



## Decision and Reasons for Decision

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Citation:	<i>O52 and Queensland Ombudsman [2020] QICmr 31 (11 June 2020)</i>
Application Number:	314596
Applicant:	O52
Respondent:	Queensland Ombudsman
Decision Date:	11 June 2020
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENT NONEXISTENT OR UNLOCATABLE</b> - applicant contends additional documents exist - whether the information sought is nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION</b> - whether deleted information is irrelevant to the terms of the access application - section 88 of the <i>Information Privacy Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE</b> - documents relating to the applicant and their interactions with the agency - whether information is exempt - section 47(3)(a) and schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION</b> - documents relating to the applicant and their interactions with the agency - personal information and privacy of other individuals - fair treatment of individuals - Ombudsman investigations - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Queensland Ombudsman (**Ombudsman**) under the *Information Privacy Act 2009* (Qld) (**IP Act**), for the period commencing 1 October 2011,<sup>2</sup> for access to:

*All documents including emails about me or my complaints, including consultations, calendar entries, minutes. Include all texts + emails to or from the following: 1. [Officer 1]; 2. [Officer 2]; any other staff. Especially seeking consultations and communications with [the Office of the Health Ombudsman].*

2. The Ombudsman located 474 pages and decided<sup>3</sup> to refuse access to 198 pages and parts of 71 pages.<sup>4</sup>
3. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Ombudsman's decision refusing access and raised concerns about the sufficiency of the Ombudsman's searches for documents responsive to the access application.
4. For the reasons set out below, I find that access to the information remaining in issue in this review may be refused or deleted on the following grounds:
  - further documents responsive to the access application are nonexistent or unlocatable
  - parts of 6 pages are not relevant to the access application
  - 2 pages are exempt information, as they are subject to legal professional privilege; and
  - disclosure of parts of 234 pages would, on balance, be contrary to the public interest.

### Background

5. Significant procedural steps taken during the external review are set out in the Appendix to this decision.

### Reviewable decision

6. The decision under review is the Ombudsman's decision dated 30 April 2019.

### Evidence considered

7. The applicant provided extensive submissions during the review. I have considered all this material and have only extracted those parts which I consider have relevance to the issues to be determined in this external review.
8. In reaching my decision, I have had regard to the submissions, evidence, legislation and other material referred to throughout these reasons (including footnotes and Appendix).

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<sup>1</sup> Access application dated 9 March 2019.

<sup>2</sup> Until 12 March 2019, this being the date the Ombudsman received the access application. Section 47(1) of the IP Act provides that an access application is taken only to apply to documents that are or may be in existence on the day the application is received.

<sup>3</sup> Decision dated 30 April 2019.

<sup>4</sup> Further detail regarding the Ombudsman's decision and the information remaining in issue is set out at paragraphs 10-13 below.

<sup>5</sup> By email dated 1 May 2019.

9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>6</sup> particularly the right to seek and receive information as embodied in section 21 of the HR Act. I consider that a decision-maker will, when observing and applying the law prescribed in the IP Act, be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act.<sup>7</sup> I further consider that, having done so in this decision and reasons, I have acted compatibly with and given proper consideration to relevant human rights, as required under section 58(1) of the HR Act.<sup>8</sup> I also note the observations made by Bell J on the interaction between the Victorian equivalent of Queensland's IP Act and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>9</sup>

### Information in issue

10. While the schedule attached to the Ombudsman's decision indicates that 472 pages were located, on my assessment of the pages provided by the Ombudsman, I am satisfied that 474 pages were located – specifically, 281 pages rather than 280 pages in **File A**<sup>10</sup> and 193 pages rather than 192 pages in **File B**.<sup>11</sup>
11. In terms of the 281 pages in File A, the Ombudsman refused access to 5 pages<sup>12</sup> and parts of 71 pages.<sup>13</sup> On external review, the Ombudsman agreed<sup>14</sup> to release parts of 3 of the 5 pages that it had refused in full. The remaining parts of those pages remain in issue. Accordingly, 2 pages and parts of 74 pages in File A remain in issue.
12. In terms of the 193 pages in File B, the Ombudsman's decision noted that these pages comprised a complaint file relating to an ongoing investigation and refused access to them in their entirety.<sup>15</sup> However, on 6 February 2020, the Ombudsman advised OIC that the investigation was complete, so OIC requested further submissions from the Ombudsman regarding File B.<sup>16</sup> In response, the Ombudsman agreed to release 21 pages and parts of 172 pages. The applicant accepted<sup>17</sup> that her application did not apply to parts of 7 pages as they post-dated the date<sup>18</sup> on which the Ombudsman received her application<sup>19</sup> but maintained that parts of 165 pages should be released to her. The Ombudsman and the Crime and Corruption Commission (**CCC**)<sup>20</sup> then accepted<sup>21</sup> that the names of two managerial staff of the CCC appearing on 97 of the 165 part pages

<sup>6</sup> Which came into force on 1 January 2020.

<sup>7</sup> See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [11].

<sup>8</sup> Under section 108(1)(a) of the IP Act, the procedures to be followed in an external review are within the discretion of the Information Commissioner, and therefore me as her delegate (under section 139 of the IP Act). Following difficulties communicating with the applicant by telephone, the applicant was asked to communicate with OIC by written document or audio file, sent by email or saved to USB or CD and posted. I am satisfied that this has had no bearing on the extent to which OIC has been able to communicate with the applicant, or my consideration of the issues relevant to the issue for determination in the review.

<sup>9</sup> *XYZ* at [573].

<sup>10</sup> That is, the pages relating to complaint files 2013/13290, 2016/08861, 2018/03157, 2018/04194, 2018/04873, 2018/05268, 2018/05341, 2018/05597, 2018/06019, 2018/06469, 2018/06902, 2018/11214, 2019/00023, 2019/00258, 2019/00353, 2019/00356, 2019/00416, and the Additional documents located in emails of Officers 2 and 3.

<sup>11</sup> Relating to complaint file 2018/10089.

<sup>12</sup> Under section 47(3)(a) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

<sup>13</sup> Parts of 67 pages were refused under section 47(3)(b) of the RTI Act and parts of 6 pages were deleted under section 88 of the IP Act. Note – two pages (specifically, pages 112 and 280) contained both information refused under section 47(3)(b) of the RTI Act and information deleted under section 88 of the IP Act.

<sup>14</sup> On 14 May 2020.

<sup>15</sup> Under section 47(3)(b) of the RTI Act.

<sup>16</sup> Given that the Ombudsman bears the onus of establishing that its decision was justified or that the Information Commissioner should give a decision adverse to the applicant – section 100(1) of the IP Act.

<sup>17</sup> Email from applicant to OIC sent on 5 March 2020 at 4:30am.

<sup>18</sup> 12 March 2019.

<sup>19</sup> Section 47(1) of the IP Act.

<sup>20</sup> Which was consulted as a third party pursuant to section 56 of the IP Act.

<sup>21</sup> On 30 and 29 April 2020 respectively.

could be released to the applicant.<sup>22</sup> Following this release, parts of 164 pages in File B remain in issue.

13. Consequently, the remaining information in issue is contained within 2 full pages<sup>23</sup> and parts of 238 pages.<sup>24</sup>

### **Preliminary issue – alleged bias**

14. Before addressing the issues for determination, I will first deal with a preliminary issue raised by the applicant.
15. In the course of this external review and others, the applicant has made submissions alleging that the Right to Information Commissioner, Assistant Information Commissioner Corby and I have shown bias towards her.<sup>25</sup> I have carefully considered these submissions, alongside the High Court's test for assessing apprehended bias for a decision maker. The High Court's test requires consideration of *'if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide'*.<sup>26</sup> The High Court has also noted that *[t]he question of whether a fair-minded lay observer might reasonably apprehend a lack of impartiality with respect to the decision to be made is largely a factual one, albeit one which it is necessary to consider in the legal, statutory and factual contexts in which the decision is made'*.<sup>27</sup>
16. OIC is an independent statutory body that conducts merits review of government decisions about access to, and amendment of, documents. The procedure to be followed on external review is, subject to the IP Act, within the discretion of the Information Commissioner.<sup>28</sup> In order to ensure procedural fairness (as required by both the IP Act<sup>29</sup> and common law), it is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected party. This appraises that party of the issues under consideration, and affords them the opportunity to put forward any further information they consider relevant to those issues.
17. In terms of the applicant's allegations of bias regarding the Right to Information Commissioner, I confirm that I am the delegate of the Information Commissioner<sup>30</sup> for this review. I also confirm that the procedures followed and decisions made throughout the course of this review have been determined by Assistant Information Commissioner Corby or myself. Consequently, there is nothing before me to suggest that the applicant's allegations of bias by the Right to Information Commissioner are possessed of any substance.
18. Further, in terms of the applicant's allegations of bias regarding Assistant Information Commissioner Corby and myself, the fact that the preliminary views conveyed to the

<sup>22</sup> Such information comprised the only information in issue on one of the 165 part pages in File B (specifically, page 184). Consequently this part page is no longer in issue.

<sup>23</sup> Pages 219-220 in File A.

<sup>24</sup> Parts of pages 17-21, 24, 28-30, 32-34, 38-45, 52, 69-71, 73, 78, 82, 84, 86-87, 89-91, 93, 98-99, 101-102, 104-105, 112, 115, 117-118, 126-129, 142-151, 164-166, 194, 210-212, 245, 248, 252-253, 264-266 and 280-281 in File A; and 8, 10-55, 57, 60-61, 73, 75-119, 121-166, 168-171, 173-183, 185-187 and 190-193 in File B.

<sup>25</sup> For example, emails identified as submissions in this review dated 19 September 2019 at 1:12pm, 27 February 2020, 12 March 2020 and 2 June 2020.

<sup>26</sup> *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6] per Gleeson CJ, McHugh, Gummow and Hayne JJ. See also *Michael Wilson & Partners Limited v Nicholls* (2011) 244 CLR 427 at [31] per Gummow ACJ, Hayne, Crennan and Bell JJ.

<sup>27</sup> *Isbester v Knox City Council* (2015) 255 CLR 135 at [20] per Kiefel, Bell, Keane and Nettle JJ.

<sup>28</sup> Section 108 of the IP Act.

<sup>29</sup> Section 110 of the IP Act.

<sup>30</sup> Section 139 of the IP Act.

applicant in this review<sup>31</sup> did not adopt the applicant's view that the information sought by her should be located and released to her does not, of itself, demonstrate bias against the applicant. I advised the applicant that she could respond to my preliminary view and provide additional information supporting her case, which would be considered and may influence the outcome.<sup>32</sup> Assistant Information Commissioner Corby's preliminary view provided similar advice to the applicant.<sup>33</sup> I consider that this advice demonstrates that neither Assistant Information Commissioner Corby nor I were so committed to our preliminary views that our conclusions were already formed and incapable of alteration, whatever evidence or arguments may be presented by her.<sup>34</sup>

19. For the purpose of this decision, I have reviewed the entirety of the applicant's submissions and carefully considered them to the extent they are relevant to the issues for determination. Apart from this external review and other external reviews sought by the applicant regarding which I am a delegate of the Information Commissioner,<sup>35</sup> I have not to my knowledge dealt with the applicant in any capacity, and cannot identify any conflict of interest in my dealing with her application for review of the Ombudsman's decision. I do not consider that the fact that the applicant has requested that I be joined to proceedings in which she alleges that her human rights have been breached<sup>36</sup> has altered my conduct of the review or consideration of the issues before me in any way. In these circumstances, paraphrasing the High Court's test, I am unable to identify any basis for finding that a fair-minded lay observer might reasonably apprehend that I<sup>37</sup> might not bring an impartial and unprejudiced mind to the resolution of this matter.

### Issues for determination

20. I will now turn to consideration of the issues for determination in this review. The issues for determination are:
  - **Sufficiency of search** - whether access to further documents sought in response to the access application may be refused on the basis that they are nonexistent or unlocatable.
  - **Irrelevant information** - whether information may be deleted on the basis it is irrelevant to the scope of the access application.
  - **Legal professional privilege** - whether access to information may be refused on the ground that it is subject to legal professional privilege, and is therefore exempt information.
  - **Contrary to public interest** - whether access to information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

<sup>31</sup> By myself on 19 September 2019 and Assistant Information Commissioner Corby on 4 March 2020.

<sup>32</sup> Footnote 1. of OIC's letter to the applicant dated 19 September 2019.

<sup>33</sup> Footnote 3. of OIC's letter to the applicant dated 4 March 2020.

<sup>34</sup> With reference to the test for prejudice noted in *Minister for Immigration v Jia Le Geng* (2001) 205 CLR 507 at [72] per Gleeson CJ and Gummow J.

<sup>35</sup> Under section 139 of the IP Act.

<sup>36</sup> Email dated 31 January 2020 sent in relation to another external review sought by the applicant.

<sup>37</sup> As a delegate of the Information Commissioner under section 139 of the IP Act.

## Sufficiency of search

### Relevant law

21. Under the IP Act, a person has a right to be given access to documents of an agency or Minister.<sup>38</sup> However, this right is subject to provisions of the IP Act and RTI Act including the grounds on which an agency or Minister may refuse access to documents.<sup>39</sup>
22. Access to a document may be refused if the document is nonexistent or unlocatable.<sup>40</sup> 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.<sup>41</sup> A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.<sup>42</sup>
23. To be satisfied that documents are nonexistent, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors including:<sup>43</sup>
  - 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 the request relates to.<sup>44</sup>
24. When proper consideration is given to relevant factors, it may be unnecessary for searches to be conducted. However, if an agency or Minister relies on searches to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the requested documents. The key factors identified above are also relevant to a consideration of whether an agency or Minister has taken all reasonable steps before concluding that documents are unlocatable.<sup>45</sup>

### Findings

25. In response to the access application, the Ombudsman located 474 pages.<sup>46</sup> Of these pages, 205 pages and parts of 71 pages were disclosed to the applicant pursuant to the Ombudsman's decision; and a further 21 pages and parts of 175 pages were disclosed to the applicant during the external review.

<sup>38</sup> Section 40 of the IP Act.

<sup>39</sup> Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access application under the RTI Act.

<sup>40</sup> Section 67(1) of the IP Act and sections 47(3)(e) and 52 of the RTI Act.

<sup>41</sup> Section 52(1)(b) of the RTI Act.

<sup>42</sup> Section 52(1)(a) of the RTI Act.

<sup>43</sup> *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*). *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of which are replicated in section 52 of the RTI Act.

<sup>44</sup> *PDE* at [37] - [38].

<sup>45</sup> *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [20] - [21].

<sup>46</sup> Further detail regarding the Ombudsman's decision and the information remaining in issue is set out at paragraphs 10-13 above.

26. In seeking an external review, the applicant submitted:<sup>47</sup>

*In particular check [Officer 3], [Officer 1] and [Officer 4] texts and emails for sufficiency of searches please...*

*The QFTAC return advice was not in the release so please search.*

27. Three of the pages located by the Ombudsman<sup>48</sup> comprise emails between the Ombudsman and the Queensland Police Service relating to the 'QFTAC return advice' as raised by the applicant.<sup>49</sup> The Ombudsman's decision refused access to these pages in full; however on external review the Ombudsman agreed to disclose most of the 3 pages,<sup>50</sup> except for small portions of information on each of them.<sup>51</sup>

28. Regarding the searches that it conducted, the Ombudsman submitted:<sup>52</sup>

*[The RTI Coordinator] conducted a physical search on all of [the applicant's] complaint files (both electronic and paper). Where an equivalent paper file existed, [the RTI Coordinator] compared the contents to the electronic record to ensure all responsive documents were located.*

*[Officer 3] searched her own work email account for any emails relating to [the applicant]. [The RTI Coordinator] searched [Officer 2's] work email account for any emails relating to [the applicant]. As a result, a small number of emails ... were located.*

*[The RTI Coordinator] emailed ... the investigations team, and IT officers requesting them to search for emails in Mailbox Ombudsman and Mailbox Investigations relating to [the applicant]. A total of 96 emails were located by IT officers. [The RTI Coordinator] checked them all against what was already on the electronic case files and found that all had been saved to the case files. Therefore, no new emails were located in those mailboxes.*

29. Based on the above submission from the Ombudsman, I cannot identify any additional searches that could reasonably be conducted for *emails*.
30. In terms of *text messages*, the Ombudsman indicated that Officer 1 and Officer 3 do not have work issued mobiles. Assuming Officer 4 had a work issued mobile in the relevant period, I consider that, if she were to send text messages regarding the applicant to any Ombudsman officers, she would most likely send them to the officers involved in dealing with the applicant's complaints – that is, Officer 1 or Officer 3. However, this appears unlikely, both because Officers 1 and 3 do not have work issued mobiles, and also because the 474 pages located by the Ombudsman do not contain any information which points to the existence of any text messages sent or received by Officers 1, 3 or 4 or any other Ombudsman officers. Indeed, the 474 pages do not contain any information which points to any practice of communication by text among any Ombudsman officers. In

<sup>47</sup> Email dated 1 May 2019 at 3:02 pm.

<sup>48</sup> Pages 164-166 in File A.

<sup>49</sup> QFTAC is an acronym for the Queensland Fixated Threat Assessment Centre, which was implemented in 2013 and is based at the Queensland Police Service (QPS) Headquarters in Brisbane. QFTAC is a joint initiative between the QPS and the Queensland Forensic Mental Health Service that identifies fixated individuals through their abnormal communications with public office holders. QFTAC seeks to mitigate the risk posed by these individuals by linking them with mental health interventions and addressing other identified risk factors. See the *Police Communications Centre Mental Health Liaison Service Evaluation Report* (May 2016) at page 12 for further discussion: [https://www.qmhc.qld.gov.au/sites/default/files/evaluation\\_report\\_police\\_communications\\_centre\\_mental\\_health\\_liaison\\_service.pdf](https://www.qmhc.qld.gov.au/sites/default/files/evaluation_report_police_communications_centre_mental_health_liaison_service.pdf) accessed on 10 June 2020.

<sup>50</sup> Given the nature of information in the emails, the Ombudsman accepted my preliminary view that this information was not exempt information, as its disclosure could not reasonably be expected to prejudice a system or procedure for the protection of persons, property or the environment.

<sup>51</sup> Disclosure of these small portions of information would, in my opinion, be contrary to the public interest and have addressed this below under the heading 'Refusal of access: Contrary to the public interest'.

<sup>52</sup> Letter to OIC dated 3 June 2019.

these circumstances, I do not consider that there are reasonable grounds to request that the Ombudsman conduct further searches for text messages.

31. In the absence of independent evidence pointing to the existence of further documents, I am satisfied that all reasonable searches for documents responding to the access application, including text messages and emails, have been conducted, and that it is not necessary for any further searches to be conducted. On this basis, I find that access to further documents responsive to the access application may be refused on the ground that the documents sought are nonexistent or unlocatable.<sup>53</sup>

## **Irrelevant information**

### ***Relevant law***

32. Section 88 of the IP Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. This provision does not set out a ground for refusal of access. Rather, it provides a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>54</sup>

### ***Findings***

33. The Ombudsman deleted small portions of information on six pages<sup>55</sup> on the basis that they were irrelevant to the access application.
34. I am satisfied that one of these portions of information<sup>56</sup> comprises meeting agenda items about general matters that do not involve or relate to the applicant. Further, I am satisfied that the remaining portions of information constitute information about other individuals' complaints to the Ombudsman. These complaints are not mentioned in contexts where they are compared with the applicant's complaints; rather they are mentioned in separate contexts and solely relate to those other individuals.
35. As noted above,<sup>57</sup> the access application sought information relating to the applicant. Given the small portions of information on six pages in no way relate to the applicant and clearly fall outside the terms of the application, I find that they can be deleted from the copies of the documents released to the applicant.<sup>58</sup>

## **Legal professional privilege**

### ***Relevant law***

36. Access to a document may be refused where information is exempt.<sup>59</sup> Relevantly, information is exempt from disclosure if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>60</sup>

<sup>53</sup> Under section 67(1) of the IP Act and section 47(3)(e) and section 52 of the RTI Act.

<sup>54</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>55</sup> Parts of pages 252-253, 265-266 and 280-281 in File A. Note – some parts of pages 112 and 280 are addressed below under the heading 'Contrary to public interest'.

<sup>56</sup> On page 281 in File A.

<sup>57</sup> At paragraph 1.

<sup>58</sup> Under section 88 of the IP Act.

<sup>59</sup> Section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

<sup>60</sup> Schedule 3, section 7 of the RTI Act.



37. Legal professional privilege protects confidential communications between a lawyer and their client, made for the dominant purpose of:
  - seeking or giving legal advice or professional legal assistance (advice privilege), or
  - use in legal proceedings either on foot or reasonably anticipated, at the time of the relevant communication (litigation privilege).<sup>61</sup>
38. Legal professional privilege can extend to copies of non-privileged documents where they are attached to privileged communications,<sup>62</sup> and to internal client communications repeating legal advice, whether verbatim or in substance, or gathering information necessary in order to seek legal advice.<sup>63</sup>

### **Findings**

39. The Ombudsman's decision found that two pages were subject to legal professional privilege.<sup>64</sup>
40. The IP Act limits the extent to which I can describe these pages.<sup>65</sup> However, I can confirm that they constitute communications between staff of the Ombudsman and in-house legal counsel. On examination of these communications, I am satisfied that:
  - advice was sought or received from a suitably qualified and independent legal advisor
  - the dominant purpose of the communications was seeking and/or providing legal advice; and
  - there is no evidence indicating that the communications were not confidential or that the Ombudsman has otherwise waived privilege.
41. Given these considerations, I am satisfied that the two pages in issue are subject to legal professional privilege and therefore qualify as exempt information.<sup>66</sup> Accordingly, I find that access to the two pages may be refused.<sup>67</sup>
42. For sake of completeness I confirm that, when information is found to be exempt information, there is no scope under the legislation to consider public interest arguments because Parliament has decided that it would be contrary to the public interest to disclose exempt information.<sup>68</sup> Further, the Information Commissioner does not have the power to direct that access be given to information that is found to be exempt.<sup>69</sup>

### **Contrary to the public interest**

#### **Relevant law**

43. An agency may also refuse access to information where its disclosure would, on balance, be contrary to the public interest.<sup>70</sup> The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one

<sup>61</sup> *Esso Australia Resources Ltd v Commission of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552.

<sup>62</sup> *Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501.

<sup>63</sup> *Brambles Holdings v Trade Practices Commission* (No. 3) (1981) 58 FLR 452 at 458-459; *Komacha v Orange City Council* (Supreme Court of New South Wales, Rath J, 30 August 1979, unreported).

<sup>64</sup> Pages 219-220 in File A.

<sup>65</sup> Sections 121(1) and 123(7) of the IP Act.

<sup>66</sup> Under schedule 3, section 7 of the RTI Act.

<sup>67</sup> Under section 67(1) of the IP Act and section 47(3)(a) of the RTI Act.

<sup>68</sup> Section 48(2) of the RTI Act.

<sup>69</sup> Section 118(2) of the IP Act.

<sup>70</sup> Section 67(1) of the IP Act and section 47(3)(b) and 49 of the RTI Act.

which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.<sup>71</sup>

44. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>72</sup>
- 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.
45. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision. Additionally, I have kept in mind the RTI Act's pro-disclosure bias<sup>73</sup> and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.<sup>74</sup>

## Findings

46. The remaining information in issue consists of small portions of information on 234 pages.<sup>75</sup> Again, the IP Act limits the extent to which I can describe this information,<sup>76</sup> so my descriptions below are necessarily circumspect. However, I can confirm that these portions of information may be categorised as follows:
- **Category A information**—direct landline and work mobile numbers and direct email addresses of public service officers<sup>77</sup>
  - **Category B information**—names of non-managerial CCC staff who provided administrative assistance to other CCC officers<sup>78</sup> who dealt with the applicant's complaints<sup>79</sup>
  - **Category C information**—general pleasantries between public service officers (specifically, greetings and references to family members and leave arrangements)<sup>80</sup>
  - **Category D information**—thoughts and emotions of public service officers regarding the applicant's conduct<sup>81</sup>
  - **Category E information**—the name of another individual who made complaint/s to the Ombudsman, mentioned in comparison with the applicant<sup>82</sup>

<sup>71</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>72</sup> Section 49(3) of the RTI Act.

<sup>73</sup> Section 44 of the RTI Act.

<sup>74</sup> Section 47(2) of the RTI Act.

<sup>75</sup> Parts of pages 17-21, 24, 28-30, 32-34, 38-45, 52, 69-71, 73, 78, 82, 84, 86-87, 89-91, 93, 98-99, 101-102, 104-105, 112, 115, 117-118, 126-129, 142-151, 164-166, 194, 210-212, 245, 248, 264-265 and 280 in File A; and 8, 10-55, 57, 60-61, 73, 75-119, 121-166, 168-171, 173-183, 185-187 and 190-193 in File B.

<sup>76</sup> Sections 121(1) and 123(7) of the IP Act.

<sup>77</sup> Parts of pages 17-21, 24, 28-30, 32-34, 38-45, 52, 69-71, 73, 78, 82, 84, 86-87, 89-91, 93, 98-99, 101-102, 104-105, 112, 115, 117-118, 126-129, 146-151, 194, 210-212, 264 and 280 in File A; and parts of pages 8, 54-55, 57, 60, 73, 119, 165-166, 169, 171, 175-178, 186-187, 190-193 in File B. Note – some parts of pages 112 and 280 in File A are addressed above under the heading 'Irrelevant information'.

<sup>78</sup> Whose names are among the information released to the applicant by the Ombudsman.

<sup>79</sup> Parts of pages 82, 112 and 142-145 in File A; and parts of pages 10-53, 75-118, 121-164, 173-174, 175-177, 179-183 and 185 in File B. Note – the names of the managerial staff have been disclosed to the applicant.

<sup>80</sup> Parts of page 265 in File A.

<sup>81</sup> Parts of pages 245 and 248 in File A.

<sup>82</sup> Part of page 165 in File A. Note – other individuals' complaints to the Ombudsman, mentioned in separate contexts rather than in comparison with the applicant's complaints, are addressed above under the heading 'Irrelevant information'.

- **Category F information**—references to a large number of employees of various Government agencies who were the subjects of complaints made by the applicant that were dealt with by the Ombudsman;<sup>83</sup> and
- **Category G information**—the name of an individual that some of the applicant's complaints allege was a victim of crime.<sup>84</sup>

### Irrelevant factors

47. The Ombudsman submitted that:<sup>85</sup>

*Some of the documents were created by, or amended by the Deputy Ombudsman. Some of the documents record the opinions of or attribute opinions to the Deputy Ombudsman and/or other senior officers.*

48. An irrelevant factor arises where the person who created the document containing the information was or is of high seniority within the agency.<sup>86</sup> I have not taken this or any other irrelevant factors into account in reaching my decision.

### Factors favouring disclosure

49. The Category A to G information appears in documents about complaints made by the applicant that were dealt with by the Ombudsman. However, none of the Category A to G information comprises the applicant's personal information.<sup>87</sup> Accordingly, the factor favoring disclosure of an applicant's personal information<sup>88</sup> does not apply in relation to the Category A to F information.
50. Under the RTI Act, factors favouring disclosure arise where disclosure could reasonably be expected to enhance Government accountability or provide transparency around Government operations and decisions.<sup>89</sup>
51. The Category A to C information consists of direct contact details of public service officers; pleasantries in emails between public service officers; and the names of non-managerial staff who performed administrative tasks and had no input into decisions regarding the applicant's complaints. I am unable to identify how disclosure of such information would advance the accountability of the Ombudsman or CCC, or increase the applicant's understanding of how those agencies dealt with her complaints, much if at all. Accordingly, while I consider the above three factors are relevant regarding the Category A to C information, I am satisfied that they warrant no more than negligible weight.
52. The Category D and E information consist of two small portions of information setting out public service officers' sentiments regarding the applicant's conduct; and the mention of another complainant in comparison with the applicant. Noting the content of the surrounding information (which has been released to the applicant), I am satisfied that the observations recorded in the Category D and E information had little to no bearing on how the applicant's complaints were dealt with. Given this, I consider that disclosure of the Category D and E information would enhance accountability and transparency of

<sup>83</sup> Parts of pages 142-143 and 145 in File A; and parts of pages 8, 10-53, 61, 75-119, 121-164, 168, 170, 175-177, 179-183 and 185-187 in File B.

<sup>84</sup> Parts of pages 17, 30, 82, 95, 128, 141 and 179 in File B.

<sup>85</sup> As set out at page 3 of the decision.

<sup>86</sup> Schedule 4, part 1, item 4 of the RTI Act.

<sup>87</sup> 'Personal information' is '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' – see definition in schedule 5 of the RTI Act and section 12 of the IP Act.

<sup>88</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>89</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.8i

agency operations and decisions, but only by a small amount. I therefore give the above three factors low weight in relation to the Category D and E information.

53. The Category F and G information consist of references to various public servants who were the subjects of the applicant's complaints dealt with by the Ombudsman; and references to an individual the applicant considers to be a victim of crime. Necessarily, the various individuals who are the subjects of the applicant's complaints and the individual she considers to be a victim of crime are within her knowledge. I also note the extent of the surrounding information which has been released to applicant – that is, all surrounding information, except for small portions of Category A to E information appearing on the same pages. Given the information within the applicant's knowledge and the information that has been released to her, I am satisfied that disclosure of the Category F and G information would advance the above three factors, but only to a limited degree. Accordingly, with respect to the Category F and G information, I again consider that the above three factors should be afforded low weight.
54. Generally, the applicant's submissions express concern about the conduct of various Government agencies, including the Ombudsman and the CCC. I have therefore considered whether disclosure of the Category A to G information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official, or reveal or substantiate such deficiencies.<sup>90</sup>
55. As noted above, the information in Categories A to G consists of direct contact details, email pleasantries, the names of certain administrative support staff, two brief comments recording certain public servants' sentiments regarding the applicant's conduct, the name of another complainant as a point of comparison with the applicant, and references to the individuals identified in the applicant's complaints. I cannot see how disclosure of these types of information could reveal, or assist in revealing, any deficiencies in the conduct of the Ombudsman or the CCC, or any other Government agencies. On this basis, I find that these two factors are not relevant with respect to the Category A to G information.
56. The applicant has also submitted that all information should be released to her '*in light of current prosecutions against your agency and the subject agency*'.<sup>91</sup> Given these submissions, I have considered whether disclosure of the Category A to G information could reasonably be expected to contribute to the administration of justice for a person.<sup>92</sup>
57. Consideration of this factor requires, in part, examination of whether disclosure of the information in issue '*would assist the applicant to pursue [a] remedy, or to evaluate whether a remedy is available, or worth pursuing*'.<sup>93</sup> Usually, such consideration precedes any pursuit of a legal remedy by the applicant. Here, however, the applicant refers to '*current prosecutions*'. Given this, I am unable to identify how disclosure of the Category A to G information could reasonably be expected to contribute to the administration of justice in the sense generally contemplated in *Willsford*.<sup>94</sup>
58. It is my understanding that the applicant considers that disclosure of the refused information will contribute to the administration of justice for her, in the sense of assisting her to advance her position in the proceedings that she has already commenced. Having carefully examined the Category A to G information, I consider it unlikely that any of it would assist the applicant in such proceedings. Regardless, I consider it relevant to note

<sup>90</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>91</sup> Email dated 23 May 2020.

<sup>92</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>93</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 (**Willsford**) at [17](c).

<sup>94</sup> *Ibid.*

that in any proceedings commenced by the applicant, relevant disclosure processes are available to her. Given the availability of these disclosure mechanisms, and also noting that '[t]he RTI Act was not ... designed to serve as an adjunct to court processes',<sup>95</sup> I am unable to conclude that disclosure of the Category A to G information could reasonably be expected to contribute to the administration of justice for the applicant in the sense raised in the applicant's submissions.

59. The applicant's submissions also contend that various agencies have not treated her fairly. I have therefore considered whether disclosure of the Category A to G information could reasonably be expected to advance the fair treatment of the applicant in her dealings with agencies, or contribute to the administration of justice generally for her.<sup>96</sup>
60. I cannot see how the disclosure of direct contact details, email pleasantries or the names of certain administrative support staff could advance the fair treatment of the applicant, or contribute to procedural fairness for her. I am therefore satisfied that the fair treatment and general administration of justice factors do not apply to the Category A to C information.
61. In terms of the public servants' thoughts and emotions about the applicant's conduct and the name of another complainant as a point of comparison with the applicant, I note that one of the fundamental requirements of procedural fairness is an unbiased decision-maker. In this regard, the applicant may consider that the observations in the Category D and E information constitute evidence of bias against her. However, the contexts in which these observations appear (specifically, the surrounding information which has been released to the applicant) indicate that the observations had little, if any, impact on the manner in which the applicant's complaints were dealt with. Given these considerations, I afford the fair treatment and general administration of justice factors low weight with respect to the Category D and E information.
62. The other fundamental requirement of procedural fairness is a fair hearing. This requirement is relevant when it comes to considering whether disclosure of Category F and G information could advance fair treatment or procedural fairness for the applicant. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it.<sup>97</sup> Here, however, the applicant is the complainant, and the information in Categories F and G refers to the subjects of her complaints and an individual she considers to be a victim of crime. In these circumstances, I find that the fair treatment and procedural fairness factors are not relevant with respect to the Category F and G information. However, if I am wrong in this regard and either or both of these factors are applicable, I am satisfied that they warrant no more than low weight, in light of the information within the applicant's knowledge regarding the subjects of her complaints and the alleged victim of crime, and given the extensive amount of information surrounding the Category F and G information released to her.
63. I can identify no further public interest considerations telling in favour of disclosure of the Category A to G information, in schedule 4, part 2 of the RTI Act or otherwise.<sup>98</sup> For example, noting the nature of the types of information that constitute the Category A to G information, I cannot identify how disclosure could reasonably be expected to contribute to a debate on important issues or matters or serious interest,<sup>99</sup> contribute to

<sup>95</sup> *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24].

<sup>96</sup> Schedule 4, part 2, items 10 and 16 of the RTI Act.

<sup>97</sup> *Kioa v West* (1985) 159 CLR 550 at 584 per Mason J.

<sup>98</sup> Noting that the factors in schedule 4, including part 2, are not exhaustive – section 47(3)(b) of the RTI Act.

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

the enforcement of the criminal law,<sup>100</sup> or reveal that any of the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>101</sup>

### Factors favouring nondisclosure

64. As mentioned above, none of the Category A to G information comprises the applicant's personal information. The Category A to G information solely comprises the personal information of third parties.
65. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>102</sup> and that a further factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>103</sup> The concept of privacy is not defined in the IP Act or RTI Act, but it can be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others.<sup>104</sup>
66. In terms of the Category A and C information – that is, direct contact details of public service officers and the names of certain administrative support staff – I am satisfied that these types of information constitute routine personal work information. Given their routine and generally innocuous nature, while I consider that the harm factor applies, I attribute it negligible weight only.
67. In terms of the privacy factor, I have taken note of the specific context of the Category A and C information within a series of complaints arising from the applicant's concerns across multiple agencies and individuals. I have also noted that both the released information and the applicant's submissions indicate that the applicant frequently attempts to engage particular public service officers with her concerns in a manner that becomes increasingly agitated, accusatory and derogatory when they fail to agree with her. I also note that disclosure of the Category A information would allow officers to be contacted directly and/or outside of work hours. In these particular circumstances, I am satisfied that disclosure could reasonably be expected to cause a moderate level of prejudice to the right of the individuals in question to preserve their personal spheres free from interference. Therefore, I afford the privacy factor moderate weight with respect to the Category A and C information.
68. The Category B information – that is, email pleasantries between public servants – is not wholly related to routine day to day work duties and responsibilities, but rather, falls within the relevant public servants' personal spheres. Given this, the Category B information does not, in my opinion, constitute routine personal work information. Taking into account the private yet relatively prosaic nature of this information, I attribute moderate weight to both the harm factor and the privacy factor.
69. For the Category D information – that is, two small portions of information setting out public service officers' sentiments regarding the applicant's conduct – again, I am satisfied that this information is not wholly related to their routine day to day work duties and responsibilities. Rather, the thoughts and emotions fall within the relevant public servant's personal spheres and, given their relatively sensitive nature, I consider that the above two factors apply and warrant moderate to significant weight.

<sup>100</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>101</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>102</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>103</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>104</sup> *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22] 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 paragraph 1.56. The report is available at [https://www.alrc.gov.au/wp-content/uploads/2019/08/108\\_vol1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf).

70. In terms of the Category E information – that is, the name of another individual who made complaint/s to the Ombudsman, mentioned in comparison with the applicant – this information refers to a private individual. I consider that disclosure of this name would impinge on the personal sphere of the individual concerned to a significant extent, particularly given the Ombudsman's concerns inherent in the surrounding information which has already been released to the applicant. Consequently, I am satisfied that the privacy and personal information factors apply, and each warrant significant weight.
71. The Category G information consists of the name of a private individual cited in some of the applicant's complaints as a victim of crime. Although the applicant provided this name to the Ombudsman, and is consequently aware of it, I am satisfied that its disclosure, particularly in the context of the surrounding information which has been released by the Ombudsman, would substantially impinge on the relevant individual's private sphere. I consider that both of the above factors are applicable, and give each factor significant weight.
72. Finally, I will address the Category F information. This information comprises the names of, and other references to, a large number of employees of various Government agencies who were the subjects of complaints made by the applicant that were dealt with by the Ombudsman. While this information relates to public service officers, the fact that it relates to allegations of misconduct about them means that it is not routine personal work information. Again, although the subjects of the applicant's complaints are within her knowledge, I am satisfied that disclosure of Category F information, particularly in the context of the surrounding released information, would impinge on the relevant public servants' private spheres to a significant degree. Given this, I consider that the above two factors apply, and that each should be given significant weight.
73. Under the RTI Act, a further factor favouring nondisclosure arises where disclosure could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.<sup>105</sup> The Category F information connects specific public servants to allegations of misconduct made by the applicant. Based on the material before me, it is my understanding that these allegations are unsubstantiated. In these circumstances, I consider that this factor warrants significant weight with respect to the Category F information.

### **Balancing the public interest**

74. I have considered the pro-disclosure bias in deciding access to information.<sup>106</sup>
75. For the Category A, B and C information – I consider that the accountability and transparency factors warrant negligible weight. On the other hand, I consider that the privacy factor should be given moderate weight. I also give the personal information harm factor moderate weight for the Category B information, however for the Category A and C information, I afford this harm factor negligible weight. On balance, for all three categories of information, I find that the factors favouring nondisclosure outweigh those favouring disclosure.
76. For the Category D and E information – I give the accountability and transparency factors low weight, and also give the fair treatment and general administration of justice factors low weight. In contrast, I consider that the personal information harm factor and privacy

<sup>105</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>106</sup> Section 44 of the RTI Act.

factor should be attributed moderate to significant weight. I therefore find that the factors favouring nondisclosure outweigh those favouring disclosure.

77. For the Category F and G information – I consider that the accountability and transparency factors warrant low weight, and give the fair treatment and general administration of justice factors low to no weight. Conversely, I give personal information harm factor and privacy factor significant weight. Also, for the Category F information, I give the unsubstantiated allegations factor significant weight. Therefore, I find that the factors favouring nondisclosure outweigh those favouring disclosure regarding both the Category F and G information.
78. In summary, on balance, I consider the nondisclosure factors outweigh the disclosure factors in relation to all seven categories of information. Accordingly, I find that access to the parts of 234 pages that constitute the Category A to G information may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.<sup>107</sup>

## DECISION

79. For the reasons set out above, I vary the Ombudsman's decision and find that:
- access to further documents responsive to the access application may be refused on the ground that such documents are nonexistent or unlocatable<sup>108</sup>
  - parts of 6 pages are not relevant to the access application and therefore may be deleted<sup>109</sup>
  - access to 2 pages may be refused on the ground that they comprise exempt information, namely information subject to legal professional privilege;<sup>110</sup> and
  - access to parts of 234 pages may be refused on the ground that disclosure of this information would, on balance, be contrary to the public interest.<sup>111</sup>
80. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**A Rickard**  
**Assistant Information Commissioner**

**Date: 11 June 2020**

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<sup>107</sup> Under section 67(1) of the IP Act and section 47(3)(b) and 49 of the RTI Act.

<sup>108</sup> Section 67(1) of the IP Act and section 47(3)(e) of the RTI Act.

<sup>109</sup> Section 88(2) of the IP Act.

<sup>110</sup> Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 7(1) of the RTI Act.

<sup>111</sup> Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.



## APPENDIX

### Significant procedural steps

Date	Event
1 May 2019	OIC received the applicant's application for external review. OIC received emailed submissions from the applicant.
2 May 2019	OIC notified the Ombudsman that the application for external review had been received and requested procedural documents. OIC received some of the requested documents from the Ombudsman.
3 May 2019	OIC received emailed submissions from the applicant.
7 May 2019	OIC notified the applicant that the application for external review had been received.
9 May 2019	OIC received the remaining requested documents from the Ombudsman.
29 May 2019	OIC advised the Ombudsman and the applicant that the external review application had been accepted, and requested a copy of the following from the Ombudsman: <ul style="list-style-type: none"> <li>the documents located</li> <li>any correspondence with consulted third parties; and</li> <li>any records of the searches conducted.</li> </ul>
3 June 2019	OIC received the requested documents and a submission from the Ombudsman.
26 August 2019	OIC received emailed submissions from the applicant.
27 August 2019	OIC received emailed submissions from the applicant.
28 August 2019	OIC received two emailed submissions from the applicant.
5 September 2019	OIC received emailed submissions from the applicant.
11 September 2019	OIC received emailed submissions from the applicant. OIC received a verbal submission from the Ombudsman.
19 September 2019	OIC conveyed a written preliminary view to the applicant. OIC received two emailed submissions from the applicant.
21 September 2019	OIC received emailed submissions from the applicant.
25 September 2019	OIC wrote to the applicant about this external review and other external reviews sought by her.
26 September 2019	OIC received emailed submissions from the applicant.
8 November 2019	OIC wrote to the Ombudsman about the external review.
30 January 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
6 February 2020	OIC received correspondence from the Ombudsman about an issue relevant to the external review.
7 February 2020	OIC requested submissions from the Ombudsman about File B.
27 February 2020	OIC received emailed submissions from the Ombudsman. OIC received emailed submissions from the applicant.

Date	Event
3 March 2020	By telephone, OIC conveyed a brief preliminary view to the Ombudsman, and the Ombudsman advised that it accepted this view.
4 March 2020	OIC conveyed a written preliminary view to the applicant. <sup>112</sup> OIC requested that the Ombudsman release parts of File B to the applicant in accordance with its submissions of 27 February 2020 and OIC's preliminary view of 3 March 2020.
5 March 2020	OIC received two emailed submissions from the applicant.
6 March 2020	OIC received confirmation from the Ombudsman that it had released parts of File B to the applicant.
9 March 2020	OIC received emailed submissions from the applicant.
11 March 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
12 March 2020	OIC received emailed submissions from the applicant.
15 April 2020	OIC conveyed a written preliminary view to the Ombudsman and consulted with the CCC as a third party regarding disclosure of further information.
29 April 2020	The CCC advised OIC that it did not object to disclosure of further information.
30 April 2020	The Ombudsman advised OIC that it accepted the preliminary view about the disclosure of further information.
1 May 2020	OIC wrote to the Ombudsman and asked it to release the further information to the applicant. OIC wrote to the applicant to advise her that the Ombudsman would release the further information to her. OIC received confirmation from the Ombudsman that it had released the further information.
8 May 2020	OIC conveyed a written preliminary view to the Ombudsman regarding disclosure of further information.
14 May 2020	The Ombudsman advised OIC that it accepted the preliminary view about the disclosure of further information.
22 May 2020	OIC wrote to the Ombudsman and asked it to release the further information to the applicant. OIC wrote to the applicant to advise her that the Ombudsman would release the further information to her, and to reiterate OIC's preliminary view regarding the remaining information in issue. OIC received emailed submissions from the applicant.
23 May 2020	OIC received emailed submissions from the applicant.
27 May 2020	OIC received confirmation from the Ombudsman that it had released the further information.
1 June 2020	OIC wrote to the applicant about this external review and other external reviews sought by her.
2 June 2020	OIC received emailed submissions from the applicant.

<sup>112</sup> The email that conveyed this preliminary view as an attachment was erroneously sent twice to the applicant – at 4:43pm and then again at 4:54pm (AEST). The applicant was informed of this error on 5 March 2020.