



## Decision and Reasons for Decision

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Citation:	<i>F70SMF and Department of Natural Resources, Mines and Energy</i> [2018] QICmr 39 (25 September 2018)
Application Number:	313592
Applicant:	F70SMF
Respondent:	Department of Natural Resources, Mines and Energy
Decision Date:	25 September 2018
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST INFORMATION - information submitted to a professional industry body by agency officers in relation to a complaint about a registered valuer - accountability, transparency and administration of justice - personal information and privacy of the agency officers - whether disclosure would, on balance, be contrary to the public interest - section 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the then Department of Natural Resources and Mines<sup>2</sup> (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information about certain valuers employed by the Department, valuations conducted by the Department, and communications between the Department and other entities, including the Australian Property Institute (**API**).
2. The Department located over 200 pages and released most of them to the applicant, except for information<sup>3</sup> which the Department decided<sup>4</sup> would, on balance, be contrary to the public interest to disclose.<sup>5</sup> The Department also decided to refuse access to some requested information on the basis that it did not exist.<sup>6</sup>

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<sup>1</sup> Access application dated 28 April 2017.

<sup>2</sup> Machinery of government changes in December 2017 transferred relevant responsibility from the Department of Natural Resources and Mines to the Department of Natural Resources, Mines and Energy. Accordingly, existing RTI applications and reviews involving certain applications made to Department of Natural Resources and Mines before the machinery of government changes now rest with Department of Natural Resources, Mines and Energy, including this external review and accordingly, that is the relevant agency. For ease of reference, I will simply refer to the **Department** in these reasons.

<sup>3</sup> 61 full and nine part pages.

<sup>4</sup> Decision dated 27 September 2017.

<sup>5</sup> Section 47(3)(b) and 49 of the RTI Act.

<sup>6</sup> Section 47(3)(e) and 52(1)(a) of the RTI Act.

3. The applicant applied for internal review<sup>7</sup> and the Department affirmed the original decision.<sup>8</sup>
4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.<sup>9</sup> The applicant raised concerns that the Department had not located all information relevant to the terms of his application. During the review, the Department located further information, some of which remains in issue.
5. For the reasons set out below, I vary the Department's decision<sup>10</sup> and find that access to the remaining information in issue can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

## Background

6. The applicant has a history of grievances with the valuation of his property by the Department. He alleges that the high valuation has impacted on his rates and land tax and has made several complaints to regulatory bodies in relation to this matter, including a complaint to the API in 2016. The API is as a privately operated, membership organisation for property professionals—it is a professional industry body, funded by its members.<sup>11</sup>
7. The nature of the applicant's complaint to the API was against one of its registered valuer members, who conducted statutory valuations for the applicant's property, in his role with the Department (**Valuer**). The information that remains in issue was provided to the API by the Valuer and his supervisor (**Area Manager**) during the API's investigation of the applicant's complaint.
8. In 2013, the Land Court of Queensland (**Land Court**) dismissed the applicant's appeal against a valuation, and confirmed the 2011 annual valuation conducted by the Valuer.<sup>12</sup> The applicant then objected to the 2012 annual valuation conducted on his property, and following an independent valuation (at the applicant's expense) and consent orders filed in the Land Court, the valuation of the property was slightly reduced.
9. The applicant made extensive submissions to OIC supporting his case.<sup>13</sup> I have considered all of this information, and to the extent that it is relevant to the issues for determination, I have considered it below. Some concerns raised by the applicant are outside the external review jurisdiction of the Information Commissioner under the RTI Act, and therefore, I have made no findings on such matters. For example, the applicant suggests that a Royal Commission is required to examine valuation practices in the Department.
10. Significant procedural steps relating to the external review are set out in the Appendix.

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<sup>7</sup> Internal review application dated 28 September 2017.

<sup>8</sup> Internal review decision dated 27 October 2017.

<sup>9</sup> Application dated 6 November 2017.

<sup>10</sup> To the extent the Department decided that some of the information did not exist—it was located by the Department during the external review process.

<sup>11</sup> <https://www.api.org.au>. Accessed on 21 September 2018.

<sup>12</sup> The Land Court of Queensland published its reasons for decision. However, I have not cited that decision as to do so could reasonably be expected to identify the applicant, which would conflict with OIC's decision to remove the applicant's name from this decision, for privacy reasons.

<sup>13</sup> As referred to in the Appendix.

## Reviewable decision

11. The decision under review is the Department's internal review decision dated 27 October 2017.

## Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

## Information in issue

13. During the review, the applicant agreed to exclude certain information from further consideration by OIC.<sup>14</sup> The applicant emphasised to OIC that he was most interested in obtaining access to what was said by the Valuer and Area Manager in their correspondence to the API.<sup>15</sup> Accordingly, the information remaining in issue comprises the following two documents:
- (i) a two page letter prepared by the valuer employed by the Department and submitted to the API Complaints Committee<sup>16</sup> (**Valuer's Submission**); and
  - (ii) a two page letter sent by another officer of the Department to the API Complaints Officer (**Area Manager's Letter**).<sup>17</sup>

## Issue for determination

14. The issue for determination is whether access to the Valuer's Submission and Area Manager's Letter can be refused under the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.<sup>18</sup>

## Relevant law

15. The RTI Act gives people a right to access information held by government agencies<sup>19</sup> and is to be administered with a pro-disclosure bias.<sup>20</sup> However, there are limitations on this right, including grounds for refusal of access. Relevantly, access to information may be refused if its disclosure would, on balance be contrary to the public interest.<sup>21</sup> The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest.<sup>22</sup> It also explains the steps that a decision-maker must take in deciding the public interest.<sup>23</sup>
16. The term 'public interest' is not defined in the RTI Act, but is generally accepted to refer to considerations affecting the good order and functioning of the community and

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<sup>14</sup> Including, for example, copies of documents he already had in his possession and documents relating to the resignation of a particular officer of the Department.

<sup>15</sup> Accordingly, OIC limited its consideration to only the correspondence authored by those officers, excluding attachments. In any event, the attachments largely consist of documents already in the applicant's possession.

<sup>16</sup> Dated 20 January 2015. As the complaint was not made until October 2016, it appears the date of this document should read 20 January 2017. In any event, it is uncontested that it falls within the scope of the application.

<sup>17</sup> Dated 17 January 2017.

<sup>18</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>19</sup> Section 23 of the RTI Act.

<sup>20</sup> Section 44 of the RTI Act.

<sup>21</sup> Section 47(3)(b) and 49 of the RTI Act.

<sup>22</sup> These are listed in schedule 4 of the RTI Act, though this list of factors is not exhaustive; in other words, additional factors that are not listed may also be relevant.

<sup>23</sup> To decide where the balance of public interest lies, a decision-maker must (i) identify any irrelevant factors and disregard them, (ii) identify any relevant public interest factors favouring disclosure and nondisclosure, (iii) balance the relevant factors favouring disclosure and nondisclosure; and (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

government affairs for the well-being of its citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concerns purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

## Findings

### Valuer's Submission

17. The applicant believes that increased accountability in the valuation process is required and in this regard, submits that:

*The valuation on the land determines the Land Tax payable and Rates payable. If the valuation is higher then what it should be the people, public are affected ripped off not unlike by the banks yet there is no Royal Commission into the valuation process/integrity yet.*

*The Valuer-General states that the land owners have the right to object to the valuation knowing well that to mount an effective case would be at a considerable and prohibitive cost to them considering that the Valuer-General has at its disposal kind of unlimited resources.*

*The onus is on the land owner to prove that the Valuer-General made a mistake in the valuation and if the Land Court decides in favour of the land owner the Valuer is no worse off no disciplinary action taken and free to increase the valuation the following year like nothing had happened ripping off the land owner and teaching them an expensive lesson.<sup>24</sup>*

18. I am satisfied that the public interest favours disclosure of information which would enhance the transparency of the Department as the largest public sector provider of valuation and property related services in Queensland.<sup>25</sup> Statutory land valuations are used to calculate local council rates, state land tax and rental (for leasehold land)<sup>26</sup> and I accept the applicant's submission<sup>27</sup> that the Department must be accountable around its valuation process and transparent in making associated decisions.<sup>28</sup>
19. The Valuer's Submission was prepared in response to the applicant's complaint to the API about alleged breaches of the API Code of Professional Conduct by the Valuer, in undertaking a valuation on the applicant's property. The applicant submits<sup>29</sup> that disclosure of the Valuer's Submission would allow insight into the API's handling of the complaint and would reveal information the API considered when deciding not to take further action. That may be the case. However, there is no evidence before OIC to suggest that API is an 'agency' for the purposes of the RTI Act. Accordingly, it is not relevant, in this review, for me to consider whether the transparency and accountability of API's complaint handling process would be enhanced through disclosure of the Valuer's Submission.
20. I do however, find that the Valuer's Submission would provide some insight into the Department's valuation processes to the extent that they comprise the Valuer's recollection of events about the valuation he undertook as part of his public sector employment. However, there is no evidence available to OIC to indicate that the Valuer's Submission formed part of any investigation or separate disciplinary process undertaken

<sup>24</sup> Submissions to OIC dated 29 May 2018.

<sup>25</sup> <https://www.qld.gov.au/environment/land/title/valuation/advisory-services>. Accessed on 21 September 2018.

<sup>26</sup> <https://www.qld.gov.au/environment/land/title/valuation/usage>. Accessed on 21 September 2018.

<sup>27</sup> The applicant made submissions to this effect in a telephone conversation with OIC on 24 May 2018 and emailed submissions received by OIC on 29 May 2018 and 9 August 2018.

<sup>28</sup> Schedule 4, part 2, item 1 and 11 of the RTI Act.

<sup>29</sup> Emailed submissions received by OIC on 9 August 2018.

by the Department. Accordingly, the weight of these factors is relatively limited in this regard.

21. In recent years, the applicant has been involved in various complaint and court processes associated with his objections to the valuation of his property.<sup>30</sup> The applicant's involvement in, and access to documents gained through those processes has, in my view, significantly discharged the public interest factors concerning transparency and accountability. The applicant has, notably, been given access to a substantial volume of information about the Department's valuation processes.
22. On the basis of the above, I am satisfied that disclosure of the Valuer's Submission would only marginally enhance the transparency and accountability of the Department and therefore, I afford the relevant factors low weight in favour of disclosure.
23. The applicant submitted that he requires access to the information to challenge the API's decision.<sup>31</sup> I note however, that a complainant is not entitled to appeal against a decision of the API's Complaints Committee.<sup>32</sup> Notwithstanding, I accept that disclosure of the Valuer's Submission could reasonably be expected to contribute to administration of justice for the applicant as it may reveal information not already known to the applicant, that the applicant may wish to use in pursuing other complaint avenues.<sup>33</sup> However, I attribute limited weight to this factor as the applicant's ability to pursue other avenues of complaint are not entirely dependent on gaining access to the Valuer's Submission. In my view, the weight of these factors is further reduced given the multiple complaint and review processes already pursued by the applicant and the information disclosed to him through those processes. For example, in the API complaint process the applicant was provided with a copy of the API Decision, which summarised the content of the material relied upon by the API, and outlined the conclusions and findings of the API investigation.
24. The Valuer's Submission contains references to the applicant as the complainant and therefore, I accept that they contain the applicant's personal information,<sup>34</sup> giving rise to a further factor favouring disclosure.<sup>35</sup> The RTI Act recognises that it is important for individuals to be able to access their own personal information held by a government agency. However, the applicant's personal information is inextricably intertwined with the Valuer's personal information which appears throughout the Valuer's Submission (as discussed below). I am therefore, satisfied that the document cannot sensibly be severed to allow partial disclosure of solely the applicant's personal information. In the circumstances, I afford this factor moderate weight.
25. The applicant submitted that he does not agree with what he believes to be the content of the Valuer's Submission.<sup>36</sup> The public interest will also favour disclosure of information where it could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>37</sup> The Valuer's Submission represents his recollection of events prepared in response to the complaint against him. As such, they reflect his own opinions and views, and are, by their very nature, inherently subjective. However, this inherent subjectivity does not necessarily

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<sup>30</sup> Including the Valuers Registration Board of Queensland, the Queensland Ombudsman and the Land Court of Queensland.

<sup>31</sup> Telephone conversation with OIC on 26 February 2018.

<sup>32</sup> The Australian Property Institute, Complaints Committee Charter (at 1 January 2016), page 9. The Charter is available at [http://www.api.org.au/sites/default/files/uploaded-content/website-content/20160101\\_api\\_complaints\\_committee.pdf](http://www.api.org.au/sites/default/files/uploaded-content/website-content/20160101_api_complaints_committee.pdf). Accessed on 21 September 2018.

<sup>33</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

<sup>34</sup> As defined in section 12 of the IP Act.

<sup>35</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>36</sup> Submissions emailed to OIC on 18 January 2018. The applicant made similar submissions regarding the accuracy of the information in the Valuer's Submission and Area Manager's Letter in a telephone conversation with OIC on 24 May 2018 and emailed submissions received by OIC on 29 May 2018.

<sup>37</sup> Schedule 4, part 2, item 12 of the RTI Act.

mean that the information is unfairly so, or incorrect. I also note that the Valuer's Submission include his professional opinion as a registered valuer, and thus, I consider he has relevant expertise in the subject matter. While I acknowledge the applicant's submissions that the Valuer's Submission is incorrect, when viewed objectively, I am not satisfied that information contained in the Valuer's Submission could be considered incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Therefore, I find that this factor does not apply.

26. The Valuer's Submission comprise the Valuer's opinions, observations and reasoning in response to the applicant's complaint to the API about his conduct in undertaking a particular valuation. Despite the applicant's submissions that the Valuer's Submission is not his personal information as it is about his work,<sup>38</sup> I am satisfied that this information comprises the Valuer's personal information, giving rise to a factor favouring nondisclosure.<sup>39</sup> The Information Commissioner has previously found that personal information relating wholly and solely to the routine day to day work duties and responsibilities of a public sector employee may be disclosed under the RTI Act.<sup>40</sup> While this information appears in a workplace context, and relates to the Valuer's duties in undertaking a valuation as a Department employee, I am satisfied it is not routine in nature as it concerns a complaint made against the Valuer.<sup>41</sup>
27. I also find that disclosure could reasonably be expected to prejudice the Valuer's right to privacy.<sup>42</sup> The concept of 'privacy' is not defined in the RTI Act, however, essentially it can be viewed as the right of an individual to preserve their personal sphere free from the interference of others.<sup>43</sup> I consider that the Valuer's Submission, being a response to the applicant's complaint, falls within his 'personal sphere', as the Valuer would have a reasonable expectation that the API would use the information for the purpose of conducting the API investigation. As a result, I am satisfied that disclosure of the Valuer's Submission would be a significant intrusion into his privacy<sup>44</sup> and the public interest harm that that could reasonably be expected to flow from disclosure of the Valuer's personal information<sup>45</sup> is also high. Accordingly, I afford these factors significant weight in favour of nondisclosure.
28. In its decision, the API concluded there had been no breach of the Code of Professional Conduct and that the Valuer was not guilty of professional misconduct.<sup>46</sup> I consider those findings reflect that the applicant's allegations were unsubstantiated, giving rise to a factor favouring nondisclosure.<sup>47</sup> Given the serious nature of the allegations against the Valuer, I am satisfied that disclosure of the Valuer's Submission in response to the unsubstantiated allegations could reasonably be expected to adversely affect his reputation, and prejudice his fair treatment.<sup>48</sup> On that basis, I afford this factor moderate weight in favour of nondisclosure.
29. In balancing the relevant factors, I am satisfied that the factors favouring disclosure carry low to moderate weight—the applicant has a right to access his personal information and disclosure of the Valuer's Submission would, to a limited extent, enhance the accountability and transparency of the Department, and somewhat contribute to

<sup>38</sup> Telephone discussion with OIC on 24 May 2018.

<sup>39</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>40</sup> *Mewburn and Department of Natural Resources and Mines* [2016] QICmr 31 (19 August 2016) at [43] – [47].

<sup>41</sup> See *Foot and Valuer's Registration Board of Queensland* [2017] QICmr 59 (19 December 2017) (**Foot**) at [33].

<sup>42</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>43</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept, in "For your information: Australian privacy law and practice" *Australian Law Reform Commission Report No. 108* released 11 August 2008, at [1.56].

<sup>44</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>45</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>46</sup> API decision notice dated 23 March 2017 at [33]–[35].

<sup>47</sup> Schedule 4, part 3, item 6 of the RTI Act. See also, *F60CXC and Queensland Ombudsman* [2014] QICmr28 (13 June 2014).

<sup>48</sup> See *Foot* at [28]–[30].

administration of justice for the applicant. However, I have also found that there is an identifiable public interest in safeguarding the Valuer's privacy and his non-routine personal work information, and avoiding disclosure of information about unsubstantiated allegations. On balance, I find that:

- the weight of the nondisclosure factors is determinative
- disclosure of the Valuer's Submission would, on balance, be contrary to the public interest; and
- access to the Valuer's Submission may be refused under section 47(3)(b) of the RTI Act.

### ***Area Manager's Letter***

30. The Area Manager's Letter contains information about his role with the Department and descriptions of his own experiences, observations and opinions. It also contains comments about the Valuer in relation to how he performed his work duties—to an extent, it is akin to a character reference or referee report. As both of those individuals are identified in the Area Manager's Letter, I find that it comprises the personal information of both the Area Manager and the Valuer, thereby raising a factor favouring nondisclosure.<sup>49</sup>
31. I acknowledge that this information was prepared by the Area Manager in a work context. As noted at paragraph 26 above, it is generally accepted that personal information of public servants of a routine nature, and concerning their day to day employment duties, may be disclosed under the RTI Act. However, I consider that the nature of the Area Manager's Letter is such that it falls outside of the *routine* work context. Rather, as the information was prepared in relation to a complaint about one of the employees under the supervision of the Area Manager, I do not consider it relates wholly and solely to the routine day to day work duties of the Area Manager, or the Valuer.
32. I consider a public servant's involvement in a work-related complaint matter attracts a certain level of sensitivity and accordingly, the harm which could result from disclosure is high. Similarly, I am satisfied that the Area Manager would have reasonably expected that the API would use his correspondence for the limited purpose of dealing with the applicant's complaint. Therefore, I find that disclosing the Area Manager's Letter would constitute a significant intrusion into the 'private sphere' of both the Area Manager and the Valuer. For these reasons, I afford the relevant factors significant weight in favour of nondisclosure.<sup>50</sup>
33. The Area Manager's Letter also refers to the applicant by name, thereby raising a factor favouring disclosure of the applicant's personal information.<sup>51</sup> However, the references to the applicant's personal information are not extensive—the subject matter of the Area Manager's Letter predominantly concerns the Department's valuation process and associated appeals. As set out above, the Area Manager's Letter also consists of the Area Manager's and Valuer's personal information. I find that the personal information of those individuals appears in such a way that it cannot be logically separated from the applicant's. I am satisfied these circumstances reduce the weight of this factor and I therefore, afford it low weight in favour of disclosure.
34. I consider disclosure of the Area Manager's Letter would, to a small extent, enhance the transparency and accountability of the Department in terms of the way its officers

<sup>49</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>50</sup> Schedule 4, part 3, item 3 of the RTI Act and schedule 4, part 4, section 6 of the RTI Act.

<sup>51</sup> Schedule 4, part 2 item 7 of the RTI Act.



communicate and cooperate with professional industry bodies conducting investigations into complaints involving officers of the Department.<sup>52</sup> It would also reveal information, about the Department's valuation process and certain actions and decisions it made in relation to the applicant's property. The API decision notice that was issued to the applicant did however, summarise the content of the Area Manager's Letter which I consider has discharged these factors to a degree. Also, the reasons I have set out in paragraphs 19 and 21 above in relation to the Valuer's Submission apply equally to disclosure of the Area Manager's Letter and operate to further reduce the weight of the transparency and accountability factors. In conclusion, I afford those factors low weight in favour of the disclosure of the Area Manager's Letter.

35. Disclosing the Area Manager's Letter would provide the applicant with access to additional information that he may wish to use in pursuing further complaint processes, thereby raising a public interest factor in the administration of justice.<sup>53</sup> However, I am unable to see how initiating any further such processes would be entirely reliant upon accessing the information in the Area Manager's Letter. Also, as set out above, there is no appeal mechanism of the API's decision in response to his complaint.<sup>54</sup> For these reasons, I find that the administration of justice factor carries very low weight.
36. The applicant submits that the information contained in the Area Manager's Letter is incorrect.<sup>55</sup> He bases this submission on a section of the API decision notice which appears to identify a factual error in the Area Manager's Letter in relation to the chronology of the Land Court proceedings.<sup>56</sup> In view of these submissions, I have considered whether the public interest factor favouring disclosure of incorrect information applies.<sup>57</sup>
37. As set out in paragraph 8 above, the applicant has lodged multiple objections to the valuation of his property conducted by the Department. I have been able to locate one published decision of the Land Court dismissing an appeal by the applicant, and confirming the 2011 valuation of his property. However, there is also evidence<sup>58</sup> which indicates that there was a subsequent Land Court proceeding settled by consent order, and that order was favourable to the applicant to the extent that the valuation of his property was slightly reduced.
38. I accept that there is a factually complex background to the applicant's history of complaints and valuation objections. However, having reviewed the content of the Area Manager's Letter, and the other evidence available to OIC, I am not satisfied that the former represents an incorrect statement of facts relating to the Land Court proceedings.<sup>59</sup> Therefore, I find that the public interest factor does not arise in the circumstances of this case.
39. In balancing the public interest, I accept that disclosure of the Area Manager's Letter would give the applicant access to his personal information, enhance the transparency and accountability of the Department, and somewhat contribute to the administration of justice for the applicant. However, for the reasons set out above, those factors carry low weight. On the other hand, I am satisfied that disclosure of the Area Manager's Letter

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<sup>52</sup> Schedule 4, part 2, item 1 and 11 of the RTI Act.

<sup>53</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>54</sup> The Australian Property Institute, Complaints Committee Charter (at 1 January 2016), page 9. The Charter is available at [http://www.api.org.au/sites/default/files/uploaded-content/website-content/20160101\\_api\\_complaints\\_committee.pdf](http://www.api.org.au/sites/default/files/uploaded-content/website-content/20160101_api_complaints_committee.pdf). Accessed on 21 September 2018.

<sup>55</sup> Telephone conversation with OIC on 24 May 2018 and submissions emailed to OIC on 18 January 2018 and 29 May 2018.

<sup>56</sup> Applicant's submissions dated 29 May 2018.

<sup>57</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>58</sup> In the API decision notice and applicant's submissions.

<sup>59</sup> Section 108 of the RTI Act prevents me from directly referring to the content of the Area Manager's Letter as it remains in issue.



would reveal personal information, of a non-routine work nature, of both the Valuer and Area Manager to a degree that would be a significant intrusion into the private sphere of those individuals.

40. On balance, I find that the factors favouring nondisclosure outweigh the factors favouring disclosure and therefore, access to the Area Manager's Letter may be refused under section 47(3)(b) of the RTI Act.

## **DECISION**

41. I vary the Department's decision that the Area Manager's Letter does not exist, and find that access to it, and the Valuer's Submission may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure of those documents would, on balance, be contrary to the public interest.
42. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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K Shepherd  
**Assistant Information Commissioner**

**Date: 25 September 2018**

## APPENDIX

### Significant procedural steps

Date	Event
6 November 2017	OIC received the external review application.
8 November 2017	OIC notified the Department and the applicant that the external review application had been received and requested procedural documents from the Department.
10 November 2017	OIC received the procedural documents from the Department.
30 November 2017	OIC notified the Department and the applicant that the external review application had been accepted for review. OIC confirmed to the applicant that OIC would consider certain sufficiency of search issues and refusal of access issues raised in his application. OIC asked the Department to provide a copy of the documents located in response to the application, and information about the searches the Department had conducted in processing the application.
12 December 2017	The Department provided OIC with the requested documents.
18 January 2018	OIC received further submissions from the applicant, by email.
8 February 2018	OIC phoned the applicant to confirm the sufficiency of search issues that he was seeking to have considered on external review.
23 February 2018	OIC asked the Department to undertake additional searches and provide records of those searches to OIC.
26 February 2018	OIC wrote to the applicant confirming the scope of the external review application. The applicant made oral submissions to OIC in a telephone call.
16 March 2018	OIC received the requested additional search information from the Department.
22 March 2018	OIC asked the Department to undertake further additional searches and provide records of those searches to OIC.
10 April 2018	The Department provided OIC with the requested additional search information, including a copy of the Area Manager's Letter.
24 May 2018	OIC conveyed a preliminary view to the applicant and the Department that access to the remaining information would, on balance, be contrary to the public interest. OIC received further submissions from the applicant, by telephone.
29 May 2018	OIC received further written submissions from the applicant.
14 June 2018	OIC clarified the information remaining in issue to the applicant, by email.
9 August 2018	OIC received further written submissions from the applicant.
17 August 2018	OIC received further submissions from the applicant, by telephone.