



Decision and Reasons for Decision

Citation:	<i>Osgood and The Public Trustee of Queensland</i> [2017] QICmr 24 (3 July 2017)
Application Number:	312937
Applicant:	Osgood
Respondent:	The Public Trustee of Queensland
Decision Date:	3 July 2017
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - statutory declarations and other third party personal information - accountability and transparency - personal information and privacy - accuracy of information - administration of justice - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - applicant submits agency has failed to locate all documents - whether the agency has taken all reasonable steps to locate documents relevant to the access application - whether access to further documents may be refused on the basis that they are nonexistent or unlocatable - sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The Public Trustee of Queensland (**Public Trustee**) was appointed as the administrator for financial matters for the applicant's mother. The applicant's mother passed away shortly after the appointment of the Public Trustee. The applicant applied to the Public Trustee under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to all documents pertaining to his late mother.¹
2. The Department of Justice and Attorney-General (**Department**), on behalf of the Public Trustee,² located 874 pages and refused access to some in part and some in full on the basis that disclosure would, on balance, be contrary to the public interest.³ The applicant

¹ Access application emailed on 13 May 2016.

² The Public Trustee delegated decision-making powers to the Department under section 30 of the RTI Act.

³ By decision dated 20 June 2016. Of the 874 pages located in response to the application, the Department excluded 660 pages from consideration as they were duplicate documents.

sought internal review,⁴ and the Department made a decision which largely accorded with the original decision.⁵

3. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision. In summary, the applicant submitted on external review that he was entitled to access the refused information under the RTI Act, and that the Public Trustee had not located all relevant documents.
4. For the reasons set out below, I vary the Department's decision, and find that access to:
 - the remaining information in issue may be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest; and
 - any further information may be refused under section 47(3)(e) of the RTI Act as it is nonexistent or unlocatable under section 52(1) of the RTI Act.

Background

5. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix to these reasons.

Reviewable decision

6. The decision under review is the Department's internal review decision dated 29 July 2016.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
8. The applicant provided written and oral submissions to OIC supporting his case.⁶ While I have carefully reviewed all of those submissions, certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act. Accordingly, in reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination on external review.

Information which is no longer in issue

9. The applicant notified OIC that he did not seek access to information on external review which he had previously received through the Queensland Civil and Administrative Tribunal (**QCAT Information**).⁷ The applicant provided OIC with a copy of the QCAT Information he had received.⁸ OIC identified the QCAT Information within 240 of the 874 pages located by the Department⁹ and confirmed with the applicant in writing that these pages would not be considered on external review.¹⁰ However, the applicant then disputed the exclusion of these pages and sought to have them included for

⁴ By email on 6 July 2016.

⁵ By decision dated 29 July 2016. In his internal review application, the applicant notified the Department that he sought review of duplicate documents which had been excluded from consideration in the original decision. Therefore, the internal review decision dealt with all 874 pages which were located in response to the application, and refused access to the same type of information within the duplicate documents as had been refused in the original decision. The internal review decision also addressed sufficiency of search concerns raised by the applicant, but did not locate any documents in addition to the original 874 pages.

⁶ Including in his external review application, various telephone calls with OIC and written submissions received on 21 September 2016 and 22 February 2017.

⁷ In a telephone call on 9 September 2016.

⁸ With his written submission received on 21 September 2016.

⁹ Pages 21-59, 159-186, 256-294, 392-418, 468-488, 507-526, 625-651 and 742-780.

¹⁰ By email on 16 January 2017 and preliminary view letter dated 18 January 2017.

consideration in this review.¹¹ The applicant did not provide OIC with any reasons for seeking to have the QCAT Information included in the review after agreeing to exclude it, other than to state that there was a misunderstanding and he had no recollection of the agreement.¹²

10. OIC is required to identify opportunities and processes for early resolution of external review applications and promote settlement.¹³ If this process is to be effective, OIC must be able to rely on agreements reached with review participants throughout the course of the review for both certainty and efficiency in the review process. OIC understood that the applicant had agreed to exclude the QCAT Information and proceeded with the review on this basis. I note that the exclusion of the QCAT Information from this review will not prejudice the applicant in any way, as he already has a copy of this information in his possession. For these reasons, OIC has excluded the 240 pages of QCAT Information from consideration on external review and I will not deal with them further in this decision.¹⁴

Issues for determination

11. The issues for determination in this review are whether access to:
- the remaining information in issue¹⁵ may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest; and
 - any further documents may be refused under section 47(3)(e) of the RTI Act on the basis that they are nonexistent or unlocatable.

Contrary to public interest information

Relevant law

12. The RTI Act confers a right of access to documents of an agency,¹⁶ subject to limitations, including grounds for refusal of access.¹⁷ Access may be refused to a document where disclosing the information would, on balance, be contrary to the public interest.¹⁸ The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of the public interest¹⁹ and explains the steps that a decision-maker must take²⁰ in deciding the public interest as follows:
- identify any irrelevant factors and disregard them²¹
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure would, on balance, be contrary to the public interest.

¹¹ Telephone calls with OIC on 6 February 2017 and 7 February 2017 and written submission received on 22 February 2017.

¹² Written submission received on 22 February 2017.

¹³ Section 90(1) of the RTI Act.

¹⁴ Access to certain information on pages 199, 305, 429, 537, 585, 662 and 791 has also been refused. However, this same information has been released to the applicant in other pages. As the applicant has the information from these seven pages, I have not dealt with it further on external review.

¹⁵ The remaining information in issue comprises 22 pages and parts of 60 pages. I have characterised this information below as Statutory Declaration Information and Third Party Personal Information.

¹⁶ Section 23(1)(a) of the RTI Act.

¹⁷ Grounds for refusal of access are set out in section 47 of the RTI Act.

¹⁸ Sections 47(3)(b) and 49 of the RTI Act.

¹⁹ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, these lists of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

²⁰ Section 49(3) of the RTI Act.

²¹ No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

Findings

Statutory Declaration Information

13. This information is contained within three separate statutory declarations prepared by other individuals in the context of a domestic violence application and comprises 14 pages and 28 part pages.²²

Accountability and transparency

14. I have considered whether disclosing the Statutory Declaration Information could reasonably be expected to enhance government accountability²³ or reveal the reason for a government decision and any background or contextual information that informed the decision.²⁴
15. I acknowledge the general public interest in disclosing information which would enhance the transparency of government agencies—in this case, the Public Trustee and/or the Queensland Police Service²⁵—in performing their functions. I accept that disclosure would provide the applicant with a greater understanding of the information which was provided in relation to the domestic violence application and which may have informed a decision on whether the application was warranted in the circumstances. However, the Statutory Declaration Information does not reveal any information about the actions taken by either agency or the reasons for a decision in relation to the application. As a result, I consider these factors carry very low weight in favour of disclosure.

Personal information and privacy

16. The RTI Act recognises that it is in the public interest for individuals to access their personal information held by government agencies.²⁶ I consider that, as most of the Statutory Declaration Information is about the applicant, it comprises his personal information,²⁷ and therefore, this factor favouring disclosure applies. I also acknowledge that, to the extent the Statutory Declaration Information is about the applicant's late mother, a factor favouring disclosure arises, given the applicant is one of her 'eligible family members'.²⁸ This information appears in the context of statements given by other individuals in relation to allegations of domestic violence. Given the nature of this information and the context in which it appears, I afford these factors moderate weight.
17. The Statutory Declaration Information also comprises the personal information of other individuals, being their names, identifying information, opinions and allegations.²⁹ The personal information of the applicant and his late mother is intertwined with the personal information of other individuals in such a way that it cannot be separated and is properly characterised as 'mutual personal information'. It is therefore relevant to consider whether disclosing this information could reasonably be expected to:

²² Pages 70-74, 76, 197-201, 203, 305-309, 311, 429-433, 435, 537-541, 543, 662-666, 668, 791-795 and 797. Many of these pages are duplicates.

²³ Schedule 4, part 2, item 1 of the RTI Act.

²⁴ Schedule 4, part 2, item 11 of the RTI Act.

²⁵ The Queensland Police Service being the agency to which the statutory declarations were provided.

²⁶ Schedule 4, part 2, item 7 of the RTI Act.

²⁷ In accordance with the definition of 'personal information': see section 10 and schedule 6 of the RTI Act, and section 12 of the *Information Privacy Act 2009* (Qld). 'Personal information' is defined as '*information or an opinion ... whether true or not ... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

²⁸ Schedule 4, part 2, item 9 of the RTI Act. See also the definition of 'eligible family member': section 10 and schedule 6 of the RTI Act.

²⁹ In submissions made by telephone on 6 February 2017 and 7 February 2017, the applicant stated that he had already been given access to this information in a court process. However, he has not provided OIC with a copy of this information for consideration or any additional information to support this assertion. Therefore, these submissions do not reduce the weight of the nondisclosure factors in relation to this information.

- prejudice the protection of an individual's right to privacy³⁰
- impact on the applicant's mother's privacy if she were alive;³¹ or
- cause a public interest harm through disclosure of another individual's personal information.³²

18. I consider that the Statutory Declaration Information appears in a very sensitive context, being the individuals' responses to the domestic violence application. Further, I consider that disclosing the Statutory Declaration Information would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford each of these factors favouring nondisclosure significant weight.

Accuracy of the information

19. The applicant submits that the Statutory Declaration Information is false, incorrect, or a misrepresentation of the facts.³³ However, the applicant has not provided any evidence or detail to support this assertion.

20. I have considered whether disclosing the Statutory Declaration Information could reasonably be expected to reveal that the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.³⁴

21. The Statutory Declaration Information is, by its very nature, the particular versions of events provided by the relevant individuals, and it is shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not, however, mean that the Statutory Declaration Information is necessarily false, incorrect or a misrepresentation, as the applicant contends.³⁵ Disclosing the Statutory Declaration Information would only potentially reveal that other individuals may have different recollections of events from the applicant's own. There is no information available to me, other than the applicant's mere assertion, that this factor is relevant and I find that it does not apply in the circumstances.

Contribute to the administration of justice

22. In summary, the applicant submits that the administration of justice favours disclosure of the Statutory Declaration Information³⁶ as:

- his personal residence is an asset of his late mother's estate, and there is a pending legal action in relation to the estate
- one of the previous executors of the estate authored one of the statutory declarations containing the Statutory Declaration Information
- the previous and current executors of the estate have acted inappropriately and failed to exercise their duty of care and, as a result, he has suffered a loss in the form of a reduction in the value of his entitlement to part of the estate
- he seeks to be compensated in the distribution of assets in the final settlement of the will; and
- the Statutory Declaration Information would support his case.

³⁰ Schedule 4, part 3, item 3 of the RTI Act.

³¹ Schedule 4, part 3, item 5 of the RTI Act.

³² Schedule 4, part 4, item 6 of the RTI Act.

³³ External review application, submissions made by telephone on 9 September 2016 and 7 February 2017, and written submission received on 22 February 2017.

³⁴ Schedule 4, part 2, item 12 of the RTI Act.

³⁵ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20].

³⁶ External review application and written submission received on 22 February 2017.

23. I have considered whether disclosing the Statutory Declaration Information could reasonably be expected to contribute to the administration of justice generally or for a person.³⁷ In *Willsford and Brisbane City Council*,³⁸ the Information Commissioner found that the administration of justice factor will arise where an applicant can demonstrate that:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist them to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.
24. I have carefully considered the nature of the Statutory Declaration Information and the context in which it appears, together with the applicant's submissions on this issue. Based on this information, I am unable to identify any legal remedy which may be available to the applicant and to which the Statutory Declaration Information would be relevant. In any event, it is not clear how the Statutory Declaration Information would assist the applicant in pursuing any legal remedy which may be available to him in relation to the administration of his late mother's estate. If this information is directly relevant to legal proceedings, the applicant may be able to pursue access to this information through the relevant court processes, including the issuing of a subpoena, for example. However, I do not consider that disclosing this information to the applicant would assist him to pursue a legal remedy or evaluate whether such a remedy is available. Accordingly, I am not satisfied that these factors are relevant in the circumstances.

Balancing the relevant public interest factors

25. The RTI Act is to be administered with a pro-disclosure bias, which means that an agency must decide to give access to a document unless giving access would, on balance, be contrary to the public interest.³⁹
26. The information includes the personal information of the applicant and his late mother, which gives rise to two factors favouring disclosure, both of which carry moderate weight in the circumstances. However, it also comprises personal information of other individuals, which cannot be separated from the personal information of the applicant and his late mother. Given the sensitive nature of this information, I afford significant weight to each of the three factors favouring nondisclosure.
27. I acknowledge that disclosing this information would provide the applicant with a greater understanding of the background to any decision on the domestic violence application. However, as the information does not relate to the actions taken by either agency or reveal the reasons for a decision, the two factors relating to accountability and transparency carry very low weight and do not override the other factors favouring nondisclosure of this information.
28. In the circumstances, I am unable to identify any other relevant factors favouring disclosure which may justify the release of this information to the applicant.
29. For these reasons, I am satisfied that disclosing the Statutory Declaration Information would, on balance, be contrary to the public interest and that the Department was entitled to refuse access to this information under section 47(3)(b) of the RTI Act.

³⁷ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³⁸ (1996) 3 QAR 368.

³⁹ Section 44(1) of the RTI Act.

Third Party Personal Information

30. This information appears in 8 pages and parts of 32 pages⁴⁰ and includes:
- correspondence between other individuals in relation to the affairs of the applicant's mother
 - the names, contact details and other identifying particulars of other individuals in police crime reports; and
 - the postal addresses and telephone numbers of other individuals which appear in QCAT documents.

Accountability and transparency

31. I have considered whether the accountability and transparency factors arise in respect of the Third Party Personal Information.⁴¹ This information is very limited in nature and its disclosure to the applicant would not reveal any information about the actions taken by the Public Trustee in relation to the affairs of the applicant's late mother. As a result, I consider these factors carry very low weight in favour of disclosure.

Personal information and privacy

32. As noted above, a public interest factor favouring disclosure will arise if the information is the applicant's personal information.⁴² The Third Party Personal Information does not comprise the applicant's personal information—it does not identify him and is not about him. Accordingly, this factor does not apply. However, as some of this information is the personal information of the applicant's late mother,⁴³ and the applicant is an 'eligible family member', I afford a small amount of weight to this factor favouring disclosure.
33. This information comprises the personal information of other individuals. Accordingly, I have considered whether disclosing this information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy⁴⁴
 - impact on the applicant's mother's privacy if she were alive;⁴⁵ or
 - cause a public interest harm through disclosure of another individual's personal information.⁴⁶
34. This information ranges from ordinary personal information to information that is relatively sensitive. Relative to the degree of sensitivity of each particular piece of Third Party Personal Information, I consider that disclosure under the RTI Act would be a moderate to substantial intrusion into the other individuals' privacy, and that the extent of the public interest harm that could be anticipated from disclosure also ranges from moderate to substantial. To the extent this information is about the applicant's mother, I note that this same information is also about other individuals. On that basis, I am satisfied that the weight to be afforded to these factors favouring nondisclosure is moderate to substantial.

⁴⁰ Pages 15-16, 18, 62-63, 67, 122, 153, 189-190, 194, 250-251, 297-298, 302, 356, 388, 421-422, 426, 501-502, 504, 529-530, 534, 589, 620, 654-655, 659, 722, 736-737, 739, 783-784, 788 and 843. Many of these pages are duplicates.

⁴¹ For example, schedule 4, part 2, items 1 and 11 of the RTI Act.

⁴² Schedule 4, part 2, item 7 of the RTI Act.

⁴³ Schedule 4, part 2, item 9 of the RTI Act.

⁴⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁵ Schedule 4, part 3, item 5 of the RTI Act.

⁴⁶ Schedule 4, part 4, item 6 of the RTI Act.

Contribute to the administration of justice

35. The applicant's submissions on the administration of justice factors do not appear to relate to this category of information. However, I have considered whether disclosing this information would further the factors relating to the administration of justice.⁴⁷ The Third Party Personal Information is very limited in nature and I am unable to identify (and the applicant has not provided submissions addressing) how these factors arise in relation to this information. I do not consider these factors are relevant.

Balancing the relevant public interest factors

36. The information includes the personal information of the applicant's late mother, which gives rise to a factor favouring disclosure and carries a small amount of weight in the circumstances. However, balanced against this, is the moderate to substantial public interest in protecting the personal information and privacy of the other individuals identified in the Third Party Personal Information. The factors relating to accountability and transparency carry very low weight in the circumstances and are overridden by the nondisclosure factors identified above.
37. In the circumstances, I am unable to identify any other relevant factors favouring disclosure which may justify the release of this information to the applicant.
38. For these reasons, I am satisfied that disclosing the Third Party Personal Information would, on balance, be contrary to the public interest and that the Department was entitled to refuse access to this information under section 47(3)(b) of the RTI Act.

Nonexistent or unlocatable documents

39. In his application to the Public Trustee, the applicant stated that he was seeking access to all documents pertaining to his late mother, including a file forwarded to the Public Trustee by her nursing home, archived records held by that nursing home, and other records held by private sector companies and other government agencies. In his internal review application, the applicant submitted that information had been refused regarding his solicitor, as well as information pertaining to land titles, and asset details such as bank accounts. On external review, the applicant raised similar sufficiency of search issues.⁴⁸

Relevant law

40. Access to a document may be refused if it is nonexistent or unlocatable.⁴⁹ A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.⁵⁰ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.⁵¹
41. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:
- the administrative arrangements of government
 - the agency's structure

⁴⁷ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁴⁸ Written submission received on 21 September 2016, and submissions made by telephone on 6 February 2017 and 7 February 2017.

⁴⁹ Sections 47(3)(e) and 52(1) of the RTI Act.

⁵⁰ Section 52(1)(a) of the RTI Act.

⁵¹ Section 52(1)(b) of the RTI Act.

- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
 - the agency's practices and procedures (including, but not limited to, its information management approaches); and
 - other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.⁵²
42. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
43. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.⁵³ Such steps may include inquiries and searches of all relevant locations identified after consideration of the key factors listed above.
44. In determining whether a document is unlocatable, it is necessary to consider:
- whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and
 - whether the agency has taken all reasonable steps to find the document.⁵⁴
45. In answering these questions, regard should be had to the circumstances of the case and the key factors set out above.⁵⁵

Findings

46. As noted above, the searches performed in response to the application located 874 relevant pages, although the majority of these were duplicates. The Department's search records and certifications⁵⁶ show that:
- the Public Trustee did a name search of the Client Information Management System, and provided the physical file located from the Townsville office
 - the Public Trustee extracted relevant documents from another electronic document database
 - searches were conducted of the unit that deals with complaints, but no relevant documents were located; and
 - the Public Trustee found archived documents relating to the applicant's previous access application in the Governance and Risk Unit.
47. The information which has been released to the applicant reveals that, after an application by the applicant's mother's nursing home,⁵⁷ QCAT made a decision to appoint the Public Trustee as administrator for the applicant's mother for all financial

⁵² *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

⁵³ As set out in *PDE* at [49]. See also section 137(2) of the IP Act.

⁵⁴ Section 52(1)(b) of the RTI Act.

⁵⁵ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

⁵⁶ Submission received on 8 December 2016.

⁵⁷ Pages 831-859.

matters.⁵⁸ However, his mother passed away less than a month after the Public Trustee's appointment, and it appears that, as a result, the Public Trustee had not taken any action in relation to her affairs prior to her death.⁵⁹ Further, the Public Trustee's authority ceased on the date of death. This explains why some of the documents which the applicant contends should be in the possession of the Public Trustee have not been located.

48. While further records about the financial affairs of the applicant's mother may exist, I consider that any such documents would be held by the entities which created them—for example, her nursing home, or the private sector companies or other government agencies mentioned by the applicant.⁶⁰ On the information available to me, there is nothing to indicate that these documents are also held by the Public Trustee. Accordingly, these are not documents which could be applied for in an application to the Public Trustee under the RTI Act. The RTI Act only permits applications for documents which are in an agency's possession or under the agency's control.⁶¹ This means that documents such as records held by the nursing home, the private sector companies or other government agencies could not be accessed through an application to the Public Trustee unless those documents were also in the Public Trustee's possession or under its control.
49. In any event, I am satisfied that the Public Trustee's searches and inquiries have been appropriately targeted and comprehensive and that it has taken all reasonable steps to locate any documents which fall within the scope of the application, particularly in view of the Public Trustee's very limited role in the administration of the financial affairs of the applicant's late mother.
50. For these reasons, I find that the Department is entitled to refuse access to the additional documents which the applicant contends exist under section 47(3)(e) of the RTI Act on the basis that they are nonexistent or unlocatable.

DECISION

51. For the reasons set out above, I vary the decision under review, and find that access to:
 - the Statutory Declaration Information and the Third Party Personal Information may be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest; and
 - any further information may be refused under section 47(3)(e) of the RTI Act as it is nonexistent or unlocatable under section 52(1) of the RTI Act.
52. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

T Mainwaring
Acting Assistant Information Commissioner

Date: 3 July 2017

⁵⁸ Pages 716-717.

⁵⁹ Pages 704 and 709.

⁶⁰ In relation to the applicant's solicitor, I note that the Public Trustee has released documents recording contact between the Public Trustee and the solicitor: pages 701-702, 711 and 718-719.

⁶¹ Sections 12 and 23(1)(a) of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
25 August 2016	OIC received the external review application.
26 August 2016	OIC notified the Department of the external review application and requested procedural documents.
30 August 2016	OIC received information from the applicant.
2 September 2016	OIC received the requested procedural documents from the Department.
9 September 2016	The applicant discussed the review with OIC and agreed to exclude the QCAT Information from consideration on external review. OIC notified the applicant and the Department that the external review application had been accepted. OIC asked the Department to provide the documents located in response to the application.
15 September 2016	The applicant discussed the review with OIC.
21 September 2016	OIC received information from the applicant. OIC received the requested documents from the Department.
28 October 2016	The applicant discussed the review with OIC.
21 November 2016	OIC discussed a number of procedural issues with the Department.
24 November 2016	OIC requested that the Department provide further information about the searches conducted in processing the application, including search certifications.
8 December 2016	OIC received the requested information from the Department.
16 January 2017	OIC wrote to the applicant identifying the QCAT Information and confirming it was to be excluded from consideration on external review.
18 January 2017	OIC conveyed a preliminary view to the applicant and invited him to provide submissions if he did not accept the preliminary view. OIC also confirmed the QCAT Information had been excluded from consideration.
6 February 2017	The applicant discussed the review with OIC.
7 February 2017	The applicant discussed the review with OIC.
8 February 2017	OIC granted the applicant an extension to provide submissions in response to the preliminary view and confirmed the QCAT Information had been excluded from consideration.
22 February 2017	OIC received a written submission from the applicant.