Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***Glass Media Pty Ltd and Department of the Premier and Cabinet; Screen Queensland Pty Ltd (Third Party); The Walt Disney Company (Australia) Pty Ltd (Fourth Party)* [2016] QICmr 30 (18 August 2016)**
Application Number:	**312557**
Applicant:	**Glass Media Group Pty Ltd**
Respondent:	**Department of the Premier and Cabinet**
Third Party:	**Screen Queensland Pty Ltd**
Fourth Party:	**The Walt Disney Company (Australia) Pty Ltd**
Decision Date:	**18 August 2016**
Catchwords:	**ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – CABINET INFORMATION – information describing value of film incentive – whether information brought into existence for consideration of Cabinet – whether disclosure of information would reveal consideration of Cabinet – whether information created in course of State's budgetary processes – whether exempt information to which access may be refused – sections 47(3)(a) and 48 and schedule 3, section 2 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – BREACH OF CONFIDENCE – whether disclosure of information would found an action for breach of confidence – whether information is exempt under schedule 3, section 8 of the the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – whether disclosure of information would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. In October 2014, the Queensland Government agreed to provide financial assistance to the fourth party (**Disney**), to secure production in Queensland of the feature film 'Pirates of the Caribbean 5' (**PoC**).

2. The terms of this financial assistance (the '**Incentive Payment**') were largely negotiated by the third party (**Screen**), a company the single share in which is held beneficially by the State of Queensland[1] and whose objects include '*making funding available to members of the domestic and foreign film industry…*'.[2] In the case of the PoC project, Screen acted as a 'conduit'[3] between Disney and the Department, conveying the intentions of the former so as to facilitate access to government funding via the latter.

3. By application dated 14 July 2015, the applicant applied to the Department under the *Right to Information Act 2009* (Qld) (**the RTI Act**), for access to documents disclosing the amount of the Incentive Payment, within the date range 13 March 2015 to 14 July 2015.[4]

4. The Department located one page in response to the application, a document created in early 2015 for Ministerial briefing purposes (government having changed following the January 2015 general election). Access was granted to all of this page, apart from one segment consisting of a single sentence, describing the structure and value of the Incentive Payment. Access was refused to this segment, on the ground it comprised exempt information as information disclosure of which would found an action for a breach of confidence.[5]

5. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision. In the course of the review, Screen and Disney were joined as participants in the review.[6]

6. The applicant has not sought to pursue access to a small sub-segment of information (comprising a dollar amount of one component of the Incentive Payment), which therefore no longer remains in issue in this review.

7. The applicant otherwise continues to press for access to the balance of the segment in issue, the substance of which describes the value of the principal component of the Incentive Payment. The Department, Disney and Screen have argued on multiple grounds that access to this information should be refused.

8. Having considered the participants' submissions, I have decided to set aside the Department's decision. There are no grounds under the RTI Act on which access to that part of the segment still remaining in issue may be refused. The applicant is therefore entitled to access this information.

Background

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

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[1] Department of the Premier and Cabinet (**Department**) submissions dated 16 October 2015. See also the Department's 2014-15 Annual Report, at page 92, which further records that Screen is an entity '*100 percent controlled by the department*': p. 91.
[2] Department's Annual Report, 2014-15, p. 49.
[3] Paragraph 35 of Screen's submissions dated 26 February 2016.
[4] The applicant originally specified a broader date range, but agreed to the narrower range stated after consulting with the Department.
[5] Under section 47(3)(a), section 48 and schedule 3, section 8 of the RTI Act.
[6] Under section 89 of the RTI Act.

Reviewable decision

10. The decision under review is the Department's decision dated 19 August 2015.

Evidence considered

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

Information in issue

12. The information in issue comprises the segment to which the Department refused the applicant access, describing the nature and value of the principal component of the Incentive Payment – apart from a dollar figure which no longer remains in issue. A copy of the page containing the information in issue accompanies the copy of these reasons forwarded to the Department, with the relevant dollar figure redacted.

Objections to disclosure

13. The Department, Screen and Disney (the '**Objecting Participants**') all argue that the information in issue comprises exempt information to which access may be refused, as information the disclosure of which would found an action for a breach of confidence. The Department and Screen further argue that the information is 'Cabinet information' exempt from disclosure under schedule 3, section 2 of the RTI Act,[7] while all Objecting Participants contend that disclosure of the information in issue would, on balance, be contrary to the public interest.

14. I have considered the Objecting Participant's submissions below, beginning with the objections to disclosure based on schedule 3, section 2 of the RTI Act.

Cabinet information

15. The RTI Act gives people a right to access documents of government agencies.[8] This right is subject to other provisions of the RTI Act, including grounds on which access may be refused. Access may be refused to information, to the extent the information comprises 'exempt information'.[9] 'Exempt information' includes information:[10]

    i. brought into existence for the consideration of Cabinet;[11]
    ii. information the disclosure of which would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations;[12] and
    iii. information brought into existence in the course of the State's budgetary processes.[13]

Information brought into existence for the consideration of Cabinet

16. The Department has explained that the approval of the grant paid to Disney involved the consideration and endorsement of the Cabinet Budget Review Committee (**CBRC**).[14] The information in issue here, however, comprises part of a briefing note created after relevant considerations had taken place, and the Incentive Payment itself finalised and announced.

[7] Departmental and Screen submissions dated 16 October 2015, further developed in Departmental submissions dated 19 February 2016. In its 16 October 2015 submissions, the Department also argued for the application of the exemption prescribed in schedule 3, section 12 of the RTI Act. The information to which relevant submissions relate is the dollar figure noted in the preceding paragraph; information that is no longer in issue. Accordingly, it is not necessary to address those submissions in these reasons.
[8] Section 23 of the RTI Act.
[9] Section 47(3)(a) of the RTI Act.
[10] Section 48 and schedule 3 of the RTI Act.
[11] Schedule 3, section 2(1)(a) of the RTI Act
[12] Schedule 3, section 2(1)(b) of the RTI Act.
[13] Schedule 3, section 2(1)(c) of the RTI Act.
[14] Which comprises Cabinet for the purposes of schedule 3, section 2 of the RTI Act: schedule 3, section 2(5).

Indeed, the very tense of the text comprising the information in issue indicates that it post-dates Cabinet consideration. It does not comprise information that was brought into existence for the purposes of that consideration, rather, it was brought into existence for briefing on or conveying information about the Incentive Payment, in the wake of that consideration.

17. The Department rejects the above analysis, submitting[15] that the '*RTI Act makes a distinction between 'information' which is exempt, and a 'document' in which the information is contained.*' In support of this position, the Department cites sections 73-75 of the RTI Act, which respectively sanction deletion of irrelevant, exempt or contrary to public interest information from a document, in order to permit access to the balance. The Department argues:[16]

> *What each of these provisions have in common, is that they refer to the distinction between the broader term 'document' which may be the subject of an access application, and a piece of 'information' contained in documents. Most relevantly, s. 74 allows an agency to delete exempt information from a document and give access to an applicant of the remainder of the document. …*

18. The Department concedes that while it is 'true' the segment comprising the information in issue forms part of a document '*created after finalisation and award of the Incentive Payment and therefore, any relevant Cabinet consideration*':[17]

> *…what is critical to the application of schedule 3, s.2(1) is a focus on whether the precise piece of information falls within the scope of paragraphs (a) – (c): not the…document alone. …*
>
> *…the…document may itself have been brought into existence to convey information about the Incentive Payment, in that case for the purpose of briefing a Minister, but that does not deny to the matter in issue exempt status under paragraphs (a) – (c) if the information in issue satisfies the requirements of those paragraphs.*

19. As best I can gather, the Department's case seems to be that, while a document may not have been brought into existence for the consideration of Cabinet, matter within the document may nevertheless comprise information of this kind,[18] and the segment in issue is information of just this kind – essentially, that it is information brought into existence for the consideration of Cabinet which, while transposed into a document post-dating that consideration, nevertheless retains the status necessary to qualify it for exemption under schedule 3, section 2(1)(a) of the RTI Act. I cannot accept this argument, and do not consider the distinctions between 'document' and 'information' drawn in sections 73-75 of the RTI Act justify the interpretation of schedule 3, section 2(1) proposed by the Department. The segment comprising the information in issue was plainly brought into existence *after* relevant Cabinet considerations, for the purpose of, as I have noted and the Department has confirmed, conveying a briefing. There is, in these circumstances, simply no way it can be said to have itself have been created for the consideration of Cabinet.

20. For the sake of completeness, I should note that even if the information in issue *did* comprise an exact duplication or 'cut and paste' of information originally brought into existence for the consideration of Cabinet (a contention which I do not accept, given the language in which it is phrased and tense in which it is framed, and having compared the information in issue as against the actual CBRC submission), I would nevertheless reject the Department's claim for exemption under schedule 3, section 2(1)(a). That is because it remains the fact that this particular iteration of that information – ie, the segment in issue – was itself brought into existence *subsequent* to relevant Cabinet considerations, for the purposes of, as I have noted above, conveying a briefing. I can see no way in which it could thus be argued to have been brought into existence for an event – consideration of Cabinet – that, at the time of its creation, lay in the past.

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[15] Submissions dated 19 February 2016.
[16] As above.
[17] As above.
[18] Presumably where it directly replicates text or information originally brought into existence for the consideration of Cabinet – ie, a 'cut and paste' of a segment appearing in, say, a Cabinet submission.

Disclosure revealing consideration of Cabinet or otherwise prejudicing Cabinet confidentiality or operations

21. Schedule 3, section 2(1)(b) of the RTI Act requires me to be satisfied that disclosure of the information in issue itself would reveal a consideration of Cabinet or otherwise prejudice the confidentiality of Cabinet considerations or operations. 'Consideration' is defined in schedule 3, section 2(5) to include:

    - discussion, deliberation, noting (without or without discussion) or decision; and
    - consideration for any purpose, including, for example, for information or to make a decision.

22. The Department made relatively extensive submissions as to the application of schedule 3, section 2(1)(b) of the RTI Act.[19] Many of these submissions were directed at distinguishing the facts in this case from those considered by the Information Commissioner in *Ryman and Department of Main Roads,*[20] the lead decision on the interpretation of the exemption now reflected in schedule 3, section 2(1)(b) of the RTI Act. *Ryman* involved selective or extraneous disclosure of information by an agency during the course of a review, sufficient to establish a connection between the information in issue in that case and associated Cabinet processes. The Information Commissioner was not prepared to accept that a claim for exemption could be 'pulled up by its bootstraps' in such a fashion. He rejected the respondent agency's claim for exemption, relevantly finding that:[21]

    > *If the documents now claimed to be exempt under s.36(1)(e) had simply been disclosed to Mr Ryman without any comment on behalf of the Department, there is no possible basis on which their disclosure could have involved the disclosure of any consideration of Cabinet or could have otherwise prejudiced the confidentiality of Cabinet considerations or operations. I am not prepared to find that the test for exemption under s.36(1)(e) is established because the Department, through its own disclosures of information extraneous to the matter in issue, claims that disclosure of the matter in issue, in connection with that extraneous information, would involve the disclosure of information noted by Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations.*

23. In this case, the Department notes that, unlike *Ryman*, information evidencing the fact of Cabinet involvement in the promulgation of the grant to Disney exists independently of any action taken by the Department in the course of dealing with the applicant's access application or this review.[22] I accept the Department's submissions in this regard. Nevertheless, it remains the case that to successfully establish a claim for exemption under schedule 3, section 2(1)(b) of the RTI Act, the Department must show that disclosure of the actual information in issue would reveal a Cabinet consideration or otherwise prejudice Cabinet confidentiality or operations. I am not satisfied that this is so.

24. I have, in the course of this review, had the benefit of viewing the submission prepared by Arts Queensland[23] seeking approval for the award of the grant, and the CBRC decision on that submission.[24] Having carefully compared the terms of those documents with the information in issue, I am not satisfied that disclosure of the latter would reveal the considerations nor prejudice the confidentiality of such considerations or Cabinet operations leading to the former. The information in issue is a brief and summary overview of the structure and value of the Incentive Payment to Disney, and is sufficiently distinct from the terms of either the CBRC submission or

[19] See particularly submissions dated 19 February 2016.
[20] (1996) 3 QAR 416.
[21] At [43].
[22] See pages 6-7 of the Department's submissions dated 19 February 2016.
[23] The division of the Department responsible, together with Screen, for administration of the film production incentive program which resulted in the grant to Disney the subject of the information in issue; at the time of the grant's promulgation, Arts Queensland was housed in another Department.
[24] A copy of which was annexed to the affidavit of Kirsten Herring dated 19 February 2016. The Department maintains that this and the bulk of the exhibits to Ms Herring's affidavit and certain other parts of its submissions are confidential. I have therefore taken care to ensure the contents of such material is not disclosed in these reasons, and that it is referred to only as necessary to discharge my decision-making obligations under the RTI Act and the general law.

the CBRC decision such that its disclosure would not, in my view, reveal of itself that decision nor any Cabinet 'discussion, deliberation' or 'noting'. It discloses nothing about those considerations nor reveals anything about Cabinet 'operations,' such that the confidentiality of either stand to be prejudiced by its disclosure.

25. In short, the terms of the CBRC submission, the CBRC decision and the information in issue are discrete pieces of information, and no-one examining the latter would have revealed to them the contents of the former.

26. The mere fact that there is publicly-available evidence of a Cabinet decision or process associated with matters recorded in agency documents is not sufficient to ground a claim for exemption of those documents under schedule 3, section 2(1)(b) of the RTI Act. To find otherwise would, in my view, give the provision too broad a scope of operation; it is, after all, the case that many if not most actions of government are ultimately referable to Cabinet considerations, deliberations and decisions. The test for exemption under this provision is, as I have noted, to be evaluated by reference to the effects of disclosure of the information in issue itself. For the reasons given above, I am not persuaded that disclosure of the information in issue in this case would occasion any of the prejudices or adverse consequences against which schedule 3, section 2(1)(b) of the RTI Act seeks to safeguard.

Information created in the course of State budgetary processes

27. Information will be exempt from disclosure where it has been '*brought into existence in the course of the State's budgetary processes*'.[25] The Department points to the involvement of CBRC in approving payment of the grant to Disney, and notes that the final particulars of the grant were settled under the auspices of the Treasurer and Queensland Treasury.[26]

28. I accept the Department's account in this regard, and further accept that the promulgation of the grant did involve State budgetary processes, being processes involving allocation of State funds, controlled by CBRC and overseen by the State's principal budgetary agency, Treasury. I also accept the Department's submission that the scope of the phrase 'State's budgetary processes' may include processes extending beyond the date of a particular budgetary decision by CBRC, to include processes involved in the execution and implementation of that decision.

29. These considerations alone, however, are insufficient to establish exemption under schedule 3, section 2(1)(c) – it must also be shown that information claimed to be exempt under this provision was created '*in the course*' *of* such processes.

30. The Department contends that relevant budgetary processes '*continue*[d] *up* ***to and include the precise Information in Issue****, including implementation of CBRC's decision, and dissemination of that decision to Ministers*' (my emphasis). I do not accept this submission. The announcement that PoC would be filmed in Queensland occurred on 2 October 2014,[27] CBRC's decision to approve the Incentive Payment had happened several months earlier, and while the Department contends otherwise, I think it reasonable to conclude that State budgetary processes concerning the grant to Disney – those requiring the involvement of the State's key budgetary apparatus – had concluded by the time the information in issue was created.

31. Even accepting that some residual State budgetary processes continued after the date of CBRC's decision, the page containing the information in issue was created no earlier[28] than mid-March

[25] Schedule 3, section 2(1)(c) of the RTI Act. The phrase '*State's budgetary processes*' is not defined in the RTI Act, and thus must be construed according to its plain meaning.
[26] Submissions dated 19 February 2016; affidavit of Kirsten Herring dated 19 February 2016.
[27] 'Walt Disney Studios to film fifth Pirates of the Caribbean movie in Queensland, Australia', joint Commonwealth and Queensland Government media release dated 2 October 2014, accessible at https://www.attorneygeneral.gov.au/Mediareleases/Pages/2014/FourthQuarter/2October2014-WaltDisneyStudiostofilmfifthPiratesoftheCaribbeanmovieinQueenslandAustralia.aspx
[28] The page containing the information in issue is undated, and I am not otherwise aware of the date of its creation; in view of the date range specified in the access application (as recorded in paragraph 3), it cannot, however, have been created any earlier than 13 March 2015.

2015 – at least five months after public reportage of the fact of the State's incentive offer[29] and the announcement of Disney's commitment to film locally.[30] In the absence of any objective evidence to the contrary,[31] I am content to infer that State budgetary processes associated with the promulgation of the incentive had concluded. There being no relevant budgetary processes in train, the information in issue cannot have been created in the course of same.

32. Yet even if the findings in the preceding paragraph are incorrect, and it could be demonstrated that associated State budgetary processes were continuing as at the date of the information in issue's creation, I would not be prepared to read schedule 3, section 2(1)(c) as applying to the information in issue in the circumstances of this case.

33. The expression '*in the course of*' as used in schedule 3, section 2(1)(c) of the RTI Act requires something more than mere temporal coincidence of the creation of information claimed to be exempt and the State's budgetary processes: it must also be shown that relevant information was created in connection with or as part[32] of that process.

34. The information in issue here was, as noted, created months after both the CBRC decision to offer the Incentive Payment which it describes, and public confirmation of Disney's commitment to film, for the apparent purpose of providing a summary background to a Minister of a different government than that which initiated relevant budgetary processes and conferred the incentive, the product of those processes. I do not accept that such an advisory or informational reporting exercise can be said to have been undertaken as part of the 'implementation' of CBRC's budgetary decision, or to have comprised a step connected with advancing any budgetary processes arising from that decision – the information in issue is, in my opinion, properly characterised as information created in the course of reporting on budgetary processes,[33] rather than the processes themselves.

35. In conclusion, while the segment in issue may summarise the thrust or substance of information that *was* brought into existence in the course of the State's budgetary processes, I am not prepared to find that the particular iteration[34] of information comprising the information in issue is one that was itself created 'in the course' of those processes.

Information disclosure of which would found an action for breach of confidence

36. Another category of exempt information to which access may be refused under the RTI Act is information disclosure of which would found an action for a breach of confidence (**Breach of Confidence Exemption**). Each of the Objecting Participants claim that the information in issue is exempt on this basis.

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[29] As contained in contemporary press coverage – see, for example, 'Pirates of the Caribbean 5 to be filmed in Queensland with a $100m economic windfall expected', *Courier-Mail*, 2 October 2014 http://www.couriermail.com.au/news/queensland/pirates-of-the-caribbean-5-to-be-filmed-in-queensland-with-a-100m-economic-windfall-expected/news-story/755fc3ebc5ba1f658fe6496c9b5fc0c9, relating that the-then responsible Minister '*confirmed the Queensland Government has provided incentives*'.

[30] Note 27.

[31] The Department submits that I should accept that the briefing containing the information in issue was itself part of a qualifying budgetary process. For the reasons explained in paragraphs 33-35 below, I do not accept this proposition.

[32] Paraphrasing Murphy J in *Window v The Phosphate Co-Operative Co of Australia Ltd* [1983] 2 VR 287. In that case, His Honour considered the words '*in the course of any trade carried on*' as appearing in section 63(2) of the *Environment Protection Act 1979* (Vic). Having observed that the meaning of the words 'in the course of' '*has been said to vary according to the context of the Act in which they appear*', His Honour went on to review various authorities, before concluding that '*…for a discharge to occur "in the course of any trade carried on", it must be shown that the discharge was* ***connected with the trade or part of the trade****.*' (My emphasis.) Given the context in which the expression appears in this case – an exemption provision in beneficial legislation otherwise intended to confer a right of access to government information, and to be interpreted with a pro-disclosure bias – I consider His Honour's observations may be usefully applied in ascertaining the meaning of schedule 3, section 2(1(c) of the RTI Act. In considering this issue, I also had regard to the decision of the High Court in *Bellino v Australian Broadcasting Corporation* (1996) 185 CLR 183, which involved analysis of the phrase '*in the course of, or for the purposes of…discussion*', as had been used in section 377(8) of the *Criminal Code 1899* (Qld). I cannot see anything in that judgment precluding me from approaching schedule 3, section 2(1)(c) in the manner as I have in this decision.

[33] Whether concluded or continuing.

[34] As with its claim under schedule 3, section 2(1)(a) of the RTI Act, the Department, as I understand both its 19 February 2016 submissions and further submissions dated 14 June 2016, seeks to bolster its claim under schedule 3, section 2(1)(c) with an argument similar to that summarised in paragraph 19. I do not accept this argument. The specific iteration or instance of information comprising the information in issue cannot, for reasons explained in this and the preceding three paragraphs, itself be said to have been brought into existence in the course of relevant budgetary processes.

37. The test for exemption under the Breach of Confidence Exemption must be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, with appropriate standing to bring an action to enforce an obligation of confidence claimed to bind the Department not to disclose relevant information.[35]

38. Establishing the exemption requires consideration of whether an equitable obligation of confidence exists.[36] The following five cumulative criteria must be met in order to give rise to an equitable obligation of confidence:

    a) relevant information must be capable of being specifically identifiable as information that is secret, rather than generally available,
    b) the information must have the necessary quality of confidence – ie, it must not be trivial or useless, and must have a degree of secrecy sufficient for it to be subject to an obligation of conscience,
    c) the information must have been communicated in such circumstances as to import an obligation of confidence,
    d) disclosure of the information to the access applicant must constitute an unauthorised use of the confidential information, and
    e) disclosure must cause detriment to the plaintiff.[37]

39. The Objecting Participants all argue that access may be refused to the information in issue, on the basis its disclosure would found an action for a breach of confidence. They diverge, however, in who it is they contend is the 'hypothetical plaintiff' owed the obligation of confidence necessary to found this exemption. The Department and Disney submit the obligation is owed to Disney.[38] Conversely, Screen's main argument is that it is the entity to whom the Department owes an equitable obligation of confidence; ie, that it is the identifiable plaintiff with standing to bring an action against the Department.[39]

40. The distinction is material, as different considerations apply when assessing whether government owes a duty of confidence to an entity genuinely independent of government such as Disney, and in evaluating claims of confidence said to be owed by government to bodies which, like Screen, are owned and controlled by government. I have considered each scenario, beginning with the submission that it is Disney that is owed an enforceable obligation of confidence.

Obligation of confidence claimed to be owed to Disney

41. As noted, the requirements for establishing the Breach of Confidence Exemption enumerated in paragraph 38 are cumulative; if any of the five cannot be satisfied, then a claim for exemption based on this provision must fail. As regards Disney, it is my view that the third of the five cumulative requirements – 'requirement (c)' – cannot be satisfied.

42. Ascertaining whether this third requirement is met requires an assessment of all relevant circumstances surrounding communication of confidential information,[40] so as to determine

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[35] *B and Brisbane North Regional Health Authority* [1994] QICmr 1 (***B and BNRHA***), a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**), at [44]. During the review, I did contemplate whether the information in issue came within the exception to the Breach of Confidence Exemption prescribed in schedule 3, section 8(2) of the RTI Act. However, assuming that relevant information otherwise satisfies the requirements of this provision (which the Department and Screen do not accept), it does not appear to have been created in the course of, or for the purposes of, the 'deliberative processes of government' as required by schedule 3, section 8(2).

[36] In cases concerning disclosure of information that is claimed to be confidential, the facts may give rise to both an action for breach of contract and in equity, for breach of confidence. At general law, these are separate and distinct causes of action. An action for breach of confidence will only be established where particular requirements (enumerated in this and the preceding paragraph) are present. However, where a contractual term requiring confidentiality exists, disclosure (or threatened disclosure) of information may, in itself, only found an action for breach of contract: *Callejo and Department of Immigration and Citizenship* [2010] AATA 244 (***Callejo***) at paragraphs 163-166. See also *TSO08G and Department of Health* (Unreported, Queensland Information Commissioner, 13 December 2011).

[37] *B and BNRHA, at* [57]-[58]. See also *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic) and Another* (1987) 14 FCR 434 at 437, per Gummow J.

[38] Department's submissions dated 19 February 2016, Disney's submissions dated 10 March 2016.

[39] Submissions dated 26 February 2016.

[40] B and BNRHA, at [84], and see further paragraph 55 of these reasons.

whether the '*recipient should be fixed with an enforceable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it.*'[41]

43. In this case, I am not satisfied that the circumstances in which any communication to the Department may have occurred justifies the imposition upon it of an equitable obligation of confidence favouring Disney.

Information not communicated by Disney

44. Firstly, while I am quite prepared to accept that Disney did communicate sensitive information to Screen and/or the Department, I have serious reservations as to whether the information in issue can actually be said to reflect a communication from Disney as confider to a government recipient. It is obviously crucial to a claim under the Breach of Confidence Exemption that there exist a communication of information from a confidant to a government recipient. In this case, however, relevant information – describing part of the amount and the nature of the incentive the government had resolved to award to Disney – is properly characterised as a summation of information communicated by government to Disney. This alone would seem sufficient to preclude a finding that Disney is owed any obligation of confidence fundamental to a successful application of the Breach of Confidence Exemption.[42]

45. The Department resists any such characterisation. Together with Screen, it has lodged extensive submissions and evidence,[43] detailing the process culminating in the awarding of the incentive, and, they say, the creation and communication of the information in issue. In summary terms, that process involved:

- initial discussions between Disney and Screen, which '*resulted in the Information in Issue, which was the amount of the incentive which Disney would require to make the film in Queensland*';[44]
- referral of Disney's desires by Screen to the relevant division of the Department, Arts Queensland, for the development of a funding submission seeking CBRC's approval of a proposed incentive;
- consideration and approval by CBRC, and
- communication of the approval by Arts Queensland to Screen, and, in turn, Disney.

46. The Department's position is that the information in issue reflects information confidentially communicated directly by Disney to Screen. The information was then re-communicated by the latter to the Department, which received it knowing it to have been originally given by Disney to Screen in confidence. The Department is, therefore, bound to treat the information in issue confidentially.

47. I accept the evidence of the process culminating in the award of the incentive. I further acknowledge the principle that a third party may be restrained from communicating information originally given in confidence. I do have difficulty, however, in accepting that what is in issue before me can be said to be information of such a kind. I consider the information in issue flows from a communication outward from government to Disney, reflecting what has been approved *after* considered deliberation by government (through the agency of CBRC and appropriately-qualified officials) of material some of which may initially have been communicated by Disney. Indeed, parts of the Department's own submissions support a conclusion of just this kind: the Department and the responsible Minister assessed Disney's requirements and various factors, then 'determined' the reasonableness of the proposed grant.[45]

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[41] *B and BNRHA* at [76].
[42] In this regard, see the Information Commissioner's observations as regards similar information in *Aries Tours Pty Ltd and Environmental Protection Agency* (Unreported, Queensland Information Commissioner, 28 March 2002), at [55].
[43] See particularly the Department's 19 February 2016 submissions, and affidavit of Kirsten Herring dated 19 February 2016.
[44] Department's submissions dated 19 February 2016.
[45] Affidavit of Kirsten Herring dated 19 February 2016, paragraph 14. See also paragraph 17 of that affidavit, which attests to a process involving 'discussion' between Screen and various levels of government, and official Departmental and Queensland Treasury analysis of 'the proposal and an appropriate response'.

48. In any event, even if the information in issue can genuinely be said to be a communication from Disney to the Department, I nevertheless remain of the view that the Breach of Confidence Exemption cannot apply in this case. I have detailed below my view that the circumstances in which that information was communicated do not, on an objective assessment, support the imposition of an obligation of confidence binding the Department.

49. Apart from that, however, is the fact that if the information in issue does actually embody a communication from Disney to government, then, as a statement of the amount of public assistance committed to a private entity, that communication seems to me to have occurred in a context justifying disclosure.

50. In this regard, I note the Information Commissioner's observations that '*an obligation of confidence claimed to apply in respect of information supplied to government will necessarily be subject to the public's legitimate interest in obtaining information about the affairs of government*…'.[46] The public would appear to have a genuinely 'legitimate interest' in obtaining information describing the amount of its resources that government has elected to disburse to private interests – an interest sufficient to forestall the establishment of an equitable obligation of confidence.

51. The Department and Screen contest the relevance of public interest considerations of the kind referred to by the Information Commissioner in the passage quoted above, in determining whether an equitable obligation of confidence exists.[47] Screen, particularly, argues that public interest considerations may arise only as a potential defence to an action for breach of confidence, considerations which a decision-maker under the RTI Act is precluded from taking into account given the Breach of Confidence Exemption only requires that disclosure of information would '*found* an action for a breach of confidence'.[48]

52. Broader public interest considerations strike me, however, as matters coming within the constellation of relevant circumstances I am required to assess in determining whether requirement (c) is established in a breach of confidence claim for exemption under the RTI Act.[49] This is especially so, when one bears in mind Parliament's express intentions as set out in the Act's Preamble, including the recognition that, in a '*free and democratic society*', '*there should be open discussion of public affairs*', that '*the community should be kept informed of government's operations*', and that '*openness in government enhances the accountability of government*'.[50]

53. I am unaware of any authority decisively precluding my taking matters of a public interest nature into account in evaluating whether information has been communicated in a fashion so as to give rise to an equitable obligation of confidence. In the circumstances, I am content to follow the considered reasoning of the Information Commissioner as extracted in paragraph 50, and to stand by the observations I have there recorded. I do not accept that equity would hold the Department conscience-bound to keep confidential from the Queensland community information disclosing the amount of that community's resources allocated to a private company. (In any event, as will be apparent from my reasoning in the preceding paragraphs and paragraphs 54-68, I do not consider that requirement (c) can be satisfied as regards Disney, quite apart from public interest considerations.)

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[46] *Seeney, MP and Department of State Development; Berri Limited (Third Party)* (2004) 6 QAR 354, at [191] (***Berril***), citing *Esso Australia Resources Ltd & Ors v Plowman & Ors* (1995) 183 CLR 10, *Commonwealth of Australia v Cockatoo Dockyard Pty Ltd* (1995) 36 NSWLR 662, and *Cardwell Properties Pty Ltd & Williams and Department of the Premier, Economic and Trade Development* (1995) 2 QAR 671, at pp.693-698 ([51]-[60]). See also *Orth and Medical Board of Queensland; Cooke (Third Party)* (2003) 6 QAR 209, at [34].

[47] See respective submissions dated 19 and 26 February 2016.

[48] Applying Administrative Appeals Tribunal (**AAT**) Deputy President Forgie's reasoning that, to quote Screen's submissions, the 'founding of an action is separate and apart from the defences to that action': *Re Lobo v Department of Immigration and Citizenship* [2011] AATA 705. See also *Callejo*, at paragraphs 180-185.

[49] See paragraphs 42 and 55.

[50] Preamble, (1)(a), (c) and (d).

Information not communicated in circumstances of confidentiality

54. Even assuming that the information in issue can be said to comprise information communicated by Disney to the Department via Screen, I am not satisfied that it was communicated in circumstances giving rise to a legally enforceable obligation of confidence.

55. As noted above, determining whether a legally enforceable duty of confidence is owed turns on an evaluation of the whole of the relevant circumstances. These include (but are not limited to) the nature of the relationship between the parties, the nature and sensitivity of the information, and the circumstances relating to its communication.[51]

56. The Objecting Participants have each argued that the information in issue was communicated by Disney to the government actors – Screen and the Department – on the shared understanding it would be treated confidentially. I am not persuaded that this is so. In any event, as can be seen from the statement of principle set out in the preceding paragraph, the mere existence of a mutual understanding that person A will not further disclose information supplied by person B does not necessarily mean that a legally enforceable duty of confidence is owed by person A to person B: determining whether such a duty exists turns on an evaluation of all relevant circumstances.[52] Having done so, I do not consider any such duty arises in this case.

57. Firstly, I can identify nothing independently substantiating the Objecting Participants' claims as to a mutual understanding Screen and the Department would treat relevant information confidentially at Disney's behest. Certainly, there is material before me – including a sentence immediately following the segment in issue – signalling an understanding that the information was to be handled confidentially. The Department also points in this regard to the use of the term 'confidential' and the like in various emails and communications passing between governmental and Screen officers,[53] while Screen notes the existence of undertakings as to confidence executed by government officers in its favour.[54]

58. Having scrutinised all this material, however, it appears to me that relevant endorsements and references were generally intended either to flag and protect the confidentiality of the CBRC process, or to communicate a desire by Screen, as opposed to Disney, that this information be managed confidentially. While much of the material relied upon by the Department and Screen[55] certainly evidences that the latter was concerned to ensure that information it communicated to the Department was treated confidentially, it does not of itself evidence a similar concern on the part of Disney as regards the information in issue. In this regard, I can identify no contemporaneous material directly substantiating the Objecting Participants' assertions that Disney (as opposed to Screen, whose position is considered below) required the specific amount of the grant to be kept confidential at the time that information was communicated.[56]

59. Indeed, the highest that Disney – the party one would expect to be in the best position to lead such evidence – put things in its direct submissions on the point was that the information in issue was generated in the course of *'…commercial-in-confidence discussions on information that the parties agreed would remain confidential*';[57] a submission I accept, but which does not of itself amount to evidence of Disney having been the party insisting on assurances as to confidentiality.

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[51] *B and BNRHA* at paragraphs [84] and [82], citing *Smith Kline and French Laboratories (Aust) Limited and Ors v Secretary, Department of Community Services and Health* (1991) 28 FCR 291, pp.302-3.
[52] *Hopkins & Presotto and Department of Transport* (1995) 3 QAR 59.
[53] Examples of which are exhibited to the affidavit of Kirsten Herring dated 19 February 2016.
[54] See the receipt and acknowledgement of confidentiality dated 8 October 2014, a copy of which was enclosed with the Department and Screen's initial submissions dated 16 October 2015.
[55] Such as the acknowledgement noted above, a letter from Screen Queensland to Arts Queensland dated 23 September 2014 (exhibit 'KH-7' to the affidavit of Ms Herring dated 19 February 2014) and an email from Tracey Vieira of Screen dated 25 November 2014, forming part of exhibit 'KH-10' to Ms Herring's 19 February 2016 affidavit.
[56] Obligations of confidence ordinarily arising at the time relevant information is imparted: *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41 per Megarry J, at paragraph 47.
[57] Submission dated 10 March 2016.

60. The balance of the evidence on the point, then, comprises the statements lodged and submissions made by the Objecting Participants during the course of the review, such as Disney's as set out in the preceding paragraph. Each has strenuously asserted that the information in issue was communicated by Disney to the government representatives – Screen and the Department – in circumstances obliging the latter to keep the information confidential.[58] There are, however, broader considerations which tend to subvert these assertions.

61. Firstly, there is the fact that the Commonwealth Government also provided fiscal support to Disney for PoC, in an amount that was publicly announced.[59] Why this latter amount of – substantial[60] – government assistance might be suitable for public dissemination, but the value of Queensland Government backing is information that Disney would be concerned to keep confidential, or considers was given in confidence to the Government and its representatives, is not clear to me.

62. Further militating against a finding that any communication from Disney occurred in circumstances giving rise to an obligation of confidence ultimately binding the Department are the terms of the contract between Screen[61] and Disney, governing payment of the Incentive Payment. Indeed, as contemporaneous material, these provisions are perhaps the best evidence of the Objecting Participants' intentions as regards confidentiality.

63. Screen has objected to the publication of relevant provisions of the contract with Disney, on the basis that the clauses – which appear to comprise relatively generic provisions of the kind often encountered in commercial agreements – are themselves 'confidential'.[62] Screen's position in this regard creates some difficulty, given that it seeks to rely on these provisions in support of its claim for exemption. Nevertheless, I have carefully scrutinised them, and consider I can relay an analysis sufficient to fulfil my decision-making obligations without infringing any claimed confidentiality.

64. The Objecting Participants relied on relevant provisions – clauses 8.1(a)[63] and 8.1(b)[64] – as evidence of, or consistent with, a mutual understanding between Screen and Disney that the former agreed to keep confidential the information in issue. In my view, they do no such thing. The clauses are clearly directed at ensuring Disney was the entity bound to maintain confidentiality as regards information of the kind reflected in the information in issue.

65. I acknowledge that the wording of clause 8.1(a)(1), read in isolation, might be broad enough to encompass information such as that reflected in the information in issue.[65] The difficulty for the Objecting Participants is that the very next subclause, 8.1(b), specifically and explicitly identifies such information, and provides that it is information <u>that only Disney is obliged to keep secret</u>. If it had been the intention of the parties that both be subject to obligations not to disclose that information, it would have been straightforward to have included an equivalently unambiguous reference in clause 8.1(a)(1) (binding Screen) as appears in clause 8.1(b) (binding Disney). The confidentiality provisions of the contract, properly construed, go no way to putting Screen and the Department under an express obligation of confidence or evidencing the existence of same. Nor do those provisions, or the circumstances generally, give rise to any implied obligation.

66. Taking all relevant considerations into account, I am not satisfied that the information in issue can be said have been communicated by Disney in circumstances giving rise to an equitable obligation of confidence binding the Department not to disclose that information.

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[58] See, for example, statutory declaration of Ms Vieira dated 16 October 2015, particularly paragraphs 5-7 and 8-9. See also letter from Disney to Screen dated 23 February 2016, accompanying Screen's submissions dated 26 February 2016.
[59] See note 27.
[60] $21.6 million, according to the media release referred to in note 27.
[61] On, as I understand, the State's behalf.
[62] See note 2 of Screen's submissions dated 26 February 2016.
[63] Purporting to bind Screen to keep certain information confidential.
[64] Imposing confidentiality obligations on Disney.
[65] As Screen, for example, contends: submissions dated 26 February 2016.

67. The picture that emerges on an objective evaluation of all relevant facts and circumstances is not, as the Objecting Participants argue, one of Disney communicating the information in issue to Screen and the Department on the basis of a shared understanding[66] that it would be kept confidential. It seems to me the actual situation is one to the contrary – of the government actors insisting that Disney not disclose the amount of public assistance it received. (For the sake of completeness, I should also note that even if the evidence did otherwise support a finding of communication in circumstances giving rise to an obligation of confidence, I consider that equity would hold any such obligation subject to the public's 'legitimate interest' in obtaining access to this information, in accordance with the reasoning at paragraphs 49-53.)

68. There remains open the question as to whether the Department owes an equitable obligation to Screen, a question I have addressed below. Precluded, however, is a finding that disclosure of the information in issue would found an action for breach of confidence by Disney against the Department. The information in issue cannot comprise exempt information on this basis.

Obligation of confidence claimed to be owed to Screen

69. As noted above, Screen submits that the Department owes it an obligation not to disclose the Information in Issue; that, if the relevant segment was disclosed, Screen would have standing to bring an action against the Department for breach of confidence. Screen's case in this regard is in some respects stronger than Disney's; there is evidence that Screen sought and obtained assurances that information communicated by it to the Department would be kept confidential by the Department.[67]

Information not communicated in circumstances of confidentiality

70. There are difficulties with Screen's case as to the application of the Breach of Confidence Exemption. As with the claim under this provision relating to Disney, it seems misconceived to contend that the information in issue embodies a communication passing from Screen to the Department. While Screen did, as I understand, contribute monies to the total incentive package, much had to be sourced from within government proper. In reviewing the grant process it appears clear that the final detail of incentive as reflected in the information in issue would comprise information developed by and communicated to Screen by the Department, in conjunction with other government agencies such as Queensland Treasury.[68] Accordingly, it is difficult to see that the fundamental element of requirement (c) – communication to the Department – can be satisfied, for reasons as explained above.

71. For reasons similar to those discussed in paragraph 50, I do not consider that equity would hold the Department conscience-bound not to disclose the information in issue, taking into account the legitimate public interest in allowing community scrutiny of the amount of public monies paid to Disney. In other words, I find it difficult to conceive that a court would fix the Department with an equitable obligation to keep confidential information describing the quantity of public funds divested into private hands, as communicated to it by what is essentially an agent of that Department – an instrument of government action, owned by the State and controlled by the Department.[69]

Detriment

72. In any event, even if my views as described in the preceding two paragraphs are mistaken, I am satisfied that, as against Screen, requirement (d) – the requirement of detriment – cannot be satisfied.

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[66] Whether express or implied.
[67] See notes 54 and 55.
[68] The involvement of which was confirmed and attested to by the Department: paragraph 27 and note 45.
[69] Note 1.

73. In considering the detriment requirement,[70] the nature of the body said to be the confider – Screen, a government-owned company – must be taken into account. As governments control information in a representative capacity, a higher burden is imposed on government bodies and entities than on private individuals to justify the secrecy of information in their possession.[71]

74. As Mason J[72] explained in *Commonwealth of Australia v John Fairfax and Sons Ltd*,[73] the leading Australian case in this area, government plaintiffs claiming information is subject to an equitable obligation of confidence owed to them must demonstrate that disclosing relevant information would be detrimental to the public – and not the government confider's – interest. Unless it can be established that disclosure is likely to injure the public interest, it will not be protected,[74] and in the context of the RTI Act, a claim for exemption under schedule 3, section 8 will fail.

75. The relevance of the principles enunciated in *Fairfax* to confidentiality exemption claims involving entities such as Screen Queensland in the context of information access legislation was explained by Senior Member (**SM**) Bayne of the Administrative Appeals Tribunal (**AAT**) in *Sullivan v Department of Industry, Science and Technology and Australian Technology Group Pty Ltd* (***Sullivan***).[75]

76. In *Sullivan*, SM Bayne considered whether disclosure by a Commonwealth department of information relating to a proprietary company largely owned by the Commonwealth could qualify for exemption.[76] The Senior Member noted as follows:[77]

> *25. … I turn now to consider another basis upon which I might find that disclosure under the Act by the first Respondent could not found an action for breach of confidence by ATG against the first Respondent. In* Plowman*, Mason CJ indicated that in respect of matter provided in and for the purposes of arbitration to which an obligation of confidence attaches*
>
> > there may be circumstances, in which third parties and the public have a legitimate interest in knowing what has transpired in an arbitration, which would give rise to a "public interest" exception. The precise scope of this exception remains unclear.
> >
> > **The courts have consistently viewed governmental secrets differently from personal and commercial secrets** … As I stated in [*Fairfax*], **the judiciary must view the disclosure of governmental information "through different spectacles". This involves a reversal of the onus of proof: the government must prove that the public interest demands non-disclosure**….
> >
> > … **The approach outlined in *John Fairfax* should be adopted when the information relates to statutory authorities or public utilities because, as Professor [sic] Finn notes**,…**in the public sector "(t)he need is for compelled openness, not for burgeoning secrecy".** …
>
> *The Chief Justice further observed that in* British Steel Corporation v. Granada Television Ltd [1981] AC 1096 at 1185
>
> > Lord Salmon, in a strong dissent, highlighted the sharp distinction between a statutory authority and a private company: "there are no shareholders, and (the authority's) losses are borne by the public which does not have anything like the same safeguards as shareholders". His Lordship concluded that the public was "morally entitled" to know why the statutory authority was in such a parlous condition.

[70] Where the information claimed to require protection is government information, the High Court of Australia has indicated that detriment to the confider is a necessary element of an action for breach of confidence: *Commonwealth of Australia v John Fairfax & Sons* (1980) 147 CLR 39 per Mason J at paragraph 51-52. See also *Director-General of Education v Public Service Association of NSW* (1984) 79 FLR per McLelland J at paragraph 15 and 20 and *Callejo*, paragraphs 168 and 170.
[71] *Attorney-General (UK) v Heinemann Publishers Australia Pty Ltd* (1987) 10 NSWLR 86 at paragraph 191.
[72] As he then was.
[73] (1980) 147 CLR 39.
[74] *Fairfax*, at paragraph 52.
[75] [1997] AATA 192.
[76] Under the provision of the *Freedom of Information Act 1982* (Cth) equivalent to schedule 3, section 8 of the RTI Act.
[77] Internal citations and references omitted.

> *26.* ***Thus, if ATG is a public body for the purposes of the* Fairfax *doctrine, the question will be whether I am satisfied that the public interest requires that any matter in document 1(i) which otherwise would found an action for breach of confidence should not be disclosed.***
>
> *27. I turn first to whether ATG should be regarded as a public body for the purposes of the* Fairfax *doctrine. A number of matters are relevant in this respect. In his oral evidence…Mr Harbour deposed that ATG is "99% plus" owned by the Commonwealth, and that the Commonwealth has been the sole source of shareholder funds for the ATG. He conceded that the Commonwealth could wind up ATG without any difficulty. Mr Harbour said that the ATG's auditor is the Commonwealth Auditor-General. This by itself is some indication of the public status of ATG. Furthermore, the "Statement" at annexure B to Dr Read's affidavit included documents called "Draft ATG Guidelines" and "Public Interest Safeguards", and the latter in particular indicates the extent of Commonwealth control over ATG's activities.*
>
> *28. On the other hand, the Respondent pointed to evidence from Mr Harbour that while a public servant and a Senator were directors of this company incorporated under the* Corporations Law*, the Commonwealth had appointed a majority of the directors from the private sector. Other than through the two non-private sector directors, the Commonwealth had not sought to influence decisions made by the Board of ATG.*
>
> *29. There is very little guidance in the case-law as to what bodies may be regarded as sufficiently public in nature as to be affected by the* Fairfax *doctrine. What was said above by Mason CJ in* Plowman *indicates that the doctrine applies to "statutory authorities or public utilities". **A body such as ATG, albeit that it is a public company almost wholly owned by the Commonwealth, might not in ordinary usage be regarded as a statutory authority or a public utility. But I do not take Mason CJ's reference to "statutory authorities or public utilities" as exhausting the range of bodies beyond government Departments which are affected by the* Fairfax *doctrine.** *The Chief Justice approved of the observation of Professor Finn that in the public sector "(t)he need is for compelled openness, not for burgeoning secrecy**". In a functional sense, ATG is a public sector body.***
>
> (My emphasis.)

77. SM Bayne's approach to and application of the *'Fairfax* doctrine' (***Fairfax* Doctrine**) has been endorsed by a Deputy President of the AAT,[78] and applied by OIC in several cases arising under the RTI Act.[79] I am satisfied of its relevance in this case. If I consider that Screen is a 'public sector body' in the broad or 'functional' sense described in *Sullivan*, then, for the fifth cumulative requirement of detriment to be established, I must be satisfied that the public interest demands non-disclosure of the information in issue.

Status of Screen as a public sector body

78. Turning to the first issue, I am satisfied that Screen is a 'public sector body' in the 'functional sense' described by SM Bayne, bearing as it does the same or similar characteristics as the company considered by the Senior Member in *Sullivan*.

79. Screen Queensland is fully owned[80] and controlled[81] by the State, economically reliant upon the State,[82] could be readily wound up by the State,[83] and its accounts are audited by the Queensland Audit Office.[84] I also note that in its 2012-13 Annual Report, Screen Queensland expressly

[78] Deputy President Forgie, in *Callejo*, at paragraphs 167-172.
[79] See for example *Kalinga Wooloowin Residents Association Inc and Department of Employment, Economic Development and Innovation; City North Infrastructure Pty Ltd (Third Party)* (Unreported, Queensland Information Commissioner, 19 December 2011) and *Kalinga Wooloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd (Third Party); Department of Treasury(Fourth Party))* (Unreported, Queensland Information Commissioner, 9 May 2012) (***KWRA and BCC***).
[80] As opposed to the entity in *Sullivan*, which was merely majority government owned.
[81] Note 1.
[82] More than 80% of its revenue, on my calculations, deriving directly from State grant monies (using 'Revenue and other income figures' appearing on page 18 of Screen Queensland's 2013-14 Financial report). See also paragraph 11 of the affidavit of Ms Herring dated 19 February 2016.
[83] A relevant indicia: *Sullivan*, paragraph 27.
[84] The books of the company considered in *Sullivan* having been subject to audit by the Commonwealth Auditor-General, a fact which SM Bayne noted was '*by itself… some indication of the* [company's] *public status…*' (paragraph 27).

recognises that it acts on government's behalf, and acknowledges its economic dependence on public funding:[85]

> *The company focuses on the provision of services on behalf of the Queensland State Government in relation to promotion and development of the film production industry and film culture in Queensland. Any significant change in Government funding support would have a material effect on the ability of the company to provide these services.*

80. To paraphrase SM Bayne in *Sullivan*, Screen is, in a functional sense, a public sector body.

81. The Department and Screen have each made submissions disputing the application of the *Fairfax* Doctrine in this case. The Department's contentions[86] can be set to one side, predicated as they are on my applying the doctrine to the situation in which Disney is the entity claimed to be the confider owed an equitable obligation of confidence. As I have explained at paragraphs 44-67, an exemption claim under schedule 3, section 8 of the RTI Act as based upon Disney's position founders on the third cumulative requirement stated in paragraph 38; it is thus unnecessary to consider the fifth, detriment.

82. Screen, on the other hand, contends that it '*is an incorrect interpretation of the legal requirements that must be satisfied in order to establish* [an exemption claim under schedule 3, section 8 of the RTI Act] *to apply the* Fairfax *Doctrine as an additional legal requirement*'.

83. Screen has, however, made no attempt to particularise the above allegation of error. It has not directed me toward any principle or authority calling into question the relevance and applicability of the *Fairfax* Doctrine as explained in *Sullivan* – a doctrine which, I should make clear, does not comprise an 'additional legal requirement' to be fulfilled in order to establish exemption, but an explanation or clarification as to how one of the five accepted requirements must be met in specific circumstances. I am, as noted above, satisfied that the explanation in *Sullivan* is correct, and that contrary to Screen's submission, it is entirely appropriate to apply the *Fairfax* Doctrine where, as here, the entity claiming to be owed an obligation of confidence is a government-owned body.

84. Screen further contests its being characterised as a 'public sector body', 'strongly' submitting that '*the test for determining whether an entity is a "public body" is not clear and Screen Queensland does not accept that it is a "public body" in the current circumstance.*'[87]

85. I do not accept these arguments. With regards to the first point, there are many accepted legal concepts the application or identification of which are attended by a degree of ambiguity or lack of categorical precision, and appraisal of which entail careful analysis from case-to-case.[88] That there may be no 'hard and fast' criteria for determining a particular issue or identifying a species of entity for the purposes of a given legal doctrine in no way of itself invalidates or delegitimises the underlying doctrine or concept. In any event, the general criteria for identifying a 'public sector body' in the *Sullivan* sense are in my view quite clear – involving questions of ownership, control, governance, regulation and funding.

86. As for Screen's dismissal of any characterisation of it as a 'public body', it is sufficient to note that I am satisfied Screen is a public sector body in nature, if not strict legal form. It shares many of the same characteristics as the entity found to be a 'functional' public sector body in *Sullivan* (indeed, in what is perhaps the most material characteristic – ownership – Screen 'outdoes' the entity analysed in *Sullivan*, being fully owned by the Queensland Government). Screen has advanced no reasons as to why I should distinguish its position from that of the company analysed in *Sullivan*. Having analysed its status – including its full government ownership, near-total dependence on public monies, and the subjection of its operations to the scrutiny of the State's

[85] Page 36.
[86] As set out in its 19 February 2016 submissions.
[87] Submissions dated 26 February 2016, paragraph 76(a).
[88] Distinguishing between questions of fact and questions of law on occasion, or identifying the 'dominant purpose' for the creation of a given communication, by way of just two examples.

auditor – I can see no reason why I should do so. In the circumstances, I simply reiterate my findings as set out in paragraphs 78-80.

87. Screen also goes on to challenge whether the information in issue can be said to be sufficiently 'governmental' in nature so as to warrant the sterner test for detriment imposed on 'government secrets' as imposed by *Fairfax*: the donning of 'different spectacles', to paraphrase Mason J (as he then was). Screen submits that:[89]

> *The basis upon which the OIC has determined what constitutes "government information" for the purposes of applying the Fairfax Doctrine does not rest upon an identifiable and sufficiently clear test. In particular, it does not enable a distinction to be drawn between routine government information of an administrative nature and information concerning the commercial activities of a supplier of the information or activities of a supplier which depend upon retaining the confidence of private individuals or entities, especially in respect of communications that are concerned with the private or commercial information of those individuals or entities. In this regard, the Information in Issue cannot simply be categorised as "government information" because it was communicated by a public authority. Rather the Information in Issue is the outcome of a negotiation process with a nongovernment public sector entity and as such the information therefore is about the commercial affairs of a non-government entity…*

88. Whether information is 'government information' to be subject to the stricter threshold for detriment enunciated in *Fairfax* is essentially determined by reference to who it is that is claiming to be owed the obligation of confidence necessary to found exemption under schedule 3, section 8 of the RTI Act – ie, by addressing the question answered above at paragraph 80. If a public sector body is claiming that it is owed an obligation of confidence in respect of information it has communicated, then for it to be successful in that claim, the information must of its very nature be that public body's and thus, in a broad or functional sense, 'government' information – generally speaking, information that has ultimately been brought into existence as a consequence of actions and endeavours funded by the public purse.

89. The alternative is that the public body has merely been a conduit through which information communicated by an independent third party has passed. In such a situation, the 'plaintiff' with standing to bring the hypothetical legal action necessary to found the breach of confidence exemption will be that third party, not the public body.

90. In the present case, Screen is pressing a claim that *it* is the plaintiff with standing to bring the requisite hypothetical legal action. Having satisfied myself that Screen is a public body, I need go no further – the information it claims to have communicated must by its very nature be information of a public body – or 'government information' – to some extent, otherwise Screen could not claim to be owed an independent obligation of confidence. It may be the case that such information touches on or refers to the affairs or concerns of third parties independent of government; that, however, will be a matter relevant to the evaluation of the public interest consequences of disclosure required by the *Fairfax* Doctrine.

91. In short, whether the *Fairfax* Doctrine is enlivened in a particular case turns on a proper characterisation of the entity claiming to be owed an obligation of confidence, rather than the information said to be subject to such obligation. If the said entity is a public sector body within the broad meaning of that concept as stated in *Sullivan*, relevant information must axiomatically comprise 'government information' of some type. In any event, I am satisfied that a record of the amount of public monies disbursed by government such as that in issue is 'government information'.

Public interest in nondisclosure

92. The next step in applying the *Fairfax* Doctrine is assessing whether the public interest demands or requires nondisclosure of the information in issue. I do not consider that it does – on the contrary, in this case the public interest would, in my view, be best served by its release.

[89] Submissions dated 26 February 2016, paragraph 77(a).

93. I have analysed public interest considerations at length below, in dealing with the Objecting Participant's claims that access may be refused under section 47(3)(b) of the RTI Act. For present purposes, it is sufficient to note that while I acknowledge the multiple public interest harms the Objecting Participants assert would flow from disclosure, I am not persuaded that they have succeeded in substantiating those assertions.

94. The absence of any identifiable harm that might flow to the public interest as a consequence of disclosure of the information in issue is sufficient to preclude satisfaction of requirement (d) – detriment, and Screen's claim that the information is exempt under schedule 3, section 8 of the RTI Act must therefore fail.

95. Yet even if the Objecting Participants could demonstrate that disclosure would result in the occurrence of claimed public interest harms, it is my view that there are significant public interest considerations in this case which would outweigh any such adverse consequences. In this regard, I note that in considering whether potential detriment to the public interest requires nondisclosure of information, it is, as SM Bayne observed in *Sullivan*, '*also relevant to have regard to the public interest in disclosure of the documents*'.[90]

96. The information in issue details a substantial grant paid to a private commercial interest by government. That grant was funded by Queensland taxpayers, and there is a manifest public interest in allowing those taxpayers access to information describing same, in order that they may scrutinise what government committed on their behalf, and whether doing so represented a sound investment of their monies. It is noted that the government made public statements detailing the benefits expected to accrue to the State as a consequence of the PoC production. The release of the information in issue would allow the public to weigh those publicised benefits against the costs incurred. Accountability of this kind is fundamental to all government agencies and government-owned entities which perform functions or negotiate outcomes on behalf of the Queensland community, using the community's funds.

97. For these reasons, it cannot be said the public interest requires non-disclosure of the information in issue. The detriment required to found an action for a breach of confidence by Screen is not established, and the information in issue therefore cannot comprise exempt information under schedule 3, section 8 of the RTI Act.

Contrary to public interest information

98. The Objecting Participants also contend that disclosure of the information in issue would, on balance, be contrary to the public interest[91] within the meaning of section 47(3)(b) and 49 of the RTI Act. This comprises a further ground on which access to information may be refused under the Act.[92]

99. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest[93] and explains the steps that a decision-maker must take, as follows:[94]

- identify any irrelevant factors and disregard them;
- identify relevant public interest factors favouring disclosure and nondisclosure;
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

[90] At paragraph 37.
[91] The phrase *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 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.
[92] Section 47(3)(b).
[93] Schedule 4 of the RTI Act – a non-exhaustive itemisation of potentially relevant considerations.
[94] Section 49(3) of the RTI Act.

Irrelevant factors

100. I have taken no irrelevant factors into account in making my decision.

Factors favouring disclosure

101. I consider that there are significant and weighty public interest considerations telling in favour of disclosure of the information in issue. The public interest demands that government decisions involving the transfer of public wealth into private hands be made as transparently as possible, so as to enable proper public scrutiny and ensure appropriate accountability.

102. In terms of the public interest factors enumerated in the RTI Act, for reasons further elaborated at paragraphs 149-175 below, I consider that disclosure of the information in issue could reasonably be expected to:[95]

- promote open discussion of public affairs and enhance the Government's accountability;
- contribute to positive and informed debate on important issues or matters of serious interest; and
- ensure effective oversight of expenditure of public funds.

Factors favouring nondisclosure

103. The Objecting Participants submit that disclosure of the Information in Issue would result in a number of consequences adverse to the public interest, which are sufficient to displace any considerations favouring disclosure. In their original submissions,[96] the Department and Screen jointly submitted that disclosure could reasonably be expected[97] to:

- prejudice the business, professional, commercial or financial affairs of entities (**Business Affairs Nondisclosure Factors**),[98]
- cause a public interest harm because disclosure would disclose information that has a commercial value to an agency or another person and could reasonably be expected to destroy or diminish that commercial value[99] (**Commercial Value Harm Factor**); and/or
- prejudice the economy of the State[100] - Screen going on in further submissions to argue that disclosure could have a substantial adverse effect on the ability of government to manage the economy of the State.[101]

104. Screen has further submitted[102] that disclosure of the information in issue could reasonably be expected to prejudice:

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[95] Schedule 4, part 2, items 1, 2 and 4 of the RTI Act.
[96] Dated 16 October 2015.
[97] The words 'could reasonably be expected' as used throughout the RTI Act '*call for the decision-maker… to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible (e.g. merely speculative/conjectural "expectations") and expectations which are reasonably based, i.e. expectations for the occurrence of which real and substantial grounds exist.*: *B and BNRHA*, at [160]. Other authorities note that the words '*require a judgement to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous' to expect a disclosure of the information in issue could have the prescribed consequences relied on.*': *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45, at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180, at 190.
[98] Schedule 4, part 3, items 2 and 15 of the RTI Act. Neither the Department or Screen sought to argue the application of the similarly worded 'business affairs' harm factor prescribed in schedule 4, part 4, section 7(1)(c) of the RTI Act. In any event, for reasons explained below, I do not consider it arises for consideration in the circumstances of this case.
[99] Schedule 4, part 4, section 7(1)(b) of the RTI Act.
[100] Schedule 4, part 3, item 12 of the RTI Act. The Department's original submissions dated 16 October 2015 also cited schedule 4, part 3, item 22 of the RTI. The only information to which this factor could meaningfully relate is the dollar figure discussed at paragraph 12, which no longer remains in issue. Accordingly, it is not necessary to consider the factor further.
[101] A public interest harm factor: Schedule 4, part 4, section 9(1)(a) of the RTI Act. Screen's 26 February 2016 submissions citing this harm factor simply refer to '*s. 9 of Part 4 of Schedule 4 to the RTI Act*', which actually contains two 'sub' factors – given the language with which relevant submissions are framed, it appears Screen was only intending to rely upon the sub-factor set out in schedule 4, part 4, section 9(1)(a), and I have only had regard to this provision in reaching my decision. Certainly, there is nothing before me to suggest disclosure of the information in issue could reasonably be expected to '*expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Assembly or government…*' for the purposes of the second sub-factor prescribed in schedule 4, part 4, section 9(1)(b) of the RTI Act.
[102] Submissions dated 26 February 2016.

- Screen's '*capacity to compete with other…jurisdictions in attracting the filming and production of feature films in Queensland*';
- '*the proper performance of Screen Queensland's functions and powers*'; and
- '*the proper performance and operation of an investment incentive scheme*' (collectively, **Additional Factors Favouring Nondisclosure**).

105. Disney separately contends that disclosure could reasonably be expected to prejudice or have an adverse effect upon:
    - Disney's business and commercial affairs;[103]
    - the future supply by Disney and other companies to the Queensland Government of information similar to the information in issue,[104] and
    - the Queensland Government's 'competitive commercial' activities.[105]

106. The Objecting Participants' public interest submissions as outlined in the preceding three paragraphs can be broadly summarised as arguments that disclosure of the public interest would prejudice or impair Screen's business, commercial or financial interests; do the same to Disney, and/or adversely impact upon the public interest, by hindering Screen and thus the State's capacity to 'win' future feature film production to Queensland, resulting in various negative economic and social impacts. I am not satisfied that disclosure of the information in issue could reasonably be expected to result in any of these prejudices or detriments, for reasons set out below.

The Department and Screen's public interest submissions

107. The Department's and Screen's initial joint submissions on the public interest (summarised in paragraph 103) centre mainly on the commercial damage that disclosure of the information in issue would allegedly cause Screen. The Department and Screen argue that disclosure could reasonably be expected to 'c*ause competitive harm*' to Screen, submitting that:[106]

> *Screen Queensland competes nationally and internationally for projects such as* [PoC]*, which generate potentially significant economic and employment benefits to the State. Disclosure of the Information in Issue would put it at a competitive disadvantage as against other applicants for such grants and similar bodies at both a national and international level, because:*
>
> *(a) the information could be used by other applicants for such grants to assess a starting point for negotiations over an appropriate grant figure, and to that extent weaken Screen Queensland's negotiating position;*
> *(b) the information could enable competitor governments to assess the likely terms on which grant assistance would be offered by Screen Queensland, and tailor their offers to outbid Queensland on projects; and*
> *(c) this would in turn encourage forum shopping by movie producers to get the best deal available, to the likely economic detriment of Queensland and employment opportunities in Queensland.*
>
> *Further or alternatively, disclosure of the Information in Issue could reasonably be expected to prejudice Screen Queensland's business affairs and/or cause a public interest harm because disclosure of the information would disclose information…that has a commercial value to Screen Queensland and could reasonably be expected to destroy or diminish the commercial value of the information.*

[103] Schedule 4, part 3, items 2 and 15 and schedule 4, part 4, section 7(1)(c) of the RTI Act. Schedule 4, part 4, section 7(1)(c) is a public interest harm factor which will arise where, relevantly, disclosure of information could reasonably be expected to have an adverse effect upon an entity's business etc affairs, or prejudice future supply of like information to government. Disney has not argued that disclosure would have an 'adverse effect'; in view, however, of its arguments as to commercial/business prejudice and its citation of the second form of prejudice – prejudice to future supply of information – prescribed in this provision, I have, for the sake of completeness, had regard to it in reaching my decision.

[104] Schedule 4, part 4, section 7(1)(c)(ii) of the RTI Act. A broadly similar nondisclosure factor will arise where disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information: schedule 4, part 3, item 16 of the RTI Act.

[105] Schedule 4, part 3, item 17 of the RTI Act.

[106] Submissions dated 16 October 2015 (footnotes omitted).

108. The first point to note is that I do not consider that Screen,[107] in carrying out its film financing and procurement activities, can be said to actually possess business, commercial or financial affairs of the kind necessary to enliven relevant nondisclosure or harm factors.

109. The Information Commissioner discussed the proper characterisation of activity undertaken in the administration of industry incentive schemes of the kind facilitated by Screen in *Berri*.[108] In dismissing claims that disclosure of information analogous to the information in issue[109] would give rise to the material equivalents[110] of the Business Affairs Nondisclosure Factors and Commercial Value Harm Factor, the Information Commissioner rejected the argument that administration of an industry incentive scheme was activity of a 'business' or 'commercial' nature:

> *49.* *In* Re Johnson and Queensland Transport; Department of Public Works…*at paragraphs 56-57, I rejected a submission that the Infrastructure and Major Projects Division of the Department of Public Works, in discharging project management duties allocated to it by government and funded out of consolidated revenue, had "business or commercial affairs", according to the proper meaning of those terms in the context of s.45(1)(c) of the FOI Act. Section 45(1)(b) was not relied on by the Department of Public Works in* Re Johnson*, and therefore was not mentioned in my discussion of the issue at paragraphs 50-57. However, I consider that that discussion is also relevant to s.45(1)(b) because, in my view**, information cannot have commercial value to an agency if the agency does not have commercial affairs**…At paragraphs 50-51 of* Re Johnson*, I said:*
>
> …
>
> 51. … an agency will have business or commercial affairs if, and only to the extent that, it is engaged in a business undertaking carried on in an organised way for the purpose of generating income or profits, or is otherwise engaged in an ongoing operation involving the provision of goods or services for the purpose of generating income or profits.
>
> *50.* *In this case, **the activities of the Department in administering the QIIS and otherwise providing incentive assistance to attract major/strategic projects, do not answer either of the descriptions in the last quoted paragraph**.*
>
> *51.* *When properly analysed, the nature of the transaction between the State of Queensland and the third party involved an advance of public monies in return for the third party agreeing to engage in certain capital expenditure and economic activity for the benefit of the Queensland economy, and also agreeing to repay the advance of public funds if it did not do so. **This was not a commercial activity on the part of the Department. It did not involve the purchase or sale of goods and services. It was a traditional governmental activity, although it had a commercial appearance as the result of the execution of a formal agreement between the State of Queensland and the third party,** which included the sort of terms usually to be found in commercial agreements. In that agreement, the third party bound itself to do, by certain dates, the things which the investment incentive schemes administered by the Department seek to achieve by way of stimulus/benefit to the Queensland economy, and bound itself to repay the financial assistance grant if it did not do those things.*
> ***…***
>
> *56.* *The fact that State governments sometimes **compete with each other in offering inducements to business operators does not, in itself, transform a traditional governmental activity into a commercial activity.** State governments sometimes talk about competition to offer a low-tax environment to business, but it could not be suggested that setting the rates of state taxes and other imposts at a level that is optimal to attract new business investment in the State is a commercial activity rather than a governmental activity, even if its aim is to attract greater commercial activity in the State.*

[107] Nor the Department, insofar as it is involved in the administration of film production incentives.
[108] First cited at note 46. The FOI Act was amended following this decision to include a provision allowing for the exemption from disclosure of investment incentive scheme information in certain defined circumstances, for certain defined periods. That exemption was carried forward into the RTI Act: schedule 3, section 11. It does not, however, have application to the information in issue in this case, and I cannot see that its enactment invalidates relevant aspects of the Information Commissioner's reasoning in *Berri*.
[109] The amount of a grant paid to a beverage manufacturer.
[110] Contained in the FOI Act.

…

> *62. … **I consider that, in administering the QIIS and other incentive schemes, and in negotiating and concluding an agreement with the third party for a grant of financial assistance, the Department was not engaged in business or commercial activities, but in governmental activities.** I find that whatever value any of the matter in issue has for the Department in terms of its administration of the QIIS and other arrangements for providing incentive assistance to attract major/strategic projects, it cannot properly be characterised as having commercial value as that term is used in s.45(1)(b) of the FOI Act. On that basis, I find that none of the matter in issue qualifies for exemption under s.45(1)(b) on the ground that it has a commercial value to the Department that could reasonably be expected to be diminished by its disclosure.*
>
> *63. In my view, the Department's reliance on s.45(1)(b) (and indeed s.45(1)(c) to the extent that reliance was predicated on the Department having business or commercial affairs) was misconceived, for the reasons I have indicated above. The Department's submissions emphasised the competitive element of its activities in administering the relevant incentive schemes; e.g.: "The attraction of industry and investment to Queensland, in competition with other States and nations is itself a commercial activity on the part of the agency". In my view**, the element of competition between governments in offering taxpayer-funded incentives to attract industry and investment does not alter the fundamental character of the activity from a governmental activity to a commercial activity.***
>
> (My emphasis – internal citations omitted.)

110. The Information Commissioner went on in *Berri* to explain the proper interpretation of the word 'financial', as used in the phrase 'business, professional, commercial or financial affairs', which appears in the first[111] of the Business Affairs Nondisclosure Factors relied on by the Department and Screen in their initial submissions:

> *93. …the common link between the words "business", "professional", "commercial" and "financial" in s.45(1)(c) is to activities carried on for the purpose of generating income or profits, and I consider that Parliament intended the s.45(1)(c) exemption to be confined to business operators and government agencies engaged in activities carried on for that purpose. In my view, the ambit of the application of the s.45(1)(c) exemption should be confined in the way I indicated in* Re Johnson *at p.324 (paragraphs 50-51). **That is, in respect of its application to agencies, s.45(1)(c) should apply only to the extent that an agency is engaged in a business undertaking carried on in an organised way for the purpose of generating income or profits, or is otherwise involved in an ongoing operation involving the provision of goods or services for the purpose of generating income or profits.***
>
> (My emphasis.)

111. Given the similarity in wording, it is my view that the Commercial Value Harm Factor and the Business Affairs Nondisclosure Factors[112] are to be read narrowly, in the manner explained by the Information Commissioner in *Berri*: they are only applicable to information concerning activities or affairs that are carried on in a business-like fashion for the purpose of generating income or profits. I also consider that the Information Commissioner's findings that the administration of an incentive scheme is not such an activity are directly applicable in the present review. The only feature distinguishing this case from *Berri* is that the government has here opted to administer taxpayer-funded incentives through a wholly state-owned incorporated vehicle, Screen, rather than directly via a mainstream public agency. The underlying activities undertaken by Screen on the State government's behalf are, however, of a piece with those scrutinised in *Berri*: fundamentally governmental, rather than commercial.

112. In the circumstances, then, Screen (and, more broadly, the Department) cannot be said to have

[111] Schedule 4, part 4, item 2 of the RTI Act.

[112] And, indeed, schedule 4, part 4, section 7(1)(c) of the RTI Act, which is worded identically to section 45(1)(c) of the repealed FOI Act; as noted, none of the Objecting Participants expressly argued the application of schedule 4, part 4, section 7(1)(c) of the RTI Act – it should be apparent from the discussion in these paragraphs that I do not consider it can have any application, at least as regards Screen (or the Department).

business, commercial or financial affairs in the sense required by the Commercial Value Harm Factor and Business Affairs Nondisclosure Factors. Accordingly, the factors cannot and do not arise for consideration as regards the affairs of Screen (or the Department).

113. I conveyed the reasoning expressed in paragraphs 108-112 above to each of the Department and Screen by correspondence dated 17 December 2015, and invited their submissions in reply. Neither participant has sought to contest that reasoning.

114. The Department, while wishing to maintain its claim that disclosure would, on balance, be contrary to the public interest, essentially left Screen to advance its own case as regards commercial and/or business prejudice.[113] Screen's subsequent submissions[114] were similarly silent on the issue, instead arguing that disclosure would give rise to the several Additional Factors Favouring Nondisclosure as summarised in paragraph 104 – each of which argues substantively similar prejudices to those embodied in the Business Affairs Nondisclosure Factors, but does not claim that such prejudice would impact upon Screen's commercial, business etc. affairs.

115. In the absence, then, of any submissions to the contrary – and bearing in mind the formal onus borne by the Department[115] – I reiterate my conclusion as expressed in paragraph 112: neither the Commercial Value Harm Factor nor the Business Affairs Nondisclosure Factors[116] arise for consideration in assessing where the balance of the public interest lies in this case.

116. If I am wrong in the above findings and Screen *could* be said to possess the requisite commercial, business etc. affairs, and that the information issue could be said to concern those affairs, I am not satisfied that the information in issue:

- is possessed of commercial value standing to be diminished by disclosure (as required to enliven the Commercial Value Harm Factor), nor
- that its disclosure could reasonably be expected to prejudice or adversely affect those affairs (for the purposes of the Business Affairs Nondisclosure Factors), or prejudice or substantially adversely affect the economy of the State.

117. I have addressed the substantive requirements for these factors below.

Commercial Value Harm Factor

118. Information will have a commercial value if:[117]

- it is valuable for the purposes of carrying on the commercial activity in which that agency or other person is engaged (i.e. because it is important or essential to the profitability or viability of a continuing business operation, or a pending "one-off" commercial transaction); or
- a genuine arms-length buyer is prepared to pay to obtain that information from that agency or person, such that the market value of the information would be destroyed or diminished if it could be obtained from a government agency which has possession of it.

119. The information in issue falls within neither of the above categories. There is nothing before me to suggest the existence of arm's length third party purchasers prepared to pay for access to dated grant information. Further, as the Incentive Payment has been settled and agreed to, disclosure of its amount could in no way impact upon the negotiations or 'transaction' that led to that agreement.

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[113] Submissions dated 19 February 2016.
[114] Submissions dated 26 February 2016, amplified by further submissions dated 13 June 2016.
[115] Section 87(1) of the RTI Act.
[116] Of, for the sake of completeness, schedule 4, part 4, section 7(1)(c) of the RTI Act.
[117] *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at [54]-[55] (***Cannon***), considering section 45(1), a similar exemption which appeared in the FOI Act. The information must have a commercial value at the time that the decision is made; information which was once valuable may become aged or out-of-date such that it has no remaining commercial value: [56].

120. The only possible argument – and the one I understand the Department and Screen to have been prosecuting in their initial joint submissions – is that the information in issue possesses an ongoing, intrinsic commercial value which could be diminished by disclosure. Again, the Information Commissioner's observations in *Berri* are apposite. In rejecting a near-identical argument, the Commissioner noted as follows:

> *69. The Department has submitted that the category 1 matter has intrinsic commercial value because it allows the Department to set a benchmark or precedent for its grants scheme both in a general sense, and in the specific industry. It has argued that a crucial element in assessing other projects seeking grants is the amount and details of prior grants, both in the particular industry (i.e., food processing), and generally.*
>
> *70. However, I consider that whatever value the category 1 matter (and also what I have described at paragraph 25 as the peripheral matter) might still have for the Department in terms of its administration of the relevant incentive schemes (i.e., in assessing other projects seeking grants), its value in that regard does not depend upon the information being kept secret, and I find that its value could not be diminished by disclosure of that information at this stage.*
>
> *71. The real nub of the Department's case for keeping the information secret is that, in an environment of competition with the New South Wales, Victorian and overseas governments to attract industry and investment through financial assistance grants, disclosure of the amounts of grants paid to specific businesses would set benchmarks for comparable claims in comparable industries, that:*
>
> *(a) could be used by other applicants for assistance to assess a starting point for negotiations over an appropriate grant figure, and to that extent weaken the Department's negotiating position;*
> *(b) enable competitor governments to assess the likely terms on which grant assistance would be offered by the Department, and tailor their offers to outbid Queensland on projects; and*
> *(c) this would in turn encourage forum shopping by business operators to get the best deal available.*
>
> *…*
>
> *73. … the arguments I have summarised at paragraph 71 above **do not flow from any intrinsic commercial value attaching to the category 1 matter** and the peripheral matter.*

121. The above findings are directly applicable in the present case. Whatever worth the information in issue might arguably have to Screen or the Department for the purposes of future incentive proposals, that value does not, in my view, derive from any inherent or intrinsic commercial value in the amount of the Incentive Payment (as contained in the information in issue) itself, and such value would not be diminished or affected by disclosure now of that information.

122. As with the observations and findings set out in paragraphs 108-112, I afforded both the Department and Screen the opportunity to contest the reasoning expressed in the preceding four paragraphs. Neither has done so. In the circumstances, I find that the requirements of the Commercial Value Harm Factor are not satisfied. The Factor does not, therefore, apply to the Information in Issue, and does not arise for consideration in balancing the public interest.

Business Affairs Nondisclosure Factors

123. As noted, in their opening submissions in this review, the Department and Screen also argued that disclosure of the information in issue could reasonably be expected to prejudice Screen's business etc. affairs. These arguments were largely, as I understand, premised on the submissions extracted in paragraph 107. Relevant submissions essentially comprise 'benchmarking' arguments, ie, that disclosing the value of the incentive paid to one production house at a given point in time would arm other companies with information sufficient to enable them to assess negotiation starting points, to bargain for comparable assistance, and to allow rival locales to outbid Queensland.

124. Assuming that such information can be said to concern Screen's business etc, affairs,[118] I have considerable reservations as to whether its disclosure could reasonably be expected to prejudice the commercial, business or financial interests of Screen (or indeed, the Department). In this regard, I refer again to the Information Commissioner's comprehensive analysis and rebuttal of near-identical arguments in *Berri*:

> *108. The Department's evidence and submissions did not explain precisely how disclosure of the amount of the grant could enable other grant applicants, and competitor governments, to assess benchmarks. Presumably, the amount of the grant would be assessed against the information which the Department does publish (for example, in terms of job targets and capital investment promised by the recipient of the grant), to infer that, in return for that amount of capital investment in Queensland, and that number of new jobs created, the Queensland government would be prepared to offer that amount of financial assistance.*
>
> *109. In practical terms, however, there would be many more potential variables that could affect the amount of grant assistance that the Department would be prepared to pay in particular cases. These could include:*
>
> - *premiums to attract particular industry sectors (e.g., aviation support, bio-technology) with a highly skilled labour force, or reputable foreign businesses seeking to establish headquarters in Australia;*
> - *premiums to attract investment of particular strategic importance to the economy of the State, or investment that boosts development and employment in regions of Queensland that are in particular need;*
> - *the amount of funding available to the grants scheme from consolidated revenue; and*
> - *the extent to which the Department is prepared to compete with offers of assistance from other governments.*
>
> *110. Let us assume that disclosure of the matter in issue enabled another grant applicant to approach the Department with the proposition that its project involves x times the amount of capital expenditure, and x times the number of new jobs created, as the third party's project, and therefore it is deserving of x times the amount of the grant given to the third party.* ***I cannot see how such an approach by a grant applicant could somehow bind the Department to proceed with subsequent negotiations in a way that meant that the financial interests of the Department or the State, or the ability of government to manage the economy of the State, could be adversely affected. The Department would be neither morally nor legally obliged to accept the grant applicant's position, nor even to treat it as a starting point for negotiations. The Department would make its own detailed assessment of the particular project in deciding an appropriate amount of financial incentive grant, and negotiations would proceed by reference to that detailed assessment.***
>
> *111. I cannot see how discussion of comparative grants would likely be more than a transitory sidetrack in negotiations over a new specific project. Moreover,* ***I consider that it is mere speculation for the Department to assert that some companies would be discouraged from investing in Queensland merely because they could not obtain grants which they considered comparable (presumably on some kind of pro rata basis) to the grant obtained by the third party in the instant case. If the issue of comparability were raised by a grant applicant, it would be open to the Department to explain why the cases were not comparable.***
>
> *112. There has been no indication in the Department's evidence and submissions that pre-contractual negotiations over the amount of a grant of financial assistance are conducted on a basis that binds the applicant for a grant not to disclose to another government the amount of the latest grant offer from the Department. Even if that were the case,* ***it would be difficult to prevent a forum-shopping grant applicant from indicating to another government (without revealing the details of Queensland's offer) that it would have to make a better offer to induce acceptance in preference to Queensland's offer ….***

[118] Which, as discussed above, I do not: paragraph 112.

> *113. This is another reason why I have difficulty accepting that disclosure of the matter in issue could reasonably be expected to have the adverse effects asserted by the Department, in terms of allowing other governments to outbid Queensland on projects through obtaining knowledge of the incentives that Queensland might offer to attract a project.* ***Even assuming that disclosure of the particular matter in issue could enable another government to assess how Queensland would be likely to arrive at an initial offer to attract a new business project, that could only have an adverse effect if it enabled the other government to outbid Queensland in circumstances where a forum-shopping grant applicant offered each interested government one chance to submit its best offer to attract the grant applicant's project.*** *Such a case could occur but, ordinarily, a private sector business operator would negotiate as extensively as the respective governments would permit (and the significance to it of the project warranted), in order to find out how far each government would go to attract its business.* ***The amount of each package would then be factored into the grant applicant's assessment of a range of other business factors to determine which base of operations would be most beneficial for its business plans. Any number of other factors could carry greater weight in reaching that decision than the amount of grant assistance on offer, and the government that made the second or third best offer might secure the project.*** *Indeed, the business operator might know in advance what its preferred location is, and still seek to play off one government against another to get the best possible deal from the government of its location of choice.*
>
> *114. These are the kind of variables that the Department (and other governments) have to assess in deciding how much taxpayers' money they are prepared to offer to attract a particular project. No doubt there are elements of a poker game when several governments are competing to attract a desirable business that is new to Australia and seeking the best available incentive package to influence the location of its headquarters. Difficult judgments are no doubt involved in assessing how high it is necessary or appropriate to go to make a competitive or winning bid. However,* ***a government cannot responsibly be prepared to pay whatever it takes to secure the investment project if the cost to taxpayers would be disproportionate to the economic benefits liable to be obtained.***
>
> *…*
>
> *117. The Department's submissions treat the question of disclosure of the amount of the grant to the third party as if it were a precedent for all other grant amounts, with the consequence that disclosure of all grant amounts would then enable future grant applicants and other governments to work out comprehensive benchmarks. However, the terms of the relevant exemption provisions require assessment of the reasonably apprehended effects of disclosure of the particular matter in issue. Each case must turn on its own merits. The individual circumstances of each grant must be considered, such as the time that has passed since the grant was made, whether other states were competing to attract the project, and whether the grant was site-specific or otherwise unique in its circumstances such as to have limited general application or precedent value. I do not accept that a blanket approach to exemption (or, for that matter, disclosure) can be taken with respect to all grants.*

(My emphasis.)

125. The Information Commissioner's critique as set out above is generally applicable in the present case (allowing, of course, for the fact that the incentive program analysed in *Berri* related to general industry, as opposed to film production specifically). The information in issue is a historical figure reflecting a substantial part of what the State was prepared to offer one production company at a particular point in time, under circumstances prevailing at that time. While a production house might attempt to use the information in issue as a 'starting point' in future negotiations with the State, it is not clear to me why this would of itself occasion any prejudice to the business affairs of Screen and/or the Department. There is nothing before me to suggest Screen and/or the Department are bound in any way to ensure future incentives match historical grants. Regardless of disclosure, each will retain the capacity to negotiate future incentive packages on their merit – to set the parameters for negotiations with film proponents, based on Screen and the Department's own careful analysis of the costs and benefits of a proposed production. Negotiations would then surely proceed by reference to that analysis, rather than the partial amount of assistance awarded at some point in the past.

126. Similarly, I am unable to see how disclosure of historical information of the kind in issue could reasonably be expected to, of itself, precipitate 'forum shopping' as asserted, nor to allow Queensland to be outbid in future negotiations.

127. As to the first point, the most pertinent information for a prospective film producer 'shopping around' for the best deal would not, it seems to me, comprise information concerning a historical grant to a competitor, but whatever current deal Queensland was prepared to 'put on the table', which could then be touted around competing jurisdictions.[119] In this regard, even if Screen or the Department sought to bind the producer from disclosing details of the State's latest offer during negotiations (on which point there is before me no evidence), it would be difficult to prevent the producer suggesting to competing jurisdictions that the latter would need to do better.

128. As for any assertion that disclosure of the information in issue would enable competitor jurisdictions to outbid Queensland on film proposals, or would dissuade production houses from investing locally if they could not secure funding comparable to Disney's, I think the Information Commissioner's reasoning in *Berri* as set out above adequately deals with these propositions. I would only note again that the amount of any future incentive payment would be determined not by reference to a particular grant awarded in October 2014, but by reference to a variety of factors, including the amount available to government in consolidated revenue, the perceived value of the particular production and film production generally to the state economy at the time any grant falls to be assessed, the quantum of any assistance proposed by the Commonwealth and, perhaps most significantly, the prevailing foreign exchange rate.[120]

129. The substance of the discussion and reasoning set out in paragraphs 124-128 was put to the Department and Screen for consideration and reply, by correspondence dated 17 December 2015. The Department did not seek to elaborate upon its original submissions, leaving, as I have noted, Screen to press relevant public interest arguments. Screen did indeed do so,[121] in terms emphasising prejudice to its operations generally, rather than business, commercial, or financial interests specifically. The thrust of those submissions was aimed at fortifying its original 'benchmarking' arguments, and it is therefore convenient to deal with them here. The relevant submissions are expansive, however having carefully reviewed them in their entirety, I think the following excerpts fairly capture their essence:[122]

> *28.* [Screen] *submits that the role of incentive packages such as that provided to Disney for Pirates of the Caribbean: Dead Men Tell No Tales are critical in attracting studios to choose Queensland as a location to film and produce films and ultimately to secure* [specified economic and social] *benefits….*
>
> *29. While Screen Queensland acknowledges that an incentive package may not be the only issue for studios when they are deciding whether or not to locate their production in Queensland, the incentive process and the package itself is significant on several levels being:*
>
> *(a) The prospect of an incentive package is a mechanism which allows our client to reach out and approach international studios and to put forward Queensland as a viable option. Without such an approach, Queensland may not be seen as being attractive particularly during the early stages of the production location identification processes;*

[119] Which, indeed, appears to have been exactly what occurred in this case. Disney seems to have actively 'forum-shopped' prior to settling on Queensland as a preferred production locale: the media report cited in note 29, for example, records that Screen '*beat off competition from Mexico and other Australian states to win the production*'. It seems to me that such behaviour – and associated 'bidding wars' – occurs and will continue to occur irrespective of whether the information in issue in this review is released.

[120] In its 2015 report '*Industry Assistance in Queensland*', the Queensland Competition Authority (**QCA**) noted a correlation between the exchange rate and foreign film production in Australia, suggesting that '*while incentive payments may affect some production decisions at the margin, the exchange rate may overwhelm other factors influencing the location decisions of foreign producers.':* QCA*, Industry Assistance in Queensland: Final Report (July 2015)* (**Industry Assistance Report**)*,* p. 163. The QCA is an independent statutory authority established under the *Queensland Competition Authority Act 1997* (Qld). Section 10(e) of that Act invests the QCA with responsibility for investigating and reporting on matters relating to competition, industry or productivity at the direction of the responsible Minister.

[121] Submissions dated 26 February 2016.

[122] The initialisation 'PIP' used in these submissions refers to the Incentive Payment. The substance of this 'PIP' is reflected in the information in issue.

> *(b) Queensland is now considered to be a potential location option as it has a skilled workforce with experience in international productions which has been progressively developed over time. Previous productions, have chosen Queensland on the back of incentive arrangements and packages such as the Program;*
>
> *(c) The competitiveness of an incentive package can be a significant determining factor where the options are narrowed down to two or three locations. An incentive package can separate the options to provide a preferred option; and*
>
> *(d) An incentive arrangement can make Queensland a competitive and attractive option. For example, when the Australian Dollar was trading at a high level, the incentive arrangements had the effect of removing this competitive disadvantage.*
>
> *30. Incentive packages are therefore an important tool used by Screen Queensland in satisfying the functions and purposes for which Screen Queensland has been established and to react and accommodate local and global market issues.*
>
> *…*
>
> *32. There are a range of reasons as to why Screen Queensland considers that details such as the amount of a PIP are sensitive and confidential and should not be disclosed to the public at large. These include the following key matters:*
>
> *(a) Should it be known across the industry sector the value of a PIP that has been paid to a production studio, Screen Queensland will then lose its competitive leverage and capacity to undertake robust, competitive negotiations with production companies in the future. For example, if other competitor production studios were aware of the PIP amounts paid, they could argue for parity, or may even seek a higher PIP. For instance if an international production company was negotiating with Screen Queensland in relation to a PIP and they were aware of the details of a previous amount paid for a similar international production company, why would they be prepared to accept less? Clearly the disclosure of such commercially sensitive information would substantially weaken Screen Queensland's future bargaining position and its capacity to strongly negotiate a commercial outcome in relation to incentive payment issues;*
>
> *(b) The film and television production industry is an industry sector in which Queensland competes on a national and international level as an attractive location. As soon as information about the amount of a PIP is publically available, Screen Queensland's market competitors will be provided with Screen Queensland's position and will be able to "outbid" Screen Queensland in respect of current and future incentive negotiations;*
>
> *(c) … Ausfilm markets the Australian government screen production incentive scheme. … Ausfilm* [has] *confirm*[ed] *our view that the disclosure of a production incentive…would reasonably be expected to prejudice Screen Queensland in its capacity to compete with other national and international jurisdiction in attracting screen production to their regions. …*
>
> *(d) The combination of the adverse outcomes detailed above will also mean that overall Screen Queensland will have a diminished capacity to continue to negotiate effectively and in a manner that ensures value for money in expending public money. This will in turn place pressure on Screen Queensland, the incentive program which could then adversely affect the attraction of production studios to Queensland.*

130. It would appear that the above submissions[123] are premised on an assumption that international feature film production in Queensland is good for the local community – a proposition which, as discussed elsewhere in these reasons, I do not consider can be fully evaluated without factoring in the cost of attracting that production.

[123] And further submissions expanding on the paragraphs I have extracted, set out at paragraphs 90-122 of Screen's 26 February 2016 submissions.

131. As to the submissions themselves, I accept Screen's submission that incentive packages play an important role in securing feature film production in a given locale. It is hardly surprising that private for-profit commercial concerns would find the promise of public monies appealing, and of consequence in making decisions as to where they should undertake a given project.

132. The difficulty for Screen is that I cannot see how the balance of these later submissions[124] overcome the reservations foreshadowed by me in my 17 December 2015 correspondence, and again explained above. These submissions essentially cover the same ground as the initial submissions jointly put by Screen and the Department, the substance of which are addressed at paragraphs 124-128. Screen's later submission, for example, that disclosure would arm future film proponents with information sufficient to 'argue for parity' when petitioning for possible grant monies seems to be met squarely by the Information Commissioner's reasoning in *Berri*, as extracted in paragraph 124: '*If the issue of comparability were raised by a grant applicant, it would be open to* [Screen and/or the Department] *to explain why the cases were not comparable*,' or at the least, to spell out differences in circumstances as between the Disney grant and future incentive proposals. Proposed ventures may not, for example, offer as significant benefits to the State, such as crew and catering employment.

133. In a related vein, Screen goes on to question why a rival production studio would in the future be '*prepared to accept less*' than Disney, were the former forearmed with the value of Disney's grant as described in the information in issue. On this point, however, its own submissions answer this query, at least in part. As Screen acknowledges, incentive packages are <u>but one factor</u> studios take into account in determining where to film – it may be, for example, that a rival studio is '*prepared to accept less*' in order to avail itself of Queensland's '*skilled workforce with experience in international productions*,' a favourable exchange rate, or a complementary Commonwealth incentive. It may also fall to Screen to explain to a production house that an amount equal to or less than that granted to Disney is simply all that can be prudently offered at the time future negotiations come to be conducted: as the Information Commissioner observed in the passage from *Berri* excerpted above, entities such as Screen, dealing in and with public monies, '*cannot responsibly be prepared to pay whatever it takes…*'.

134. I do not think it necessary to address Screen's later submissions in any further detail, but to rely on the reasoning and authority already stated in this decision. It is sufficient to note that, having given those submissions[125] careful consideration, I do not think it reasonable to conclude that the disclosure now of the part value of a specific grant awarded in a particular set of circumstances nearly two years ago would have any of the prejudicial consequences as argued by either the Department and Screen in their original joint submissions, nor Screen in its later submissions.

135. This is not to say that there could never exist a situation in which disclosure of information similar to the information in issue could reasonably be expected to have detrimental effects of the kind Screen and the Department contend would arise in this case. I am, for example, prepared to acknowledge that disclosure of such information prematurely, such as during the course of negotiations between Screen and a production house, might well occasion one or more harms of the type discussed above. In such cases, there may exist a justifiable case for secrecy for a given period of time as regards information of the kind in issue in this review.[126] For the reasons explained above, however – and bearing in mind, again, the time that has elapsed since the grant was awarded – I am not satisfied that disclosure in this particular case could reasonably be expected to lead to such harms.

136. Taking all relevant circumstances into account, I am not persuaded that disclosure of information of the kind in issue could reasonably be expected to prejudice or adversely affect the business etc. affairs of Screen or the Department, or to hinder or prejudice Screen's operational capacity

[124] Which I take to be an argument that disclosure of the information in issue would reduce the potency or effectiveness of future incentive offers, rather than destroy Screen's capacity to deploy them altogether; I am unable to see any tenable basis on which the latter position could be sustainably put – release of the amount of a past grant would not in any way preclude Screen from making future offers.
[125] And further material lodged by Screen in support of same, dated 13 June 2016.
[126] See *Berri*, at [115].

in the manner asserted in the Additional Factors Favouring Nondisclosure. Accordingly, relevant factors and considerations do not arise for consideration in balancing the public interest in this review.

Prejudice/substantially adversely affect economy of State

137. Nor do I consider that disclosure of the information in issue could reasonably be expected to prejudice the economy of the State, or that it could substantially adversely affect the ability of government to manage the economy of the State.[127] I accept that film production such as the PoC project generates economic activity. I have explained above, however, that I am not satisfied that disclosure of the information in issue could reasonably be expected to hinder or impede future production in Queensland, as asserted. Accordingly, I do not consider that disclosure in this case will negatively affect future projects, so as to disturb resultant economic activity. Disclosure, therefore, will not prejudice the economy of the State, and I cannot see how it could have a substantial adverse effect upon government's ability to manage that economy. Even if I were wrong in this regard, then as regards the harm factor prescribed in schedule 4, part 4, section 9(1)(a) of the RTI Act, there is insufficient information before me to allow me to be satisfied that any adverse effects that might flow from disclosure would be 'substantial' – 'grave, weighty, significant or serious'[128] – so as to enliven this consideration.

Prejudice performance of an investment incentive scheme

138. Prior to addressing Disney's public interest arguments, there remains the last of Screen's Additional Factors Favouring Nondisclosure to deal with: namely, that disclosure of the information in issue would prejudice the performance of an investment incentive scheme. In support of this submission,[129] Screen points to the existence of schedule 3, section 11 of the RTI Act, which provides that access to some incentive scheme information may be refused in certain circumstances.

139. Screen does not seek to argue that the provision has application to the information in issue in this case. It does, however, contend that the information in issue is sufficiently similar to that intended to fall within schedule 3, section 11 of the RTI Act, the release of which Parliament has deemed would occasion public interest harms sufficient to justify nondisclosure. It should thus be accepted that release of the information in issue would, given its similarity to that covered by schedule 3, section 11, also result in a public interest harm.

140. I do not accept this argument. As I have explained above, I do not accept disclosure of the information in issue will prejudice Screen's investment incentive activities. Further and in any event, Parliament framed schedule 3, section 11 of the RTI Act in limited terms, allowing for the discretionary exemption of a given species of information created or received by a government agency in very particular circumstances. The information in issue is not information of that kind, and in view of the narrow terms in which it is cast, Parliament's intention that the RTI Act otherwise be read with a pro-disclosure bias,[130] and the general principle that, as beneficial legislation, the Act ought be construed as broadly as a fair reading will permit, the presumption of public interest harm established by schedule 3, section 11 of the RTI Act should in my view be confined to information to which it directly relates.

141. I will now address Disney's public interest arguments.

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[127] Schedule 4, part 3, item 12 of the RTI Act, which as noted was cited in the Department and Screen's joint submissions dated 16 October 2015, and schedule 4, part 4, section 9(1)(a) of the RTI Act, a harm factor raised in Screen's February 2016 submissions.
[128] The meaning to be given to the word 'substantial' in this context: *Cairns Port Authority and Department of Lands* (1994) 1 QAR 663, at [148]-[150].
[129] Contained in its 26 February 2016 submissions.
[130] Relevantly, section 44 of the RTI Act.

Disney's public interest submissions

Prejudice/adverse effect upon business/commercial affairs

142. There is no evidence before me to substantiate Disney's assertions that disclosure of the information in issue – part of the amount of a publicly-funded incentive – could reasonably be expected to cause Disney commercial harm or impair or adversely affect its business activities. I am unable to conceive how it could be argued that disclosure of the amount of an incentive settled nearly two years ago would in any way impinge upon or hinder Disney's future competitive commercial activities, nor to cause it any pecuniary detriment.[131] My view in this regard is reinforced by the fact that, as I have noted above, the amount of support provided by the Commonwealth government to Disney for the PoC project *was* publicly announced.[132] This disclosure did not, to my knowledge, cause Disney any prejudice, commercial harm or other difficulty, and relevant nondisclosure considerations are not enlivened for the purposes of balancing the public interest.

Prejudice future supply of/ability to obtain information

143. Similarly, there is no evidence before me that disclosure of the information in issue would prejudice the future supply of information analogous to that in issue to government, nor prejudice any agency's ability to obtain confidential information. Accepting these submissions essentially requires me to accept that disclosure would cause a substantial number of companies to refrain from communicating[133] similar information to the Queensland Government or its agencies in the future. On the information before me, I am not persuaded that real and substantial grounds exist to expect that this would be the case, given that in doing so, such companies would presumably simply preclude themselves from accessing the significant monetary incentives offered by government.

144. In the circumstances, I am not satisfied that disclosure of the information in issue could reasonably be expected to prejudice the future supply to government of like information in support of a request for a grant of financial assistance, or to prejudice an agency's ability to obtain such information. Relevant considerations do not arise to be weighed in balancing the public interest.

Prejudice Queensland Government's 'competitive commercial' activities

145. Disney did not identify the 'competitive commercial' activities of government it claims would be prejudiced by disclosure of the information in issue, nor how disclosure of that information could reasonably be expected to lead to such prejudice. In any event, it would appear to me that the Department and/or Screen would be the participants in this review best placed to articulate any potential commercial prejudice of this nature, and to the extent they have done so, I have addressed their arguments above.

146. Further, assuming Disney's reference to 'competitive commercial' activities is a reference to the Department and/or Screen's administration of screen production incentive payments, this is, as I have detailed above, properly regarded as a governmental, rather than commercial, activity. For reasons explained earlier, I am not persuaded that any Queensland Government entities involved in facilitating the incentive payment to Disney were engaging in competitive commercial activities during relevant negotiations, and that therefore no such activities stand to be prejudiced by disclosure of the information in issue.

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[131] The type of harms relevantly required by these provisions: see the Information Commissioner's analysis of the substantially similar exemption provision contained in the FOI Act in *Cannon*, at [82]-[84]. This analysis has been adopted for the purposes of schedule 3, part 3, items 2 and 15 and schedule 4, part 4, section 7(1)(c) of the RTI Act: see, for example, *KWRA and BCC*, at [89].

[132] Note 60.

[133] Assuming, for the sake of argument, that information in issue can actually be said to be information communicated by Disney to Screen and/or the Department, noting my view that relevant information is properly characterised as information communicated *to* Disney: see paragraphs 44 and 47.

147. For the sake of completeness, even if I am incorrect in this regard, I am unable to conceive as to how disclosure of the information in issue – detailing a payment settled many months ago, the quantum of which was arrived at following consideration of particular facts and circumstances obtaining at that time – could reasonably be expected to prejudice the commercial or business affairs of any government entity in facilitating future incentive payments. Inasmuch as Disney's submissions in this regard may be read as a suggestion that disclosure of the information in issue could lead to Queensland being 'outbid' in future film production negotiations, I am not persuaded that real and substantial grounds exist to expect such an outcome, for the precise reasons as explained by the Information Commissioner at paragraphs [108]-[114] and [117] of *Berri*, quoted in paragraph 124 above.

148. In summary then, I do not consider that any of the nondisclosure factors relied upon by Disney arise for consideration in this case. It remains then to evaluate where the balance of the public interest lies.

Balancing the public interest

149. I have identified several public interest factors telling in favour of disclosure of the information in issue, and none favouring nondisclosure. In the circumstances, I cannot[134] be satisfied that disclosure of that information would, on balance, be contrary to the public interest.

150. Even if my reasoning rejecting the Objecting Participants' public interest arguments is incorrect, and some or all of the harm and nondisclosure factors relied on by these participants do arise for consideration in this case, it is nevertheless my view that the balance of the public interest favours disclosure in this case.

151. Decisions by government to transfer public wealth to private interests should, in my view, be attended by the highest possible levels of transparency and accountability. This is necessary, in order that the community might be satisfied that not only such decisions are made with appropriate levels of probity, but that they represent a worthwhile investment of the community's scarce resources. On this basis alone, it is my view that considerations meriting disclosure are in this case of irresistible weight, sufficient to displace any factors that might be argued to favour nondisclosure (which, if established, I consider would deserve a modest weighting, particularly given the age of the information in issue).

152. My view in this regard is further reinforced by the fact that there appears to be some debate as to whether selective industry assistance of the type granted to Disney and described in the information in issue is publicly beneficial.

153. In this regard, I note the detailed analysis and findings set out by the Queensland Competition Authority in in its 2015 *Industry Assistance Report*,[135] relied on by the applicant in support of its case for access. The QCA noted that industry assistance programs leading to payments of the kind made to Disney have been marked by a general lack of transparency, and that many, when objectively scrutinised, appear to achieve no net benefit for the community. In the Report's opening overview, the QCA observed that:[136]

> *…there is limited transparency in the provision of significant amounts of public resources to the private sector, particularly for highly selective assistance measures.*
>
> *The evidence that is available suggests that, although a number of industry assistance measures are beneficial, many others are ineffective and result in a range of costs, including resource allocation distortions, lower productivity, lower household incomes and harmful environmental impacts.*
>
> *…*

[134] In view of the RTI Act's express pro-disclosure bias.
[135] First cited at note 120.
[136] Page vi.

> *…Much is captured by private firms with limited or no positive effect on the welfare of Queenslanders as a whole.*

154. The 'Overall Assessment' section of the *Industry Assistance Report* elaborates on the above themes. After querying the public benefit of industry assistance, the QCA observed that industry assistance is typified by insufficient transparency and evaluation:[137]

> - *There is very little transparency and evaluation of industry assistance in Queensland. Transparency and evaluation are essential to make informed decisions about the allocation of limited resources and to demonstrate appropriate stewardship of taxpayer funds. There is scope to improve industry assistance measures through strengthened policy design and assessment.*

155. The QCA went on to consider the case of film industry assistance specifically, and was particularly critical of assistance of the kind awarded Disney, noting yet again the absence of transparency:[138]

> *In addition to budgeted incentive programs such as those delivered by Screen Queensland, state and the federal governments sometimes provide ad hoc incentives to production companies in order to secure major film and television productions. A recent example is the production of the fifth instalment of the Pirates of the Caribbean film series, which was lured to Queensland following a contribution of $21.6 million from the Australian Government…. Screen Queensland and the Queensland Government also provided the production with an undisclosed attraction incentive to secure the production in Queensland.*
>
> *In many cases, the total value of incentives offered outside of budgeted programs is not disclosed by governments.* ***This lack of transparency means it is often not possible to accurately assess these policies as the total cost to the public is not known. Therefore, whether or not the assistance delivers a net benefit, is also unknown****.*
>
> (My emphasis.)

156. The QCA further questioned the merits of attraction incentives for major film productions,[139] before concluding its discussion of film industry assistance with the recommendation that the Government should, among other things, '*ensure that any incentives, where government chooses to provide them, are provided transparently*'.[140]

157. I acknowledge that the Government continues to endorse the use of film production incentives. Nevertheless, there is a general lack of transparency concerning payments such as those made to Disney, beyond the statements that these film production incentives bring wealth and jobs to Queensland. In the circumstances, I consider that there exists a compelling public interest case favouring disclosure of the information in issue – the amount of the principal element of the Incentive Payment – so that the public can assess the net benefits of relevant payments.

158. To reiterate, government is accountable to the public from whom it raises monies for the manner in which it expends those monies. This is particularly so, where such expenditure is made to commercial enterprises for the use by them in the prosecution of their private business concerns, even accepting that this expenditure may secure economic benefits to the State. Appropriate accountability can only, in my view, be adequately ensured by allowing the public access to information detailing the amount and form of such expenditure.

159. In this regard, I do not accept the contention[141] that public interest considerations favouring disclosure have been sufficiently served by media statements announcing PoC's production and stating the benefits expected to flow from that production. As is clear from the QCA's analysis

[137] 'Key points', page 59 (footnotes omitted).
[138] *Industry Assistance Report*, pages 160-161.
[139] See discussion of 'Findings', at pages 167-168.
[140] Page 168.
[141] Put, for example, by the Department and Screen in their initial submissions dated 16 October 2015.

and discussion, there exists genuine debate as to whether *net*[142] benefits of the kind claimed by Screen and the Department actually accrue to the public as a result of incentive payments of the kind in issue in this review, and it is very difficult for the community to test such claims in the absence of detail such as that contained in the information in issue.

160. Nor do I consider that it is not, as the Department and Screen submitted, necessary to know the amount and composition of the incentive payment as disclosed in the information in issue, in order to be able to scrutinise the administration of that payment and to participate in an informed debate as to the merits of same. Once again, I note the Information Commissioner's rejection of an identical argument in *Berri*:

> *167. I do not accept the Department's contention that it is not necessary to know the amount of the third party's grant in order to be able to scrutinise its administration of the relevant incentive scheme in this instance and to participate in an informed debate about the costs and benefits of that grant of public monies. I consider that the dollar amount of a grant is a vital piece of information in conducting an assessment or analysis of an incentive package. Its disclosure would allow experts to assess, and contribute to informed public debate about, whether the grant represented value for money for Queensland taxpayers in terms of its return for the Queensland economy. In my view, there is a strong public interest in enhancing the accountability of the Department in respect of its administration of financial incentive grants to industry, which weighs in favour of disclosure of the matter in issue, and the category 1 matter in particular.*

161. The Information Commissioner's comments are squarely applicable in this case. The amount and nature of the grant paid to Disney is a – if not the – key piece of information concerning that grant. Access to this information is necessary to permit closer analysis of the incentive package negotiated by Screen Queensland on behalf of, ultimately, the public of Queensland.[143] Disclosure of the information in issue will thus allow for an objective assessment of the merits of the incentive, and contribute to informed public debate as to whether that incentive represented value for money for Queensland taxpayers: helping, thereby, to ensure effective oversight of expenditure of public funds. These are strong public interest considerations, which in the circumstances of this case tell conclusively in favour of disclosure. As the Information Commissioner concluded in *Berri*:

> *173. In assessing the competing public interest considerations, I consider that the general criticisms which have been levelled at industry incentive schemes warrant bringing a greater transparency and accountability to selective industry assistance. That will, in turn, enhance levels of probity and propriety, allow experts to carry out independent analysis of the claimed economic benefits of assistance packages, and promote greater public trust and confidence in the process and outcomes achieved. …Non-disclosure allows any substandard analysis by government officials of the positive or negative effects of incentives advanced from public funds to go unchallenged.*

162. I am not satisfied that disclosure of the information in issue would, on balance, be contrary to the public interest.

163. In reaching the above conclusion, I am cognisant of Screen's submission that it publishes aggregate amounts of monies disbursed in any given year. These global amounts do not, however, appear to give a complete picture of the quantity of public funds distributed, and I am not persuaded that their publication is alone sufficient to meet the public interest considerations discussed above.

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[142] In this regard, I accept Screen's submissions and evidence to the effect that film production incentives do generate objectively verifiable domestic economic activity (as set out, for example, at paragraphs 16-21 of its 26 February 2016 submissions); the crucial issue, however, is whether that activity and other less tangible benefits outweigh the costs incurred by taxpayers.

[143] In this context, I do not accept the 16 October 2015 submission of Screen and the Department that disclosure of the information in issue '*without sufficient context of the terms and conditions that attach to this payment*' would not permit effective oversight of public funds. Disclosure of this information alone would, in my view, permit scrutiny and economic analysis of the kind alluded to in this paragraph and elsewhere in these reasons. If the Department (or Screen) hold concerns that such analysis may suffer if additional information was not also taken into account, then it would be open to these entities to make same available to interested parties.

164. I have also taken into account evidence tendered by Screen as to standard industry practice regarding non-publication of the value of film incentives,[144] and opinions of those such as the Western Australian Auditor-General supportive of withholding industry assistance figures in fields such as major event attraction and sponsorship.[145]

165. As to the former, I am not persuaded that established 'industry practice' as to confidentiality of itself amounts to a public interest argument for refusing access under the RTI Act. Indeed, in my view it merely reinforces the contrary case for disclosure, so as to ensure that payments of public funds to private for-profit enterprises are made with adequate transparency.

166. Regarding the latter, I acknowledge that opinions may vary as to what is acceptable practice in a particular case. For the reasons explained above, my view is that the public interest would in this instance best be served by a decision that the information in issue be released – that is, a decision favouring maximal transparency. This is a view consistent with the QCA's contemporary analysis of the very program giving rise to the information in issue, as opposed to comments made in 2012 concerning a separate program operated in another jurisdiction, and aimed at a distinct industry sector.

167. In view of my comments in the preceding paragraph, it is appropriate here to respond to submissions aimed at undermining the legitimacy of conclusions expressed in the *Industry Assistance Report* that the applicant submitted and which I have concluded support the public interest case for disclosure. The Department, and Screen in particular, made relatively extensive submissions criticising some aspects of the methodology adopted by the QCA certain of the conclusions contained within its Report. Screen asserted that any reliance by me upon the *Report* '[h]*as the capacity to raise several legal issues of concern*',[146] pointing to the fact that the Government has continued to support film production incentive as administered by Screen, despite the QCA's recommendations.[147]

168. I do not propose to extend these already lengthy reasons with a point-by-point rebuttal of these submissions and allegations. It is sufficient to note that while I accept that Screen contests the views reached by the QCA, I have no reason to call into question the objectivity of the QCA, the legitimacy of its research or the veracity of its conclusions. Nor have I relied solely on its findings in reaching my decision, other than agreeing with some of its observations, particularly those stressing the value of transparency in cases such as this.

169. Certainly, I do not understand how invocation of the QCA's analysis in support of my reasoning might give rise to 'legal issues of concern'. Some of Screen's submissions in support of this assertion (and, indeed, its public interest case generally) appear to make the error of automatically aligning Screen's interests and/or government policy with the public interest; that is, as government policy is to maintain film incentive programs, the public interest ought to be presumed to lie in favour of same, the QCA's findings and observations should be disregarded, and the balance of the public interest presumed to lie in favour of ongoing secrecy rather than enhanced transparency. At paragraph 77(e)[148] of its 26 February 2016 submissions, for example, Screen states:

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[144] Eg, letter from the Chief Executive Officer of Ausfilm dated 18 February 2016. See also Screen's additional submissions dated 13 June 2016.
[145] Submissions dated 26 February 2016.
[146] As above, paragraph 44.
[147] In its 26 February 2016 submissions, Screen also seized on the QCA's criticisms of the lack of transparency around film industry assistance, and the consequent obstacle to objective economic assessment posed by such opacity, arguing that such a caveat called into question whether the '*QCA Report can be safely relied upon given that the QCA itself noted that there were accuracy issues.*' (Paragraph 43(f)(i).) The point is, however, that any such 'accuracy issues' flow directly from the lack of available information, such as that in issue in this review – in other words, it is the very absence of transparency identified by the QCA that hinders objective analysis as to whether film industry assistance delivers net benefits. Far from constituting a reason not to adopt the QCA's analysis, any lack of certainty as to the outcomes delivered by film incentives simply heightens the public interest in disclosure of the information in issue, in order that clarity might be obtained.
[148] It should be noted that these particular submissions were made in the context of addressing public interest matters relevant to a consideration of the *Fairfax* Doctrine which, for reasons explained at paragraphs 72-77, inform the application of the Breach of Confidence Exemption in this case; they are nevertheless pertinent to the public interest balancing exercise prescribed by sections 47(3)(b) and 49 of the RTI Act.

> *… regardless of the findings and recommendations that are set out in the QCA Report or the matters raised in the* Berri *decision, the Queensland Government is clearly of the view that the relevant public interest benefits are substantial and are triggered by having national and international production studios locate to Queensland to produce films. Therefore, any action which could reasonably be said to adversely affect the achievement of these outcomes…will be clearly contrary to the public interest.*

170. Similarly, at paragraph 112 of those submissions, Screen contends[149] '*that there is no public interest in taking actions that will diminish or frustrate the implementation of the clear policy position of the elected Government of the day.*'

171. Arguments of this kind are misplaced and appear at odds with the very reasons Parliament enacted the RTI Act: to maximise government openness so as to keep the community informed of government operations, enhance government accountability, and increase community participation in democratic processes so as to achieve better informed decision-making and a '*healthier representative, democratic government*'.[150] Agency and executive government views are of course to be given due consideration in assessing where the balance of the public interest lies, as are those of any other participant in a given review. Such views are not, however, determinative – to conclude otherwise would be to render hollow the system of independent merits review established under the RTI Act, and, more broadly, to defeat Parliament's intention in passing that legislation. I would also note that increased transparency may well serve to advance Screen's interests, should it help to demonstrate the value for money achieved through film production incentives.

172. I acknowledge that informed opinions differ as to the costs and benefits of film industry assistance programs of the kind administered by the Department and Screen, and described in the information in issue. The *Industry Assistance Report* contains, however, a comprehensive and relatively recent analysis of the very program the subject of the information in issue. I am comfortable employing that critique – and particularly, its calls for greater transparency – in determining where the balance of the public interest rests in this case.

173. Having said that, I should again make it abundantly clear that even if I were to totally disregard the analysis contained *Industry Assistance Report*, and, indeed, to accept that all of the public interest factors, considerations and arguments mounted by the Objecting Participants in favour of nondisclosure, I would nevertheless be minded to find in favour of disclosure. At the risk of repeating myself, there is a strong and compelling public interest in ensuring that government decisions which result in the transfer of significant quantities of public funds to private interests are made with the utmost transparency and accountability. The Queensland public trusts government to steward scarce community resources – which are ultimately only raised by way of taxes, levies and charges imposed on that community – with care and prudence. An assessment as to whether that trust is being met can, in my view, only be properly made by allowing scrutiny of just how much of those resources government has elected to disburse on the community's behalf in any given instance.

174. Prior to concluding these reasons, there is one further point raised by Screen with which I should deal: essentially, that there are other processes of accountability in place as regards the administration of film production incentives, such as Screen's being subject to the scrutiny of the Auditor-General. I do not consider this diminishes the public interest considerations favouring disclosure I have identified and discussed above. As the Information Commissioner has previously observed:[151]

> *I do not accept that the existence of other accountability mechanisms can be used as a basis for any significant diminution of the public interest in disclosure of information under the FOI Act in order to promote the accountability of government agencies. The FOI Act was intended to enhance the*

[149] Having argued that disclosure of the information in issue would occasion various prejudices, a contention which I do not accept, for reasons previously explained.
[150] See the Act's Preamble.
[151] *Director-General, Department of Families, Youth and Community Care and Department of Education and Ors* (1997) 3 QAR 459 at [19(a)]. See also *Pearce and Queensland Rural Adjustment Authority; Third Parties* (Unreported, Queensland Information Commissioner, 4 November 1999), at [70].

> *accountability of government (among other key objects) by allowing any interested member of the community to obtain access to information held by government (subject to the exceptions and exemptions provided for in the FOI Act itself). The FOI Act was not introduced to act as an accountability measure of last resort, when other avenues of accountability are inadequate. The FOI Act gives a right to members of the community which is in addition to, and not an alternative for, other existing rights. …*

175. The Information Commissioner's comments are equally applicable to the RTI Act, and while I note that Screen is in all likelihood not itself an 'agency' for the purposes of the Act,[152] it nevertheless relies on and deals with public monies, and must accept the accountability obligations that attend its dependence upon agencies such as the Department.[153] In any event, the Incentive Payment the subject of the information in issue in this review was ultimately facilitated by the Department. There is a manifest public interest in ensuring that that agency is accountable for its activities in this regard.

DECISION

176. I set aside the decision under review. In substitution, I decide that there are no grounds upon which access to the information in issue may be refused under the RTI Act.

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

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Clare Smith
Right to Information Commissioner

Date: 18 August 2016

[152] See *City North Infrastructure Pty Ltd v Information Commissioner* [2010] QCATA 060, noting that this is not an issue I am required to determine in this review.
[153] Including, critically, the fact that any document it communicates to or otherwise delivers into the possession or control of an agency such as the Department will be a 'document of an agency' within the meaning of section 12 of the RTI Act, and thus subject to the operation of the Act.

APPENDIX

Significant procedural steps

Date	Event
14 July 2015	Department of the Premier and Cabinet (**Department**) received the initial access application.
19 August 2015	The Department issues its decision to the applicant.
21 August 2015	**OIC received the application for external review of the Department's decision**. OIC notified the Department that the external review application had been received and requested that relevant procedural documents be provided by 31 August 2015.
25 August 2015	OIC received the requested procedural documents from the Department.
26 August 2015	OIC notified the applicant and the Department that it had accepted the external review application. OIC requested that the Department provide all documents located in response to the access application by 9 September 2015.
28 August 2015	OIC received the requested documents from the Department.
8 September 2015	OIC conveyed a written preliminary view to the Department. OIC invited the Department to provide submissions in response to the preliminary view by 22 September 2015. OIC consulted with Screen Queensland Pty Ltd (**Screen**) and invited Screen to participate in the external review. OIC's letter of consultation included a written preliminary view on the issues in the review. Screen was invited to provide submissions in reply to that preliminary view by 22 September 2015.
11 September 2015	The Department requested an extension of time, until 9 October 2015, to provide submissions in response to OIC's preliminary view. OIC granted the Department an extension of time, until 9 October 2015, to provide submissions.
14 September 2015	Screen requested an extension of time, until 9 October 2015, to provide submissions in response to OIC's preliminary view. OIC granted Screen an extension of time, until 9 October 2015, to provide submissions.
6 October 2015	The Department and Screen requested a further extension of time, until 16 October 2015, to provide submissions in response to OIC's preliminary view. OIC granted the Department a further extension of time, until 16 October 2015, to provide submissions.
7 October 2015	OIC granted Screen a further extension of time, until 16 October 2015, to provide submissions.
16 October 2015	OIC received written submissions from Screen. OIC received written submissions from the Department.
17 December 2015	OIC conveyed a further written preliminary view to each of the Department and Screen. Both were invited to provide submissions in reply by 29 January 2016. Screen requested an extension of time to provide submissions in response to OIC's further preliminary view.
18 December 2015	The Department requested an extension of time to provide submissions in response to OIC's further preliminary view.
21 December 2015	OIC granted Screen and the Department an extension of time, until 19 February 2016, to provide submissions.
4 February 2016	OIC consulted with Disney and invited Disney to participate in the external review. OIC invited Disney to apply to participate and provide submissions in support of any objections to disclosure by 3 March 2016.

18 February 2016	Screen requested a further extension of time, until 26 February 2016, to provide submissions in response to OIC's preliminary view. OIC granted Screen the requested extension of time to provide submissions.
19 February 2016	OIC received written submissions from the Department.
26 February 2016	OIC received written submissions from Screen.
2 March 2016	Disney requested an extension of time, until 10 March 2016, to provide submissions in response to OIC's preliminary view. OIC granted Disney the requested extension of time to provide submissions.
10 March 2016	OIC received written submissions from Disney, including an application by Disney to participate in the review.
12 April 2016	OIC wrote to Screen, again inviting Screen to participate in the review.
14 April 2016	OIC wrote to Disney accepting its application to participate and conveying a written preliminary view. OIC invited Disney to provide submissions in response to the preliminary view by 28 April 2016. OIC conveyed an updated written preliminary view to the Department and requested the Department's position concerning a procedural issue.
19 April 2016	Screen applied to participate in the review. The Department replied to OIC's 14 April 2016 correspondence.
26 April 2016	Disney requested an extension of time, until 12 May 2016, to provide submissions in reply to OIC's 14 April 2016 preliminary view.
28 April 2016	OIC granted Disney an extension of time, to 12 May 2016, to provide submissions.
3 May 2016	OIC wrote to Screen, advising that its application to participate in the review had been accepted. OIC further conveyed an updated preliminary view to Screen, and requested its position in relation to a procedural issue by 10 May 2016.
11 May 2016	Disney requested additional extension of time, until 26 May 2016, to provide submissions.
12 May 2016	OIC granted Disney an extension of time, until 26 May 2016, to provide submissions.
13 May 2016	OIC received written submissions from Disney.
31 May 2016	OIC conveyed a written preliminary view to the applicant, and invited the applicant to provide submissions in response to the preliminary view by 14 June 2016. No reply to that letter was received and, in accordance with its terms, the applicant was taken to have accepted the preliminary view.
1 June 2016	OIC received written submissions from the Department.
7 June 2016	OIC replied to the Department's correspondence dated 1 June 2016, setting out a further preliminary view.
13 June 2016	OIC received further written submissions from Screen.
14 June 2016	OIC received additional written submissions from the Department.
20 June 2016	OIC received further written submissions from the Department.