



Decision and Reasons for Decision

Citation: *WJA Trading Pty Ltd and Office of Industrial Relations; R97 (Third Party) [2023] QICmr 12 (15 March 2023)*

Application Number: 316519

Applicant: WJA Trading Pty Ltd (ACN 640 053 827)

Respondent: Office of Industrial Relations

Third Party: R97

Decision Date: 15 March 2023

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - CONTRARY TO THE PUBLIC INTEREST - documents related to notices issued to applicant by agency - whether disclosure would prejudice business affairs - whether disclosure would prejudice an individual's right to privacy - whether disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - documents related to notices issued to applicant by agency - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - whether disclosure could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case - whether disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law - whether exempt - sections 47(3)(a) and 48 and schedule 3, sections 10(1)(d), 10(1)(e) and 10(1)(f) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The **Access Applicant**, being the Third Party to this decision, made an **Access Application** under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Office of Industrial Relations (**OIR**) seeking:

Notices issued by OIR staff regarding the incident [reference number] relating to spray drift. Entities involved: WJA Trading Pty Ltd and [name of another entity] (WHS unit: Agriculture unit Maroochydore) dated October 2019 to 16 July 2021.¹

2. OIR located 19 pages in response to the Access Application.
3. While processing the application, OIR consulted with WJA Trading Pty Ltd (**ER Applicant**) as a relevant third party under section 37 of the RTI Act. The ER Applicant objected to the disclosure of all information located by OIR. After considering these objections, Council decided to release 10 full pages and 9 part pages² to the Access Applicant.³
4. The ER Applicant applied for internal review of OIR's decision,⁴ and OIR affirmed its original decision upon internal review.⁵
5. The ER Applicant then applied⁶ to the Office of the Information Commissioner (**OIC**) for external review of OIR's internal review decision to disclose information contrary to the ER Applicant's objections.
6. For the reasons set out below, I affirm OIR's decision and find that there is no basis under the RTI Act to refuse access to the information remaining in issue.

Background

7. The ER Applicant operates a farming property. The Access Applicant's property is located in the same vicinity.
8. Significant procedural steps in this external review are set out in the Appendix.

Reviewable decision and evidence considered

9. The decision under review is OIR's internal review decision dated 8 December 2021.
10. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and the Appendix).
11. The *Human Rights Act 2019* (Qld) (**HR Act**) affords human rights to individuals in Queensland. In this case, the ER Applicant is a corporation but the Access Applicant (who is a participant in this review) is an individual. President Kingham in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors*⁷ indicated that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and not to act or make a decision that is not compatible with human rights. As such, I have taken into account that the Access Applicant is an individual with human rights. I also note Bell J's observations in *XYZ v Victoria Police (General)*⁸ on the interaction

¹ The access application is dated 16 July 2021. The Access Applicant subsequently agreed to narrow the scope of the access application in correspondence with OIR dated 26 August 2021.

² Access to some information on pages 1, 4, 7, 8, 11, 12, 14, 15 and 17 of the 19 pages was refused on the grounds that, on balance, disclosure would be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.

³ OIR's decision dated 13 October 2021.

⁴ Internal review application dated 10 November 2021 (**IR Application**).

⁵ Internal review decision dated 8 December 2021.

⁶ External review application dated 4 January 2022 (**ER Application**).

⁷ [2020] QLC 33 at [90].

⁸ [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573].

between the Victorian analogues of Queensland's RTI Act and HR Act⁹ *'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.'* In observing and applying the law prescribed in the RTI Act, as I have done in this case, I am *'respecting and acting compatibly with'* applicable human rights as stated in the HR Act.¹⁰

Information in issue

12. During the course of the review, OIC conveyed the preliminary view¹¹ that six of the 19 pages¹² OIR had identified as responsive to the Access Application were out of scope of the Access Application. The Access Applicant and OIR accepted this view and the Access Applicant confirmed they continued to seek access to the remaining information.
13. As such, 6 full pages and 7 part pages¹³ remain in issue in this external review. These comprise information appearing in improvement notices issued by OIR to the ER Applicant regarding spray drift (**Improvement Notices**).

Onus

14. As the decision under review is a disclosure decision,¹⁴ the ER Applicant bears the onus of establishing that a decision not to disclose the Improvement Notices is justified or that the Information Commissioner should give a decision adverse to the Access Applicant.¹⁵

Issues for determination

15. Under the RTI Act, a person has a right to be given access to documents of an agency.¹⁶ However, this right is subject to provisions of the RTI Act, including the grounds on which an agency may refuse access to documents. Relevantly, an agency may refuse access to exempt information¹⁷ or to information the disclosure of which would, on balance, be contrary to the public interest.¹⁸
16. The ER Applicant provided OIC with a number of submissions regarding grounds for refusal of access to the Improvement Notices. In summary, the ER Applicant submits:
 - the Improvement Notices comprise exempt information, on the basis that disclosure could reasonably be expected to:
 - result in a person being subjected to a serious act of harassment or intimidation¹⁹
 - prejudice a person's fair trial or the impartial adjudication of a case;²⁰ or

⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁰ XYZ at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹¹ Dated 25 January 2022.

¹² Pages 1-3 and 17-19 of the 19 pages.

¹³ Pages 4-16 of the 19 pages. As noted at footnote 2 above, access to some information on pages 4, 7, 8, 11, 12, 14 and 15 of the 19 pages was refused. These redactions are consistent with the ER Applicant's view that all information should be refused. The Access Applicant did not seek review of them.

¹⁴ *'Disclosure decision'* is defined in section 87(3) of the RTI Act as *'a decision to disclose a document or information contrary to the views of a relevant third party obtained under section 37'* of the RTI Act.

¹⁵ Section 87(2) of the RTI Act.

¹⁶ Section 23 of the RTI Act.

¹⁷ Pursuant to sections 47(3)(a) and 48 of the RTI Act.

¹⁸ Pursuant to sections 47(3)(b) and 49 of the RTI Act.

¹⁹ Schedule 3, section 10(1)(d) of the RTI Act.

²⁰ Schedule 3, section 10(1)(e) of the RTI Act.

- prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law);²¹ or
 - disclosing the Improvement Notices would, on balance, be contrary to the public interest.
17. Accordingly, the first issue for me to determine is whether access to the Improvement Notices may be refused on the ground that they are exempt information; and the second issue for me to determine is whether access to the Improvement Notices may be refused on the ground that, on balance, their disclosure would be contrary to the public interest.²²
18. The ER Applicant has also raised concerns²³ about:
- OIR's handling of personal information
 - the process which led to the issue of improvement notices and the content of those notices; and
 - the conduct of individuals.
19. OIC has informed the ER Applicant²⁴ that OIC's jurisdiction in this review does not extend to investigating or addressing concerns of these types; rather, it is limited to reviewing OIR's decision to disclose the Improvement Notices under the RTI Act.²⁵ To the extent the ER Applicant's submissions in this respect are relevant to the issues for determination, I have addressed them below.

Exemptions raised by the ER Applicant

Serious act of harassment or intimidation

20. The RTI Act provides that information is exempt information if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.²⁶
21. For this exemption to apply, I must be satisfied that:
- there is a reasonable expectation²⁷ of harassment and intimidation arising as a result of disclosure, rather than from other circumstances; and
 - the expected harassment or intimidation is serious in nature.²⁸
22. Factors that might be relevant in considering whether harassment and intimidation could reasonably be expected to occur include, but are not limited to:
- past conduct or a pattern of previous conduct

²¹ Schedule 3, section 10(1)(f) of the RTI Act.

²² *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149 at [15]-[16].

²³ IR Application, extracted in ER Application; ER Applicant's submissions dated 6 September 2022.

²⁴ In the fourth preliminary view to the ER Applicant dated 6 October 2022.

²⁵ Fourth preliminary view to the ER Applicant dated 6 October 2022.

²⁶ Schedule 3, section 10(1)(d) of the RTI Act.

²⁷ The term '*could reasonably be expected to*' requires that the expectation is reasonably based and that it is neither irrational, absurd or ridiculous, nor merely a possibility; *6ZJ3HG and Department of Environment and Heritage Protection; OY76VY (Third Party)* [2016] QICmr 8 (24 February 2016) (**6ZJ3HG**) at [30].

²⁸ *6ZJ3HG* at [29], citing *Watson v Office of the Information Commissioner Queensland & Ors* [2015] QCATA 095 (**Watson**); *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [191]; *Murphy and Treasury Department* (1995) 2 QAR 744 at [54]; *Seven Network (Operations) Limited and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at [19].

- the nature of the information in issue
 - the nature of the relationship between the relevant parties; and
 - relevant contextual and or cultural factors.²⁹
23. The ER Applicant's submissions outline the following examples of past conduct by the Access Applicant and associate/s of the Access Applicant which, in its submission, give rise to a reasonable expectation of further harassment and intimidation:³⁰
- harassment, threats, verbal abuse and physical intimidation
 - *'constant surveillance'* of certain individuals and their property
 - *'repeated malicious and vexatious complaints'* to several government departments and local governments from 2019 to 2022;³¹ and
 - *'ongoing repeated litigation actions as recent as 2022'*.
24. The ER Applicant's submissions also state:
- it has taken certain steps regarding harassment, intimidation and threats
 - it has *'spent every day over the last three years vigorously defending [its] farming practices against malicious and vexatious complaints with no relief and significant cost'*
 - it believes that the *'[i]n excess of 216 photos and in excess of 319 video files'* held by OIR were taken from the Access Applicant's property³²
 - individuals involved with the ER Applicant fear for their safety
 - it is concerned disclosure would lead to individuals *'being subjected to continuous acts of harassment and intimidation'*, an *'escalation of a matter unnecessarily'*, and *'repeated litigation actions and increased harassment and intimidation'*; and
 - the Access Applicant has informed the ER Applicant that the Access Applicant intends to take legal action against the ER Applicant and/or individuals involved with the ER Applicant, and that the Access Applicant is seeking to obtain the Improvement Notices to *'build a case'*.
25. Insofar as the ER Applicant makes submissions about conduct described as harassment, threats, verbal abuse, physical intimidation and surveillance:
- I note that it appears there is a pre-existing acrimonious relationship between the ER Applicant and certain other individuals regarding the ER Applicant's farming practices. I further note that, on careful consideration of the Improvements Notices themselves, it is reasonable to conclude that the information they contain is relatively benign and the enforcement actions they refer to are relatively low level.
 - Taking these matters into account, even if I were to accept the entirety of the ER Applicant's submissions regarding past conduct, I do not consider there would be the required correlation or nexus between disclosing the Improvement Notices and a reoccurrence of harassment, threats, verbal abuse, physical intimidation

²⁹ 6ZJ3HG at [31], citing *Sheridan* at [193] and *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) at [19].

³⁰ ER Application; ER Applicant's submissions dated 9 February 2022, 4 August 2022 and 6 September 2022.

³¹ In its IR Application, extracted in the ER Application, the ER Applicant refers to *'approximately 20 contacts with WHS and other department [sic] up to present date'*. The ER Applicant also submits these complaints are for the purpose of closing down its business; ER Applicant's email to OIR dated 5 October 2021, extracted in the ER Application.

³² In this regard, the ER Applicant has provided a copy of correspondence from OIR dated 22 April 2022 in relation to a previous access application seeking documents relating to the same incident, in which OIR stated it had identified *'[i]n excess of 216 photos and in excess of 139 video files'* as responsive to that access application.

and surveillance which is required for the exemption to apply. I am not satisfied the evidence before me shows that any further conduct of this nature would occur as a result of disclosure of the Improvement Notices, rather than independently or from any other circumstances.³³ I consider that conduct of the type raised in the ER Applicant's submissions may, in all likelihood, occur or reoccur regardless of whether or not the Improvement Notices are disclosed.³⁴

- I also observe that, while the ER Applicant's submissions provide some information about conduct that could, if accepted, properly be characterised as harassment and intimidation, it is somewhat difficult given the limited material before me to conclude that such conduct amounts to *serious* harassment or intimidation, in the sense required for this exemption to apply.³⁵ I acknowledge that the ER Applicant's submissions convey some distress and frustration, but I am not satisfied the ER Applicant has met its onus in this review of establishing that such conduct is sufficiently weighty, critical or concerning to meet the legal threshold to amount to serious harassment or intimidation for the purpose of the exemption.

26. Insofar as the ER Applicant submits that the Access Applicant seeks access to the Improvement Notices to '*build a case*' and has communicated an intention to take legal action:

- I accept that legal action may occur and could be considered as, at least in part, arising as a result of disclosing the Improvement Notices.
- It is not my role to evaluate the merits of potential legal proceedings that may arise out of circumstances related to information in issue on external review.³⁶ The question for me is whether such legal action (in whatever form this may take) could be properly categorised as serious harassment or intimidation. I am not satisfied that the ER Applicant has fulfilled its onus of establishing that such legal action would constitute harassment and intimidation, serious or otherwise.
- The ER Applicant has, in its submissions,³⁷ identified a previous decision of the Information Commissioner in which repeated litigation actions were found to amount to a serious act of harassment or intimidation in the sense required for schedule 3, section 10(1)(d) of the RTI Act. In *Toogood*, the Information Commissioner found that the exemption applied where the applicants in that case had engaged in a pattern of hostile communications, complaints and voluminous threats of legal action. In relation to this pattern of behaviour, the Information Commissioner stated:³⁸

Having considered the nature of the applicants' complaints and threats of legal action, I am satisfied that a great number of these matters are unsubstantiated, lack substance or are otherwise unreasonable. The allegations concern a very large number of individuals and entities, and a wide range of matters such as corruption, breaches of the Competition and Consumer Act 2010 (Cth), breach of copyright, perjury and littering. When the nature of these complaints and threats are considered, along with the volume and breadth of these matters, and the extent of

³³ *Watson* at [19].

³⁴ *6ZJ3HG* at [37]-[38].

³⁵ The use of the word '*serious*' in schedule 3, section 10(1)(d) of the RTI Act indicates Parliament's intention, when passing this provision, that some degree of low level harassment or intimidation would be tolerated before the exemption could be invoked; *Toogood and Cassowary Coast Regional Council* [2018] QICmr 13 (22 March 2018) (*Toogood*) at [18].

³⁶ *Toogood* at [22].

³⁷ ER Applicant's submissions dated 9 February 2022 and 4 August 2022.

³⁸ *Toogood* at [23].

correspondence and social media communications generated by the applicants, I am satisfied that applicants have engaged in a pattern of unreasonable behaviour that 'persistently disturbs' and 'torments' Council, certain Council officers and third parties.

- I do not consider the complaints or threatened legal action to which the ER Applicant refers can be considered '*unsubstantiated*', '*lacking in substance*' or '*otherwise unreasonable*' in the sense described by the Information Commissioner in *Toogood*.³⁹ I accept that the ER Applicant has vigorously defended complaints made against it and considers these complaints to be malicious and vexatious. However, as mentioned above, it is not my role to evaluate every complaint and legal proceeding brought or threatened against the ER Applicant.⁴⁰ The information before me does not indicate that the OIR determined that the complaints to which the Improvement Notices relate were unfounded, nor that any of the government agencies receiving these complaints determined that they were malicious or vexatious. Accordingly, on the evidence before me, I do not consider the history of complaints, or the fact of the Access Applicant having allegedly communicated an intention to take legal action, gives rise to a reasonable expectation that disclosure would result in a serious act of harassment or intimidation.
27. I also do not consider that the fact OIR hold on record a number of photo and video files relating to the incident to be a serious act of harassment or intimidation, or an indicator that serious acts of harassment or intimidation could reasonably be expected to occur. In this respect, I note the 22 April 2021 letter from OIR to which the ER Applicant refers indicates that these files were not solely provided by third parties, but included photographs and videos taken by '*the inspector*' and individuals associated with the ER Applicant. To the extent the referenced photos and videos include those provided by third parties, on the information before me, I do not consider that a party providing documentary evidence supporting a complaint about contraventions of the *Work Health and Safety Act 2011* (Qld) (**WHS Act**) on its face constitutes a serious act of harassment or intimidation.
28. The ER Applicant also cites a recent violent incident involving farming families which was reported in the media in support of its concerns for the safety of individuals and the potential escalation of a dispute.⁴¹ I do not consider that this incident, involving individuals unrelated to the ER Applicant and Access Applicant, has any bearing on the question in this review regarding whether serious harassment or intimidation could reasonably be expected to result from disclosure of the Improvement Notices.
29. In conclusion, having carefully considered all material before me, I cannot conclude that disclosure of the Improvement Notices could reasonably be expected to result in a person being subjected to serious act of harassment or intimidation. Accordingly, I am not satisfied that these Notices are exempt information under schedule 3, section 10(1)(d) of the RTI Act.

Other exemptions raised

30. The ER Applicant has also referenced schedule 3, sections 10(1)(e) and 10(1)(f) of the RTI Act in its submissions to OIC that access to the Improvement Notices should be refused.⁴² These sections provide that information is exempt information if its disclosure could reasonably be expected to:

³⁹ Ibid.

⁴⁰ Ibid at [22].

⁴¹ ER Applicant's submissions dated 6 September 2022.

⁴² ER Applicant's submissions dated 4 August 2022.

- prejudice a person's fair trial or the impartial adjudication of a case;⁴³ or
 - prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law).⁴⁴
31. For the exemption at schedule 3, section 10(1)(e) of the RTI Act to apply, there must be a particular criminal proceeding or case to be adjudicated which would be impacted by disclosing the information in issue.⁴⁵ I am unaware of, and the ER Applicant has not identified,⁴⁶ any such proceedings or case to which it submits prejudice would occur if the Improvement Notices were disclosed. Even if there were proceedings currently on foot or a case to be adjudicated, I am unable to identify⁴⁷ the nature and extent of the anticipated prejudice to those processes that would result from disclosure.⁴⁸
32. For information to be exempt under schedule 3, section 10(1)(f) of the RTI Act, there must be '*an identifiable method or procedure*' used by the agency for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.⁴⁹ On the information before me, I am unable to identify, and the ER Applicant has not identified,⁵⁰ any method or procedure which would be impacted by disclosure of the Improvement Notices.
33. Accordingly, I am not satisfied that the Improvement Notices are exempt information under schedule 3, sections 10(1)(e) or 10(1)(f) of the RTI Act.

Public interest balancing test

34. In assessing whether disclosure of information would, on balance be contrary to the public interest, a decision maker must:⁵¹
- identify factors that are irrelevant to determining the public interest and disregard them
 - identify factors favouring disclosure of the information
 - identify factors favouring nondisclosure of the information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
35. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant to determining where the balance of public interest lies in a particular case. I have considered these factors, together with all relevant information, in reaching my decision.⁵² I have also kept in mind the RTI Act's pro-disclosure bias.⁵³

⁴³ Schedule 3, section 10(1)(e) of the RTI Act.

⁴⁴ Schedule 3, section 10(1)(f) of the RTI Act.

⁴⁵ *Campbell and North Burnett Regional Council; Melior Resources Incorporated (Third Party)* [2016] QICmr 4 (29 January 2016) (**Campbell**) at [25]-[26].

⁴⁶ OIC noted this in the third preliminary view to the ER Applicant dated 23 August 2022.

⁴⁷ The ER Applicant has also not identified the nature of the claimed prejudice, or how it considers disclosure would result in the claimed prejudice. OIC noted this in the third preliminary view to the ER Applicant dated 23 August 2022.

⁴⁸ *Campbell* at [27].

⁴⁹ *The Gold Coast Bulletin and Department of Police* (Unreported, Queensland Information Commissioner, 23 December 2010) at [10] and [15].

⁵⁰ OIC noted this in the third preliminary view to the ER Applicant dated 23 August 2022.

⁵¹ Section 49(3) of the RTI Act.

⁵² I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below.

⁵³ Section 44 of the RTI Act.

Irrelevant factors

36. The ER Applicant has raised concerns that:

- access to the Improvement Notices is being sought by a party '*not acting in the "Public Interest" rather in a personal capacity to frustrate, intimidate and harass...*' and as a '*ruse method to try and validate evidence of spray drift that does not exist*';⁵⁴ and
- the '*release of "piecemeal notices" of a much broader investigation across multiple agencies with multiple responses would only lead to mis-interpretation by the public and not serve in the public's interest...*'.⁵⁵

37. The RTI Act does not require access applicants to supply reasons for making an access request.⁵⁶ It is well settled that an applicant's motives for requesting information are irrelevant to a consideration as to whether access should be granted to requested information.⁵⁷ The RTI Act also states that the fact that disclosure could reasonably be expected to result in the applicant misunderstanding or misinterpreting the information is irrelevant to determining the public interest.⁵⁸

38. I have not taken into account the above matters, or any other irrelevant factors, in making this decision.

Factors favouring disclosure

39. The RTI Act sets out factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability⁵⁹
- inform the community of the government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community⁶⁰
- reveal the reason for a government decision and any background or contextual information that informed the decision;⁶¹ and
- reveal environmental or health risks or measures relating to public health and safety.⁶²

40. The ER Applicant submits that '*release is unnecessary*' because the investigation to which the Improvement Notices relate has been closed⁶³ and the notices complied with.⁶⁴ Even so, I consider that release of the Improvement Notices would reveal the

⁵⁴ ER Applicant's submissions dated 6 September 2022; see also ER Applicant's email to OIR dated 5 October 2021, extracted in the ER Application.

⁵⁵ ER Applicant's submissions dated 6 September 2022; see also IR Application, extracted in ER Application.

⁵⁶ I note also that the RTI Act operates with a pro-disclosure bias: see section 44 of the RTI Act.

⁵⁷ *Rylsey Enterprises Pty Ltd and Cassowary Coast Regional Council* [2015] QICmr 13 (12 May 2015) at [15] and *Helping Hands Network Pty Ltd and Department of Education, Training and Employment* (Unreported, Queensland Information Commissioner, 30 October 2012) at [66] (which cited *State of Queensland v Albietz* [1995] 1 Qd R 215 at 219 where de Jersey J observed that '*the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant*'). Refer also to *Victoria Police v Marke* [2008] VSCA 218 at [66].

⁵⁸ Schedule 4, part 1, item 2 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 1 of the RTI Act.

⁶⁰ Schedule 4, part 2, item 3 of the RTI Act.

⁶¹ Schedule 4, part 2, item 11 of the RTI Act.

⁶² Schedule 4, part 2, item 14 of the RTI Act.

⁶³ ER Applicant's submissions dated 6 September 2022.

⁶⁴ ER Application.

steps OIR has taken in dealing with matters relating to public health and safety,⁶⁵ including in relation to investigations conducted in response to reported breaches of the WHS Act. I also consider disclosure would enhance OIR's accountability in relation to investigations conducted into reported breaches of the WHS Act⁶⁶ and promote transparency in relation to the reasons for its decisions under that Act.⁶⁷ I consider these factors favouring disclosure deserve significant weight.

Factors favouring nondisclosure

41. I have considered whether disclosure of the Improvement Notices could prejudice the privacy of individuals or reveal their personal information.⁶⁸ The ER Applicant submits that improvement notices are '*between myself and Work WHS*' and that disclosure could reasonably be expected to prejudice the protection of an individuals' right to privacy.⁶⁹ OIR decided⁷⁰ to refuse the Access Applicant's access to names of third party individuals, and so this information has been redacted in the Improvement Notices. I consider this substantially mitigates any prejudice to the privacy of individuals that may otherwise result from disclosure. To the extent the Improvement Notices include company names, addresses and ABNs, I do not consider it was Parliament's intention, when drafting schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act, that these nondisclosure factors would extend to protect information identifying a company.⁷¹ While the ER Applicant submits that individuals associated with the ER Applicant company can be easily identified,⁷² in my view any prejudice to the privacy of these individuals resulting from disclosure of the Improvement Notices would be minimal.⁷³ Accordingly, I afford these factors favouring nondisclosure low weight.
42. In its original decision notice to the ER Applicant,⁷⁴ OIR noted that improvement notices issued under section 191 of the WHS Act are required to be displayed at a prominent place at or near the workplace.⁷⁵ The ER Applicant submits that the '*workplace is within private boundaries*' and that '*the notices are private to the workplace specifically and have not been displayed in the public domain*'.⁷⁶ I do not consider that the fact of the relevant workplace being within private boundaries nullifies the intention of the WHS Act that improvement notices be displayed, and not be treated as private, confidential or secret. I also note that the purpose of the RTI Act is to make available documents that are not otherwise publicly available. I do not consider the fact of the relevant workplace being within private boundaries reduces the weight I have afforded to any of the factors I have identified in this decision as favouring disclosure of the Improvement Notices.

⁶⁵ Schedule 4, part 2, item 14 of the RTI Act.

⁶⁶ Schedule 4, part 2, items 1 and 3 of the RTI Act.

⁶⁷ Schedule 4, part 2, item 11 of the RTI Act.

⁶⁸ Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

⁶⁹ ER Applicant's email to OIR dated 5 October 2021, extracted in the ER Application; raising the factor favouring nondisclosure at schedule 4, part 3, item 3 of the RTI Act.

⁷⁰ OIR's decision notice to the Access Applicant dated 13 October 2021.

⁷¹ Schedule 4, part 3, item 3 of the RTI Act seeks to protect '*an individual's right to privacy*' (emphasis added). Likewise, schedule 4, part 4, section 6(1) of the RTI Act seeks to protect disclosure of '*personal information of a person*'; and '*personal information*' is defined under the RTI Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*' (emphasis added); schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld).

⁷² Telephone call between ER Applicant and OIC dated 4 July 2022.

⁷³ I note, for example, that information about the directors of Australian companies is publicly accessible by searching the Australian Securities and Investments Commission's website.

⁷⁴ Dated 13 October 2021.

⁷⁵ Section 210(1) of the WHS Act.

⁷⁶ IR Application, extracted in ER Application.

43. I have also considered whether disclosure of the Improvement Notices would prejudice the private, business, professional, commercial or financial affairs of entities⁷⁷ or prejudice the business affairs of a person.⁷⁸ The ER Applicant submits that:
- the Improvement Notices are '*misleading*', and that the ER Applicant applied for internal review of a decision to issue one of the notices;⁷⁹ and
 - disclosure would cause '*maximum frustration and embarrassment of my farming practices with no public defence*'.⁸⁰
44. It is not my role in this review to determine whether content of, or decision to issue, the Improvement Notices was correct. I acknowledge the ER Applicant does not accept or admit any fault in relation to the incidents the subject of the notices and disagrees with the decision to issue the Improvement Notices. Having considered the Improvement Notices, I do not consider that they can be classified as '*misleading*' in such a way that their release would unfairly harm the ER Applicant's business reputation. However, I do consider that release of the Improvement Notices would reveal information about OIR's investigations and actions taken to seek improvement of the ER Applicant's practices, and that this may impact the ER Applicant's reputation. I also consider the Improvement Notices generally relate to the ER Applicant's business affairs. Having considered the information before me, including the relatively low level nature of the action taken by OIR by issuing improvement notices (as opposed to more robust enforcement action), I consider that any impact to the ER Applicant's reputation and business affairs would be minor. Accordingly, I afford low weight to these factors favouring nondisclosure.
45. The ER Applicant also submits disclosure of the Improvement Notices would prejudice the fair treatment of individuals, and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.⁸¹ I accept that the ER Applicant denies the circumstances leading to the issuing of the Improvement Notices. However, I do not consider that the allegations in the Improvement Notices can be considered unsubstantiated in circumstances where the inspector issuing the notices was satisfied as to the circumstances described therein such that they issued the notices.⁸² Accordingly, I consider this factor favouring nondisclosure does not apply.
46. The ER Applicant has also raised the following factors favouring nondisclosure in this review:⁸³
- prejudice to security, law enforcement or public safety⁸⁴
 - impeding the administration of justice generally,⁸⁵ or for a person;⁸⁶ and
 - disclosure is prohibited by an Act.⁸⁷

⁷⁷ Schedule 4, part 3, item 2 of the RTI Act. This factor was raised in the ER Applicant's email to OIR dated 5 October 2021, extracted in the ER Application.

⁷⁸ Schedule 4, part 3, item 15 of the RTI Act.

⁷⁹ IR Application, extracted in ER Application.

⁸⁰ ER Applicant's submissions dated 6 September 2022.

⁸¹ ER Applicant's email to OIR dated 5 October 2021, extracted in the ER Application; raising the factor favouring nondisclosure at schedule 4, part 3, item 6 of the RTI Act.

⁸² On the information before me, I am also aware that OIR's decision to issue one of the Improvement Notices was confirmed on internal review.

⁸³ ER Applicant's email to OIR dated 5 October 2021, extracted in the ER Application; ER Applicant's submissions dated 4 August 2022.

⁸⁴ Schedule 4, part 3, item 7 of the RTI Act.

⁸⁵ Schedule 4, part 3, item 8 of the RTI Act.

⁸⁶ Schedule 4, part 3, item 9 of the RTI Act.

⁸⁷ Schedule 4, part 3, item 22 of the RTI Act.

47. The ER Applicant has provided no further explanation as to why, in its submission, these factors arise to favour nondisclosure of the Improvement Notices.⁸⁸ I am unable to identify how the administration of justice would be impeded by disclosure of the Improvement Notices or the relevant legislative provision pursuant to which the ER Applicant submits disclosure is prohibited.⁸⁹ Also, as set out above,⁹⁰ I consider that disclosure of the Improvement Notices would reveal the steps OIR has taken to protect public safety and I am unable to ascertain how disclosure could prejudice security, law enforcement or public safety. Accordingly, I do not consider that these factors apply to favour nondisclosure of the Improvement Notices.
48. Finally, given that the public interest factors listed in the RTI Act are not exhaustive, I have also considered whether the applicant's submissions about harassment and intimidation⁹¹ raise a public interest factor favouring nondisclosure requiring consideration in the context of the public interest test—that is, whether disclosure could reasonably be expected to result in a person being subjected to lower level (ie. less than serious) harassment and intimidation.⁹²
49. In terms of whether the types of past conduct the ER Applicant considers comprise harassment and intimidation could reasonably be expected to reoccur as a result of disclosing the Improvement Notices, I repeat and rely on my observations at paragraphs [25] to [28] above. Accordingly, I am unable to discern a correlation or nexus between disclosure of the Improvement Notices and the reoccurrence of the types of past conduct described by the ER Applicant as harassment, threats, verbal abuse, physical intimidation and surveillance. Further, while there may be a correlation between disclosure and possible legal action or complaints by the Access Application, I do not consider that the ER Applicant has satisfied the onus on it in this review of establishing that any such action they anticipate will result from disclosure could be properly classified as 'harassment or intimidation'. While I accept that the ER Applicant may understandably wish to avoid any such action, or even the prospect of it, I do not consider that disclosure of the Improvement Notices could reasonably be expected to result in harassment or intimidation. Accordingly, I afford no weight to this factor favouring nondisclosure.
50. I have carefully considered all other factors against disclosure, both in schedule 4, parts 3 and 4 of the RTI Act and more generally. I am unable to identify further factors which could be considered applicable in the circumstances of this review.

Balancing the public interest

51. I am satisfied that the significant weight of the pro-disclosure factors relating to the accountability and transparency of OIR outweighs the low weight I have afforded to the nondisclosure factors related to privacy and personal information of individuals, business affairs of the ER Applicant and lower level harassment or intimidation.
52. Based on the information before me, and for the reasons set out above, I am not satisfied that disclosing the Improvement Notices would, on balance, be contrary to the public interest.

⁸⁸ OIC noted this in the first and third preliminary views to the ER Applicant dated 25 January and 23 August 2022. OIC has also informed the ER Applicant of its onus in this review to establish that a decision not to disclose the Improvement Notices is justified: section 87(2) of the RTI Act.

⁸⁹ I also note that the Improvement Notices were issued under the WHS Act and are required to be displayed at a prominent place at or near the workplace: section 210(1) of the WHS Act.

⁹⁰ At paragraph [40] of this decision.

⁹¹ As noted in paragraphs [20] to [29] above, I do not accept the ER Applicant's submission that disclosure of the Improvement Notices could reasonably be expected to result in a serious act of harassment or intimidation.

⁹² 6ZJ3HG at [69]-[71].

Other matters raised

53. The ER Applicant notes the fact that it '*had no representation when the notices were issued*' as one of the reasons that release of the Improvement Notices is unnecessary.⁹³ I do not consider the engagement (or otherwise) of legal representation when the notices were issued has any bearing on my assessment of whether access should be refused to the Improvement Notices under the RTI Act.⁹⁴
54. The ER Applicant has referred to an access application it made previously to a Queensland government agency in response to which it received a notice refusing its access to the requested information. The ER Applicant submits that this indicates a '*conflict between RTI officers on the release of information that is confidential to protect the complainant*', or a '*double standard*'.⁹⁵ While the ER Applicant may have concerns about the outcomes of separate access applications, I must determine each case on its own merits.⁹⁶ I consider that the outcome of the separate access application to which the ER Applicant refers has no bearing on this review.

Conclusion

55. For the reasons outlined above, I do not consider the ER Applicant has discharged the onus imposed by section 87(2) of the RTI Act in this review of establishing that the Improvement Notices comprise exempt information, or that the release of this information would, on balance, be contrary to the public interest.
56. Accordingly, I am not satisfied that access to the Improvement Notices can be refused under the RTI Act.

DECISION

57. I affirm OIR's decision to disclose the Improvement Notices and find there is no basis under the RTI Act to refuse access to the Improvement Notices.
58. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

A Rickard
Assistant Information Commissioner

Date: 15 March 2023

⁹³ ER Applicant's submissions dated 6 September 2022.

⁹⁴ OIC explained this in the fourth preliminary view to the ER Applicant dated 6 October 2022.

⁹⁵ IR Application, extracted in the ER Application.

⁹⁶ OIC explained this in the first preliminary view to the ER Applicant dated 25 January 2022.

APPENDIX

Significant procedural steps

| Date | Event |
|------------------|--|
| 4 January 2022 | OIC received the external review application. |
| 5 January 2022 | OIC requested preliminary documents from OIR. |
| 6 January 2022 | OIC received the requested preliminary documents from OIR. |
| 7 January 2022 | The Access Applicant confirmed that they continued to seek access. |
| 25 January 2022 | OIC advised OIR and the ER Applicant that the external review application had been accepted. OIC conveyed a preliminary view to the ER Applicant, OIR and the Access Applicant. |
| 7 February 2022 | OIR advised OIC it agreed with OIC's preliminary view. |
| 9 February 2022 | The ER Applicant provided submissions in response to OIC's preliminary view. |
| 10 February 2022 | OIC re-sent its 25 January 2022 preliminary view to the Access Applicant. The Access Applicant advised OIC they agreed with OIC's preliminary view. |
| 16 June 2022 | OIC conveyed a further preliminary view to the ER Applicant. |
| 4 July 2022 | The ER Applicant requested an extension of time to respond to OIC's preliminary view. OIC granted the extension of time. |
| 4 August 2022 | The ER Applicant provided submissions in response to OIC's preliminary view. |
| 23 August 2022 | OIC conveyed a third preliminary view to the ER Applicant. |
| 24 August 2022 | The Access Applicant applied to participate in the review. |
| 25 August 2022 | OIC provided OIR with an update. |
| 6 September 2022 | The ER Applicant provided submissions in response to OIC's preliminary view. |
| 6 October 2022 | OIC conveyed a final preliminary view to the ER Applicant and confirmed the matter would proceed to final decision. |