



Decision and Reasons for Decision

Citation:	<i>Q52 and Legal Services Commission</i> [2020] QICmr 22 (17 April 2020)
Application Number:	314662
Applicant:	Q52
Respondent:	Legal Services Commission
Decision Date:	17 April 2020
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - complaint documents about a solicitor to the Queensland Legal Services Commission - applicant is neither the solicitor, the subject of complaint nor the complainant - personal information and privacy - accountability and transparency - administration of justice - revealing incorrect information - inquiry into possible deficiencies - fair treatment - prejudice business affairs - prejudice free flow of information to regulatory agencies - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under 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 DOCUMENTS - purported attachments to a complaint letter - how agency is to be satisfied purported attachments do not exist - whether access may be refused under 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 Legal Services Commission (**LSC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to 17 items listed in a letter from the LSC and addressed to another individual concerning a complaint.¹

¹ Access application dated 13 April 2019.

2. LSC refused access to all 17 items on the basis that disclosure would, on balance, be contrary to the public interest.² The LSC also refused access to certain attachments to one of the items on the basis that they were nonexistent.³
3. The applicant applied to the Information Commissioner for external review of LSC's decision.⁴
4. For the reasons set out below, I affirm LSC's decision.

Background

5. Significant procedural steps taken during the external review are set out in the Appendix.
6. The background to this matter is that a solicitor made a complaint (on behalf of his client) about another solicitor by letter to LSC (**Complaint Letter**). LSC investigated and ultimately dismissed the complaint. Written notice of this decision was given to the subject of the complaint (**Decision Letter**). Seventeen items were listed on page 2 of the Decision Letter, including the Complaint Letter and its purported attachments. These documents (with the exception of some that have now been excluded by the applicant) are the information in issue in the review.
7. The applicant was not the subject of the LSC complaint or the complainant, but rather, was a client of one of the solicitors involved in the complaint. Broadly speaking, the nature of the complaint was that a solicitor had acted for both the applicant's company and another party to a property transaction, and that this amounted to a conflict of interest. The applicant has submitted that there was never any property transaction,⁵ that the complaint was vexatious and baseless,⁶ and that misleading information was provided to LSC.⁷ He has submitted that he seeks the information to make a complaint to the Victorian Legal Services Commissioner (**VLSC**)⁸ about the complainant solicitor.⁹

Reviewable decision

8. The decision under review is LSC's decision dated 27 May 2019.

Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including in footnotes and the Appendix).
10. During the review, the applicant has made extensive submissions about the background to the matter, his concerns about the information provided to LSC by the complainant and related allegations of wrongdoing.¹⁰ I acknowledge that the background to the matter is of great importance to the applicant, and that his allegations are serious in nature and raise complex legal questions. In my reasons for decision, I have referred to the applicant's submissions to the extent that they are relevant to the issues for my consideration.

² LSC decision dated 27 May 2019.

³ LSC decision dated 27 May 2019.

⁴ External review application dated 12 June 2019.

⁵ Submission with external review application dated 11 June 2019.

⁶ Submission with external review application dated 11 June 2019 and submission dated 17 January 2020.

⁷ Submission dated 17 June 2019.

⁸ The applicant may also have made a complaint to the New South Wales Legal Services Commissioner but it is unclear whether he wishes to use the 17 documents in any such complaint.

⁹ Submission dated 29 November 2019.

¹⁰ The dates on which the applicant made their submissions are set out in the Appendix.

11. I have also had regard to the *Human Rights Act 2019* (Qld),¹¹ particularly the right to seek and receive information.¹² I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹³ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Information in issue

12. During the external review, the applicant advised OIC that he no longer requires six of the 17 items listed in the Decision Letter.¹⁴ Of the remaining 11 items in issue, most are comprised of correspondence to LSC from the complainant solicitor, including the Complaint Letter and its purported attachments.

Issues for determination

13. The issues for determination are whether:
- access to the information in issue may be refused because its disclosure would, on balance, be contrary to the public interest;¹⁵ and
 - access to the attachments to the Complaint Letter may be refused because they are nonexistent.¹⁶

Contrary to public interest information

Relevant law

14. Access to information may be refused under the RTI Act if its disclosure would, on balance, be contrary to the public interest.¹⁷ The term '*public interest*' is not defined in the legislation, but is generally accepted to refer to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. A public interest consideration is generally common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.¹⁸
15. A decision-maker is required to take specific steps in reaching a decision on disclosure¹⁹ and various factors may be relevant to deciding where the balance of the public interest lies.²⁰ I have explained my assessment of the relevant public interest factors below.

Findings

Irrelevant factors

16. I have not taken any irrelevant factors into account in reaching my decision.

¹¹ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

¹² Section 21 of the HR Act.

¹³ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁴ Applicant's submission dated 6 January 2020.

¹⁵ Section 47(3)(b) and 49(1) of the RTI Act.

¹⁶ Section 47(3)(e) and 52(1)(a) of the RTI Act.

¹⁷ Sections 47(3)(b) and 49 of the RTI Act.

¹⁸ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹⁹ Section 49(3) of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

²⁰ Including the non-exhaustive list of factors in schedule 4 of the RTI Act.

Factors favouring disclosure

17. There is a general public interest in advancing access to government-held information, and the RTI Act is administered with a '*pro-disclosure bias*',²¹ meaning that an agency should decide to give access to information, unless giving access would, on balance, be contrary to the public interest.
18. The information in issue identifies the applicant, in some cases, by name, and in some cases as the sole director of a company related to the issues in dispute.²² This gives rise to a factor in favour of disclosure, being the interest in an individual obtaining access to their own personal information.²³ In terms of the weight to be attributed to this factor, I accept the applicant's involvement in the factual background to the complaint,²⁴ and I have considered his submission that '*[t]he complaint revolves around a transaction [his] company is claimed to be involved in, that never occurred*'.²⁵ However, I find that the nature of the information in issue is such that it does not integrally involve him or his personal sphere. He is not the complainant, and nor is he the subject of the complaint. Accordingly, I afford this factor low weight.
19. The applicant contends that LSC relied on false information²⁶ and that there were failings in its investigation. Given these submissions, I consider that disclosure could reasonably be expected to:
 - enhance LSC's accountability²⁷
 - inform the community of LSC's operations;²⁸ and
 - reveal the reason for LSC's decision and the background or contextual information that informed the decision.²⁹
20. In terms of the weight of these factors, I acknowledge that the applicant seeks the information relied on by LSC, and that this would provide him with a more complete picture of the investigation. However, the applicant has a copy of the Decision Letter,³⁰ which sets out the reasons for LSC's decision in detail. The applicant himself considers that the Decision Letter contains a summary of all the provided information and that '*[t]here is no information in the requested documents that [he does] not already have*'.³¹ While the applicant contends that LSC's accountability and transparency would be enhanced by disclosure of the information in issue, his submissions suggest that he seeks to hold private individuals (certain solicitors and others) to account. The applicant notes:³²

Is not the broader public interest best served by transparency and accountability, the reason the OIC exists I would have thought.

Solicitors have in this complaint breached numerous rules of the uniform code of conduct. How can you NOT give significant weight to the release of documents that make false representations which your own guidelines for making submissions say is an offence. How can it be an offence to mislead the OIC, but misleading the QLSC be of NO consequence.

²¹ Section 44(1) of the RTI Act.

²² The applicant describes the company as '*my company*' in his external review application dated 11 June 2019.

²³ Schedule 4, part 2, item 7 of the RTI Act.

²⁴ As noted in the application for external review dated 11 June 2019 and submissions dated 6 January 2020.

²⁵ Submissions dated 17 January 2020.

²⁶ Submissions dated 17 January 2020.

²⁷ Schedule 4, part 2, item 1 of the RTI Act.

²⁸ Schedule 4, part 2, item 3 of the RTI Act.

²⁹ Schedule 4, part 2, item 11 of the RTI Act.

³⁰ Access application to LSC dated 13 April 2019.

³¹ Submissions to OIC on 7 January 2020.

³² Submissions dated 17 January 2020.

21. To the extent the desire to hold private individuals to account is relevant to a factor favouring disclosure, it is considered in the paragraph below. However, I do not consider that it enhances the weight to be attributed to factors concerning LSC's accountability, transparency, or understanding its operations or the background to its decision.
22. The applicant has also made submissions to the effect that LSC may wish to cover up the investigation because it was '*botched*'.³³ I acknowledge that having access to the documents requested by the applicant would give greater transparency around the information that was made available to the LSC in its investigation process. Having considered the submissions advanced by the applicant, the nature of the information in issue and the information already available to the applicant, I afford these factors moderate weight.
23. In terms of the applicant's desire to hold certain individuals to account, the applicant submits that the LSC complaint was '*part of a fraud that cost me my home, and millions of dollars*'.³⁴ The applicant has provided extensive submissions concerning the background to this.³⁵ For the relevant purposes under the RTI Act, it is sufficient to note that the applicant alleges wrongdoing by certain solicitors (and others) and wishes to make a complaint to the VLSC concerning the matter. Accordingly, I have considered whether disclosure of the information in issue could reasonably be expected to contribute to the administration of justice for the applicant.³⁶
24. While I understand the applicant's desire to collect as much information as possible to support his intended complaint to VLSC, this is not the test required to be applied in relation to this factor. Rather, it must be considered whether:³⁷
 - loss or damage or some kind of wrong has been suffered, in respect of which a remedy is, or may be, available under the law
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosure of the information in issue would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.
25. I acknowledge the applicant's submission that he requires the Complaint Letter to provide to the VLSC, and that the Decision Letter is not sufficient for this purpose.³⁸ However, the nature of the Complaint Letter and the other information in issue is that it contains a disputed series of events. This can be contrasted with cases where there is a clear nexus between the applicant's ability to pursue a remedy and the disclosure of information, such as where the identity of an individual is required in order to pursue or assess a claim.³⁹ Having said this, I acknowledge that the VLSC may require information from the applicant in order to conduct a preliminary assessment of a complaint, and may close a complaint if a complainant has not responded, or has responded inadequately, to a request for further information.⁴⁰ Given these circumstances, in relation to the

³³ Submission dated 17 January 2020.

³⁴ Submission dated 17 January 2020.

³⁵ As set out in the attached Appendix.

³⁶ Schedule 4, part 2, item 17 of the RTI Act.

³⁷ *Willsford and Brisbane City Council* (1996) 5 QAR 368. This decision involved the owner of a car who collided with a dog, who was seeking information which would identify the owner of the dog, in order to take steps to assess whether she was in a position to recover damages.

³⁸ Applicant's submission dated 6 January 2020.

³⁹ *EF9TO8 and Department of Transport and Main Roads* [2016] QICmr 19 (3 June 2016), where the application required the registered garaging address of a vehicle to pursue a lawful remedy.

⁴⁰ Schedule 1, chapter 5 of the *Legal Profession Uniform Law Application Act 2014* (Vic), in particular sections 276 and 277.

applicant's proposed VLSC complaint, I attribute the administration of justice factor moderate weight.⁴¹

26. In terms of more general legal proceedings, the applicant has indicated he is not involved in any current court actions that would enable him to avail himself of third party disclosure rules,⁴² but he has also submitted that there are '*... significant damages to be recouped by a legal remedy that the release of the requested material would assist.*' The applicant has provided extensive submissions concerning concurrent civil proceedings and a criminal investigation.⁴³ Having considered these submissions and the information provided, I am not satisfied that disclosure of the particular information in issue in this matter would assist the applicant to pursue any remedy (or to evaluate whether a remedy is available, or worth pursuing). Accordingly, in relation to more general legal proceedings, I do not consider the administration of justice factor carries any significant weight.
27. While this may be frustrating for the applicant, as he wishes to build a comprehensive picture of events as against the relevant individuals, I consider the Information Commissioner's observations in *Phyland and Department of Police*⁴⁴ are relevant:

The RTI Act was not, however, designed to serve as an adjunct to court processes, but to comprise a stand-alone mechanism for enabling public access to government-held information. Obviously, the applicant is entitled to elect to pursue access under the right of access conferred by the RTI Act. In doing so, however, she must accept the qualifications upon and limitations to that right imposed by the Act itself....

28. The applicant submits that disclosure of the information in issue would '*allow an erroneous perception, based on lies, to be rectified.*'⁴⁵ A factor favouring disclosure arises where disclosure of the information could reasonably⁴⁶ be expected to reveal that the information was incorrect.⁴⁷ Having considered the applicant's submissions, I acknowledge that he is strongly of the view that certain factors relied upon in LSC's Decision Letter are false. This is a matter in dispute, and not an issue I am able to decide in this process. Relevantly, LSC considered conflicting submissions made for and on behalf of the complainant and the subject of the complaint. In these circumstances, I consider it unlikely that the information in issue will provide a high degree of insight into the factual background to the matter. At best, it may allow the applicant to better understand the position of the solicitors involved. Accordingly, I afford this factor low weight.
29. The applicant refers to the LSC investigation as '*botched.*'⁴⁸ A factor favouring disclosure arises when disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency.⁴⁹ The wording of this factor is broad, as it applies to '*possible*' deficiencies. While I am not persuaded that there were any deficiencies in the LSC's investigations, I acknowledge that disclosure of the information may allow or assist the applicant to develop a more fulsome

⁴¹ Along with the factors concerning advancing fair treatment of individuals in accordance with the law in their dealings with agencies, and the contribution to administration of justice generally: schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴² Applicant's submission dated 17 January 2020.

⁴³ Submissions to OIC on 7 January 2020, 17 January 2020, 31 January 2020, 10 February 2020, 16 and 17 March 2020. On 11 April 2020 the applicant provided more than 1,700 pages of material related to a concurrent civil action to OIC.

⁴⁴ (Unreported, Queensland Information Commissioner, 31 August 2011), at [24].

⁴⁵ Applicant's submission dated 11 June 2019.

⁴⁶ The Information Commissioner has found that a decision maker must distinguish '*between what is merely possible ... and expectations which are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154]-[160].

⁴⁷ Schedule 4, part 2, item 12(a) of the RTI Act.

⁴⁸ Submissions dated 6 January 2020 and 17 January 2020.

⁴⁹ Schedule 4, part 2, item 5 of the RTI Act.

understanding of the matters relied on by LSC. For this reason, it may allow or assist inquiry into any possible deficiencies. Accordingly, I afford this factor low weight.

Factors favouring nondisclosure

30. A public interest factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.⁵⁰ LSC is a regulatory agency that bears responsibility for enforcing the *Legal Profession Act 2007* (Qld) by regulating legal practice in Queensland and facilitating the regulation of legal practice nationally.⁵¹
31. I consider there is a very strong public interest in protecting the free flow of information to regulatory authorities such as LSC.⁵² This is supported by previous decisions of the Information Commissioner about the flow of information to regulatory agencies.⁵³ LSC relies on complaints to be alerted to and investigate the conduct of legal practitioners and initiate disciplinary proceedings where appropriate. Disclosing complaint information provided to LSC could reasonably be expected to discourage individuals from coming forward to make complaints to LSC and give LSC evidence in investigations. This would impede the free flow of information to LSC and would significantly prejudice LSC's ability to effectively discharge its enforcement function. The weight of this factor is not reduced by the applicant's submission that certain information provided to LSC in relation to this complaint was fictitious or erroneous. The Information Commissioner has previously considered a similar submission in *O'Connor and Legal Services Commission*:⁵⁴

The applicant contends that LSC 'had the wool pulled over their eyes' by the third party and it is in the public interest to prevent false information being taken into account in investigations. While making no finding about the veracity of the information provided by the third party, it is, however, generally recognised that there is a very strong public interest in protecting the free flow of information to law enforcement or regulatory agencies, even where this may result in an agency investigating false and/or unsubstantiated matters. Accordingly, I find that this factor favouring nondisclosure applies and I afford it significant weight.

32. The same analysis applies here. Accordingly, this factor carries significant weight in favour of nondisclosure.
33. I also consider that the information in issue contains information the disclosure of which could reasonably be expected to:
 - prejudice the fair treatment of the individuals named in the Decision Letter, and it contains unsubstantiated allegations of misconduct, and unlawful, negligent or improper conduct⁵⁵
 - prejudice individuals' privacy and disclose their personal information;⁵⁶ and
 - prejudice the relevant firms' private, professional, commercial or financial affairs.⁵⁷
34. The nature of the information in issue is such that it contains unsubstantiated allegations, some of which were not considered in detail in LSC's decision. These allegations could reasonably be expected to prejudice the fair treatment of individuals named in the

⁵⁰ Schedule 4, part 3, item 13 of the RTI Act.

⁵¹ Section 3 of the *Legal Profession Act 2007* (Qld).

⁵² Schedule 4, part 3, item 13 of the RTI Act.

⁵³ *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015) at [29]; *Gregory and Queensland Police Service* [2014] QICmr 48 (12 November 2014) at [25]; *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012) at [37].

⁵⁴ [2015] QICmr 10 (29 April 2015) at [30] (footnotes omitted).

⁵⁵ Giving rise to a nondisclosure factor under schedule 4, part 3, item 6 of the RTI Act.

⁵⁶ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁵⁷ Schedule 4, part 3, item 2 of the RTI Act.

Decision Letter, prejudice their privacy, reveal their personal information⁵⁸ and prejudice the commercial affairs of the relevant firms, and of third parties involved in the underlying transactions. In this case, I acknowledge that the applicant is aware of the background to the matter, and the parties involved. However, given the sensitivity of the information provided in the course of the LSC's investigation, I consider these factors carry significant weight in the circumstances.

Balancing the public interest

35. In the circumstances of this case, I attribute low to moderate weight to each of the factors favouring disclosure. On the other hand, I have attributed significant weight to the factors concerning fair treatment of third-party individuals, prejudice to their privacy/disclosure of their personal information and prejudice to their business affairs. Finally, the public interest factor concerning the free flow of information to LSC carries significant weight, and in the circumstances of the review, tips the balance of the public interest in favour of nondisclosure.
36. I therefore consider that the factors favouring nondisclosure outweigh the factors favouring disclosure, and access to the information in issue may be refused on the basis that disclosure would, on balance, be contrary to the public interest.

Nonexistent information

37. One of the items requested by the applicant in the access application was the '*complaint and attachments*'.⁵⁹
38. LSC refused access to the '*attachments*' on the basis that they were non-existent.⁶⁰ In submissions to OIC, LSC explained⁶¹ that the reference to attachments was inadvertently included as a result of '*typographical error as parties often provide attachments to the LSC or formed part of the template document with the reference not being deleted*'. There is no reference in the Complaint Letter itself to any '*attachments*', and LSC did not locate any during searches of its physical and electronic file. I have considered the applicant's submissions that tax invoices may have been attached to the Complaint Letter, but I am not able to identify any basis for this.⁶²
39. I am satisfied with this explanation and the searches conducted by LSC, and I consider that it has taken reasonable steps to locate any attachments. Accordingly, I find that access may be refused under section 47(3)(e) of the RTI Act,⁶³ on the basis that the attachments are nonexistent.

DECISION

40. I affirm LSC's decision to refuse access to the information in issue under section 47(3)(b) and 47(3)(e) of the RTI Act.

⁵⁸ The term '*personal information*' is broader than names, addresses and contact details. It is defined in section 12 of the *Information Privacy Act 2009* (Qld) as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

⁵⁹ This was the first of 17 items listed in the Decision Letter.

⁶⁰ Under section 47(3)(e) of the RTI Act.

⁶¹ By submission dated 18 July 2019.

⁶² Submissions dated 17 January 2020.

⁶³ And section 52(1)(a) of the RTI Act.

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

Assistant Information Commissioner

17 April 2020

APPENDIX

Significant procedural steps

Date	Event
12 June 2019	OIC received the applicant's external review application.
14 June 2019	OIC requested preliminary documents from LSC.
17 June 2019	OIC received a written submission from the applicant.
19 June 2019	OIC received the requested preliminary documents from LSC.
8 July 2019	OIC notified the applicant and LSC that the application for external review had been accepted and requested further information from LSC.
18 July 2019	OIC received the requested further information and a submission from LSC.
28 August 2019	OIC received a written submission from the applicant.
15 November 2019	OIC conveyed a written preliminary view to the applicant.
29 November 2019	OIC received a written submission from the applicant.
3 December 2019	OIC received a submission from the applicant by telephone.
7 January 2020	OIC received a written submission from the applicant.
17 January 2020	OIC received a written submission from the applicant. OIC received a submission from the applicant by telephone.
31 January 2020	OIC received a written submission from the applicant.
10 February 2020	OIC received a written submission from the applicant.
16 March 2020	OIC received a written submission from the applicant.
17 March 2020	OIC received a written submission from the applicant.
11 April 2020	OIC received further information from the applicant.