of the RTI Act.

<sup>230</sup> Which contained QBCC’s estimates about the number of pages QBCC considered to be responsive to individual components of the scope, as it was being narrowed.

<sup>231</sup> Which identified located audio recordings.

<sup>232</sup> QBCC submission dated 3 April 2025.

locating these types of documents would potentially require QBCC staff to undertake more resource intensive searches and enquiries to locate the previously linked documents<sup>233</sup>

- although QBCC maintains a repository for its policy and procedure documents on its intranet portal, not all of the Referenced Associated Documents would still be locatable via that portal (taking into account the discontinuation of some referenced documents);<sup>234</sup> and
- while it is difficult in the above circumstances to calculate the volume of the Referenced Associated Documents, they were conservatively estimated to total 5000 pages.<sup>235</sup>

197. In the absence of an assessment of this large volume of estimated pages by QBCC or OIC, I am unable to make a finding regarding the sufficiency of QBCC's searches for the Referenced Associated Documents. Noting the narrowed terms of the access application, it appears reasonable to expect that the estimated 5000 pages referenced above would contain some information within the scope of Items 30 and 31.

198. However, given the large, estimated volume of these Referenced Associated Documents, the issue of substantial and unreasonable diversion of resources arose for consideration.

199. As noted in paragraph 14 above, I conveyed a preliminary view to the applicant about the documents which he considered had not been located by QBCC. When doing so, I outlined the work that I considered QBCC would be required to undertake to deal with the Referenced Associated Documents and my view that, undertaking that work, would constitute a substantial and unreasonable diversion of QBCC's resources. The applicant was invited to respond to that preliminary view and, as I have mentioned above, no response was received from the applicant.

### **Relevant law**

200. Section 41(1)(a) of the RTI Act permits an agency to refuse to deal with an access application if the agency considers the work involved in dealing with the application would, if carried out, substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions.

201. Before making a decision to refuse to deal with an application on this basis, the agency is required to fulfil certain procedural prerequisites, namely:<sup>236</sup>

- give the applicant a written notice:
  - stating an intention to refuse to deal with the application
  - advising that, for the prescribed consultation period, the applicant may consult with the agency with a view to making the application in a form that would remove the ground for refusal; and
  - stating the effect of sections 42(2)-(6) of the RTI Act
- give the applicant a reasonable opportunity to consult with the agency; and
- as far as is reasonably practicable, give the applicant any information that would help the making of an application in a form that would remove the ground for refusal.

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<sup>233</sup> QBCC submission dated 3 April 2025.

<sup>234</sup> QBCC submission dated 3 April 2025.

<sup>235</sup> QBCC submission date 1 August 2025.

<sup>236</sup> Section 42(1) of the RTI Act.

202. In deciding to refuse to deal with an application on this basis, an agency:
- must not have regard to any reasons the applicant gives for applying for access or the agency's belief about what are the applicant's reasons for applying for access;<sup>237</sup> and
  - must have regard to the resources that would be used for:<sup>238</sup>
    - identifying, locating or collating the documents
    - making copies, or edited copies of any documents
    - deciding whether to give, refuse or defer access to any documents, including resources that would have to be used in examining any documents or conducting third party consultations; or
    - notifying any final decision on the application.
203. On external review, OIC may decide any matter in relation to an access application that could, under the RTI Act, have been decided by an agency.<sup>239</sup> Accordingly, OIC may determine that requiring an agency to process (or further process) an access application would be a substantial and unreasonable diversion of the agency's resources.

### Findings

204. QBCC has not made a specific estimate of the resources that would be used in performing the relevant tasks identified in section 41(2) of the RTI Act—that is to:

- to locate all the Referenced Associated Documents
- review the content of those documents; and
- reach a disclosure position for them,

while also progressing other, unrelated applications and fulfilling QBCC's other functions.

205. In the circumstances of this matter (in particular, noting QBCC's submissions referenced in paragraph 196 above and the passage of time between the applicant lodging the External Review Application and the Second External Review Application), it is difficult to quantify the amount of time that would now be required to locate all the Referenced Associated Documents.
206. Based on QBCC's estimate that Referenced Associated Documents would comprise 5000 pages, I consider that, as a very conservative estimate, the time that would need to be spent on:

- scanning these pages
- determining whether to give, refuse or defer access to any information within the pages
- marking-up the pages to redact any refused information; and
- providing submissions to OIC regarding QBCC's assessment of the Referenced Associated Documents,

would equate to approximately 1 minute per page, totalling approximately 5000 minutes. In other words, undertaking the above steps would require more than 83 hours, which equates to more than 11 business days, for one full-time QBCC

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<sup>237</sup> Section 41(3) of the RTI Act.

<sup>238</sup> Section 41(2) of the RTI Act.

<sup>239</sup> Section 105(1)(b) of the RTI Act.

decision-maker, working exclusively on the Referenced Associated Documents.<sup>240</sup>  
This is almost half of the standard processing period.<sup>241</sup>

207. Whether the work involved in dealing with an application would, if carried out, substantially and unreasonably divert the resources of an agency is a question of fact in each individual case.<sup>242</sup> The volume of documents is not the only consideration. In each case, it is necessary to assess the work required to deal with the application in the context of the agency's other functions.
208. In the present circumstances, I consider that the work already performed by QBCC in dealing with the narrowed access application is also relevant to the question of whether the further work involved in dealing with the Referenced Associated Documents amounts to a substantial diversion of resources. In this regard, I consider it relevant to note that:
- after undertaking extensive consultation with the applicant following the issue of the Notice, QBCC located, and dealt with, more than 6800 pages and 16 audio documents as relevant to their understanding of the narrowed terms of the access application; and
  - QBCC was unable to complete its decision in respect of those located documents within the statutory timeframe.<sup>243</sup>
209. I have carefully considered the partial estimate (of more than 83 hours, as set out above) for dealing with Referenced Associated Documents, which I again note that I consider to be very conservative. I have also considered the substantial time and resources QBCC has already devoted to dealing with the narrowed access application and the current QBCC resources (including those of QBCC's Right to Information Unit) that are available to continue to deal with the narrowed access application, as well as process other applications under the RTI Act and IP Act and perform other QBCC functions.
210. Taking these matters into account, I consider it is reasonable to expect that taking one of QBCC's decision-makers offline for such a period of time would substantially interfere with QBCC's ability to attend to its RTI Act and IP Act functions for persons other than the applicant over this period. I consider the consequent delays in processing other applications and attending to other matters would have a considerable impact on QBCC's functions. I am therefore satisfied that the work involved in dealing with the Referenced Associated Documents would, if carried out, substantially divert the resources of QBCC from their use in the performance of QBCC's functions.
211. In determining whether the work involved in dealing with an application is unreasonable, it is not necessary to show that the extent of the unreasonableness is overwhelming.<sup>244</sup> Rather, it is necessary to weigh up the considerations for and against, and form a balanced judgement of reasonableness, based on objective evidence.<sup>245</sup> Factors that have been taken into account in considering this question include:<sup>246</sup>
- whether the terms of the request offer a sufficiently precise description to permit the agency, as a practical matter, to locate the documents sought

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<sup>240</sup> Based on a business day comprising 7 hours and 15 minutes.

<sup>241</sup> Under section 18 of the RTI Act, the processing period for an access application is 25 business days. Whilst this period can effectively be extended in certain circumstances as certain periods do not count as part of the processing period, it is relevant to have regard to this timeframe when considering whether the time involved in processing a single access application will have a substantial impact on an agency's resources.

<sup>242</sup> *Davies and Department of the Prime Minister and Cabinet* [2013] AICmr 10 (22 February 2013) at [28].

<sup>243</sup> That is, the time required to deal with the previously located documents exceeded the applicable processing period.

<sup>244</sup> *F60XCX and Department of the Premier and Cabinet* [2016] QICmr 41 (13 October 2016) at [90].

<sup>245</sup> *Zone Planning Group Pty Ltd and Council of the City of Gold Coast* [2020] QICmr 57 (6 October 2020) (**Zone**).

<sup>246</sup> *Zone* at [40].

- the public interest in disclosure of documents
- whether the request is a reasonably manageable one, giving due but not conclusive, regard to the size of the agency and the extent of its resources usually available for dealing with access applications
- the agency's estimate of the number of documents affected by the request, and by extension the number of pages and the amount of officer time
- the reasonableness or otherwise of the agency's initial assessment and whether the applicant has taken a cooperative approach in rescoping the application
- the timelines binding on the agency
- the degree of certainty that can be attached to the estimate that is made as to the documents affected and hours to be consumed; and in that regard, importantly whether there is a real possibility that processing time may exceed to some degree the estimate first made; and
- whether the applicant is a repeat applicant to that agency, and the extent to which the present application may have been adequately met by previous applications.

212. I have carefully reviewed the correspondence which was exchanged between QBCC and the applicant during the extensive scope consultation which followed QBCC's issue of the Notice. Having done so, while I consider that the applicant was cooperative in that process, I again note that there appears to have been no mutual understanding about what documents would be encompassed by Items 30 and 31 of the narrowed access application at the time QBCC was taken to have made the Deemed Decision.

213. In terms of the public interest in disclosing the Referenced Associated Documents, my views are necessarily qualified, given I have not perused them. Noting this qualification, my understanding of the nature of Referenced Associated Documents is gleaned from how they are described in the disclosed manuals which were specifically identified in Items 30 and 31 of the narrowed access application. On the basis of this understanding, I consider that disclosure of the Referenced Associated Documents may enhance QBCC's accountability and transparency to some extent, however, as I have already noted, the manuals specified in Items 30 and 31 have been disclosed and this has already advanced these public interest considerations. I also note that this decision does not prevent the applicant making future applications of a more confined scope in order to access some, or all, of the Referenced Associated Documents.<sup>247</sup> For these reasons, I have not placed any significant weight on this factor in my considerations.

214. I have noted above the difficulties in quantifying the volume of the Referenced Associated Documents and the resources that would be required to deal with them. For the purposes of this decision, I have partially estimated that dealing with the Referenced Associated Documents would, very conservatively, exceed 83 hours.<sup>248</sup> Taking into account the time and resources QBCC has already expended in dealing with the narrowed access application and the need for QBCC to process other access applications and complete their functions, I do not consider the work required to deal with Referenced Associated Documents would be reasonably manageable in the current case.

215. The applicant's submissions reference a number of access requests he has made to QBCC. However, while the Second External Review Application referred to QBCC's refusal to provide one particular Referenced Associated Document when it was separately requested, there is no information available to me which suggests the

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<sup>247</sup> In this regard, I also note that it was open to the applicant to make such separate applications in the period between December 2022 (when he received a review closure notification) and 17 January 2024 (when he lodged the Second External Review Application).

<sup>248</sup> For example, depending on the nature of particular Referenced Associated Documents, the time required to undertake the steps noted at paragraph 208 above regarding each page could well exceed the estimated 1 minute per page.

applicant has applied to QBCC previously, under the RTI Act, to access the Referenced Associated Documents.

216. Finally, I also note that, on external review, the applicant has not sought to address the application of section 41 of the RTI Act to his request to access the Referenced Associated Documents.

217. Taking into account the factors listed in paragraph 211 which are relevant in this case, I am satisfied that taking one full time decision-maker offline, for what equates to almost half of the standard processing period, to process the Referenced Associated Documents would also amount to an unreasonable diversion of QBCC's resources

### Conclusion

218. I am satisfied that QBCC is entitled to refuse to deal with the Referenced Associated Documents under section 41 of the RTI Act, on the basis that the work involved in dealing with them would both substantially and unreasonably divert QBCC's resources from their use in the performance of QBCC's functions.

### DECISION

219. For the reasons set out above, I set aside the Deemed Decision<sup>249</sup> and find that:

- the Irrelevant Information has been validly deleted,<sup>250</sup> as that information is not relevant to the narrowed terms of the access application
- the Category A Information comprises exempt information and access to it may be refused on that basis<sup>251</sup>
- the Category B Information comprises exempt information and access to it may be refused on that basis<sup>252</sup>
- access may be refused to the Category C Information, the Manual Deletions and the Personal Circumstance Information, as disclosure of that information would, on balance, be contrary to the public interest<sup>253</sup>
- QBCC may refuse to deal with the Referenced Associated Documents, as the work involved in dealing with them would substantially and unreasonably divert QBCC's resources from their use in the performance of QBCC's functions<sup>254</sup>
- some of the additional documents which the applicant considered to be missing have been disclosed to the applicant or form part of the Category C Information; and
- access to the remaining additional documents which the applicant considered to be missing may be refused on the basis they do not exist.<sup>255</sup>

<sup>249</sup> Under section 110(1)(c) of the RTI Act.

<sup>250</sup> Under section 73 of the RTI Act.

<sup>251</sup> Sections 47(3)(a) and 48 and schedule 3, section 6(c)(i) of the RTI Act.

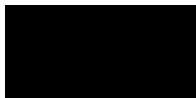
<sup>252</sup> Sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

<sup>253</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>254</sup> Section 41 of the RTI Act.

<sup>255</sup> Section 47(3)(e) and 52(1)(a) of the RTI Act.

220. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**T Lake**  
**Principal Review Officer**

**Date: 10 October 2025**

## APPENDIX

### Significant procedural steps

Date	Event
29 April 2022	OIC received the External Review Application.
26 May 2022	OIC notified the applicant and QBCC that the External Review Application had been accepted and requested information from QBCC.
1, 7 and 8 June 2022	OIC received the requested information from QBCC.
18 August 2022	OIC conveyed a preliminary view to the applicant about reviewable issues and invited the applicant to provide a submission by 7 September 2022 if he wished to contest the preliminary view.
7 September 2022	OIC received the applicant's email requesting further time to respond to the preliminary view.
14 September 2022	OIC wrote to the applicant to confirm that: <ul style="list-style-type: none"> <li>• the three-month extension requested by the applicant had been granted; and</li> <li>• the new response due date was 7 December 2022.</li> </ul>
20 December 2022	OIC notified the applicant that, as he had not responded to the preliminary view, OIC had proceeded on the basis that he no longer wished to pursue the External Review Application, and the external review had been completed.
21 December 2022	OIC notified QBCC that the external review had been completed.
17 January 2024	OIC received the Second External Review Application.
11 March 2024	OIC wrote to the applicant to confirm that an external review of the QBCC decision referenced in the Second External Review Application had previously been completed and the RTI Act did not enable a second external review to be conducted in respect of the same agency decision.
20 and 27 March 2024	OIC confirmed the applicant was not applying for a second external review and the applicant had requested that the Second External Review Application be treated as a request to re-open the previously completed external review. The applicant was invited to provide any further submission, by 5 April 2024, that he wished to make in support of that re-opening request.
22 April 2024	At the applicant's request, OIC granted an extension to 26 April 2024 for the applicant to provide any further submission he wished to make.
29 April 2024	At the applicant's request, OIC granted an extension to 3 May 2024 for the applicant to provide any further submission he wished to make.
7 May 2024	The applicant sent an email addressed to the Information Commissioner and titled ' <i>private and confidential</i> ', via an email address different to the email address nominated in prior correspondence for provision of submissions. The attachment to the email included, inter alia, the applicant's re-opening submission (dated 6 May 2024).
9 May 2024	OIC notified the applicant that based on information provided in the Second External Review Application, issues of sufficient merit had not been raised by the applicant so as to justify re-opening of external review.
3 June 2024	The Information Commissioner wrote to the applicant to confirm that the external review would remain open and invite the applicant to provide, by 24 June 2024, any submission he wished to make in response to the preliminary view that had been previously sent to him on 18 August 2022.

Date	Event
4 June 2024	OIC notified QBCC that the review had been re-opened.
17 June 2024	OIC requested QBCC to provide a copy of information that had previously been provided by QBCC in 2022 (as OIC no longer possessed a copy of that information following the review closure in 2022).
25 June 2024	At the applicant's request, OIC granted an extension to 22 July 2024 for the applicant to provide any further submission he wished to make.
27 June 2024	OIC notified QBCC that the Deemed Decision had been assessed as being the decision under review. QBCC was invited to provide a submission if they disagreed with that assessment.
22 July 2024	OIC received a submission from the applicant.
9 August 2024	OIC received requested information from QBCC.
27 August 2024	OIC received a further submission from the applicant.
17 October 2024	OIC conveyed a preliminary view to the applicant about the Undisclosed Information and invited the applicant to provide a submission by 7 November 2024 if he wished to contest the preliminary view (or any part of it).
12 November 2024	OIC received an email from the applicant.
4 March 2025	OIC requested further information from QBCC concerning the applicant's submissions about the sufficiency of QBCC's searches.
19 March 2025	At QBCC's request, OIC granted an extension to 4 April 2025 for provision of the requested information.
3 April 2025	OIC received the requested information from QBCC.
30 July 2025	OIC conveyed a preliminary view to the applicant about the sufficiency of QBCC's searches and the documents which the applicant considered to be missing. The applicant was invited to provide a submission by 28 August 2025 if he wished to contest the preliminary view (or any part of it).
1 August 2025	OIC received further information from QBCC.
29 August 2025	OIC notified the applicant that a formal decision would be issued to finalise the external review.