



## Decision and Reasons for Decision

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**Citation:** *Lotsearch Pty Ltd and Department of Environment and Heritage Protection* [2016] QICmr 51 (16 December 2016)

**Application Number:** 312768

**Applicant:** Lotsearch Pty Ltd

**Respondent:** Department of Environment and Heritage Protection

**Decision Date:** 16 December 2016

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - request for complete list of sites on the Contaminated Land Register and Environmental Management Register - whether the applicant can reasonably access the document under another Act - whether the document is commercially available - whether access may be refused under sections 47(3)(f) and 53 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST INFORMATION - request for complete list of sites on the Contaminated Land Register and Environmental Management Register - enhancing transparency and revealing environmental risks - prejudice to business affairs of an agency - specialised statutory scheme - whether disclosure of information would, on balance, be contrary to the public interest - whether access may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. Lotsearch Pty Ltd (**Lotsearch**) applied to the Department of Environment and Heritage Protection (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a list of all sites appearing on the Contaminated Land Register (**CLR**) and the Environmental Management Register (**EMR**), including site names and addresses.
2. The Department refused access to the requested information on the basis that other access was available.<sup>1</sup> Specifically, the Department decided that extracts from the CLR and EMR can be obtained, on payment of a fee, in accordance with the statutory scheme set up under the *Environmental Protection Act 1994* (Qld) (**EP Act**) and therefore, such information was commercially available and reasonably open to public access.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision. On external review, OIC explored several informal resolution opportunities with the parties, however, a negotiated outcome could not be achieved.
4. For the reasons set out below, I vary the Department's decision and find that access to the requested CLR and EMR information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.

### Background

5. Significant procedural steps taken by the Department in processing the application and by OIC in conducting the external review are set out in the Appendix to these reasons. The paragraphs below are intended to provide some background and contextual information on the statutory scheme for accessing contaminated land information in Queensland and the broader submissions made by the applicant regarding public access to this type of information.
6. The CLR and EMR are maintained under the EP Act. Land is listed on the EMR if certain types of activities (known as notifiable activities) have been, or are being, carried out on the land, or if the land is contaminated land, i.e., affected by a hazardous contaminant.<sup>2</sup> Contaminated land is moved from the EMR to the CLR where it is necessary to take action to remediate the land to prevent serious environmental harm and protect human health or other aspects of the environment.<sup>3</sup>
7. The EP Act provides for various land information registers to be made available for public inspection.<sup>4</sup> However, the CLR and EMR are specifically excluded from the public inspection provisions in the EP Act.<sup>5</sup> Instead, the EP Act<sup>6</sup> provides that extracts from those registers can be obtained by payment of the prescribed fee.<sup>7</sup>
8. The applicant, Lotsearch, uses geographic information systems (**GIS**) and database technologies to produce environmental and planning reports for its clients in New South Wales, Queensland and Victoria.<sup>8</sup> In support of the external review application,

<sup>1</sup> Under sections 47(3)(f) and 53(a) and (d) of the RTI Act.

<sup>2</sup> <https://www.qld.gov.au/environment/pollution/management/contaminated-land/about-registers/> (accessed 9 November 2016).

<sup>3</sup> Ibid.

<sup>4</sup> Sections 541 and 542 of the EP Act.

<sup>5</sup> Section 542(1) of the EP Act.

<sup>6</sup> Section 542(3) of the EP Act.

<sup>7</sup> Under schedule 10, part 3, section 14 of the *Environmental Protection Regulation 2008*.

<sup>8</sup> <http://www.lotsearch.com.au/> (accessed on 17 November 2016).

Lotsearch provided OIC with *'equivalent information which is freely available for download'*<sup>9</sup> from New South Wales and Victorian Environmental Protection Authorities.<sup>10</sup>

9. The applicant initially submitted to OIC that the Department's decision *'contradicts the guiding principles'* outlined by the Queensland Government as part of the Open Data initiative<sup>11</sup> and consistently argued on external review that the *'full list of information belongs in the public domain'*.<sup>12</sup> The applicant did however, concede during the review that *'[p]erhaps a request through the Open Data initiative would be more appropriate'*.<sup>13</sup>
10. Open Data is data that is made available by governments, organisations, researchers and individuals for anyone to access, use and share.<sup>14</sup> Open Data is one of the measures which the Queensland government has adopted to increase the flow of government information to the community. There are public consultation processes connected with Open Data regarding the types of information which citizens consider should be available through Open Data. The nature and extent of information which government chooses to make available in this way is a matter of government policy. Open Data operates independently from the disclosure processes under the RTI Act. Accordingly, I do not have jurisdiction to comment on whether the CLR and EMR datasets should be made available through Open Data— that is a policy decision for the Queensland Government. Therefore, to the extent the applicant's submissions concern such matters, I have not considered them in these reasons for decision.

### Reviewable decision

11. The decision under review is the Department's decision made on 5 February 2016, refusing access to information under section 47(3)(f) of the RTI Act.

### Evidence considered

12. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
13. I have carefully considered the applicant's applications, written and oral submissions made to OIC during this external review and supporting documents, to the extent they are relevant to the issue for determination, as set out below.

### Information in Issue

14. The applicant initially requested a copy of the CLR and EMR GIS datasets from the Department, including previous contaminated/licensed sites.<sup>15</sup> Following negotiations, the applicant reframed the request to: *'a list of the site names, addresses and parcel reference numbers (if available) for all of the properties appearing on either the CLR and/or the EMR registers'*.<sup>16</sup>

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<sup>9</sup> External review application dated 26 February 2016.

<sup>10</sup> <http://www.epa.nsw.gov.au/prclmapp/searchregister.aspx> (accessed on 9 November 2016); <http://www.epa.vic.gov.au/your-environment/land-and-groundwater/priority-sites-register> (accessed on 9 November 2016).

<sup>11</sup> External review application dated 26 February 2016.

<sup>12</sup> Submission to OIC dated 14 June 2016. This line of argument was also raised in the applicant's submissions to OIC dated 14 July and 29 September 2016.

<sup>13</sup> Submission to OIC dated 14 June 2016.

<sup>14</sup> ODI Queensland: <http://queensland.theodi.org/> (accessed on 9 November 2016). The Queensland Government makes certain data which it collects, generates and stores for its use available through an Open Data Portal <https://data.qld.gov.au/> (accessed on 9 November 2016).

<sup>15</sup> Access application dated 27 November 2015.

<sup>16</sup> Email to the Department dated 5 January 2016; the applicant's reframed request did not specifically request any historical data.

15. In its decision, the Department stated that it was:

*'... unable to provide an exact number of responsive documents as the information is contained within the EMR and CLR ... and the number of documents will vary depending on the type of search undertaken of the registers.'*

16. On external review, the applicant confirmed that it was seeking a list of all the sites appearing on the CLR and EMR, including *'names, addresses and locations of each site appearing on the registers'*.<sup>17</sup> The Department explained to OIC that report(s) listing all sites contained in the CLR and EMR could be produced from the Department's data system, but as it changes daily, it is only current/valid at the time it is generated, and cannot be prepared for an earlier point in time.<sup>18</sup>

17. For the purpose of this review, the report(s) listing the CLR and EMR sites, capable of being produced by the Department from its data system at a point in time, are referred to as the **Information in Issue** in these reasons for decision.<sup>19</sup>

### Issue for determination

18. The issue for determination is whether access to the Information in Issue can be refused under the RTI Act. In this case, the relevant grounds of refusal are:

- A. section 47(3)(f) of the RTI Act – because other access to the document is available as mentioned in section 53(a) or (d) of the RTI Act; and
- B. section 47(3)(b) of the RTI Act – to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act.<sup>20</sup>

### A. Other access available

#### Relevant law

19. A person has a right to be given access to documents of an agency under the RTI Act.<sup>21</sup> However, this right is subject to other provisions of the RTI Act, including the grounds on which access may be refused set out in section 47 of the RTI Act. Access to a document may be refused if an applicant can reasonably access the document under another Act, or under arrangements made by an agency, whether or not the access is subject to a fee or charge.<sup>22</sup> Access may also be refused if the document is commercially available.<sup>23</sup>

### Findings

20. The Department relied on section 47(3)(f) of the RTI Act to refuse access to the Information in Issue on the basis that there is a statutory scheme set up under the EP Act, enabling members of the public to purchase extracts from the CLR and EMR.<sup>24</sup>

<sup>17</sup> External review application dated 26 February 2016. The applicant did not seek to raise the issue of access to historical CLR and EMR data on external review and therefore, access to such information is not considered in these reasons for decision.

<sup>18</sup> Submissions to OIC dated 29 April 2016 and 14 December 2016. The Department initially indicated that a single report could be generated but later clarified to OIC that, due to the volume of entries in the registers and way the information is electronically stored, the requested information may need to be collated in multiple reports.

<sup>19</sup> The Department provided OIC with an abridged list of properties on the CLR and EMR taken from all Local Government Areas (LGA) and a report for a specific LGA.

<sup>20</sup> While section 47(3)(b) of the RTI Act precedes section 47(3)(f) of the RTI Act in the legislation, I have firstly assessed the application of the latter provision in these reasons, as it was the ground on which the Department relied to refuse access.

<sup>21</sup> Section 23 of the RTI Act.

<sup>22</sup> Sections 47(3)(f) and 53(a) of the RTI Act.

<sup>23</sup> Sections 47(3)(f) and 53(d) of the RTI Act.

<sup>24</sup> The EP Act provides for various land registers to be maintained and made available for public inspection. However, the CLR and EMR are specifically excluded from public inspection and instead, section 542(3) of the EP Act provides that extracts from those registers can be obtained by payment of the fee prescribed under the *Environmental Protection Regulation 2008*, schedule 10, part 3, section 14.

21. Under the EP Act, a member of the public can obtain an extract from the CLR and EMR about a specific site, using the lot/plan details applicable to the site. The document that is generated in response to such a search reflects what is recorded in the CLR or EMR at the time, in relation to one particular site only.<sup>25</sup> Where an application is made under the RTI Act for access to an extract from the CLR or EMR relating to a particular site, I accept that it would be open for an agency to refuse access to the document under sections 47(3)(b) and 53(a) of the RTI Act. However, for the reasons set out below, I consider that applying section 53 of the RTI Act to the applicant's request for a complete listing of CLR and EMR sites, presents some difficulties.
22. Firstly, in *JM and Queensland Police Service (JM)*,<sup>26</sup> the Information Commissioner observed that the 'very document' to which access is sought must be available to the applicant under the relevant alternative access scheme before the ground for refusing access may be invoked. The Information Commissioner also found in *JM* that it is not sufficient that 'information of the kind recorded in the document in issue' is available to otherwise access.<sup>27</sup> In this case, I am satisfied that the very document that the applicant seeks is not the same as what is available under the EP Act scheme. As set out above, the applicant seeks a complete list of all sites which appear on the CLR and EMR. However, what the EP Act makes available for purchase is an *extract* from the registers, containing information relevant to a single property only.<sup>28</sup>
23. Hypothetically speaking, multiple applications could be made under the EP Act to obtain extracts for every single parcel of land in Queensland. By compiling the purchased extracts into a single list, this would essentially produce the Information in Issue. The applicant submits that there are over three million individual parcels of land in Queensland and that conducting searches for each site would exceed \$138 million.<sup>29</sup> In *JM*, the Information Commissioner noted that the cost of access under a specialised access scheme is a consideration that might be relevant to a determination of whether access is reasonably available.<sup>30</sup> Given the enormity of this task and considering that a large percentage of the results would relate to properties that are not listed on the CLR or EMR (ie. information which is not sought by the applicant), I am satisfied that the Information in Issue is not 'reasonably' available to otherwise access, as required under section 53(a) of the RTI Act.
24. Secondly, the Department has confirmed to OIC that a report listing all of the properties in the CLR and EMR, ie. the Information in Issue, is not a document that is available for purchase from the Department. The Department advised OIC that the report is '*wholly for internal State Government and Local Government Authorities (LGA) use and not for reproduction as a public register*'.<sup>31</sup> For this reason, I am satisfied the Information in Issue is not 'commercially available' under section 53(d) of the RTI Act.
25. On the basis of the above, I find that access to the Information in Issue may not be refused under section 47(3)(f) of the RTI Act as other access is not reasonably, nor commercially available, under section 53 of the RTI Act.

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<sup>25</sup> <https://www.qld.gov.au/environment/pollution/management/contaminated-land/search-registers/> (accessed 9 November 2016). A search response will show: (i) if the land searched is or is not listed on the EMR or the CLR, (ii) what, if any, contaminants are on the land and have been notified to the Department, (iii) what, if any, notifiable activities have been, or are being, conducted on the land and have been notified to the Department, and (iv) if there is a site management plan for the land (if there is, a copy of the plan will also be provided).

<sup>26</sup> (Unreported, Queensland Information Commissioner, 12 May 1995). While this decision considered section 22 of the now repealed *Freedom of Information Act 1992* (Qld), the principles remain relevant in applying sections 47(3)(f) and 53 of the RTI Act as the provisions are largely equivalent in wording and operation.

<sup>27</sup> At [43].

<sup>28</sup> The Department provided OIC with sample site extracts from the EMR and CLR.

<sup>29</sup> External review application dated 26 February 2016.

<sup>30</sup> *JM* at [39].

<sup>31</sup> Department's submission dated 29 April 2016.

## B. Contrary to the public interest

### Relevant law

26. External review by the Information Commissioner<sup>32</sup> is general merits review and the Information Commissioner must make a decision affirming or varying the decision under review or substitute a new decision.<sup>33</sup> Despite my finding in paragraph 25 above, in the circumstances of this case, I have considered below whether access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act, on public interest grounds.<sup>34</sup>
27. Access to information may be refused where disclosure would, on balance, be contrary to the public interest.<sup>35</sup> A decision-maker must have regard to the pro-disclosure bias.<sup>36</sup> 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 generally. This means that ordinarily, 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.
28. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and explains the steps that a decision-maker must take<sup>37</sup> in deciding the public interest as follows:
  - identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure<sup>38</sup>
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information would, on balance, be contrary to the public interest.

### Findings

#### Irrelevant factors

29. The applicant is seeking the information for business purposes, that is, to complement the reporting services it provides to its clients who are undertaking environmental assessments and due diligence.<sup>39</sup> However, an applicant's reasons for seeking access to information under the RTI Act are an irrelevant consideration.<sup>40</sup> Therefore, in making my decision, I have not taken these submissions into account.

#### Factors favouring disclosure

30. In any event, the applicant submitted that the information should be made available to the wider community,<sup>41</sup> for the following reasons:

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<sup>32</sup> Or delegate.

<sup>33</sup> Section 110(1) of the RTI Act. See also section 105(1)(b) of the RTI Act.

<sup>34</sup> Sections 47(3)(b) and 49 of the RTI Act. During the external review I conveyed to the Department my intention to decide the matter on this basis.

<sup>35</sup> Section 47(3)(b) of the RTI Act.

<sup>36</sup> Sections 44 and 49 of the RTI Act.

<sup>37</sup> Section 49(3) of the RTI Act.

<sup>38</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

<sup>39</sup> Access application dated 27 November 2015, external review application dated 26 February 2016 and submissions to OIC dated 14 June 2016.

<sup>40</sup> See *State of Queensland v Albietz, Information Commissioner (Qld) and Anor* [1996] 1 Qd R 215 at 219 where de Jersey J observed that 'the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant'.

<sup>41</sup> Submission to OIC dated 14 June 2016.

- individuals living and working in Queensland have a right to understand potential risks from the surrounding areas
  - the current mechanism/system in Queensland is unnecessarily restrictive and costly and does not protect individuals as it denies them the ability to be able to easily search and understand their proximity to contaminated sites or potentially contaminated activities; and
  - failure to disclose the full list of contaminated sites in Queensland poses a threat to public health and safety.<sup>42</sup>
31. The applicant also provided OIC with online listings for contaminated land information that is made available in other Australian States and Territories<sup>43</sup> to lend support to its argument that the full list of information belongs in the public domain.
32. I accept that there is a public interest in ensuring that members of the public are informed about issues pertaining to land contamination and management of associated environmental issues, so that individuals and communities can put in place appropriate measures to safeguard their health and wellbeing. Government must also be accountable for ensuring that individuals are properly informed about land contamination issues and that such issues are actively managed to minimise risks to public health and safety. With this in mind, I have considered whether disclosure could reasonably be expected to enhance government accountability and transparency<sup>44</sup> and/or reveal environmental or health risks or measures relating to public health or safety.<sup>45</sup>
33. I acknowledge that other Australian States and Territories publish contaminated land information online and I accept that this provides a level of transparency in government-held information. However, for the reasons set out below, I am satisfied that transparency can also be achieved through a statutory access scheme, such as that which currently operates in Queensland under the EP Act.<sup>46</sup>
34. It is not the case that contaminated land information is kept secret from the public in Queensland. To the contrary, information on the CLR and EMR is publicly available, in site-specific extract form, upon payment of the prescribed fee. Importantly, the information that is provided by the statutory scheme is unfettered. The applicant has emphasised in its submissions the importance of individuals being aware of the inclusion of surrounding properties on the CLR and EMR. Under the EP Act scheme, if an individual is concerned about nearby properties, they are not prevented from applying to the Department for extracts relating to those particular properties.<sup>47</sup> There is no requirement that an individual must be the registered title holder to obtain a CLR or EMR extract for the site. I am therefore, unable to accept the applicant's submission that the statutory scheme denies members of the public from understanding their proximity to contaminated sites. For these reasons, I do not consider that government accountability would be any further enhanced by disclosing the Information in Issue under the RTI Act.
35. I accept that disclosing the Information in Issue, i.e., the entire CLR and EMR site listings, under the RTI Act would provide the community with some further transparency in this

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<sup>42</sup> Submissions to OIC dated 14 June, 14 July and 29 September 2016.

<sup>43</sup> [https://www.accesscanberra.act.gov.au/app/services/contaminated\\_sites/#/](https://www.accesscanberra.act.gov.au/app/services/contaminated_sites/#/); <https://ntepa.nt.gov.au/waste-pollution/contaminated-land/>; [http://report.epa.sa.gov.au/data\\_and\\_publications/site\\_contamination\\_index/](http://report.epa.sa.gov.au/data_and_publications/site_contamination_index/); <https://secure.dec.wa.gov.au/idelvel/css/> (accessed on 9 November 2016). See also footnote 10 above.

<sup>44</sup> Schedule 4, part 2, item 1.

<sup>45</sup> Schedule 4, part 2, item 14.

<sup>46</sup> I also note the Department's submission that the statutory regimes concerning contaminated land in other States and Territories are different to that which operates in Queensland. Variations in environmental protection legislation across Australian jurisdictions are not however, relevant to the issue for determination in this review and therefore, I have not examined them in these reasons for decision.

<sup>47</sup> I would not expect the number of surrounding properties of interest to an individual to be at an onerous/unaffordable level such as that referred to at paragraph 23 above.

type of information. However, there is an issue with currency of the information which I consider serves to reduce the weight of this factor. The report generated from the Department's database is only current at the point in time it is generated; entries in the CLR and EMR can change on a regular basis, even daily.<sup>48</sup> Accordingly, while disclosure of the entire list may provide an additional level of transparency for a particular point in time, I consider that the current mechanism for accessing up to date information delivers a superior level of transparency. For these reasons, I afford this factor<sup>49</sup> only minimal weight in favour of disclosure.

36. To the extent that the Information in Issue includes sites listed on the CLR and EMR that are affected by hazardous contaminants, or upon which remedial action has been taken, I consider disclosure could reasonably be expected to reveal environmental or health risks. However, as the applicant only seeks site names, addresses and parcel reference numbers, the weight of this factor is somewhat lessened as the Information in Issue is in the form of a basic list of land parcels, as opposed to the more comprehensive information that appears in a site extract about the types of contaminants, activities and site management plan details.<sup>50</sup>
37. In addition, for similar reasons to those outlined in paragraphs 34 and 35 above, I consider the weight to be attributed to this factor is further reduced by virtue of the statutory access scheme. As outlined above, information on the CLR and EMR about contaminated land and land subject to remedial action is readily available for members of the public to access, for a fee. Had there been a level of secrecy surrounding the information, or in the absence of a public access scheme, this factor may be deserving of more weight. However, in the circumstances, I find this factor carries only low weight in favour of disclosure.

#### **Factors favouring nondisclosure**

38. The RTI Act recognises that where disclosure of information could reasonably be expected to prejudice the business affairs of an agency, the public interest will favour nondisclosure.<sup>51</sup>
39. Searches of the CLR and EMR are commonly conducted by prospective property buyers as part of a due diligence process and also by people who are considering developing or changing the use of a parcel of land in Queensland. The fees paid for CLR and EMR searches are a source of income for the Department and contribute to the overall State revenue balance.<sup>52</sup> I am satisfied that, if reports comprising the complete listings of sites in the registers were made available under the RTI Act, this could reasonably be expected to reduce the number of searches requested and paid for through the statutory scheme. In turn, this would reduce the associated income received by the Department.<sup>53</sup> While the applicant has submitted it is willing to pay '*reasonable costs*' for this information,<sup>54</sup> I consider it is still reasonable to expect there would be a significant reduction in search requests made under the EP Act by the broader population.
40. The EP Act scheme is the mechanism by which Parliament has decided to provide access to information about sites affected/potentially affected by land contamination in Queensland. As the Department is the agency with responsibility for administering the

<sup>48</sup> Department's submission dated 29 April 2016.

<sup>49</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>50</sup> See footnote 25 above.

<sup>51</sup> Schedule 4, part 3, item 15 of the RTI Act.

<sup>52</sup> Currently, the cost of a search is \$47.65 if completed electronically and otherwise \$55.95, per site: see schedule 10, section 14 of the *Environmental Protection Regulation 2008* (Qld).

<sup>53</sup> In a telephone conversation with OIC on 6 July 2016, the Department indicated that the potential reduction in revenue formed part of its objection to disclosing the complete register listings.

<sup>54</sup> Submission to OIC dated 14 June 2016.



EP Act,<sup>55</sup> I am satisfied that managing access to CLR and EMR information through the statutory scheme forms part of the Department's business affairs.

41. The express exclusion of the CLR and EMR from the list of land registers open for public inspection under the EP Act demonstrates Queensland Parliament's clear intention to provide and manage access to information in these registers exclusively through the statutory scheme. Taking this into account, I am satisfied that disclosing the Information in Issue under the RTI Act would undermine the operation of the specialised statutory scheme and could thereby, reasonably be expected to prejudice the Department's business affairs. I acknowledge however, that the level of income generated from CLR and EMR searches is unlikely to represent a major component of the Department's total income, and this serves to slightly reduce the weight of this factor. In the circumstances of this case, I afford moderate weight to the factor identified at paragraph 38 above in favour of nondisclosure.

### **Balancing the public interest**

42. In addition to the pro-disclosure bias, I am satisfied that disclosing the Information in Issue under the RTI Act would somewhat enhance transparency in government-held information regarding contaminated land and to an extent, reveal environmental risks. However, given the operation of the statutory access scheme under the EP Act, I find that both factors carry only low weight in favour of disclosure. On the other hand, I am satisfied that the prejudice to the Department's business affairs by undermining a specialised fee-based statutory scheme carries moderate and determinative weight against disclosure.
43. Therefore, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest under section 49 of the RTI Act. Accordingly, I find that access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act.

### **DECISION**

44. I vary the decision under review by finding that access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act as disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act.
45. I have made this decision<sup>56</sup> as a delegate of the Information Commissioner, under section 145 of the RTI Act

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**Katie Shepherd**  
**Assistant Information Commissioner**

**Date: 16 December 2016**

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<sup>55</sup> See the *Administrative Arrangements Order (No.2) 2016* at <https://www.qld.gov.au/about/how-government-works/government-responsibilities/> at page 25 (accessed on 15 December 2016)

<sup>56</sup> Under section 110(1) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
27 November 2015	The Department received the access application and the application fee.
5 February 2016	The Department issued its decision to the applicant.
<b>1 March 2016</b>	<b>OIC received the external review application.</b> OIC notified the Department that the external review application had been received and requested that the Department provide a number of procedural documents by 8 March 2016.
8 March 2016	OIC received the requested documents from the Department.
15 March 2016	OIC notified the Department and the applicant that the external review application had been accepted. OIC asked the Department to provide additional information, including an extract from the CLR/EMR by 31 March 2016.
30 March 2016	OIC received the information requested from the Department.
7 April 2016	OIC asked the Department to provide further information about the data system used to record the CLR and EMR, by 22 April 2016.
22 April 2016	The Department sought an extension of time to respond to OIC's request. An extension of time was granted until 29 April 2016.
29 April 2016	The Department provided OIC with the requested information.
2 June 2016	OIC conveyed a preliminary view to the applicant that access to the Information in Issue may be refused because disclosure would, on balance, be contrary to the public interest. OIC asked the applicant to provide submissions supporting its case by 17 June 2016 if the preliminary view was not accepted.
13 June 2016	OIC received submissions from the applicant.
21 June 2016	An OIC staff member spoke by telephone with two directors of the applicant about the applicant's submissions and discussed ways that the review may be informally resolved.
6 July 2016	OIC made further inquiries with the Department regarding informal resolution options.
14 July 2016	OIC informed the applicant that it was unable to identify any opportunities for informally resolving the review under section 90 of the RTI Act and a formal decision would be issued. The applicant provided further submissions to OIC in support of its case.
23 August 2016	OIC conveyed to the Department that as the review had not been resolved informally, a formal decision would be issued.
29 September 2016	OIC provided the applicant with an update on the status of the review. The applicant provided further submissions to the external review.
24 November 2016	OIC asked the Department to provide a copy of the Information in Issue.
14 December 2016	The Department provided OIC with an abridged list of properties on the CLR and EMR taken from all LGA, a report for a specific LGA, and submissions regarding technical issues associated with generating such reports.