



Decision and Reasons for Decision

Citation:	<i>McCrystal and Queensland Building and Construction Commission (No. 3) [2018] QICmr 22 (18 May 2018)</i>
Application Number:	313174
Applicant:	McCrystal
Respondent:	Queensland Building and Construction Commission
Decision Date:	18 May 2018
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information provided to investigations of complaints about alleged regulatory breaches - personal information and privacy - business, commercial and financial information of private sector entities and businesses - whether disclosure would on balance be contrary to public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - applicant contends that the agency has failed to locate all documents responding to his application - whether there are reasonable grounds to be satisfied that further documents do not exist or cannot be found - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Building and Construction Commission (**QBCC**) under the *Right to Information Act 2009* (**RTI Act**) for access to:

All documents¹ relating to the QBCC's enquiries, the responses and material evidence provided by all parties (identified in complaint or not) in response to those enquiries, and consideration & advice by the QBCC of those materials, which satisfied the QBCC in all of its decisions regarding complaints lodged on 18-04-2016, 04-05-2016, 01-06-16 and 11-07-16 under QBCC Ref 1101192_7 and DHA4Z2.²

¹ The access application seeks documents for the period April 2016 to 5 August 2016 (being the date QBCC received a valid application) and identifies the types of documents sought as: *Case notes, EDRMS, legal EDRMS, internal & external correspondence, image/video/audio recordings & interviews, documents including plans/work contracts & receipts/equipment contracts & receipts/employee contracts/values/suppliers/insurance/licensing requirements, reviews of complaints (refer to reviews conducted by [Officer G] per 28-07-2016 correspondence).* The access application and the applicant's submissions on external review make specific reference to a number of QBCC Officers, who have been de-identified in this decision.

² By email to QBCC dated 30 August 2016, the applicant confirmed that he required copies of duplicate documents, documents/correspondence submitted by him and documents/correspondence sent to him.

2. QBCC located responsive documents and decided³ to provide access to 2209 pages, 10 audio recordings, parts of 215 pages and parts of 23 audio recordings. QBCC refused access to 1574 pages and the remaining parts of the 215 pages and 23 audio recordings, on the grounds that this information was exempt information, its disclosure would, on balance, be contrary to the public interest or other access to it was available. QBCC also deleted information from one page and from certain audio recordings, on the basis that it was irrelevant to the access application.
3. The applicant sought internal review of QBCC's decision. QBCC decided⁴ to release two pages which had previously been refused, refuse access to 28 pages which were previously identified for release and otherwise affirmed the original decision.
4. The applicant then applied⁵ to the Information Commissioner for an external review and raised concerns that QBCC had not located all relevant documents.
5. For the reasons set out below, I vary QBCC's internal review decision and find that access to the information remaining in issue in this review may be refused on the grounds that its disclosure would, on balance, be contrary to the public interest or it is nonexistent or unlocatable.

Background

6. QBCC is the State's building and construction industry regulator. A range of legislation falls within QBCC's regulatory responsibilities. QBCC's functions include regulation of various aspects of the building industry.⁶ Relevant to this review, QBCC has responsibility for licensing various industry participants and considering complaints that it receives about building contractors, building certifiers and unlicensed building work.
7. The applicant has made a number of complaints to QBCC relating to residential building work at two adjoining properties—Property 1 and Property 2. In 2016, the applicant made several complaints to QBCC, including the complaints specified in the access application that is the subject of this review (**the four complaints**).
8. The complaint dated 18 April 2016 (**Complaint 1**) alleged that:
 - four individuals had undertaken unlicensed fire protection work at Property 1
 - if those individuals were employed by an entity/individual contracted to perform that work, then that entity/individual engaged in unlicensed work
 - irrespective of which entity/individual was engaged in the work, a permanently excluded individual was ostensibly in control of or substantially influential in the affairs of that entity/individual and continued to act as an influential person in respect of the work; and
 - a building certifier did not comply with the requirements of an information notice dated 25 November 2015, issued by QBCC in respect of Property 1.

In Complaint 1, the applicant also '*encouraged*' QBCC to reconsider its refusal to investigate breaches alleged in an earlier complaint made by him to QBCC on 8 February 2016.⁷

³ Decision dated 14 November 2016.

⁴ Internal review decision dated 12 January 2017.

⁵ On 24 January 2017.

⁶ Section 7 of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**).

⁷ The applicant's 8 February 2016 complaint sought review of QBCC's decisions about his 2014 complaint concerning unlicensed building works at Property 1. By email dated 15 March 2016, QBCC notified the applicant's legal representative that the applicant's 2014 unlicensed contracting complaint would not be further investigated.

9. The complaint dated 4 May 2016 (**Complaint 2**) provided supplementary evidence to QBCC supporting the allegations in Complaint 1.
10. The complaint dated 1 June 2016 (**Complaint 3**) provided further supplementary evidence to QBCC supporting Complaint 1 and alleged that:
 - six individuals (including the four individuals identified in Complaint 1) undertook unlicensed fire protection work at Property 1
 - an individual had engaged in inappropriate use of a licence to enable a permanently excluded individual to carry out building works at Property 1 and Property 2
 - two individuals made representations that they were responsible for undertaking fire protection work at Property 1
 - a Queensland Fire and Emergency Services decision to take no further action concerning a complaint that it received about fire protection work at Property 1 relied on a letter dated 5 May 2016 provided to it by one of the name individuals (**the May 2016 Letter**);⁸
 - however, the authorship of the May 2016 Letter was questionable.⁹
11. The information before me indicates that QBCC combined and considered Complaints 1, 2 and 3 in one investigation. By letter dated 25 July 2016,¹⁰ QBCC notified the applicant that it had determined that no breaches of relevant legislation had occurred. By letter dated 28 July 2016,¹¹ QBCC clarified that it had identified one *alleged* breach, however there was insufficient evidence to pursue this. More particularly,¹² QBCC determined that the parties who could be adequately identified as involved in the passive fire boxes were appropriately licensed, and certificates for the passive fire boxes and fire collars had been issued by appropriately licensed persons.
12. The complaint dated 11 July 2016 (**Complaint 4**) sought suspension of works at Property 2 and the investigation of, and commencement of prosecution against, three entities and seven individuals for alleged offences concerning building works at Property 1 and Property 2. Also, the applicant stated that he was providing further information in support of another complaint made by him to QBCC on 26 May 2016 (that is, between Complaints 2 and 3), in which he alleged that a licensed building contractor had engaged in inappropriate use of a licence to enable a permanently excluded individual to carry out building works at Property 1 and Property 2, and that the permanently excluded individual acted as an influential person in respect of that work and in the affairs of the licensed building contractor.¹³

⁸ The letter stated:

*We have been engaged to oversee the rectification of these fire defects and make compliant to current codes
We have been engaged to carry out this work because the builder is no longer in business and can't carry out these works
We have engaged a commercial company who specialise in this application and hold the relevant licence class for this work
who is in control of the situation and will issue compliance forms ... in accordance with the relevant fire code and the ABC
I am happy to forward a copy at the completion of the rectification works [sic].*

⁹ A copy of the May 2016 letter was attached to Complaint 3. In the applicant's submissions in this review dated 12 April 2018, he has referred to this letter being signed by Mr K; however, he suggests that it was, in fact, authored by the excluded individual.

¹⁰ A copy of which was released to the applicant at page 1748 in File 1101192 Compliance EDRMS.

¹¹ A copy of which was released to the applicant at pages 1805-1806 in File 1101192 Compliance EDRMS.

¹² As noted in information released to the applicant at page 1738 in File 1101192 Compliance EDRMS. This was also confirmed to the applicant in a conversation on 25 July 2017—a copy of the audio recording of this conversation was released to the applicant (numbered 141030).

¹³ Complaint 4 also referenced certain of the applicant's prior complaints investigated by QBCC, namely (i) a complaint about a building contractor dated 26 October 2015, regarding which QBCC had determined that the building contractor had engaged in unlicensed contracting and issued a written warning; and (ii) complaints dated 17 February 2015, 13 March 2015, 7 July 2015, 29 October 2015 and 18 November 2015 that an excluded individual had acted as an influential person for a licenced building contractor, regarding which QBCC had determined that the excluded individual was an influential person of the building contractor and cancelled that contractor's licence.

13. By the letter dated 28 July 2016,¹⁴ QBCC notified the applicant that Complaint 4 related to an earlier complaint made by him and contained no additional breaches for investigation. Then, on 24 August 2016,¹⁵ in response to further correspondence from the applicant regarding Complaint 4, QBCC explained to him that it had decided not to investigate Complaint 4, as it considered the matters raised in this complaint had been previously assessed by QBCC and the only action arising (concerning an advertising offence) had been addressed by a member of QBCC's Industry Intelligence Unit.
14. More generally, in the letter dated 28 July 2016,¹⁶ QBCC confirmed to the applicant that it had reviewed the actions taken by QBCC's Compliance Investigation Unit concerning a number of the applicant's complaints (including the four complaints), and it was QBCC's conclusion that:
- the applicant had been notified of the outcomes of the investigations conducted by QBCC
 - QBCC was unable to provide the applicant with further assistance in relation to the issues that it had investigated; and
 - if the applicant remained dissatisfied with QBCC's investigation of his complaints (including the four complaints), he could make a complaint to the Queensland Ombudsman.¹⁷
15. On external review, the applicant expressed a desire to obtain information which identifies the entity that carried out the fire protection work at Property 1 and information which indicates how QBCC decided that two individuals were not engaged to perform or supervise that work, and did not do so (when he considers that the May 2016 Letter is evidence that they did). The applicant also expressed his general dissatisfaction with QBCC's decisions concerning the four complaints. More specifically, he provided extensive submissions to the Office of the Information Commissioner (**OIC**) in support of his understanding that:
- QBCC allowed unlicensed contracting at Property 1 and Property 2 to occur
 - QBCC knew that an excluded individual was an influential person of a QBCC licensed contractor but then claimed it could not substantiate that he was; and
 - QBCC's decision about Complaints 1, 2 and 3 does '*not make sense*'.
16. The significant procedural steps relating to the external review are set out in Appendix 1.

Reviewable decision

17. The decision under review is QBCC's internal review decision dated 12 January 2017.

Information in issue

18. During the external review,¹⁸ the applicant confirmed that he did not seek access to certain categories of information¹⁹ and accepted OIC's views that information on one

¹⁴ See footnote 11 above.

¹⁵ A copy of which was released to the applicant at page 1452 in File 1076714 *Compliance EDRMS*.

¹⁶ See footnote 11 above.

¹⁷ This was subsequently confirmed in an email QBCC sent to the applicant dated 2 August 2016 (copies of which have been released to the applicant, for example, at pages 1808 and 1818 in File 1101192 *Compliance EDRMS*).

¹⁸ As part of informal resolution in accordance with section 90(1) of the RTI Act.

¹⁹ As confirmed in OIC's letters dated 1 September 2017, 27 March 2018 and 18 April 2018, the applicant does not seek access to information which is commercially available (such as RP Data and ASIC extracts), mobile telephone numbers of QBCC employees, email greetings and pleasantries in emails between government agency employees, QBCC policy and guideline documents, a Facebook extract, signatures, lines of symbols and the duplicate documents identified in OIC's letters dated 1 September 2017 and 27 March 2018.

page was exempt information and certain information was outside the scope of, or irrelevant to, the access application.²⁰ Also, QBCC released one page to the applicant.

19. The information remaining for consideration in this decision (**Information in Issue**) consists of information refused in 851 pages and 23 audio recordings identified in Appendix 2.

Issues to be determined

20. As set out at paragraph 18 above, issues regarding some of the information refused by QBCC's internal review decision were resolved informally during the external review process. The remaining issues to be determined are whether:
- the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest; and
 - additional documents that, in the applicant's view, should have been located by QBCC may be refused on the ground that they are nonexistent or unlocatable.

Evidence considered

21. External review by the Information Commissioner²¹ is merits review, which is an administrative reconsideration of a case. In conducting that merits review, I have considered the documents QBCC located as responsive to the access application (including the Information in Issue).
22. The evidence, submissions, legislation and other material that I have considered are disclosed in these reasons (including footnotes and appendices).

Preliminary issues

23. Before addressing the issues to be determined, it is necessary to deal with the following preliminary issues arising from concerns expressed in the applicant's submissions.

QBCC's decisions about the four complaints

24. The applicant has made extensive submissions contending that QBCC's decisions concerning his four complaints were incorrect and in ignorance of, or not consistent with, the evidence he supplied to QBCC.²² However, the Information Commissioner's jurisdiction on external review is derived from the RTI Act and relates only to decisions about access to and, where relevant, amendment of, documents held by agencies. QBCC's decisions concerning the four complaints are not '*reviewable decisions*'²³ under the RTI Act, and therefore the Information Commissioner has no power to review them. Accordingly, OIC's jurisdiction in this matter does not extend to investigating, making any findings or providing any remedy to the applicant in respect of his concerns about QBCC's decisions regarding his complaints.²⁴

²⁰ Paragraphs 5, 6 and 7 in submissions dated 12 April 2018.

²¹ Or delegate.

²² As noted in paragraph 14 above, QBCC notified the applicant on several occasions that if he was dissatisfied with QBCC's decisions regarding the four complaints, there were complaint avenues available to him.

²³ '*Reviewable decision*' is defined in schedule 5 of the RTI Act.

²⁴ This was explained to the applicant in OIC's letter dated 1 September 2017.

25. I have, however, given consideration to these submissions in the context of determining whether there are public interest factors favouring disclosure of the Information in Issue.²⁵

Concerns regarding the conduct of QBCC officers

26. The applicant has submitted that certain QBCC officers have made ‘*disingenuous*’ representations regarding his complaints. In particular, the applicant referred to ‘*the continued denial that the building contractor did not engage in unlicensed contracting at [Property 1] despite knowledge to the contrary*’.²⁶ As noted at paragraph 24 above, OIC’s jurisdiction does not extend to investigation of the applicant’s concerns about QBCC’s decisions regarding his complaints. Accordingly, OIC’s jurisdiction does not extend to investigation of any representations made by QBCC officers regarding his complaints.
27. Again, however, I have given consideration to the applicant’s submissions regarding the conduct of QBCC officers regarding his complaints for the purpose of determining whether there are public interest factors favouring disclosure of the Information in Issue.²⁷
28. The applicant has also made submissions detailing his disagreement with various statements in QBCC’s internal review decision. Under the RTI Act,²⁸ certain notification requirements arise if the Information Commissioner is of the opinion, at the conclusion of an external review, that there is evidence an agency’s officer has committed a breach of duty or misconduct in the administration of the RTI Act. On the material before me, there is no evidence of such a breach of duty or misconduct in this review.

Matters dealt with in other completed external reviews

29. The applicant has made the following access applications to QBCC:

Date	QBCC reference number and decision	External review and status
16 September 2014 (First Application)	RTI_053_14_15 decision dated 30 September 2014	Not sought
21 April 2016 (Second Application)	RTI_248_15_16 decision dated 14 July 2016	312924 – completed ²⁹
4 August 2016 (Third Application)	RTI_029_16_17 internal review decision dated 12 January 2017	313174 – this review
4 August 2016 (Fourth Application)	RTI_030_16_17 decision dated 30 September 2016	312996 – completed ³⁰
4 August 2016 (Fifth Application)	RTI_031_16_17 internal review decision dated 23 December 2016	313173 – completed ³¹
5 August 2016 (Sixth Application)	RTI_032_16_17 decision dated 2 November 2016	313091 – completed ³²

30. The Third Application is the subject of this review.

²⁵ See discussion under the heading ‘Contrary to public interest information’ commencing at paragraph 37 below.

²⁶ External review application.

²⁷ See discussion under the heading ‘Contrary to public interest information’ commencing at paragraph 37 below.

²⁸ Section 113 of the RTI Act.

²⁹ External review 312924 was finalised by the decision of the Information Commissioner’s delegate in *McCrystal and Queensland Building and Construction Commission* [2017] QICmr 32 (**McCrystal No. 1**) on 10 August 2017.

³⁰ External review 312996 was finalised by the decision of the Information Commissioner’s delegate in *McCrystal and Queensland Building and Construction Commission* (No. 2) [2017] QICmr 50 (**McCrystal No. 2**) dated 6 October 2017.

³¹ External review 313173 was finalised by the decision of the Information Commissioner’s delegate in *McCrystal and Queensland Building and Construction Commission* [2018] QICmr 2 dated 30 January 2018 (**McCrystal No. 3**).

³² External review 313091 was finalised by the decision of the Information Commissioner’s delegate in *McCrystal and Queensland Building and Construction Commission* (No. 2) [2018] QICmr 10 dated 7 March 2018 (**McCrystal No. 4**).

31. The Sixth Application is the subject of completed external review 313091, which was finalised by the Information Commissioner's decision in *McCrystal No. 4*. That decision is currently the subject of an appeal to Queensland Civil and Administrative Tribunal (QCAT).³³ In that decision, the Information Commissioner:
- refused to deal with the applicant's request for one category of further documents (being Category I) which, in the applicant's view, existed and should have been located by QBCC in response to the Sixth Application;³⁴ and
 - noted, at paragraphs 54 and 55, that the applicant had acknowledged that the Category I documents comprise information which he sought in the Third Application and that his request for the Category I documents would be addressed in external review 313174 (that is, in this review).
32. In this review, the applicant has made submissions in which he '*maintains*' that the Category I documents should have been released in full in completed external review 313091.³⁵ In effect, the applicant seeks the Information Commissioner's reconsideration of matters determined in *McCrystal No. 4*. However, this beyond the power of the Information Commissioner, who is *functus officio*, given the issuing of *McCrystal No. 4*—which, as noted above, is now the subject of a QCAT appeal. In any event, as foreshadowed at paragraph 55 of *McCrystal No. 4*, the applicant's request for the Category I documents has been considered in this review. This issue was not resolved informally and is therefore addressed in this decision.³⁶

External review processes

33. The applicant has submitted that '[h]ad the OIC reviewed related applications appropriately, it would know, when it should know, of evidence' that QBCC was wrong to allow unlicensed contracting, and that QBCC allowed an excluded person to continue to act as an influential person of a QBCC licensed building contractor.³⁷ The applicant has also submitted that he believes further documents would have been released to him if his external review applications had been progressed together.³⁸ It is my understanding that the applicant considers that OIC should have conducted external review 313091 and the present review, or possibly all five of his external reviews, concurrently; and, if OIC had done so, the entirety of the material before OIC would lead OIC to conclude that QBCC's conduct and decisions regarding his complaints (including the four complaints) were wrong; which in turn would lead OIC to conclude that less information, or possibly no information, located by QBCC could be refused under the RTI Act.
34. OIC's jurisdiction in this matter is limited to considering whether the applicant can access information relevant to the Third Application and, as noted above at paragraph 24, this does not extend to investigating or providing any remedy to the applicant concerning the correctness or otherwise of QBCC's decisions regarding the applicant's various complaints. To the extent the applicant considers there are deficiencies in his other external reviews, it is relevant to note that these reviews have been finalised and therefore the Information Commissioner is *functus officio*. Also, the applicant has appealed the Information Commissioner's decisions of *McCrystal No. 2*, *McCrystal No. 3* and *McCrystal No. 4* to QCAT. In these circumstances, it is not appropriate to address

³³ Under section 119 of the RTI Act.

³⁴ At paragraphs 52-57.

³⁵ Submissions dated 12 April 2018.

³⁶ See discussion regarding Category (a) documents under the heading 'Nonexistent or unlocatable documents' commencing at paragraph 127 below.

³⁷ Submissions dated 12 April 2018.

³⁸ Submissions dated 27 April 2018.

the applicant's concerns outlined in paragraph 33 above with any degree of specificity in this decision.

35. However I can note that, generally, the manner in which an external review is conducted is, subject to the RTI Act, at the Information Commissioner's discretion.³⁹ The applicant has made five external review applications, each seeking review of five separate QBCC's decisions concerning five separate access applications, and OIC has accepted and conducted each of these external reviews (as noted at paragraph 29 above). After attempting to progress the applicant's five external reviews concurrently, OIC confirmed to the applicant, on 30 June 2017,⁴⁰ that his external reviews would be progressed separately. While refusal of access to requested information was considered in each external review, the issues requiring determination in each external review were necessarily considered on the particular facts and circumstances of each review. In each review, OIC considered the applicant's submissions expressing concerns about QBCC's decisions and conduct where relevant. I am satisfied that the applicant has not been disadvantaged by the separate progression of his external reviews and I do not agree that further documents would have been disclosed to him if the reviews had been progressed together.
36. I will now turn to consideration of the issues to be determined in this review.

Contrary to the public interest information

37. In QBCC's original decision, QBCC identified the refused information included commercial contracts between parties, invoices, quotes, subcontractor agreements and additional documents relating to construction. Further, the schedule attached to QBCC's original decision provided a general description of the information to which access was refused in each QBCC file reference.
38. While the RTI Act prevents me from disclosing the content of the Information in Issue,⁴¹ I can confirm that much of the information identified in QBCC's original decision comprises the Information in Issue.⁴² Further, I can generally describe the Information in Issue as information provided by individuals other than the applicant to QBCC's investigations of the four complaints, certain QBCC conclusions about that information and the identity and contact details of those, and other, individuals and entities. Also, I note that the nature of certain portions of the Information in Issue can be discerned from surrounding information which has been released to the applicant. For example:
- a released Document Production Request dated 3 June 2016 (**Production Request**)⁴³ confirms that, as part of its investigation of Complaints 1, 2 and 3, QBCC required production of contracts entered into, quotes, invoices, letters and emails relating to identified building work at Property 1 and Property 2
 - other information released to the applicant⁴⁴ confirms that information was provided to QBCC in response to the Production Request
 - in partially released email chains, it is evident that:
 - there is a significant level of repetition of the same emails in many of the chains; and

³⁹ Section 95(1)(a) of the RTI Act.

⁴⁰ This notification was issued in completed external review 312996.

⁴¹ Specifically, section 108(3) of the RTI Act prevents OIC from revealing information claimed to be contrary to the public interest information.

⁴² Paragraph 3 above notes the extent to which the internal review decision varied the original decision and paragraph 18 above identifies the information excluded from consideration on external review.

⁴³ Pages 30-31 in File 1076714 Compliance EDRMS comprise a copy of the Production Request.

⁴⁴ For example, pages 80 and 226 in File 1076714 Compliance EDRMS and pages 656 and 839 in File 1101192 Compliance EDRMS.

- the refused information includes individuals' email addresses and mobile telephone numbers; and
- in partially released photographs, it is evident that the refused information comprises car registration numbers and the depiction of individuals.

Relevant law

39. Under the RTI Act, a person has a right to be given access to documents of an agency.⁴⁵ The RTI Act is administered with a pro-disclosure bias.⁴⁶ The RTI Act sets out certain grounds on which access to information may be refused⁴⁷ and it is Parliament's intention that these grounds are to be interpreted narrowly.⁴⁸
40. One such ground is that disclosure would, on balance, be contrary to the public interest. To help the decision-maker decide whether giving access would, on balance, be contrary to the public interest,⁴⁹ the RTI Act sets out various factors for and against disclosure that may be relevant⁵⁰ and explains⁵¹ the steps that the decision-maker must take as follows:
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Applicant's submissions

41. Generally, the applicant submitted⁵² that the factors favouring disclosure of the Information in Issue outweigh the nondisclosure factors. Where the applicant's submissions raise or are relevant to particular public interest factors, I have addressed them below.

Findings

Irrelevant factors

42. The applicant submitted⁵³ that he has been affected by the '*unlicensed fire protection work*' at Property 1 and he has a right to receive additional information to inform him about the entity that was responsible for carrying out that fire protection work.
43. I acknowledge the applicant's view that he has been adversely affected by QBCC's decisions concerning his complaints, however, the RTI Act applies equally to all individuals seeking access to information. While there are, as noted above, some recognised public interest considerations that may apply for the benefit of an individual—such as where information is an access applicant's personal information or its disclosure would contribute to the administration of justice for the applicant⁵⁴—the applicant has no

⁴⁵ Section 23 of the RTI Act.

⁴⁶ Section 44(1) of the RTI Act.

⁴⁷ Section 47(3) of the RTI Act.

⁴⁸ Section 47(2)(a) of the RTI Act.

⁴⁹ Section 44(2)(b) of the RTI Act.

⁵⁰ Schedule 4 of the RTI acts sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these lists of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

⁵¹ At section 49(3) of the RTI Act.

⁵² Submissions dated 12 April 2018.

⁵³ Submissions dated 12 April 2018.

⁵⁴ This factor is among the factors favouring disclosure considered below.

additional entitlement to access information under the RTI Act by virtue of being a complainant or an affected third party alone. For this reason, I have not taken this submission, or any other irrelevant factor, into account.

Factors favouring disclosure

44. In his submissions regarding most of the factors favouring disclosure, the applicant submitted⁵⁵ that OIC should review the original documents.⁵⁶ As noted at paragraph 21 above, I have considered the documents QBCC located as responsive to the access application (including the Information in Issue).

Accountability, transparency and informing the community

45. The RTI Act recognises that factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability⁵⁷
 - 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;⁵⁸ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁹
46. The applicant submitted⁶⁰ that information disclosed to him does not '*adequately*' inform him of the reasons for government decisions about the four complaints or provide '*adequate*' contextual or background information. The applicant further submitted⁶¹ that there are '*significant gaps*' regarding the outcomes of QBCC's investigations in the information released to him. He considers that Officer B '*only lists these outcomes, but does not adequately explain how he arrived at his decisions*'. The specific '*gaps*' identified by the applicant⁶² are:
- details of the entity that carried out the fire protection work at Property 1 '*in circumstances where there is a statutory requirement for that entity to be licensed to carry out that work*'; and
 - information about how QBCC decided that two individuals were not contracted nor engaged to perform or supervise that fire protection work '*when there is evidence that [Mr K] signed [the May 2016 Letter] saying that they in fact were*'.
47. The applicant submitted that, given these '*gaps*', the factors at paragraph 45 above should be afforded high weight.
48. As noted in paragraph 40 above, section 49(3) of the RTI Act requires that I consider relevant factors in determining whether disclosure would, on balance, be contrary to the public interest. Where disclosure of information may reveal the reason for a Government decision or background or contextual information that informed the decision, inform the community of Government operations, or otherwise enhance Government accountability,

⁵⁵ Submissions dated 12 April 2018.

⁵⁶ The applicant indicated that the basis for this submission was his interpretation of a reference to consideration of *redacted* documents at the beginning of paragraph 37 in OIC's decision of *McCrystal No. 4*.

⁵⁷ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁸ Schedule 4, part 2, item 3 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁶⁰ External review application.

⁶¹ Submissions dated 12 April 2018.

⁶² Submissions dated 12 April 2018.

these are just some of the factors to be taken into account in deciding whether it would be contrary to the public interest to release information. The weight afforded to these factors favouring disclosure is not necessarily determinative of the public interest.

49. Generally, there is a public interest in complaint investigations being conducted with a sufficient degree of transparency and accountability, so as to afford the parties to such an investigation (and the public generally) with an understanding of the outcome and conclusions of the investigation. While the applicant does not agree with QBCC's decisions about the four complaints and contends that it was insufficient for QBCC to communicate only that the entities carrying out the relevant works were appropriately licensed, I consider that the requirement for transparency and accountability in complaint investigations does not oblige QBCC to disclose all the information it received or obtained for its investigations of the four complaints. I also consider that the requirement for transparency and accountability in complaint investigations does not extend to affording complainants a right to access all the information obtained for those investigations, for the purpose of second-guessing or reinvestigating such investigations or otherwise.
50. In considering how disclosing the Information in Issue could advance the above accountability and transparency factors, I have considered how, if at all, the weight to be afforded to the public interest factors has been impacted by the information that has already been provided to the applicant.
51. I note that the applicant has received outcome notifications regarding the four complaints. In respect of QBCC's investigation of Complaints 1, 2 and 3, after considering information provided to or obtained for the investigation (including information provided by the applicant and information received in response to the Production Request), QBCC notified the applicant that it had determined no breaches of legislation had been committed. In respect of Complaint 4, QBCC notified the applicant that it had decided not to investigate this complaint as it considered the matters raised in it had been previously assessed by QBCC. (As I have previously noted, I have no jurisdiction to investigate or determine whether these QBCC decisions were wrong or inconsistent with the evidence, as the applicant contends). In light of these outcome notifications, I consider that the weight attaching to the accountability and transparency factors must be discounted somewhat.
52. I also note that, of the information located by QBCC in response to the Third Application, QBCC has fully released approximately 2200 pages and 10 audio recordings to the applicant, and partially released about 200 pages and 23 audio recordings. I further note that this information includes:
 - a fully released audio recording dated 25 July 2016 (numbered 141030) (**Conversation Audio**) comprising a conversation in which the QBCC investigator provides a lengthy, and quite detailed, explanation to the applicant about the findings of QBCC's investigation of the various matters raised in Complaints 1, 2 and 3, including relevant contextual information for those findings; and
 - a partially released memorandum dated 16 May 2016 (**Investigation Memorandum**)⁶³ which records the evidence obtained, considered and assessed in QBCC's investigation of Complaints 1 and 2 and the investigation conclusions and recommendations.

⁶³ A copy of the Investigation Memorandum comprises pages 1689-1739 in File 1101192 Compliance EDRMS. Refused information in this document forms part of the Information in Issue.

53. I consider that the information which has been released to the applicant has advanced the public interest factors relating to QBCC's accountability and transparency because:
- it affords the applicant (and the public generally) with a relatively detailed understanding of how QBCC conducted its investigations of the applicant's complaints (for example, it confirms that QBCC reviewed the wide range of evidence the applicant provided in support of Complaints 1, 2 and 3 and that QBCC also obtained and considered information produced in accordance with the Production Request); and
 - provides background and contextual information to QBCC's investigations and the decisions QBCC made concerning the four complaints.
54. Taking into consideration the outcome notifications provided to the applicant and the information that has been released to the applicant, and also noting the nature of the Information in Issue, I am satisfied that disclosure of the Information in Issue would not further advance QBCC's accountability and transparency or inform the community about QBCC's investigative processes in any meaningful way. Accordingly, I afford low weight to these factors favouring disclosure.⁶⁴

Ensure effective oversight of expenditure of public funds

55. A public interest factor favouring disclosure will arise if disclosure could reasonably be expected to ensure effective oversight of the expenditure of public funds.⁶⁵
56. Public funds were not utilised in the building works which are the subject of the four complaints, nor has the applicant suggested that they were. The applicant has submitted⁶⁶ that the public interest factor regarding public funds is relevant because QBCC uses public funds to *'inadequately / inappropriately investigate complaints (a waste of scarce public resources) or refuses to investigate legitimate / substantiated complaints (inappropriate use of scarce public resources)'*. The applicant has not identified or addressed how disclosure of the Information in Issue could reasonably be expected to ensure effective oversight of expenditure of public funds.
57. QBCC's Compliance and Enforcement Policy 2014⁶⁷ states:
- The QBCC cannot pursue all the complaints it receives. While all complaints are carefully considered, the QBCC will exercise its discretion in directing resources to the resolution and investigation of matters that provide the greatest overall benefit for consumers.*
58. In the present case, QBCC investigated three of the four complaints and decided not to investigate Complaint 4 because it considered the matters raised in that complaint had been previously assessed by QBCC. That is, QBCC did allocate resources to investigate the various offences the applicant alleged in the four complaints. While the applicant does not agree with the outcome of QBCC's investigations and considers that he and the community should be notified of additional findings within those investigations, this is not, of itself, evidence that QBCC's investigations were inadequate or inappropriate as the applicant alleges.
59. Taking into consideration the nature of the Information in Issue—such as invoices, quotes, commercial contracts and subcontracts relating to the building works which were the subject of the applicant's complaints and the identities and contact details of

⁶⁴ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁶⁵ Schedule 4, part 2, item 4 of the RTI Act.

⁶⁶ Submissions dated 12 April 2018.

⁶⁷ Copy obtained by OIC via QBCC's website at <<http://www.qbcc.qld.gov.au/about-us/our-policies>>.

individuals contacted during the course of QBCC's investigation of the complaints—I do not consider that its disclosure could reasonably be expected to ensure effective oversight of expenditure of public funds. Accordingly, I do not consider that this factor favouring disclosure applies.

Deficiencies in the conduct or administration of an agency or official

60. Public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official;⁶⁸ and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁶⁹
61. The applicant has submitted that there has been maladministration or misconduct by QBCC officers in the investigation of his various complaints and has expressed concern that, rather than taking enforcement and disciplinary action, QBCC has instead assisted entities to '*circumvent relevant legislation*'.⁷⁰
62. The applicant submitted that the factors at paragraph 60 above should be afforded high weight because:
- QBCC's decisions about the four complaints were incorrect and certain QBCC officers had made disingenuous representations regarding his complaints;⁷¹ and
 - the evidence to substantiate his allegations of maladministration or misconduct '*lies within the documents sought pursuant to RTI access applications, and it is incumbent upon the OIC to review these original documents and understand both the offences committed and the basis for seeking access to the information*'.⁷²
63. In considering whether the factors at paragraph 60 above arise in respect of the Information in Issue, the question I must consider is whether disclosing the Information in Issue could reasonably be expected to allow or assist inquiry into, or substantiate claims about, any deficiencies in the conduct of QBCC or any QBCC officers.
64. With respect to this question, I again confirm that I have no jurisdiction to investigate, make findings or provide any remedy to the applicant in respect of his concerns that QBCC's decisions about his complaints were wrong or not consistent with the evidence he provided to QBCC or that QBCC made inappropriate representations to the applicant (and others) regarding those complaints. As to the applicant's concern that QBCC did not take enforcement and disciplinary action in respect of his various complaints, I note that QBCC's Compliance and Enforcement Policy 2014 refers to a range of civil, administrative and criminal enforcement remedies (which include education, advice and influencing good practice) that are available under the legislation which QBCC administers.
65. The Information in Issue is, as I have previously noted, information QBCC obtained from individuals other than the applicant, considered in respect of the four complaints and certain QBCC conclusions about that information. Having carefully considered the Information in Issue, I am not satisfied that it contains evidence which substantiates the

⁶⁸ Schedule 4, part 2, item 5 of the RTI Act.

⁶⁹ Schedule 4, part 2, item 6 of the RTI Act.

⁷⁰ External review application.

⁷¹ External review application.

⁷² Submissions dated 12 April 2018.

allegations of maladministration or misconduct raised by the applicant in this review. Nor am I satisfied that it gives rise to a reasonable expectation that its disclosure could reasonably be expected to allow or assist enquiry into, reveal or substantiate, any deficiencies in the conduct of QBCC or any of its officers. However, taking into consideration the broad concerns the applicant has raised about the handling of his complaints involving Property 1 and Property 2 (including the four complaints) and his submission that the failure of QBCC to regulate the building industry affects everyone,⁷³ I afford low weight to these factors favouring disclosure.⁷⁴

Advance fair treatment

66. A public interest factor favouring disclosure will arise if disclosure could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.⁷⁵
67. The applicant has submitted⁷⁶ that this factor favouring disclosure should be afforded high weight. This factor does not require a decision-maker to ensure that an applicant is provided with sufficient information for the applicant to be satisfied that they received fair treatment. Instead it is about providing information to ensure fair treatment in an applicant's future dealings with agencies.⁷⁷
68. I again acknowledge the applicant's view that he has been adversely affected by QBCC's decisions concerning his various complaints. However, I note that the applicant's submissions about those adverse effects are based upon information that has already been released to him. I also note that QBCC notified the applicant of review avenues available to him if he was dissatisfied with QBCC's decisions concerning the four complaints. Having carefully considered all the information before me, there is nothing, apart from the applicant's submission, to indicate that disclosing the Information in Issue would advance would advance the fair treatment of the applicant, or any other individual.
69. In these circumstances, and taking into consideration the nature of the Information in Issue, I am unable to conclude that disclosure of that information could reasonably be expected to advance the applicant's, or any other individual's, fair treatment in future dealings with QBCC or other government agencies. For this reason, I do not consider that this factor applies.

Administration of justice for the applicant and procedural fairness

70. Public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness, or the administration of justice for a person (for example, by allowing a person to access information that may assist them in legal proceedings).⁷⁸
71. The applicant submitted⁷⁹ that these factors should be afforded high weight as he, and others, have been adversely affected by QBCC's decisions about the four complaints because the developments at Property 1 and Property 2 '*represent an unmitigated risk of spread of fire, both within and to adjacent properties, including my own*'.

⁷³ Submissions dated 12 April 2018.

⁷⁴ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁷⁵ Schedule 4, part 2, item 10 of the RTI Act.

⁷⁶ Submissions dated 12 April 2018.

⁷⁷ *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [89]-[90].

⁷⁸ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁷⁹ External review application and submissions dated 12 April 2018.

72. Generally speaking, there is a common law requirement of regulators to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations. The fundamental requirements of procedural fairness (that is, a fair hearing and a decision-maker free from bias) should be afforded to the person who is the subject of a decision.
73. In this case, the applicant was not a subject of any of the four complaints, ensuing investigations or resulting decisions. Rather, the applicant was, in each instance, the complainant. I again acknowledge the applicant's view that he has been adversely affected by QBCC's decisions concerning his complaints. However, I note that the applicant, as the complainant, was notified of QBCC's decisions and has been provided with some background and contextual information in relation to the investigation QBCC conducted in respect of Complaints 1, 2 and 3 (such as the Conversation Audio and the Investigation Memorandum). While the applicant remains dissatisfied with QBCC's determinations, this does not, as the applicant contends, mean that disclosure of the Information in Issue (such as invoices, quotes, commercial contracts and subcontracts relating to the building works which were the subject of the applicant's complaints) is required to ensure procedural fairness for the applicant or any others whom he considers may also be affected by QBCC's decisions about his complaints. For these reasons, I am not satisfied disclosure of the Information in Issue could reasonably be expected to contribute to the general administration of justice or procedural fairness for any individual or entity and, therefore, I consider this factor⁸⁰ does not apply.
74. In determining whether the public interest factor relating to administration of justice for a person applies, I must consider whether:
- the applicant, or another individual, has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - the applicant, or that other individual, has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant, or the other individual, to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.⁸¹
75. I acknowledge the applicant's views that he and others have been adversely affected by the decisions QBCC has made in respect of his various complaints. I also acknowledge that the applicant considers government agencies will not take any action for remedy seriously if he has no knowledge of '*the entities concerned or evidence of offences / misconduct / maladministration*'.⁸²
76. I note that:
- the four complaints identify, in considerable detail:
 - the offences the applicant considers QBCC should have determined were committed; and
 - the individuals and entities the applicant believes are responsible for the building works which he believes compromise the integrity of his and other neighbouring properties
 - the applicant has received information about QBCC's decisions concerning the four complaints and how QBCC conducted its complaint investigations

⁸⁰ Schedule 4, part 2, item 16 of the RTI Act.

⁸¹ *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).

⁸² Submissions dated 12 April 2018.

- QBCC informed the applicant on a number of occasions of the complaint avenues available to him in respect of those decisions
 - the applicant considers, based on the information that has been released to him, that misconduct and maladministration has occurred in QBCC's complaint investigation processes; and
 - under the *Ombudsman Act 2001* (Qld), the Queensland Ombudsman has a range of powers available to it for obtaining information and documents relevant to its complaint investigations.
77. In terms of the misconduct and maladministration the applicant considers has occurred in QBCC's complaint investigation processes, taking into consideration the abovementioned circumstances and the nature of the Information in Issue, I do not consider that disclosure of the Information in Issue is required to enable the applicant to evaluate, or pursue, any action against QBCC.
78. To the extent the applicant considers fraud may have been occasioned in respect of the May 2016 Letter, I also consider that disclosure of the Information in Issue is not required to enable the applicant to refer his concerns to other government agencies with responsibility for investigating allegations about fraud, such as the Queensland Police Service. I am satisfied that such agencies have powers to obtain evidence that is considered necessary to investigate complaints of this nature.
79. Further, in terms of the fire risks the applicant considers that the fire protection works pose to neighbouring properties, I note that the applicant seeks disclosure of the Information in Issue in order to be informed of the identity of any individual/entity that QBCC determined had undertaken the fire protection works at Property 1. However, I consider that the information that has been provided to the applicant affords him a level of detail about the investigations undertaken and decisions made by QBCC that would enable him, and others, to evaluate whether a remedy is available and worth pursuing in respect of those works.
80. For these reasons, I do not consider that disclosure of the Information in Issue would contribute, in any meaningful way, to the administration of justice for the applicant and the other individuals he believes have been adversely affected by QBCC's decisions. Taking the above matters into consideration, I have afforded this factor favouring disclosure⁸³ low weight.

Disclosure would reveal that information was incorrect, out of date etc

81. A public interest factor favouring disclosure will arise if disclosure could reasonably be expected to reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.⁸⁴
82. The applicant submitted⁸⁵ that this factor favouring disclosure should be afforded high weight because QBCC's determination that two individuals were not responsible for the fire protection works at Property 1 conflicts with a statement by one of those individuals in the May 2016 Letter that *[w]e have been engaged to oversee the rectification of these fire defects ... and carry out this work'*⁸⁶ and he therefore has knowledge that *'the information is incorrect'*. Otherwise, the applicant has not identified how he is in a position to be possessed of knowledge that the contents of the Information in Issue—which includes invoices, quotes, commercial contracts and subcontracts relating to the

⁸³ Schedule 4, part 2, item 17 of the RTI Act.

⁸⁴ Schedule 4, part 2, item 12 of the RTI Act.

⁸⁵ Submissions dated 12 April 2018.

⁸⁶ The relevant text in the May 2016 Letter is set out at footnote 8 in full.

building works to which the applicant was not a party and the personal and business information of individuals contacted during QBCC's investigation—are not correct.

83. I have carefully considered the Information in Issue. I am satisfied that, in terms of the invoices, quotes, commercial contracts and subcontracts noted in the above paragraph, there is no evidence before me to suggest that disclosure of this particular Information in Issue would reveal that it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Consequently, I do not consider that this factor applies to such information.
84. In terms of the applicant's submissions questioning the authorship of the May 2016 Letter and its apparent conflict with QBCC's complaint determination, I acknowledge that, based on the information conveyed to the applicant about QBCC's finding regarding this aspect of the applicant's complaints, and the information in the Investigation Memorandum as released to the applicant, it appears that this factor could reasonably be expected to apply to those parts of the Information in Issue which refer to the individuals in question. I also note, however, that this position is, to some extent, ameliorated by the content of such Information in Issue in the Investigation Memorandum.⁸⁷ In these circumstances, I afford this factor favouring disclosure low weight with respect to this information.

Protection of the environment and public health and safety

85. Public interest factors favouring disclosure will arise if disclosure could reasonably be expected to protect the environment and public health and safety.⁸⁸
86. The applicant submitted⁸⁹ that, because he considers the buildings constructed on Property 1 and Property 2 pose a fire risk to occupants, owners and other properties, these public interest factors arise in favour of disclosing the Information in Issue and should be afforded high weight. However, the applicant has not elaborated on how disclosure of the Information in Issue could reasonably be expected to contribute to protection of the environment or reveal environmental health risks or measures relating to public health and safety.
87. As noted at paragraph 11 above, QBCC determined that the parties who could be adequately identified as involved in the passive fire boxes were appropriately licensed, and certificates for the passive fire boxes and fire collars had been issued by appropriately licensed persons.
88. While I acknowledge the fire risk concerns the applicant has raised, given the nature of the Information in Issue, I do not consider that its disclosure could reasonably be expected to contribute to protection of the environment or reveal environmental health risks or measures relating to public health and safety. Accordingly, I do not consider that these factors apply.

Criminal law and Iniquity

89. A public interest factor favouring disclosure will arise where disclosure of information could reasonably be expected to contribute to the enforcement of the criminal law.⁹⁰

⁸⁷ As noted in paragraph 38 above, given section 108(3) of the RTI Act, I am constrained as to the level of detail I can provide about the Information in Issue.

⁸⁸ Schedule 4, part 2, items 13 and 14 of the RTI Act.

⁸⁹ Submissions dated 12 April 2018.

⁹⁰ Schedule 4, part 2, item 18 of the RTI Act.

90. As the applicant believes that QBCC's case files relating to the four complaints contain documented evidence of building and construction activity that is '*illegal or for an improper purpose*',⁹¹ he submitted⁹² that this factor, and 'Iniquity', should be afforded high weight. Further, the applicant submitted⁹³ that representations by one individual which, in his view, contradict the May 2016 Letter may indicate fraud.
91. I note that, while QBCC's regulatory responsibilities include investigating licensing complaints, other government agencies have responsibility for investigating allegations about potentially fraudulent documents. I also note from the Conversation Audio that this was confirmed to the applicant on 25 July 2016. I am satisfied that disclosure of the Information in Issue is not required to enable the applicant to refer his concerns about fraud to appropriate government agencies.
92. The applicant's reference to Iniquity is a reference to submissions he made to the Information Commissioner in completed external review 312924 where, in summary, the applicant submitted that '*the disclosure of information that represents crime or illegal activity will outweigh nondisclosure*'. I have considered and agree with the Information Commissioner's understanding and consideration of the applicant's previous submissions concerning the application of Iniquity, which are set out at paragraphs 103 and 108-110 of *McCrystal No. 1*. Accordingly, I have considered what the applicant describes as Iniquity in the context of an additional factor favouring disclosure of the Information in Issue.
93. The four complaints included allegations about the activities of a permanently excluded individual which the applicant contended were unlawful and for an improper purpose. QBCC's investigation of Complaints 1, 2 and 3 determined that no offences had been committed and its decision regarding Complaint 4 was that the matters raised had previously been assessed by QBCC. As I have previously noted, those are not reviewable decisions under the RTI Act.
94. Having carefully considered all the material before me, including the applicant's submissions, and taking into consideration the nature of the Information in Issue—such as invoices, quotes, commercial contracts and subcontracts relating to the building works which were the subject of the applicant's complaints and the identities and contact details of individuals contacted during the course of QBCC's investigation of the complaints—there is nothing apart from the applicant's contentions which suggests that disclosing the Information in Issue would contribute to the enforcement of the criminal law or reveal a crime, civil wrong or serious misdeed of public importance. Accordingly, I afford these factors low to no weight.

Other factors

95. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the Information in Issue. Given the nature of the Information in Issue and QBCC's determination that no offences had occurred and matters in Complaint 4 had previously been assessed by QBCC, I do not, for example, consider that disclosure of the Information in Issue could reasonably be expected to:
- contribute to positive and informed debate on important issues or matters of serious interest⁹⁴

⁹¹ External review application.

⁹² Submissions dated 12 April 2018.

⁹³ Submissions dated 12 April 2018.

⁹⁴ Schedule 4, part 2, item 2 of the RTI Act.

- contribute to the maintenance of peace and order;⁹⁵ or
- contribute to innovation and the facilitation of research.⁹⁶

Factors favouring nondisclosure

96. For each of the factors favouring nondisclosure addressed below, the applicant submitted⁹⁷ that the factors are not relevant in circumstances where the entities or businesses are engaged in offences. In effect, this submission is a variation on the applicant's Iniquity submission. As noted at paragraph 92 above, I have considered what the applicant describes as Iniquity in the context of an additional factor favouring disclosure of the Information in Issue. Here, the applicant suggests that, rather than comprising a factor favouring disclosure that warrants significant weight, Iniquity precludes the relevance of factors favouring nondisclosure, or requires that they be afforded little weight. The applicant's submissions in this regard are addressed below in terms of the various factors favouring nondisclosure.

Personal information of other individuals

97. The RTI Act recognises factors favouring nondisclosure will arise where disclosure of information could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;⁹⁸ and
- cause a public interest harm if it would disclose personal information of a person, whether living or dead.⁹⁹

98. The applicant submitted¹⁰⁰ that these factors are not relevant or should be afforded low weight because the entities or businesses in question are engaged in offences. However, the information QBCC obtained for its investigation included invoices, quotes, commercial contracts and subcontracts and the Information in Issue is not limited to information about the individuals and entities who were the subject of the four complaints. Further, while the applicant disagrees with QBCC's decisions concerning the four complaints, in its investigation of Complaints 1, 2 and 3, QBCC determined that no breaches were committed and, in relation to Complaint 4, QBCC determined that these matters had previously been assessed. Even if this were not the case, and QBCC had determined that offences had occurred, this would, in my view, most likely enhance the weight of certain factors favouring disclosure, rather than diminishing the relevance or weight of the above factors favouring nondisclosure.¹⁰¹

99. Some of the Information in Issue is the personal information of a number of individuals, including their names and other identifying information, contact details, information about their personal circumstances and their opinions and recollections. In some cases, it would be clear to the applicant, from the information that has been released to him, whose personal information has been refused in the Information in Issue. Therefore, I am satisfied that disclosing such Information in Issue could reasonably be expected to prejudice the protection of individuals' right to privacy and cause a public interest harm.

⁹⁵ Schedule 4, part 2, item 15 of the RTI Act.

⁹⁶ Schedule 4, part 2, item 19 of the RTI Act.

⁹⁷ Submissions dated 12 April 2018.

⁹⁸ Schedule 4, part 3, item 3 of the RTI Act.

⁹⁹ Schedule 4, part 4, section 6(1) of the RTI Act. 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

¹⁰⁰ Submissions dated 12 April 2018.

¹⁰¹ I recognise, however, that the concept of Iniquity as raised by the applicant may affect the relevance or weight of some factors favouring nondisclosure—for example factors relating to information communicated in confidence.

100. The personal information within the Information in Issue concerns private aspects of individuals' lives and it appears in information considered by QBCC in investigating the applicant's complaints. Given the personal nature of this personal information and the context in which it appears, I consider that its disclosure would be a significant intrusion into the privacy of these individuals. For this reason, I afford significant weight to the privacy factor favouring nondisclosure.¹⁰²
101. I also consider that the extent of the harm that could be anticipated from disclosing information which includes names, contact details, personal circumstances, opinions and recollections of, or about, these individuals under the RTI Act would be significant. Accordingly, I afford the harm factor favouring nondisclosure significant weight.¹⁰³

Business affairs

102. Public interest factors favouring nondisclosure will arise where disclosure of information:
- could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities;¹⁰⁴ and
 - concerning the business, professional, commercial or financial affairs of an agency or another person 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.¹⁰⁵
103. The applicant submitted¹⁰⁶ these factors are not relevant or should be afforded low weight where the entities or business are engaged in offences of the nature alleged in the four complaints. In this regard, I repeat and rely on my observations at paragraph 98 above.
104. Some of the Information in Issue records or refers to commercial arrangements between various individuals, entities and businesses concerning the building works undertaken at Property 1 and Property 2 and the consideration to be paid under those commercial arrangements. Information of this nature is not limited to information about the individuals and entities who were the subject of the four complaints. The applicant is not a party to these commercial arrangements and, on the information before me, this information is not publically available. As previously noted, the Production Request required production of a wide range of information to QBCC, including invoices and quotes relating to the building work at Property 1 and Property 2. I am therefore satisfied that information of this nature within the Information in Issue concerns the private, commercial and business affairs of various entities and businesses.
105. There is a public interest in ensuring that the affairs of private businesses are not unduly impacted or prejudiced by the mere fact that their information comes into the possession of government by, in this case, the exercise of regulatory responsibility (including complaint investigation). I consider the entities who provided this information, or about whom this information relates, would have expected that QBCC would use that information for the purpose of undertaking QBCC's regulatory responsibilities but would not otherwise disclose the information under the RTI Act. As this private business information includes information relating to components of the overall building works and the consideration paid for those components, I am satisfied that disclosure of information

¹⁰² Schedule 4, part 3, item 3 of the RTI Act.

¹⁰³ Schedule 4, part 4, section 6(1) of the RTI Act.

¹⁰⁴ Schedule 4, part 3, item 2.

¹⁰⁵ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁰⁶ Submissions dated 12 April 2018.

of this nature could reasonably be expected to cause some prejudice to the various entities and businesses involved in the supply chain for the relevant building works.

106. Given the nature of this private business information and the context in which it appears, I consider that its disclosure could reasonably be expected to prejudice the business, commercial and financial affairs of the various individuals and entities involved in the commercial building arrangements and cause a public interest harm, by having an adverse effect on those affairs. I therefore afford significant weight to these nondisclosure factors.¹⁰⁷

Flow of information

107. If disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies, a public interest factor favouring nondisclosure arises.¹⁰⁸
108. The applicant submitted¹⁰⁹ this factor is only relevant if the entities providing information are not engaged in offences. Again, in this regard, I repeat and rely on my observations at paragraph 98 above.
109. The applicant further submitted¹¹⁰ that, as the Information in Issue was not provided voluntarily but was provided in response to a formal requirement to produce information, this nullifies this factor favouring nondisclosure, which should be afforded low to no weight.
110. Persons appointed as investigators under the QBCC Act¹¹¹ have a range of powers including, in certain circumstances, to require production of documents and the attendance of person to provide information.¹¹² However, the efficacy of QBCC's investigations of complaints received by it is also facilitated by QBCC being able to cooperatively obtain information from a range of individuals and entities.
111. On the information before me, including information that has been released to the applicant, QBCC obtained information from a range of individuals for the investigation of the applicant's various complaints through a combination of formal notifications seeking production of documents—such as the Production Request—and communications with various parties seeking information to investigate the received complaints.
112. Given this position, I consider there is a strong public interest in protecting the free flow of information to QBCC for investigation purposes. If all information provided by individuals and entities as part of QBCC's investigations was routinely disclosed, I consider that could reasonably be expected to discourage individuals from cooperating with QBCC and providing information to future investigations, particularly in the absence of formal notifications requiring production of specific information. This, in turn, would have a detrimental impact on the manner in which QBCC was able to conduct its future investigations.
113. For these reasons, I afford this factor favouring nondisclosure significant weight.

¹⁰⁷ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁰⁸ Schedule 4, part 3, item 13 of the RTI Act.

¹⁰⁹ Submissions dated 12 April 2018.

¹¹⁰ Submissions dated 12 April 2018.

¹¹¹ Part 9, division 2 of the QBCC Act relates to the appointment and qualifications of investigators.

¹¹² Refer, for example, to Part 9, division 5 of the QBCC Act.

Balancing the public interest

114. I consider the factors relating to the protection of personal information and privacy of individuals, the private, business, professional, commercial or financial affairs of entities, and the flow of information to QBCC in its investigations outweigh the relevant factors favouring disclosure of the Information in Issue. Therefore, I consider disclosing the Information in Issue would, on balance, be contrary to the public interest. Accordingly, I find that access to the Information in Issue may be refused on this basis.¹¹³

Nonexistent or unlocatable documents

Relevant law

115. Access to a document may be refused if the document is nonexistent or unlocatable.¹¹⁴ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.¹¹⁵ 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.¹¹⁶
116. To be satisfied that a document is nonexistent, the Information Commissioner has previously recognised that a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:¹¹⁷
- the administrative arrangements of government
 - the agency structure
 - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
 - the agency's practices and procedures (including but not exclusive to its 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.
117. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. This is the case in circumstances where it is ascertained that a particular document was not created because, for example, 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. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
118. Searches may also 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.¹¹⁸ What constitutes reasonable steps will vary from case to case as the search and enquiry process an

¹¹³ Under section 47(3)(b) of the RTI Act.

¹¹⁴ Sections 47(3)(e) and 52 of the RTI Act.

¹¹⁵ Section 52(1)(a) of the RTI Act.

¹¹⁶ Section 52(1)(b) of the RTI Act

¹¹⁷ *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* [2009] QICmr 7 (9 February 2009) (*PDE*). The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

¹¹⁸ As set out in *PDE* at [49]. See also section 130(2) of the RTI Act.

agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

119. To determine whether a document exists, but is unlocatable, the RTI Act 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.¹¹⁹ In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.¹²⁰

Applicant's submissions

120. In his external review application, the applicant raised a general concern that QBCC had not located all relevant documents.

121. As noted in paragraph 31 above:

- the applicant's submissions made in completed external review 313091 identified categories of further documents which the applicant believed were relevant to the Sixth Application that had not been located
- one category of those further documents (Category I) listed file folders where documents responsive to the Third Application (that is, the application that is the subject of this review) had been located by QBCC; and
- in completed external review 313091, the Information Commissioner refused to deal with the applicant's request for access to the Category I documents and confirmed that this request would be addressed in external review 313174.

122. During this review, OIC invited¹²¹ the applicant to identify specific documents relevant to the Third Application which, in his view, existed and should have been located by QBCC. In response, the applicant identified the following three categories of documents:¹²²

- **Category (a)** – the Category I documents, as raised by the applicant in external review 313091, being the following QBCC file folders:
 - 1076714 Compliance EDRMS
 - 1076714_11 Case Notes Redax
 - 1101192 Compliance EDRMS Redax
 - 1101192 Case Notes Redax
 - 1265287 [Mr T] Compliance EDRMS Redax; and
 - 1265287_1 [Mr T] Case notes Redax
- **Category (b)** – documents relating to a specific statement made in a recorded conversation between the applicant and Officer B on 8 August 2016; and
- **Category (c)** – documents relating to QBCC's decision that two individuals did not perform or supervise and were not contracted or engaged to perform or supervise the fire protection work which was the subject of Complaints 1, 2 and 3, when the applicant believes there is evidence that one of those individuals signed a letter saying that they in fact were.

¹¹⁹ Section 52(1)(b) of the RTI Act.

¹²⁰ Pryor at [21].

¹²¹ On 27 March 2018.

¹²² Submissions dated 12 April 2018.

Analysis

123. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.¹²³ 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.¹²⁴ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.
124. QBCC provided OIC with search records and certifications regarding the searches that it conducted when processing of the Third Application. In summary, these indicate that:
- four QBCC officers conducted searches for responsive documents on four separate occasions
 - these searches entailed searches of QBCC's electronic document records management system (**EDRMS**) to locate and extract relevant electronic documents
 - the searches of the EDRMS were conducted using relevant participant numbers
 - requests were sent to relevant operational areas to search for any additional responsive documents that may not have been captured in the EDRMS; and
 - enquiries were made of QBCC officers to ensure that audio recordings and case notes relevant to the Third Application were located.
125. Based on consideration of the entirety of searches conducted by QBCC and the information before me, I consider that officers of QBCC have:
- conducted comprehensive, appropriately targeted searches of all relevant QBCC record keeping systems for information responsive to the Third Application, including the Category (a), (b) and (c) documents; and
 - identified relevant staff and made enquiries of them regarding the possible existence and location of the Category (a), (b) and (c) documents.
126. I set out below my consideration, in turn, of each of the three categories of further documents the applicant contends should be located.

Findings - Category (a) documents

127. The applicant acknowledged¹²⁵ that the Category (a) documents refer to file folder names, rather than specific document names. He further submitted:¹²⁶

You will note it was stated:

"Any document within the listed folders that reveals the building and construction activity of Mr Jie Lin must be released. I maintain that these documents should have been released in full under RTI_032_16_17" (emphasis added)

Yet, the OIC has refused to review these documents or provide access under external review 313091.

Accordingly, the OIC has sought to refuse access to these documents on the basis that the

¹²³ Section 130(2) of the RTI Act.

¹²⁴ Section 87(1) of the RTI Act.

¹²⁵ Submissions dated 27 April 2018.

¹²⁶ Submissions dated 27 April 2018 – applicant's paragraph numbers and footnotes omitted.

documents fall outside the scope of both RTI access applications (313091 and 313174); in circumstances where the documents in fact:

- a. Fall within the scope of either application; and*
- b. Would have been released had the applications been progressed together.*

If the OIC holds the opinion that the documents are not relevant to external review 313091, then they should be released in full under this external review, being 313174.

I maintain that all documents located within the listed file folders should be disclosed in full.

128. I have addressed the applicant's submissions that the Category (a) documents should have been located and released in completed external review 313091 at paragraph 32 above.
129. The search record and certification provided by QBCC confirms that, in processing the Third Application, QBCC conducted searches of the file folders listed as the Category (a) documents. Specifically, QBCC searched the file folders raised by the applicant and located approximately 3900 responsive pages and 33 audio recordings. Given the large number of responsive documents QBCC located in these file folders, OIC invited the applicant to identify any specific further documents that, in his view, existed, were relevant to the Third Application and should have been located by QBCC. The applicant did not do this—rather, the applicant maintained that documents in these file folders should have been released in full in external review 313091, and should now be released in full in the present review.
130. The applicant's assertion that the documents in the listed file folders should be released in full could be construed as expressing his disagreement that the Information in Issue, as it appears in documents within the file folders, may be refused. However, to the extent that the applicant's assertion constitutes a contention or belief that further documents responsive to the Third Application should exist within those file folders, I note that the applicant has not identified any further specific documents, or types of documents, that he considers should have been located as responsive to the Third Application in the listed QBCC file folders. I therefore consider that the applicant's assertion is insufficient to support a reasonable expectation that such further documents in fact exist.
131. I also note that there is nothing before me to suggest that the search information provided by QBCC was not credible. Further, I also confirm that I have carefully considered the responsive information QBCC located and I am satisfied that there is nothing in this information which gives rise to an expectation that further responsive documents in the already searched file folders exist.
132. Given these considerations, I am satisfied that QBCC has taken all reasonable steps to locate the Category (a) documents, and that there are reasonable grounds to be satisfied that the Category (a) documents raised by the applicant are nonexistent. I therefore find that the Category (a) documents may be refused on this ground.¹²⁷

Findings - Category (b) documents

133. In defining the Category (b) documents, the applicant referred to the following **Statement** made by Officer B in an audio recording fully released to the applicant in response to a separate access application:¹²⁸

¹²⁷ Under sections 47(3)(e) and 52(1) of the RTI Act.

¹²⁸ This recording is not the subject of any external review.

I've conducted the investigation, my matters in the investigation were fully briefed through to the Manager of Compliance and to the Executive, and my decisions were agreed with as the decisions of the Commission.

134. The applicant submitted:¹²⁹

I make the following observations:

- a. *The [Investigation Memorandum] authored by [Officer B] dated 16 May 2016, as redacted and released to me, does not demonstrate, for example*
 - i. *[Officer B's] investigation, consideration of evidence, findings of fact or decision(s) regarding the [May 2016 letter] ... and how [a certain party] was not ... responsible for the Unlicensed Fire Protection Work at [Property 1] ...*
 - ii. *[Officer B's] investigation, consideration of evidence, findings of fact or decision(s) regarding who actually carried out the Fire Protection Work at [Property 1] ...*
- b. *[Officer G] is not "the Manager of Compliance" or a member of "the Executive";*
- c. *The QBCC has an Executive Office, comprised of "the Executive" where [specified QBCC employees] and the QBCC Board would be found, and would be expected to have been "fully briefed" of the "matters in the investigation".*

If there is any doubt as to what [Officer B] meant when he made the Statement, then the OIC must obtain the views of [Officer B] to ascertain what [Officer B] meant when he referred to:

- a. *Matters in the investigation*
- b. *Fully briefed*
- c. *The Manager of Compliance*
- d. *The Executive.*

There is a reasonable expectation that documents regarding [Officer B's] statement exist. It is reasonable to believe that [Officer B] holds personal knowledge relating to the above.

I maintain that documents regarding [Officer B's] statement should be located and disclosed in full.

[emphasis added]

135. It is my understanding that the applicant contends that the redacted version of the Investigation Memorandum, as released to him, does not reconcile his understanding of the May 2016 Letter with Officer B's findings regarding who was responsible for the fire protection work, nor indicate who did this work. On this basis, the applicant contends that it is reasonable to assume, based on the Statement, that further documents addressing these issues were provided to QBCC's Manager of Compliance, Executive level staff and Board. The applicant contends that it is therefore necessary to obtain the views of Officer B before OIC can be satisfied that relevant staff have undertaken appropriately targeted searches for the Category (b) documents. OIC can rely on section 103 of the RTI Act to obtain such views where necessary.¹³⁰

136. I note that the information fully or partially released to the applicant includes:

- the Investigation Memorandum—this document sets out, in some detail, the matters that were investigated from Complaints 1, 2 and 3, the evidence considered in that investigation and Officer B's investigation recommendations

¹²⁹ Submissions dated 27 April 2018 – applicant's paragraph numbers and footnotes omitted.

¹³⁰ Under section 103 of the RTI Act, where the Information Commissioner has reason to believe that a person has information or a document relevant to an external review, the Information Commissioner may give a written notice to that person requiring the provision of information or documents or their attendance to answer questions relevant to the external review. Section 104 of the RTI Act empowers the Information Commissioner to administer an oath or affirmation to such a person required to answer questions.

- case note entries dated 19 July 2016¹³¹—these entries confirm the Investigation Memorandum was submitted by Officer B to Officer G seeking approval for the investigation recommendations and Officer G approved those recommendations¹³²
- correspondence to which Officer G is the signatory—this correspondence identifies Officer G’s position as ‘*A/Manager, Compliance Investigation Unit*’¹³³
- an email to the applicant dated 4 August 2016¹³⁴ and other emails¹³⁵—these emails indicate the identity of Officer G’s ‘superior’ and identify that individual’s position as ‘*A/Director Compliance and Enforcement*’; and
- the Conversation Audio—in this recording, Officer B informed the applicant that the investigation was complete and ‘*his manager*’ had agreed with his investigation recommendations. Also, Officer B explained to the applicant, in considerable detail, the investigation outcomes, including relevant contextual information for those outcomes.

137. I appreciate that the applicant is unaware of the content of the Information in Issue, and that this may have led to his belief that Category (b) documents exist. However, on careful consideration of the documents noted at paragraph 136 above, including those parts of them that comprise Information in Issue and are therefore not within the applicant’s knowledge,¹³⁶ I am satisfied the Statement—particularly, Officer B’s comment therein that ‘*my matters in the investigation were fully briefed through to the Manager of Compliance and to the Executive*’—may reasonably be construed as relating to Officer B’s provision of the Investigation Memorandum to Officer G (who I accept was, at the relevant time, the Acting Manager of the Compliance Investigation Unit) and Officer G’s relaying of relevant information to her superior (and therefore to the Executive, as referred to in Officer B’s Statement).
138. Given this position, I do not consider it reasonable to conclude that the Statement points to the existence of any further documents addressing the issues of particular concern to the applicant (which, on his reading of the redacted Investigation Memorandum, were not addressed in that document). It follows that I cannot accept that any such documents were provided by Officer B to QBCC staff other than Officer G, to members of QBCC’s Executive or its Board. In other words, I consider that the documents noted at paragraph 130 above are sufficient to account for the nonexistence of any Category (b) documents.
139. Even I am wrong in this regard, and Category (b) documents do, in fact, exist, I am satisfied that QBCC has conducted searches of all relevant locations where it was reasonable to expect that any such documents would be found, and ensured that relevant staff have undertaken appropriately targeted searches for such information. On consideration of the search records and certifications provided by QBCC, I consider that any Category (b) documents would (if they exist) be located in the records that have already been searched by QBCC.

¹³¹ Pages 9-11 in File 1101192_7 Case Notes A, which were partially released to the applicant.

¹³² This is also confirmed in a partially released email dated 19 July 2016, comprising pages 1745-1746 in File 1101192 Compliance EDRMS.

¹³³ This position designation appears on the letter dated 28 July 2016 referenced in the Third Application (comprising pages 1805-1806 in File 1101192 Compliance EDRMS, which was fully released to the applicant). The position designation also appears in emails Officer G sent to the applicant (such as an email dated 2 August 2016, comprising page 1808 in File 1101192 Compliance EDRMS, which was fully released to the applicant).

¹³⁴ A copy of was fully released to the applicant at page 1818 in File 1101192 Compliance EDRMS.

¹³⁵ For example, page 1758 in File 1101192 Compliance EDRMS. In this regard, I also note that QBCC’s organisational chart, identifying members of its executive, is publicly accessible on QBCC’s website at <<http://www.qbcc.qld.gov.au/about-us/overview>>.

¹³⁶ As noted in paragraph 38 above, given section 108(3) of the RTI Act, I am constrained as to the level of detail I can provide about the Information in Issue.

140. In these circumstances, I do not consider that it is necessary, as suggested by the applicant, to obtain the views of Officer B regarding the Statement before it is possible for me to be satisfied that QBCC has conducted all reasonable searches for the Category (b) documents. Accordingly, I have not sought such views from Officer B either informally or via a notice under section 103 of the RTI Act.
141. In summary, I have carefully considered the responsive documents located by QBCC, the applicant's submissions about the Category (b) documents and the search record and certification provided by QBCC. I consider that:
- there is nothing in the material before me which lends itself to any reasonable expectation that additional documents relating to the Statement exist; and
 - even if any such documents did exist, there are reasonable grounds to be satisfied that they would have been located in the records that have already been searched by QBCC.
142. In the circumstances, I am satisfied that QBCC has taken all reasonable steps to locate the Category (b) documents, and that there are reasonable grounds to be satisfied any such documents are nonexistent or unlocatable. Accordingly, I find that the Category (b) documents may be refused on this ground.¹³⁷

Findings - Category (c) documents

143. As noted in paragraph 46 above, the applicant identified what he considered to be the specific 'gaps' in the information released to him. The Category (c) documents—that is, documents relating to QBCC's decision that two individuals did not perform or supervise and were not contracted or engaged to perform or supervise the fire protection work which was the subject of Complaints 1, 2 and 3, when the applicant believes there is evidence that one of those individuals (that is, Mr K) signed a letter saying that they were—are one of those identified 'gaps'.
144. The applicant submitted:¹³⁸

*There is no information in **the documents already released** which provides any understanding as to how the QBCC arrived at this particular decision. I note that if you were of the belief that certain examples of information satisfy my submissions, you would have already drawn my attention to that information: you have not.*

The QBCC is a government agency, and the regulator of the building industry in the state of Queensland. It would not be open to the QBCC to make a finding (such as the decision above) unless there was some form of investigation, consideration of evidence, findings of fact and decision(s).

In your preliminary view, relying upon search and certification by the QBCC, you are in fact proposing (and accept) that the QBCC's decision materialised "out of thin air". Such a proposition is less reasonable to believe than any proposition there is a reasonable expectation that additional documents of this nature exist.

...

Again, I note that [Officer B] holds personal knowledge relating to the above and obtaining his views is necessary, in order to be satisfied that relevant staff have undertaken appropriately targeted searches for such information.

[emphasis added]

¹³⁷ Under sections 47(3)(e) and 52(1) of the RTI Act.

¹³⁸ Submissions dated 27 April 2018 – applicant's paragraph numbers omitted.

145. I recognise that, on the applicant's reading of the documents located by QBCC, as released to him, the applicant cannot identify what he would consider to be adequate information about QBCC's decision regarding who performed, and who was responsible for, the fire protection work. As noted at paragraph 137 above, I appreciate that the applicant is unaware of the content of the Information in Issue, and that this may have led to his belief that the Category (c) documents exist.
146. However, on careful consideration of the responsive documents located by QBCC, including those noted at paragraph 136 above, and including those parts of them that comprise Information in Issue and are therefore not within the applicant's knowledge,¹³⁹ I am satisfied there is no material before me which lends itself to any reasonable expectation that any documents of this nature exist.
147. In any event, even if I am wrong in this regard and Category (c) documents do, in fact, exist, I am satisfied that QBCC has conducted searches of all relevant locations where it was reasonable to expect that any such documents would be found, and ensured that relevant staff have undertaken appropriately targeted searches for such information. Having carefully considered the search records and certifications provided by QBCC, I am satisfied that any Category (c) documents would (if they exist) be located in the records that have already been searched by QBCC.
148. Accordingly, I again do not consider it necessary, as suggested by the applicant, to obtain the views of Officer B before it is possible for me to be satisfied that QBCC has conducted all reasonable searches for the Category (c) documents. Accordingly, I have not sought such views from Officer B either informally or via a notice under section 103 of the RTI Act.
149. In conclusion, I have carefully considered the responsive documents located by QBCC, the applicant's submissions concerning the Category (c) documents and the search record and certification provided by QBCC. I consider that:
- there is no material before me which lends itself to any reasonable expectation that the Category (c) documents exist; and
 - even if any such documents did exist, there are reasonable grounds to be satisfied that they would have been located in the records that have already been searched by QBCC.
150. Given these considerations, I am satisfied that QBCC has taken all reasonable steps to locate the Category (c) documents, and that there are reasonable grounds to be satisfied that these documents are nonexistent or unlocatable. I therefore find that the Category (c) documents may be refused on this ground.¹⁴⁰

DECISION

151. I vary QBCC's decision and find that:

- access to the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest;¹⁴¹ and
- the additional information that the applicant contends QBCC should have located may be refused on the ground that it is nonexistent or unlocatable.¹⁴²

¹³⁹ As noted in paragraph 38 above, given section 108(3) of the RTI Act, I am constrained as to the level of detail I can provide about the Information in Issue.

¹⁴⁰ Under sections 47(3)(e) and 52(1) of the RTI Act.

¹⁴¹ Under section 47(3)(b) of the RTI Act.

¹⁴² Under sections 47(3)(e) of the RTI Act.

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

A Rickard
Assistant Information Commissioner

Date: 18 May 2018

APPENDIX 1

Significant procedural steps

Date	Event
24 January 2017	OIC received the external review application.
14 February 2017	OIC notified the applicant and QBCC that it had accepted the external review application and asked QBCC to provide information.
28 February 2017	OIC received requested information from QBCC.
2 March 2017	OIC received further requested information from QBCC.
April 2017 to August 2017	Initially OIC attempted to progress the applicant's various external reviews concurrently; however, this proved difficult given the volume of interconnected material across the reviews requiring consideration. OIC then progressed four earlier external reviews of the applicant, proceeding on the basis that OIC would deal with each of the external reviews in turn.
1 September 2017	OIC confirmed the categories of information the applicant no longer wished to access and asked the applicant to confirm whether he continued to seek access to additional categories of refused information.
15 September 2017	OIC received the applicant's notification of the further categories of refused information he no longer wished to access.
26 September 2017	OIC contacted the applicant by telephone to convey OIC's preliminary view in relation to the responsive documents and the limits of OIC's jurisdiction.
10 November 2017	OIC notified the applicant that, taking into consideration the timeframes for his responses to OIC's correspondence in two of his other reviews, OIC would delay conveying a preliminary view to him in this review until after the other two external reviews were finalised.
27 March 2018	OIC conveyed a preliminary view to the applicant and invited him to provide submissions if he did not accept the preliminary view.
12 April 2018	OIC received the applicant's submissions.
18 April 2018	OIC conveyed a preliminary view to the applicant about his submissions concerning further documents he believed should have been located by QBCC and invited him to provide submissions if he did not accept the preliminary view. OIC asked QBCC to release one page to the applicant.
20 April 2018	QBCC released one page to the applicant.
27 April 2018	OIC received the applicant's further submissions.

APPENDIX 2

Information in Issue

File reference	Page number	Full or part refusal
1076714 Compliance EDRMS	12 of 2043	Part refusal
1076714 Compliance EDRMS	16 of 2043	Part refusal
1076714 Compliance EDRMS	32-34 of 2043	Part refusal
1076714 Compliance EDRMS	37-38 of 2043	Part refusal
1076714 Compliance EDRMS	40 of 2043	Part refusal
1076714 Compliance EDRMS	42-43 of 2043	Part refusal
1076714 Compliance EDRMS	46 of 2043	Part refusal
1076714 Compliance EDRMS	53-57 of 2043	Part refusal
1076714 Compliance EDRMS	72-74 of 2043	Part refusal
1076714 Compliance EDRMS	77 of 2043	Part refusal
1076714 Compliance EDRMS	79 of 2043	Part refusal
1076714 Compliance EDRMS	81-224 of 2043	Full refusal
1076714 Compliance EDRMS	226-227 of 2043	Part refusal
1076714 Compliance EDRMS	244-265 of 2043	Full refusal
1076714 Compliance EDRMS	267-337 of 2043	Full refusal
1076714 Compliance EDRMS	354-356 of 2043	Full refusal
1076714 Compliance EDRMS	358 of 2043	Full refusal
1076714 Compliance EDRMS	360-361 of 2043	Full refusal
1076714 Compliance EDRMS	390-444 of 2043	Full refusal
1076714 Compliance EDRMS	446-457 of 2043	Full refusal
1076714 Compliance EDRMS	459-514 of 2043	Full refusal
1076714 Compliance EDRMS	516-524 of 2043	Full refusal
1076714 Compliance EDRMS	527-544 of 2043	Full refusal
1076714 Compliance EDRMS	548-562 of 2043	Full refusal
1076714 Compliance EDRMS	564-607 of 2043	Full refusal
1076714 Compliance EDRMS	609-622 of 2043	Full refusal
1076714 Compliance EDRMS	624-632 of 2043	Full refusal
1076714 Compliance EDRMS	634-662 of 2043	Full refusal
1076714 Compliance EDRMS	670-734 of 2043	Full refusal
1076714 Compliance EDRMS	736-776 of 2043	Full refusal
1076714 Compliance EDRMS	788-790 of 2043	Full refusal
1076714 Compliance EDRMS	793-798 of 2043	Full refusal
1076714 Compliance EDRMS	807-815 of 2043	Full refusal
1076714 Compliance EDRMS	824-843 of 2043	Full refusal
1076714 Compliance EDRMS	1438-1440 of 2043	Full refusal
1076714_11 Case Notes	1 of 1	Part refusal
1101192 Compliance EDRMS	572 of 1819	Part refusal
1101192 Compliance EDRMS	575-578 in 1819	Part refusal
1101192 Compliance EDRMS	580-584 of 1819	Full refusal
1101192 Compliance EDRMS	600 of 1819	Part refusal
1101192 Compliance EDRMS	614 of 1819	Part refusal
1101192 Compliance EDRMS	618-619 of 1819	Part refusal
1101192 Compliance EDRMS	621 of 1819	Part refusal
1101192 Compliance EDRMS	624 of 1819	Part refusal
1101192 Compliance EDRMS	627-628 of 1819	Part refusal
1101192 Compliance EDRMS	642 of 1819	Part refusal
1101192 Compliance EDRMS	720 of 1819	Full refusal
1101192 Compliance EDRMS	827-830 of 1819	Part refusal

File reference	Page number	Full or part refusal
1101192 Compliance EDRMS	839-840 of 1819	Part refusal
1101192 Compliance EDRMS	857-861 of 1819	Part refusal
1101192 Compliance EDRMS	885-890 of 1819	Part refusal
1101192 Compliance EDRMS	892 of 1819	Part refusal
1101192 Compliance EDRMS	899-901 of 1819	Part refusal
1101192 Compliance EDRMS	906-908 of 1819	Part refusal
1101192 Compliance EDRMS	912-914 of 1819	Part refusal
1101192 Compliance EDRMS	916-917 of 1819	Part refusal
1101192 Compliance EDRMS	919-921 of 1819	Full refusal
1101192 Compliance EDRMS	922-927 of 1819	Part refusal
1101192 Compliance EDRMS	929-935 of 1819	Part refusal
1101192 Compliance EDRMS	937 of 1819	Full refusal
1101192 Compliance EDRMS	938 of 1819	Part refusal
1101192 Compliance EDRMS	942 of 1819	Part refusal
1101192 Compliance EDRMS	945 of 1819	Part refusal
1101192 Compliance EDRMS	948 of 1819	Part refusal
1101192 Compliance EDRMS	951-954 in 1819	Part refusal
1101192 Compliance EDRMS	956-959 of 1819	Part refusal
1101192 Compliance EDRMS	961 of 1819	Full refusal
1101192 Compliance EDRMS	962-965 of 1819	Part refusal
1101192 Compliance EDRMS	967-968 of 1819	Full refusal
1101192 Compliance EDRMS	973-974 of 1819	Full refusal
1101192 Compliance EDRMS	976 of 1819	Part refusal
1101192 Compliance EDRMS	981-982 of 1819	Part refusal
1101192 Compliance EDRMS	995-998 of 1819	Part refusal
1101192 Compliance EDRMS	1000-1001 of 1819	Part refusal
1101192 Compliance EDRMS	1003-1007 of 1819	Part refusal
1101192 Compliance EDRMS	1009-1015 of 1819	Part refusal
1101192 Compliance EDRMS	1017-1018 of 1819	Part refusal
1101192 Compliance EDRMS	1020-1024 of 1819	Part refusal
1101192 Compliance EDRMS	1026 of 1819	Full refusal
1101192 Compliance EDRMS	1029-1030 of 1819	Part refusal
1101192 Compliance EDRMS	1032-1035 of 1819	Part refusal
1101192 Compliance EDRMS	1189 of 1819	Full refusal
1101192 Compliance EDRMS	1238 of 1819	Full refusal
1101192 Compliance EDRMS	1259 of 1819	Full refusal
1101192 Compliance EDRMS	1410 of 1819	Full refusal
1101192 Compliance EDRMS	1561 of 1819	Full refusal
1101192 Compliance EDRMS	1642-1646 of 1819	Part refusal
1101192 Compliance EDRMS	1648 of 1819	Part refusal
1101192 Compliance EDRMS	1649-1650 of 1819	Part refusal
1101192 Compliance EDRMS	1660-1662 of 1819	Part refusal
1101192 Compliance EDRMS	1664-1666 of 1819	Full refusal
1101192 Compliance EDRMS	1669-1671 of 1819	Part refusal
1101192 Compliance EDRMS	1673 of 1819	Part refusal
1101192 Compliance EDRMS	1696 of 1819	Part refusal
1101192 Compliance EDRMS	1725-1727 of 1819	Part refusal
1101192 Compliance EDRMS	1729-1740 of 1819	Part refusal
1101192 Compliance EDRMS	1742-1743 of 1819	Part refusal
1101192 Compliance EDRMS	1745-1746 of 1819	Part refusal
1101192_7 Case Notes	1 of 1	Part refusal
1101192_7 Case Notes	3-10 of 1	Part refusal

File reference	Page number	Full or part refusal
1265287 [Mr T] EDRMS	10 of 1	Part refusal
1265827_1 [Mr T] Case Notes	1 of 1	Part refusal

File reference	Audio recordings	Full or part refusal
1076714	Two audio recordings	Part refusal
1101192	21 audio recordings	Part refusal