



Decision and Reasons for Decision

Citation: *McCrystal and Queensland Building and Construction Commission (No. 2)* [2018] QICmr 10 (7 March 2018)

Application Number: 313091

Applicant: McCrystal

Respondent: Queensland Building and Construction Commission

Decision Date: 7 March 2018

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - PREVIOUS APPLICATION FOR SAME DOCUMENTS - application for information concerning a regulatory decision - documents sought in previous access applications - whether Information Commissioner should decide not to further deal with those aspects of this review - section 43(3)(d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - application for information concerning a regulatory decision - whether information was irrelevant to the terms of the access application - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - application for information concerning a regulatory decision - accountability, transparency, administration of justice and procedural fairness considerations - personal information of other individuals - business and commercial information of entities - flow of information to agency - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - application for information concerning a regulatory decision - whether agency has taken all reasonable steps to locate documents - whether the documents cannot be found or do not exist - sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Building and Construction Commission (QBCC) under the *Right to Information Act 2009* (Qld) (RTI Act) for access to:

All documents² relating to building and construction activity of [Mr X] (who is a QBCC permanently-excluded individual) and all historical documents/records of building and construction activity of LJ Technical Control Construction Pty Ltd, including contracts, addresses, values, insurance, certification, and licensing requirements. All documents relating to the QBCC's enquiries, the responses and material evidence provided by parties and experts (identified in complaints or not) in response to those enquiries, consideration and advice of the QBCC of those materials, which satisfied the QBCC in its decision to cancel the license of LJ Technical Control Construction Pty Ltd (QBCC Lic: 1263834) because [Mr X] was an influential person. Unredacted.

2. QBCC located 4638 pages, one video and three audio recordings. It decided³ that 38 pages were outside the scope of the access application and provided full access to 4055 pages, one video and two audio recordings. QBCC refused or deleted:

- 114 pages, portions of information appearing in 285 pages and portions of one audio recording on the ground that its disclosure would, on balance, be contrary to the public interest
- 61 pages on the ground that they were exempt information
- 85 pages on the ground that other access was available; and
- portions of information appearing in 45 pages and one audio recording on the basis that it was irrelevant to the access application.

3. The applicant applied⁴ to the Information Commissioner for an external review of QBCC's decision to refuse access to information. The applicant also raised concerns that QBCC had not located all relevant documents.

4. For the reasons set out below, I vary QBCC's decision and have decided:

- not to deal with parts of the applicant's external review application under section 43(3) of the RTI Act, as those parts of the application seek access to documents which were the subject of previous access applications by the applicant which are the subject of an agency decision refusing access and an incomplete external review; and
- that access to the information remaining for consideration in this review may be refused or deleted on the grounds that:
 - its disclosure would, on balance, be contrary to the public interest
 - it is outside the scope of, or irrelevant to, the access application; or
 - it is nonexistent or unlocatable.

¹ On 5 August 2016.

² The access application seeks documents for the period 2013 to 5 August 2016 (being the date the application was received by QBCC) and identifies the types of documents sought as: 'Case notes, EDRMS, legal EDRMS, internal & external correspondence, image / video / audio recordings & interviews, documents including plans / referral agency correspondence / work contracts, receipts, values / employee contracts / suppliers / insurance / licensing requirements / certificates, contracts / addresses / documents and value of work on company's record of residential construction work'.

³ QBCC issued a decision on 1 November 2016; however, QBCC issued an amended decision on 2 November 2016.

⁴ On 25 November 2016.

Background

5. QBCC regulates the building industry throughout Queensland and a range of legislation falls within QBCC's regulatory responsibilities.⁵ As the State's building and construction industry regulator, QBCC provides information, advice and regulation to ensure the maintenance of proper building standards and remedies for defective work.⁶ Of relevance in this review, QBCC has responsibility for the licensing of building companies and investigating complaints made against licensed builders.
6. The *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) relevantly provides that:
 - a person or a company must not carry out, or undertake to carry out, building work unless they hold a contractor's licence of the appropriate class under the QBCC Act⁷
 - a company is entitled to a contractor's licence if QBCC is satisfied, on application by that company for a licence, of the matters specified in section 31 of the QBCC Act, including that the company is not an excluded company
 - a company is an excluded company if an individual who is a director or secretary of, or an influential person for, the construction company is an excluded individual⁸ for a relevant event⁹
 - QBCC may suspend or cancel a licence if it becomes aware of facts that would allow QBCC to refuse to issue the licence if it were now being applied for by the licensee;¹⁰ and
 - if QBCC considers that a licensed company is an excluded company, QBCC must cancel the company's licence if, within 28 days of being notified about an excluded individual, the relevant individual does not stop being a director or secretary of, or an influential person for, the company.¹¹
7. The applicant made a number of complaints to QBCC, primarily relating to residential building work at two adjoining properties—Property 1 and Property 2.¹² Relevant to the information considered in this review, the applicant's complaints include:
 - a complaint to QBCC about unlicensed contracting by LJ Technical Control Construction Pty Ltd (**LJ Technical**) at Property 1¹³
 - a complaint¹⁴ to QBCC which reiterated the prior unlicensed contracting complaint about building work at Property 1 and also raised a concern that Mr X had been

⁵ Refer to <<http://www.qbcc.qld.gov.au/about-us/overview>> and <<http://www.qbcc.qld.gov.au/about-us/legislation>>.

⁶ Refer to <<http://www.qbcc.qld.gov.au/about-us/overview>>.

⁷ Section 42 of the QBCC Act. Note that exemptions to this requirement are set out in schedule 1A to the QBCC Act. A licensee that is a company is required, under section 42B of the QBCC Act, to have a nominee who holds a contractor's licence or a nominee supervisor's licence for the building work carried out under the company's class of licence.

⁸ Under Section 56AC(3) of the QBCC Act, an 'excluded individual' includes an individual who becomes bankrupt and three years have not elapsed since the relevant bankruptcy event happened. Section 58 of the QBCC Act defines where an individual will be a 'permanently excluded individual'.

⁹ Section 56AC(6) of the QBCC Act.

¹⁰ Section 48(1)(j) of the QBCC Act.

¹¹ Section 56AG(3) of the QBCC Act. QBCC may also cancel or suspend licenses on other grounds – refer to section 49 of the QBCC Act, which requires QBCC to give the licensee a notice of reasons, allow the licensee to make written representations on the matter and provide a written notice of cancellation or suspension to the licensee which complies with the requirements of section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (**QCAT Act**).

¹² A summary of these complaints comprises Appendix 1 to decision of the Information Commissioner's delegate of *McCrystal and Queensland Building and Construction Commission* [2018] QICmr 2 dated 30 January 2018 (**McCrystal No. 3**).

¹³ Complaint dated 10 July 2014. QBCC investigated the complaint and, on 24 July 2014, QBCC issued a stop work order and an infringement notice. However, the infringement notice was subsequently withdrawn by QBCC on 8 August 2014 and construction was permitted to continue.

¹⁴ Submitted to QBCC by the applicant's legal representative and dated 17 February 2015.

- acting as an influential person for LJ Technical in contravention of the QBCC Act¹⁵
 - a further complaint¹⁶ to QBCC that Mr X was acting as an influential person for LJ Technical¹⁷
 - a complaint¹⁸ about unlicensed contracting by LJ Technical at Property 2¹⁹
 - a further complaint²⁰ to QBCC which provided additional information in support of the prior complaint that Mr X was acting as an influential person for LJ Technical²¹
 - a further complaint²² to QBCC which included a complaint that Mr X was acting as an influential person for LJ Technical and/or other persons or companies in respect of certain building work at Property 1²³
 - a further complaint²⁴ to QBCC which included a complaint that Mr X continued to act as an influential person for LJ Technical and/or other persons or companies in respect of building work at Property 1 and Property 2; and
 - a further complaint²⁵ to QBCC about multiple building licence breaches at Property 2, which included a complaint that Mr X continued to act as an influential person for LJ Technical and/or other companies in respect of building work at Property 2.²⁶
8. On 26 November 2015, QBCC issued a written notice (**Proposal Notice**)²⁷ to LJ Technical, under section 56AG of the QBCC Act, which stated that:
- QBCC considered LJ Technical was an excluded company because Mr X was an excluded individual and was a director, secretary or influential person for LJ Technical
 - QBCC would cancel LJ Technical's licence if, within 28 days, Mr X did not stop being a director, secretary or influential person for LJ Technical.²⁸
9. On 28 April 2016, QBCC issued a notice cancelling LJ Technical's licence (**Cancellation Notice**).²⁹
10. A QBCC license search³⁰ of LJ Technical confirms that it:

¹⁵ QBCC responded to this complaint on 23 February 2015 stating that an investigation of the unlicensed contracting complaint had previously been carried out and determined LJ Technical was appropriately licensed for the building work at Property 1. I also note that, prior to submission of this complaint to QBCC, the applicant raised the complaint with a Councillor, by letter dated 6 January 2015. The Councillor forwarded that complaint to QBCC (which was received by QBCC on 26 February 2015) and requested that QBCC investigate the matters raised by the applicant regarding Mr X. QBCC responded to the Councillor by letter dated 10 March 2015 confirming that, in respect of the complaint concerning Mr X, it was unable to substantiate that Mr X was an influential person involved in LJ Technical and was unable to take any further action.

¹⁶ Submitted by the applicant's legal representative and dated 13 March 2015.

¹⁷ Supplementary evidence in support of the complaint was submitted to QBCC by the applicant's legal representative on 7 July 2015. QBCC determined, on 8 September 2015, that there was insufficient evidence to demonstrate the excluded individual was acting as an influential person for LJ Technical.

¹⁸ Dated 26 October 2015.

¹⁹ QBCC investigated the complaint and, on 18 January 2016, issued a warning letter to LJ Technical.

²⁰ Submitted by the applicant's legal representative and dated 29 October 2015.

²¹ Further supporting information was provided to QBCC by the applicant's legal representative on 18 November 2015. QBCC investigated the complaint and, on 28 April 2016, QBCC cancelled LJ Technical's building licence, on the basis that an excluded individual did not stop being an influential person.

²² Dated 18 April 2016.

²³ Supplementary information in support of the complaint was submitted to QBCC on 4 May 2016 and 1 June 2016. QBCC investigated the complaint and determined that there was insufficient evidence to pursue a breach that it had identified.

²⁴ Dated 1 June 2016.

²⁵ Dated 11 July 2016.

²⁶ On 28 July 2016 QBCC noted that the matter had been investigated, a warning letter had been issued to LJ Technical and, on 24 August 2016, QBCC stated that it would not be investigating the complaint.

²⁷ The Proposal Notice was sent to LJ Technical at two addresses. I note that copies of the Proposal Notice, as sent to both addresses, comprise pages 1225-1232 in File 1263834 Compliance EDRMS, which have been released to the applicant.

²⁸ The Proposal Notice also referred to additional cancellation circumstances which are not relevant to this review.

²⁹ A copy of the Cancellation Notice appears at pages 1995-1996 in File 1263834 Compliance EDRMS, which have been released to the applicant.

³⁰ Search conducted by OIC on 6 February 2018, via QBCC's website.

- is not currently licenced by QBCC, as its building licence was cancelled on 28 April 2016
- is an excluded company by reason of Mr X, who entered into bankruptcy on 30 May 2012, being listed as an influential person; and
- has one listed director and secretary.

11. On external review, the applicant has provided extensive submissions to the Office of the Information Commissioner (**OIC**) in support of his belief that:

[Mr X], and others, have engaged in activities that are illegal or for an improper purpose (as proven by relevant QBCC findings); however, this activity would appear to extend to those offences that the QBCC knew, or ought to have reasonably known, were continuing to be commissioned against the QBCC Act for which the QBCC did not adequately investigate or take enforcement action.³¹

12. The significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

13. The decision under review is QBCC's decision dated 2 November 2016.

Evidence considered

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

15. The applicant provided OIC with extensive submissions in his external review application and on four occasions during the external review. To the extent the applicant's submissions are relevant to the issues for determination in this review, I have addressed them below.

16. The Information Commissioner's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies. The applicant's submissions raise a number of concerns generally relating to:

- the applicant's dissatisfaction with QBCC's investigations of his various complaints and certain investigation outcomes and his belief that certain decisions were conflicting and '*demonstrably wrong*'; and
- concerns that certain individuals may have acted in accordance with the directions of Mr X or may have engaged in building and construction activities under Mr X's instruction or supervision, and that LJ Technical's building work may not comply with the requirements of the Building Code of Australia.

17. I have given consideration to these concerns for the purpose of determining whether there are public interest factors favouring disclosure of information. Otherwise, however, OIC has no jurisdiction to address, make findings or provide any remedy to the applicant regarding his concerns about the correctness of QBCC's decisions regarding his complaints, building work compliance or his concerns that particular individuals have acted in accordance with the directions of Mr X.³²

³¹ External review application.

³² During the external review, OIC has advised the applicant that that he may wish to take his concerns to other agencies which have jurisdiction to investigate those matters.

Information in issue

18. On external review, QBCC located additional documents, which generally comprised:

Category One Additional Documents 458 pages and two audio recordings containing information about QBCC's investigation of some of the applicant's complaints and licensing of LJ Technical

Category Two Additional Documents information created or obtained by, or provided to, QBCC relating to rectification requirements, concerning works conducted in a period prior to 2013 at a site where Hypersonic Construction Pty Ltd (**Hypersonic Construction**) and other entities were previously involved, and associated disciplinary action initiated by QBCC but subsequently withdrawn

Category Three Additional Documents documents in File 1263834_3 and associated information concerning legal proceedings in the Queensland Civil and Administrative Tribunal (**QCAT**) in respect of QBCC's cancellation of LJ Technical's licence.

19. During the external review:

- QBCC released some information to the applicant and accepted OIC's views that:
 - 38 pages which QBCC excluded as being outside the scope of, or irrelevant to, the access application could not be excluded on that basis; and
 - 61 pages to which QBCC refused access on the basis they were exempt information could not be refused on that basis
- the applicant did not wish to pursue access to:
 - information which is commercially available³³
 - mobile telephone numbers of QBCC and state government employees
 - email greetings and pleasantries in emails between government agencies; and
 - 66 pages of duplicates³⁴
- QBCC accepted OIC's views about the Category One Additional Documents and released some of the Category One Additional Documents to the applicant in accordance with those views; and
- the applicant accepted OIC's views that the disclosure of one category of information would, on balance, be contrary to the public interest³⁵ and some information is outside the scope of, or irrelevant to, the access application.³⁶

20. Therefore, the information remaining for consideration in this review (**Information in Issue**) is:

³³ For example, RP Data and ASIC extracts.

³⁴ As identified in OIC's letter dated 23 August 2017.

³⁵ Paragraph 87 in submissions dated 2 November 2017.

³⁶ Paragraph 71 in submissions dated 2 November 2017.

- information refused or deleted by QBCC on 335 pages³⁷ and parts of one audio recording
- information refused or deleted on 134 pages³⁸ and 2 audio recordings in the Category One Additional Documents; and
- the Category Two Additional Documents and the Category Three Additional Documents.

Issues to be determined

21. As set out in paragraph 19 above, some issues have been resolved informally during the review process. The remaining issues to be determined are whether:
- I may refuse to deal with the applicant's request for certain documents on the grounds that the applicant had previously applied for the same documents and those previous applications are the subject of an agency decision refusing access under section 47 of the RTI Act and an incomplete external review; and
 - the Information in Issue may be refused or deleted on the grounds that its disclosure would, on balance, be contrary to the public interest or it is outside the scope of, or irrelevant to, the access application; and
 - the additional documents that the applicant considers should have been located by QBCC may be refused on the ground that they are nonexistent or unlocatable.

Preliminary issue

22. Before considering the issues for determination, it is necessary to deal with a preliminary issue arising from concerns expressed in the applicant's submissions.
23. The applicant submitted³⁹ that he is significantly concerned that '*Officers and employees of the QBCC have also engaged in misconduct, and this extends to Officers engaged in making RTI decisions*'.
24. I note that external review by the Information Commissioner⁴⁰ is merits review, which is an administrative reconsideration of a case that can be described as 'stepping into the shoes' of the primary decision-maker, to determine what is the correct and preferable decision. Given this position, the applicant's submissions concerning QBCC's RTI decision-makers do not raise matters requiring consideration in the context of the remaining issues to be determined.
25. I have, however, carefully considered the applicant's submissions concerning QBCC's RTI decision-makers in terms of my obligation to notify relevant parties about evidence

³⁷ Pages 1-61 in File 1076714_2; pages 1-8 in File 1076714_3; Page 55 in File 1101192 Compliance EDRMS; page 4 in File 11477551 Regulatory Services EDRMS; pages 2, 13, 14, 15, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 80, 84, 85-99, 101, 103, 104, 106, 107 and 121 in File 1263834 Contact Centre EDRMS; pages 1, 2, 3, 4, 5, 7-9, 78, 79, 82 and 83 in File 1263834 Disc Part 1; pages 1, 3, 5, 6, 11, 13, 14, 17-20, 25-29, 45, 47, 48, 49, 80-88, 89-93, 97, 98, 99, 100, 101, 107, 108, 109, 110, 111, 124, 136-145, 148, 170, 175, 187, 188, 207, 211, 212 and 213 in File 1263834 Hard File A; page 1 in File 1263834 Licence Activity Report; page 57 in File 1263834 Ministerials; pages 2, 22 and 23 in File 1263834 Regulatory Services; pages 2, 3 and 4 in File 1263834_3 Case Notes; page 1, 2 and 3 in File 1265287 Regulatory Services EDRMS; page 4 in File CN CMS Notes; and pages 1223, 1234, 1235, 1298, 1306, 1307, 1308, 1309, 1550, 1552, 1553, 1554, 1566-1576, 1588, 1590, 1591, 1592, 1593, 1595, 1596, 1599, 1600, 1603, 1604, 1605, 1608, 1609, 1612, 1613, 1614, 1615-1617, 1619, 1620, 1621, 1622, 1686, 1687, 1688, 1689, 1692, 1693, 1694, 1695, 1696, 1712, 1714, 1715, 1716, 1717, 1722, 1724, 1725, 1728-1731, 1736-1740, 1756, 1758, 1759, 1791-1801, 1802-1806, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1837, 1861, 1883, 1888, 1899, 1900, 1901, 1919, 1923, 1924 and 1925 in File 1263834 Compliance EDRMS.

³⁸ Pages 1, 2, 4, 5 and 8 in File 1263834 Compliance – EP Documents; pages 12, 18, 19, 20, 21-59, 61-99, 101, 102, 103 and 104-142 in File 1263834 Compliance – Financial Audit Documents; page 2 in File 1263834 Miscellaneous Document; page 1 in File 1263834_2 Case Notes; page 1 in File 1263834_5 Case Notes; page 1 in File 1263834_7 Case Notes; page 1 in File Ministerial RFI documents; and page 1 in File Ministerial RFI documents.

³⁹ Submissions dated 23 January 2017.

⁴⁰ Or delegate.

of deficiencies in the conduct of agency officers.⁴¹ There is no evidence before me which supports the applicant's assertions that QBCC's RTI decision-maker has engaged in midconduct as the applicant alleges.⁴²

26. I will now turn to consideration of the substantive issues to be determined in this review.

Refusal to deal

Relevant law

27. Under the RTI Act, an individual has a right to be given access to documents of an agency,⁴³ however, this right of access is subject to a number of exclusions and limitations.

28. Where an applicant has made an access application under the RTI Act or the *Information Privacy Act 2009 (Qld) (IP Act)*, and then makes a later application under the RTI Act or IP Act to the same agency seeking access to one or more of the same documents,⁴⁴ section 43 of the RTI Act enables the agency to refuse to deal with the later access application if:

- the agency's decision in respect of the first application:
 - refused access to documents under section 47 of the RTI Act;⁴⁵ or
 - is the subject of a review⁴⁶ that is not complete;⁴⁷ and
- the later application does not on its face disclose a reasonable basis for seeking access to those same documents.⁴⁸

29. As noted in paragraph 24 above, external review by the Information Commissioner⁴⁹ is merits review. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency under the RTI Act.⁵⁰

Analysis

30. The applicant has made the following access applications to QBCC:

Date	QBCC reference number and decision	External review and status
16 September 2014 (First Application)	RTI_053_14_15 – decision dated 30 September 2014	Not sought
21 April 2016 (Second Application)	RTI_248_15_16 – decision dated 14 July 2016	312924 – completed ⁵¹
4 August 2016 (Third Application)	RTI_029_16_17 – internal review decision dated 12 January 2017	313174 – ongoing

⁴¹ Section 113 of the RTI Act.

⁴² In terms of QBCC's decision-maker, if OIC considered there was such evidence, the Information Commissioner must take the actions specified in section 113 of the RTI Act.

⁴³ Section 23 of the RTI Act.

⁴⁴ Section 43(1) of the RTI Act.

⁴⁵ Section 43(3)(b)(iii) of the RTI Act.

⁴⁶ Of relevance in this matter, 'review' is defined in section 43(5) of the RTI Act to include an external review.

⁴⁷ Section 43(3)(d)(i) of the RTI Act.

⁴⁸ Section 43(1)(b) of the RTI Act.

⁴⁹ Or delegate.

⁵⁰ Section 105(1)(b) of the RTI Act. However, this does not apply to the discretion in section 44(4) of the RTI Act to give access to a document to which access can be refused, as the Information Commissioner does not have power to direct that access be given to a document which is exempt or contrary to public interest to disclose: section 105(2) of the RTI Act.

⁵¹ External review 312924 was finalised by the decision of the Information Commissioner's delegate of *McCrystal and Queensland Building and Construction Commission* [2017] QICmr 32 (**McCrystal No. 1**) on 10 August 2017.

4 August 2016 (Fourth Application)	RTI_030_16_17 – decision dated 30 September 2016	312996 – completed ⁵²
4 August 2016 (Fifth Application)	RTI_031_16_17 – internal review decision dated 23 December 2016	313173 – completed ⁵³
5 August 2016 (Sixth Application)	RTI_032_16_17 – decision dated 2 November 2016	313091 – this review

31. In processing the Sixth Application, which is the subject of this review, QBCC requested⁵⁴ the applicant confirm the documents he sought in the following part of the application – that is: ‘*All documents relating to building and construction activity of [Mr X] (who is a QBCC permanently-excluded individual)*’.

32. In response, the applicant confirmed to QBCC⁵⁵ that:

... any building and construction activity of LJ Technical Control Construction Pty Ltd (throughout the entire period it held a QBCC licence), individuals who are known to act in accordance with his wishes, or other relevant QBCC or BSA licensee, can be considered to be building and construction activity of [Mr X].

The reasons (and material evidence) that satisfied the QBCC to cancel the licence of LJ Technical Control Construction Pty Ltd, including the relevant activity of [Mr X], are further stipulated in the application.

In conclusion, in the interest of removing any possible doubt as to the nature of the documents sought:

(1) All documents and information held by QBCC relating to LJ Technical Control Construction Pty Ltd may be considered relevant to the building and construction activity of [Mr X] ... Any document bearing reference to [Mr X] (by name or through individuals who are known to act in accordance with his wishes) is required to be disclosed in full.

(2) All documents providing reference to the building and construction activity of Mr X (by name or through individuals who are known to act in accordance with his wishes) found under the additional file numbers listed above⁵⁶ is required to be disclosed in full, as permitted within the scope of the application.

33. On external review, the applicant queried why drafts of QBCC’s letter to a Councillor dated 10 March 2015⁵⁷ (**Draft Letters**) had not been located by QBCC and otherwise raised concerns that QBCC had not located all relevant documents.

34. OIC requested⁵⁸ the applicant confirm the categories of information, in addition to the Draft Letters, which in his view existed and should have been located by QBCC. In response, the applicant identified⁵⁹ the following nine categories of further documents:

⁵² External review 312996 was finalised by the decision of the Information Commissioner’s delegate of *McCrystal and Queensland Building and Construction Commission (No. 2)* [2017] QICmr 50 (**McCrystal No. 2**) dated 6 October 2017.

⁵³ External review 313173 was finalised by *McCrystal No. 3*.

⁵⁴ By email dated 26 September 2016.

⁵⁵ By letter to QBCC dated 6 October 2016.

⁵⁶ Being case or file numbers 1187571, 1147551, A21174, 1265287, 14922, 1076714, 32248 and 1101192_7. As set out in QBCC’s decision dated 2 November 2016, QBCC located responsive documents in file numbers 1187571, 1147551, 1265287, 1076714 and 1101192.

⁵⁷ The final version of this letter comprises pages 62-63 in File 1263834 *Ministerials*, which have been released to the applicant.

⁵⁸ On 9 December 2016.

⁵⁹ By letter dated 23 January 2017.

Document Category No. ⁶⁰	Description provided by applicant	Location identified by applicant
A	'Case Notes Unlawful Building Work 1263834_1'	1263834_1
B	Emails: '[Officer E] to/from [an email address]; Subject: RE: [Property 1];' together with nine specified attachments ⁶¹	1263834_1
C	'Schedule and Infringement Notice Checklist'	1263834_1
D	'Record of Discussions on site'	1263834_1
E	'Email: [Officer S]; Subject: FW: [Property 1] - Alternative Solution Report and Qld Fire and Emergency (rescue) Service Approval'	1263834_1
F	'Fit and Proper Investigation? [sic] - Investigation 1263834_3 is referenced in 1263834 Compliance EDRMS.pdf in RTI_032_16_17'	1263834_3
G	'Influential Person Investigation? [sic] - Investigation 1263834_7 is referenced in 1263834 Compliance EDRMS.pdf in RTI_032_16_17'	1263834_7
H	'Other relevant investigations - Notated as 1263834_x (replace x for investigation)'	1263834_x
I	'RTI_029_16_17 Referred to OIC for External Review Specifically under RTI_029_16_17 - 1076714 Compliance EDRMS - 1076714_11 Case notes Redax'	RTI_029_16_17 - 1076714 - 1101192 - 1265287

35. The applicant subsequently submitted⁶² that he also sought six specific 'RTI_053_14_15 documents', being the Category A, B, and D documents, a specific email which fell within the Category E documents,⁶³ 'metadata descriptions' and 'record of telephone conversations'.⁶⁴

Findings - Category A, B, C and E documents

36. The Category A, B, C and E documents are documents that were the subject of the First Application. QBCC provided a written decision to the applicant concerning the First Application.⁶⁵ The applicant did not seek internal or external review of QBCC's decision in respect of the First Application.
37. I have considered the redacted version of the documents QBCC released to the applicant in respect of the First Application and I note that:
- QBCC located approximately 225 pages of information
 - the Category A, B, C and E documents are the documents which were not fully released to the applicant
 - access was refused to information in the Category A, B, C and E documents primarily on the ground that its disclosure would, on balance, be contrary to the public interest; and
 - most of the information to which QBCC refused access in the Category A, B, C and E documents comprised the personal information of individuals other than the

⁶⁰ OIC's letter to the applicant dated 19 October 2017 conveyed OIC's view concerning the sufficiency of search concerns raised by the applicant in this review. To provide clarity about the information remaining for consideration in this review, the document category numbers in this table are not the same as the document category numbers set out in OIC's letter to the applicant.

⁶¹ I also note that a further copy of one of these documents (being the second email attachment identified by the applicant) has been partially released to the applicant in respect of the Fifth Application.

⁶² Submissions dated 23 November 2017.

⁶³ Specifically, an email from Officer S to Officer C dated 24 July 2014.

⁶⁴ The applicant made general submissions, on 23 November 2017, regarding additional audio recordings of telephone conversations he considers should have been located. I will address those submissions later in this decision.

⁶⁵ Under section 54 of the RTI Act.

applicant, such as their names, signatures and contact details (including postal addresses, mobile telephone numbers and email addresses).

38. Accordingly, I am satisfied that the Category A, B, C and E documents were the subject of an agency decision refusing access under section 47 of the RTI Act.⁶⁶
39. The applicant submitted that:
- these documents *'are known to exist through a previous RTI decision'*⁶⁷
 - he considers that each of his access applications were *'substantially different'*⁶⁸
 - the scope of the First Application did not specifically seek information regarding the building and construction activity of Mr X;⁶⁹ and
 - *'The number of the RTI requests reflects the number of disputed QBCC decisions, and each one has been made with distinct reasonable basis. Due to the nature of the complaints and relationship between them, where the outcome of one complaint can affect the outcome of another, it is inevitable that there will be some overlap in the scope of the request.'*⁷⁰
40. On external review, the applicant confirmed⁷¹ that the First Application sought access to documents relating to his complaint about unlicensed contracting by LJ Technical at Property 1.
41. I accept that the First Application did not specifically identify information regarding the building and construction activity of Mr X. However, the Sixth Application that is the subject of this review, was framed in broad terms. The applicant confirmed to both QBCC⁷² (during its processing of the Sixth Application) and OIC⁷³ (during the external review) that the information sought in the Sixth Application included documents and information held by QBCC relating to LJ Technical's building and construction activities. That is, the applicant confirmed that his later application, the Sixth Application, again sought access to documents he had previously sought under the First Application. Based on this specific confirmation from the applicant and a plain reading of the terms of both applications, I am satisfied that the Sixth Application seeks information which includes documents that were the subject of the First Application.
42. The applicant further submitted that *'Where the QBCC stores its information, which happens to be across a variety of file numbers and in file numbers already accessed by the Applicant for completely different reasons, is no fault of the [applicant]'*.⁷⁴ In applying section 43 of the RTI Act in this review, the relevant question for consideration is not whether QBCC has previously accessed the same file numbers to address the First Application; rather it is whether the Sixth Application seeks access to one or more of the same documents sought in the First Application. As set out above, I am satisfied that the Sixth Application does seek access to documents that were the subject of the First Application.

⁶⁶ Section 43(3)(b)(iii) of the RTI Act.

⁶⁷ Submissions dated 23 January 2017.

⁶⁸ Submissions dated 2 November 2017.

⁶⁹ Submissions dated 2 November 2017.

⁷⁰ Submissions dated 23 January 2017.

⁷¹ Submissions dated 2 November 2017. In the applicant's submissions dated 23 November 2017, the applicant stated that the First Application sought: *'All documents relating to the QBCC's enquiries and notice to cease work/fine and the Builder's response to those enquiries which satisfied the QBCC that the development is a Class 2, Type C Construction Site address [Property 1]'*.

⁷² By letter to QBCC dated 6 October 2016.

⁷³ External review application.

⁷⁴ Submissions dated 2 November 2017.

43. I have carefully considered the terms of the Sixth Application. I am satisfied that there is no information on the face of this application which discloses any reasonable basis for again seeking access to the Category A, B, C and E documents.

44. In the course of the review, the applicant submitted:⁷⁵

There is a reasonable basis for seeking access to the documents under RTI_053_14_15 relevant to this access application. Documents under RTI_053_14_15 provide a substantial understanding of documents that were available to the QBCC before 10 March 2015⁷⁶ at a time when the QBCC was asked to investigate and take enforcement action against [Mr X] because he was acting impermissibly as an Influential Person. [applicant's emphasis]

45. In this regard, I also note the applicant submitted⁷⁷ that the Sixth Application was made 'in response to circumstances in which the QBCC itself revealed that it had been making false and misleading representations regarding numerous investigations'. That is, it appears the applicant considers that information previously provided to him by QBCC gave rise to his concerns that QBCC made false and misleading representations.

46. The Category A, B, C and E documents, which are dated between April and August 2014,⁷⁸ relate to QBCC's investigation of the applicant's complaint about unlicensed contracting by LJ Technical at Property 1. Taking into consideration the nature and extent of the information in the Category A, B, C and E documents that has been released to the Applicant in the First Application, I am satisfied that such information would provide the applicant with a 'substantial understanding of documents that were available to the QBCC' in respect of the 2014 investigation of the applicant's complaint.

47. Further, as noted in paragraph 37 above, most of the information in the Category A, B, C and E documents to which access was refused in the First Application comprises individuals' personal information. I do not consider that disclosure of such personal information would further the applicant's understanding, in any meaningful way, of the documents that were available to QBCC. Rather, the applicant's request to again access the Category A, B, C and E documents appears to seek the Information Commissioner's review of the information to which QBCC refused access in the First Application.

48. The applicant submitted that 'The OIC cannot punish an Applicant for not seeking external review of an access application in completely unrelated circumstances'⁷⁹ and that no external review was sought regarding QBCC's decision concerning the First Application because:

- 'in the context of that unique access application it was not deemed necessary';⁸⁰ and
- QBCC was not notified until 17 February 2015 (being the date of the applicant's second complaint to QBCC referred to in paragraph 7 above) that '[Mr X] was acting impermissibly as an Influential Person – well beyond the expiry of any permissible external review application for RTI_053_14_15'.⁸¹

⁷⁵ Submissions dated 23 November 2017.

⁷⁶ The applicant's submissions dated 23 November 2017 refer to his expectation that the Information in Issue will reveal that, prior to 10 March 2015, QBCC officers accepted and referred to Mr X as the director of LJ Technical and/or that he was otherwise demonstrably an influential person. Further, his submissions dated 2 November 2015 refer to 10 March 2015 as a date on which QBCC 'denied' that Mr X was an influential person of LJ Technical.

⁷⁷ Submissions dated 2 November 2017.

⁷⁸ As noted in paragraph 30 above, the First Application was made on 16 September 2014 and, under section 27 of the RTI Act, it was taken only to apply to documents that were in existence on that date.

⁷⁹ Submissions dated 2 November 2017.

⁸⁰ Submissions dated 2 November 2017.

⁸¹ Submissions dated 2 November 2017.

49. Parliament has identified specific circumstances in which an agency may refuse to deal with an access application and those circumstances are specified in sections 40, 41 and 43 of the RTI Act. In applying the provisions of section 43 of the RTI Act, the Information Commissioner is not *'punishing'* the applicant for not seeking review of QBCC's decision concerning the First Application.
50. I have carefully considered the applicant's basis for again seeking access to the Category A, B, C and E documents, as set out in the applicant's submissions in this review. There is nothing in the applicant's submissions on external review that persuade me there is any reasonable basis to again seek access to the documents requested in categories A, B, C and E above.
51. Thus, as I am satisfied that there is nothing on the face of the applicant's Sixth Application, or in the applicant's submissions in this external review, that discloses any reasonable basis to again seek access to the Category A, B, C and E documents, I refuse to deal with that part of the applicant's application which again seeks access to the documents identified in categories A, B, C and E above under section 43(3)(b)(iii) of the RTI Act.

Findings - Category I documents

52. Category I documents are documents that were the subject of the Third Application.⁸² QBCC's decision regarding the Third Application is the subject of external review 313174, which is not complete. Accordingly, these documents are the subject of an incomplete external review.⁸³
53. As noted previously, I have carefully considered the terms of the Sixth Application that is the subject of this review. I am satisfied that there is no information on the face of this application which discloses any reasonable basis for again seeking access to the Category I documents.
54. I have also carefully considered the applicant's submissions in this review regarding the Category I documents. In this regard, I note that:
 - the applicant confirmed⁸⁴ that he understood these documents *'to be held under'* QBCC's decision in the Third Application *'which will be discussed under the Request for External Review of that decision'*;⁸⁵ and
 - *'I accept that the [Category I documents] will be dealt with in external review 313174; although any building and construction activity of [Mr X], who was an undischarged bankrupt at the relevant time and is a QBCC permanently excluded individual, must be released'*.⁸⁶
55. The applicant's submissions acknowledge that the Category I documents comprise information which he seeks in the Third Application and that his request for the Category I documents will be addressed in ongoing external review 313174.

⁸² The Third Application was submitted to QBCC on 4 August 2016. By email dated 5 August 2016, the applicant paid the application fee in respect of the Third Application. The Sixth Application was submitted by the Applicant on 5 August 2016. As noted in paragraph 30 above, QBCC numbered the Third, Fourth, Fifth and Sixth Applications sequentially to reflect the order in which they were received by QBCC. Accordingly, I find that the Sixth Application was made after the Third Application.

⁸³ Section 43(3)(d)(i) of the RTI Act.

⁸⁴ Submissions dated 23 January 2017.

⁸⁵ I also note that the applicant has raised concerns in external review 313174 that QBCC has not located all relevant documents.

⁸⁶ Submissions dated 2 November 2017.

56. Accordingly, I am satisfied that there is nothing in the applicant's Sixth Application, or the applicant's submissions in this external review, that persuades me there is any reasonable basis to again seek access to the Category I documents.
57. For these reasons, I refuse to deal with part of the applicant's application for external review under section 43(3)(d)(i) of the RTI Act, in so far as it again seeks access to the documents identified in category I above.

Information outside the scope of, or irrelevant to, the access application

Relevant law

58. Section 24(2) of the RTI Act sets out the criteria which an applicant must meet in order to have a valid RTI application, which relevantly requires the applicant to give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents.
59. If a document does not contain *any* information that is relevant to the terms of the access application, it is outside the scope of the access application and that document will not be considered as part of the application under the RTI Act.
60. Section 73 of the RTI Act permits an agency to delete information in a document that the agency reasonably considers is not relevant to the access application before giving access to a copy of the document. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.⁸⁷
61. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.⁸⁸

Findings – information deleted in the Category One Additional Documents

62. QBCC deleted the following information (**Deleted Information**) in the Category One Additional Documents released to the applicant, on the basis that it comprised information not relevant to the Sixth Application:
 - two portions of information on one page;⁸⁹ and
 - portions of information in one audio recording of QBCC officers attending Property 1 (**site visit**) on 24 July 2014 (**site visit audio**).
63. In respect of the site visit audio, the applicant submitted:⁹⁰

It is clear from the recording that QBCC Officers refer to individuals and their activities, and enter into conversations with individuals, whose identities have been concealed.
64. The applicant's submissions do not identify how the applicant considers the Deleted Information is relevant to the Sixth Application. (To the extent the applicant's submissions relate to information in the site visit audio which has been refused on the ground that its disclosure would, on balance, be contrary to the public interest I have addressed them under the heading 'Findings – Third Party Information' below).

⁸⁷ *Wyeth and Queensland Police Service* [2015] QICmr 26 at [12].

⁸⁸ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

⁸⁹ Being page 1 in File 1263834_7 Case Notes.

⁹⁰ Submissions dated 12 January 2018.

65. The portions of written information within the Deleted Information appear in a case note created as part of QBCC's investigation of the applicant's complaints about Mr X. Notwithstanding the context in which this information appears, it does not comprise information which does relates to building and construction activity of LJ Technical or Mr X, nor does it comprise '*reasons (and material evidence) that satisfied the QBCC to cancel*' LJ Technical's licence.
66. Similarly, the portions of Deleted Information in the site visit audio released to the applicant comprise information which does not relate to building and construction activity of LJ Technical or Mr X or QBCC's decision to cancel LJ Technical's licence.
67. I have carefully considered the Deleted Information. Taking into consideration the terms of the Sixth Application and the content of the Deleted Information, I am satisfied that the Deleted Information concerns matters that are unrelated to the Sixth Application and may be deleted⁹¹ on the basis that they are irrelevant to the Sixth Application.

Findings – Category Two Additional Documents

68. The applicant's submissions do not identify how the applicant considers the Category Two Additional Documents are relevant to the Sixth Application.
69. The applicant's complaint to QBCC, dated 17 February 2015:⁹²
- raised concerns about unlicensed contracting at Property 1 and that Mr X was an influential person for LJ Technical
 - at paragraph 40 stated that '*Between 2001 and 2011 [Mr X] was involved in 21 different companies and appointed as a director of 19 of those companies*'; and
 - nominated Hypersonic Construction as one of the 21 companies he considered Mr X was involved in.⁹³

Based on the material before me, it appears that Mr X may have been involved in building and construction work of Hypersonic Construction.

70. Hypersonic Construction is a deregistered company.⁹⁴ A QBCC license search⁹⁵ of Hypersonic Construction confirms that it:
- is not currently licensed by QBCC, as its building licence was cancelled on 8 July 2009; and
 - QBCC issued a direction to rectify defective work or remedy consequential damage in 2013 and the requirements of the direction have not been satisfied.
71. As noted in paragraph 18 above, the Category Two Additional Documents comprise information that relates to rectification requirements arising from works conducted in a period prior to 2013 at a site where Hypersonic Construction and other entities were previously involved, and associated disciplinary action initiated by QBCC but subsequently withdrawn.
72. As noted above, information that is publicly available confirms that QBCC's issued rectification directions associated with works at a site where Hypersonic Construction

⁹¹ Under Section 73 of the RTI Act.

⁹² Copies of which have been released to the applicant.

⁹³ An appendix to the complaint provided a summary of 21 companies.

⁹⁴ Search conducted by OIC on 12 February 2018, via the Australian Securities and Investments Commission website.

⁹⁵ Search conducted by OIC on 12 February 2018, via QBCC's website.

(and others) were previously involved were not satisfied. Taking this, the terms of the Sixth Application and the nature of the Category Two Additional Documents into consideration, I am satisfied that the Category Two Additional Documents are not pertinent to the terms of the Sixth Application. Accordingly, I find that the Category Two Additional Documents can be excluded from consideration in this review as they fall outside the scope of the Sixth Application.

73. For completeness, I note that some information in the Category Two documents is arguably of a relatively similar nature to the Separate Investigation Information considered in this decision. If any such information within the Category Two Additional Documents fell within the scope of the Sixth Application (which I do not believe it does), I would be satisfied that its disclosure would, on balance, be contrary to the public interest for the reasons set out in respect of the Separate Investigation Information.

Findings – Category Three Additional Documents

74. As noted in paragraph 18 above, the Category Three Additional Documents comprise information about ongoing proceedings in QCAT concerning QBCC’s decision to cancel LJ Technical’s licence.

75. The applicant submitted⁹⁶ that:

Of course, a party to a proceeding may conduct their case in any manner they wish. However, the QBCC has a responsibility to the public and the Tribunal to make effective use of finite resources. If the QBCC has indisputable evidence that [Mr X] is an Influential Person, it may apply for early dismissal of the company’s application in the interest of protecting the Tribunal’s “finite administrative and judicial resources”. Instead, the matter has progressed to further submissions and oral arguments, at significant cost to the public.

In the event the QBCC withholds evidence substantiating that [Mr X] is an Influential Person, ... it may not be conducting its case appropriately or lawfully. The QBCC may sabotage its own case in order to conceal misconduct (or corrupt conduct) and preserve its own interests, and breach its duties under the QCAT Act.

If the QBCC’s decision were to be set aside by the Tribunal, because the QBCC withheld this evidence, the consequences would be disastrous to natural justice, the integrity of the QBCC, and confidence in the building industry of Queensland. Indeed, these are consequences which may have already been occasioned.

76. The applicant’s submissions do not identify how the applicant considers the Category Three Additional Documents are relevant to the Sixth Application. Rather, they identify certain concerns he has regarding the manner in which the QCAT proceedings are being managed by QBCC. I note that, although the applicant is not a party to these proceedings, his submissions on external review:

- outline his understanding of the procedural steps that have occurred in the QCAT proceedings
- make reference to the QCAT file number for the proceedings and a transcript dated 10 August 2017; and
- summarise certain submissions made to QCAT in the proceedings which appear in the transcript dated 10 August 2017.

77. The Sixth Application seeks documents ‘which satisfied the QBCC in its decision to cancel’ LJ Tehnical’s licence because Mr X was an influential person. Further and as

⁹⁶ Submissions dated 23 November 2017.

noted in paragraph 32 above, in responding to QBCC's requested clarification of the documents sought in the Sixth Application, the applicant confirmed to QBCC that the Sixth Application requested documents related to LJ Technical which:

- concerned the building and construction activity of LJ Technical '*throughout the entire period of its licence*'; and
- satisfied QBCC to cancel LJ Technical's licence.

78. The Category Three Additional Documents relate to proceedings commenced after, and in respect of, QBCC's decision to cancel LJ Technical's licence. They generally comprise the application lodged with QCAT,⁹⁷ internal correspondence with QBCC's legal section about that application and documents held in the records of QBCC's legal section.

79. Given the nature of the Category Three Additional Documents and the terms of the Sixth Application, I am satisfied the Category Three Additional Documents have no bearing on, and are not pertinent to, the terms of the Sixth Application. Accordingly, I find that the Category Three Additional Documents can be excluded from consideration in this review as they fall outside the scope of the Sixth Application.

Findings – metadata

80. As noted in paragraph 35 above, on external review the applicant requested access to '*metadata descriptions*'.⁹⁸

81. Under section 28 of the RTI Act, an access application for a document is taken not to include an application for access to metadata about the document unless the access application expressly states that it does.

82. I have carefully considered the terms of the Sixth Application that is the subject of this review. It does not expressly seek metadata. On this basis, I am satisfied that the requested metadata can be excluded from consideration in this review as it falls outside the scope of the Sixth Application.

Contrary to the public interest information

83. While the RTI Act prevents me from disclosing the content of the remaining Information in Issue,⁹⁹ I am able to advise that the information can be generally categorised as follows:¹⁰⁰

- construction contract information (including contractual terms and contract value), QBCC insurance premium information (including nominated contract values and

⁹⁷ I note that QCAT's case files are generally open for public inspection. Additionally, members of the public can apply to QCAT to search QCAT's register of proceedings or QCAT's record of proceedings. Refer to <<http://www.qcat.qld.gov.au/resources/searches>>.

⁹⁸ Submissions dated 23 November 2017.

⁹⁹ Section 108(3) of the RTI Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

¹⁰⁰ OIC's letters to the applicant dated 19 October 2017 and 9 November 2017 conveyed OIC's views in respect of information considered in this review. As noted in paragraph 19 above, QBCC accepted OIC's views and the applicant accepted OIC's view that disclosure of '*Category 4 Information*'—which was identified in OIC's letter dated 19 October 2017 to be bank account details—would, on balance, be contrary to the public interest. To provide clarity about the information remaining for consideration in this review, the definitions of the contrary to the public interest information categories in this decision are not the same as the category definitions set out in OIC's letters to the applicant.

premiums) and other insurance details concerning Property 1 and Property 2 (**Contract Information**)¹⁰¹

- addresses (including real property descriptions), contract details (including values), insurance details and owner information (including names and contact details) concerning properties other than Property 1 and Property 2 (**Other Property Information**)¹⁰²
- information relating to an employment arrangement concerning Mr X (**Employment Information**)¹⁰³
- information relating to LJ Technical's licence (**Licence Information**)¹⁰⁴
- information obtained by or provided to QBCC regarding an investigation about construction at a property which is unrelated to the applicant's complaints concerning the building and construction activity of LJ Technical (**Separate Investigation Information**);¹⁰⁵ and
- names and contact details of individuals contacted during the course of QBCC's investigations and information obtained from, provided by or recorded about those individuals (**Third Party Information**).¹⁰⁶

Relevant law

84. An agency may refuse access to information the disclosure of which would, on balance, be contrary to the public interest.¹⁰⁷ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:¹⁰⁸

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

85. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that,

¹⁰¹ Pages 2, 13, 14, 15, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 85-99, 103, 104, 106, 107 and 121 in File 1263834 Contact Centre EDRMS; pages 78 and 79 in File 1263834 Disc Part 1; pages 11, 13, 14, 124, 136-145, 187, 188, 212 and 213 in File 1263834 Hard File A; page 1 in File 1263834 Licensee Activity Report and pages 1722, 1724, 1725, 1837, 1900, 1901, 1924 and 1925 in File 1263834 Compliance EDRMS.

¹⁰² Pages 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 42 in File 1263834 Contact Centre EDRMS; pages 78 and 79 in File 1263834 Disc Part 1; pages 13, 14, 124, 207, 211, 212 and 213 in File 1263834 Hard File A; page 1 in File 1263834 Licensee Activity Report and pages 1724, 1725, 1837, 1919, 1923, 1924, 1925 in File 1263834 Compliance EDRMS.

¹⁰³ Page 4-5 in File 1263834 Disc Part 1; page 6 in 1263834 Hard File A; and pages 1615-1617, 1689, 1695-1696 and 1717 in File 1263834 Compliance EDRMS.

¹⁰⁴ Pages 1 and 2 in File 1263834 Disc Part 1; pages 1, 3, 17-20, 25-29, 80-88, 89-93, 97, 100 and 101 in File 1263834 Hard File A; pages 2, 3 and 4 in File 1263834_3 Case Notes; pages 1686, 1692, 1712, 1714, 1728-1731, 1736-1740, 1791-1792, 1793-1801, 1802-1806, 1810, 1813 and 1814 in File 1263834 Compliance EDRMS; and the following Category 1 Additional Documents—pages 4, 5 in File 1263834 Compliance EP Documents; pages 20, 21-59, 61-99, 101, 102, 103 and 104-142 in File 1263834 Compliance Financial Audit Documents; page 1 in File 1263834_2 Case Notes; page 1 in File 1263834_5 Case Notes; and page 1 in File 1263834_7 Case Notes.

¹⁰⁵ Pages 1-61 in File 1076714_2 and pages 1-8 in File 1076714_3.

¹⁰⁶ Page 55 in File 1101192 Compliance EDRMS; page 4 in File 1147551 Regulatory Services EDRMS; pages 14, 80, 84, 101 and 104 in File 1263834 Contact Centre EDRMS; pages 2, 3, 4, 7, 8, 9, 82 and 83 in File 1263834 Disc Part 1; pages 5, 6, 45, 47, 48, 49, 98, 99, 100, 107, 108, 109, 110, 111, 148, 170, 175, 187 and 188 in File 1263834 Hard File A; page 57 in File 163834 Ministerials; pages 2, 22 and 23 in File 1263834 Regulatory Services; pages 2-3 in File 1263834_3 Case Notes; pages 1-3 in File 1265287 Regulatory Services EDRMS; page 4 in File CN CMS Notes; pages 1201, 1206, 1223, 1234, 1235, 1298, 1306, 1307, 1308, 1309, 1550, 1552, 1553, 1554, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1588, 1590, 1591, 1592, 1593, 1595, 1596, 1599, 1600, 1603, 1604, 1605, 1608, 1609, 1612, 1613, 1614, 1619, 1620, 1621, 1622, 1686, 1687, 1688, 1693, 1694, 1695, 1715, 1716, 1717, 1756, 1758, 1759, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1861, 1883, 1888, 1899, 1900 and 1901 in File 1263834 Compliance EDRMS; parts of one audio recording; and the following Category 1 Additional Documents—pages 1, 2, 5 and 8 in File 1263834 Compliance EP Documents; pages 12, 18, 19, 20 and 103 in File 1263834 Compliance Financial Audit Documents; page 2 in File 1263834 Miscellaneous Document; page 1 in File Ministerial RFI documents; one audio recording and portions of information in the site visit audio.

¹⁰⁷ Sections 47(3)(b) and 49 of the RTI Act.

¹⁰⁸ Section 49(3) of the RTI Act.

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.¹⁰⁹

Applicant's submissions

86. The applicant has generally submitted¹¹⁰ that the public interest factors favouring disclosure of the Information in Issue substantially override the factors favouring nondisclosure. More particularly, the applicant submitted:¹¹¹

Respectfully, the public interest lies in understanding why the QBCC knowingly made false and misleading representations regarding decisions that are demonstrably wrong, and permitted a known undischarged bankrupt and QBCC permanently-excluded individual to continue to engage in unlawful activity, and still perpetuate that misconduct by continuing to deny that [Mr X] was an Influential Person in the face of repeated complaints. Further, it was I, as the Applicant, who was personally subject to false and misleading representations by a government agency (along with [a Councillor]) – and enhancing my understanding of why I was treated that way, perpetually, is afforded under the RTI Act. Irrespective of any agency these matters may have been referred to (for investigation within the realm of that agency's investigative powers) I am afforded the standing under the RTI Act to access these documents.

87. As noted in paragraph 17 above, I have given consideration to the applicant's above submission, and similar submissions, for the purpose of determining whether there are public interest factors favouring disclosure of information. Otherwise, however, OIC has no jurisdiction to address the applicant's concerns that QBCC's decisions about his complaints were wrong, or to make any findings or provide any remedy to the applicant in respect of such concerns.

Findings – Contract Information

88. There is duplication in certain portions of the Contract Information. For example:
- the portion of information comprising the notified contract value for Property 1 refused on page 2 in File 1263834 Contact Centre EDRMS is duplicated on pages 78 in File 1263834 Disc Part 1
 - the portion of information comprising the contract value, insurance premium and GST component of the premium for Property 1 refused on page 13 in File 1263834 Contact Centre EDRMS is duplicated on page 14 in File 1263834 Contact Centre EDRMS
 - the portion of information comprising the notified contract value for Property 2 refused on page 44 in File 1263834 Contact Centre EDRMS is duplicated on pages 46, 48, 50, 52, 54, 56, 5860, 62, 64, 66, 68, 70 and 72 in File 1263834 Contact Centre EDRMS
 - the portion of information comprising the policy value for Property 1 page 78 in File 1263834 Disc Part 1 is duplicated on page 212 in File 1263834 Hard File A, page 1 in File 1263834 Licensee Activity Report and pages 1724, 1837 and 1924 in File 1263834 Compliance EDRMS; and
 - the portion of information comprising the policy value for Property 2 page 78 in File 1263834 Disc Part 1 is duplicated on page 79 in File 1263834 Disc Part 1, pages 212 and 213 in File 1263834 Hard File A, page 1 in File 1263834 Licensee Activity Report and pages 1724, 1725, 1924 and 1925 in File 1263834 Compliance EDRMS.

¹⁰⁹ However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹¹⁰ Submissions dated 2 November 2017 and 23 November 2017.

¹¹¹ Submissions dated 2 November 2017.

89. The applicant's submissions identify the factors favouring disclosure of the Contract Information that he considers relevant, namely, where disclosure of the refused information could reasonably be expected to:

- enhance the government's accountability¹¹²
- contribute to positive and informed debate on important issues or matters of serious interest¹¹³
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community¹¹⁴
- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official¹¹⁵
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct¹¹⁶
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies¹¹⁷
- reveal the reason for a government decision and any background or contextual information that informed the decision¹¹⁸
- reveal the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant¹¹⁹
- contribute to the administration of justice generally, including procedural fairness¹²⁰
- contribute to the administration of justice for a person;¹²¹ and
- disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law.¹²²

Irrelevant factors

90. I do not consider that any irrelevant factors arise in respect of the Contract Information. The applicant's submissions reference the factor specified in schedule 4, part 1 of the RTI Act—disclosure of the information could reasonably be expected to cause embarrassment to the Government or to cause a loss of confidence in the Government. I have not taken this factor, or any other irrelevant factors, into account.

Factors favouring disclosure

Accountability, transparency and informing the community

91. The RTI Act recognises the following factors favouring disclosure arise where disclosing information could reasonably be expected to:

- enhance the Government's accountability¹²³

¹¹² Schedule 4, part 2, item 1 of the RTI Act.

¹¹³ Schedule 4, part 2, item 2 of the RTI Act.

¹¹⁴ Schedule 4, part 2, item 3 of the RTI Act.

¹¹⁵ Schedule 4, part 2, item 5 of the RTI Act.

¹¹⁶ Schedule 4, part 2, item 6 of the RTI Act.

¹¹⁷ Schedule 4, part 2, item 10 of the RTI Act.

¹¹⁸ Schedule 4, part 2, item 11 of the RTI Act.

¹¹⁹ Schedule 4, part 2, item 12 of the RTI Act.

¹²⁰ Schedule 4, part 2, item 16 of the RTI Act.

¹²¹ Schedule 4, part 2, item 17 of the RTI Act.

¹²² Schedule 4, part 2, item 18 of the RTI Act.

¹²³ Schedule 4, part 2, item 1 of the RTI Act.

- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by Government in its dealings with members of the community;¹²⁴ and
- reveal the reason for a government decision and any background or contextual information that informed the decision.¹²⁵

92. The applicant submitted¹²⁶ that these factors should each be afforded high weight.
93. As the industry regulatory body, QBCC must be transparent and accountable in how it deals with investigations of complaints it receives about potential breaches of the legislation it administers. However, there are circumstances in which disclosure of some, but not all, information in an agency's records will achieve accountability and transparency in Government.
94. The applicant submitted¹²⁷ that the content of the information that has already been released to him has no bearing on further information that is to be released to him and that:

It is not the OIC's discretion to pick and choose which documents will provide understanding, when in fact the only way to gain such an understanding is to release all documents the Applicant is entitled access to [sic]

95. While there is a public interest in affording the parties to QBCC's investigations (and the public generally) with an understanding of the conclusions and outcomes of such investigations, this does not extend to affording complainants a right to reinvestigate such investigations, particularly in circumstances where other avenues of redress for perceived investigative inadequacy are available.¹²⁸ As I have noted in paragraph 10 above, publicly accessible information also confirms that LJ Technical's licence has been cancelled and it is an excluded company by reason of Mr X being listed as an influential person.
96. Accordingly, in considering how disclosing the Contract Information could advance these accountability and transparency factors, I have also considered how, if at all, these public interest factors have been advanced by the information that has been provided to the applicant.
97. In processing the Sixth Application, QBCC located more than 4600 pages, one video recording and three audio recordings and provided access to the majority of that information. QBCC also released additional information to the applicant on external review. In terms of the public interest, I consider that the released information affords the public (and the applicant personally) a relatively detailed understanding of how the various QBCC investigations were conducted, and provides background and contextual information to those investigations and QBCC's decisions concerning the applicant's various complaints about Mr X. For this reason, I consider the information that has been released to the applicant in response to the Sixth Application has substantially advanced the public interest factors relating to QBCC's accountability and transparency.
98. Additionally, as noted in paragraph 30 above, the applicant has made five other access applications, generally seeking information related to QBCC's handling of his complaints

¹²⁴ Schedule 4, part 2, item 3 of the RTI Act.

¹²⁵ Schedule 4, part 2, item 11 of the RTI Act.

¹²⁶ Submissions dated 2 November 2017.

¹²⁷ Submissions dated 2 November 2017.

¹²⁸ In this regard, I note the applicant has referred certain of his concerns regarding the construction work at Property 1 and Property 2 to the Queensland Ombudsman.

about building works at Property 1 and Property 2. I consider that information released to the applicant in response to those other applications has provided him with further background and contextual information and an understanding of how QBCC investigated his complaints.

99. Taking into consideration the nature of the Contract Information (including contractual terms, contract values, QBCC insurance premium information and other insurance details), the content of the information that has been released to the applicant and the publicly available licence information, I am not satisfied that disclosure of the Contract Information could reasonably be expected to enhance or provide transparency about its reasons for decisions or its operations. Accordingly, I afford low weight to the accountability and transparency factors¹²⁹ favouring disclosure of the Contract Information.

Contribute to informed debate

100. The applicant submitted¹³⁰ that this public interest factor favouring disclosure¹³¹ should be afforded moderate weight. However, the applicant has not elaborated on how disclosure of the Contract Information (such as contractual terms, contract values, QBCC insurance premium information and other insurance details) could reasonably be expected to contribute to the public interest in positive and informed debate on important issues or matters of serious interest.
101. As previously noted, information about the current status of LJ Technical as an excluded company (by reason of Mr X being listed as an influential person) and the cancellation of its licence is publicly accessible.
102. Given the nature of the Contract Information and publicly accessible information about LJ Technical's licence, while disclosure of the Contract Information may satisfy the applicant's curiosity, I do not consider that its disclosure could reasonably be expected to contribute to positive and informed public debate.
103. Accordingly, I afford low to no weight to this factor favouring disclosure.

Deficiencies in the conduct or administration of an agency or official

104. Public interest factors in favour of disclosure also arise where disclosure of information could reasonably be expected to:
- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official;¹³² and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.¹³³
105. The applicant submitted¹³⁴ that these public interest factors should each be afforded high weight. More particularly, the applicant submitted that:
- notwithstanding QBCC had determined Mr X was an influential person and issued a notice to cancel LJ Technical's licence on 25 November 2015, QBCC officers

¹²⁹ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹³⁰ Submissions dated 30 November 2017.

¹³¹ Schedule 4, part 2, item 2 of the RTI Act.

¹³² Schedule 4, part 2, item 5 of the RTI Act.

¹³³ Schedule 4, part 2, item 6 of the RTI Act.

¹³⁴ Submissions dated 2 November 2017.

continued to communicate with Mr X for matters that fell under the QBCC Act, including the applicant's unlicensed contracting complaint about Property 2¹³⁵

- the outcomes of QBCC's investigations of his unlicensed contracting complaint for Property 1 and his influential person complaints '*were demonstrably wrong and the QBCC later conceded this*'¹³⁶
- '*The information released so far demonstrates that the QBCC made false and misleading representations to the Applicant and [a Councillor]*';¹³⁷ and
- the documents to which access has been refused '*do not reflect mistakes in assessment and judgement; they represent that the QBCC knowingly made false and misleading representations to the Applicant and [a Councillor]*'.¹³⁸

106. In this regard, I note that the applicant submitted that the information which has been released to him '*demonstrates that the QBCC made false and misleading representations*'. That is, the applicant considers information already released to him reveals or substantiates some of what he considers to be improper or deficient conduct by QBCC and its officers.

107. For these factors to be relevant, there must be a reasonable expectation that disclosing the Contract Information (such as construction contract terms and values, QBCC insurance premium information and other insurance details) would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. I have carefully considered the Contract Information, together with the information which has been released to the applicant. I am satisfied that there is nothing in the Contract Information which:

- gives rise to a reasonable expectation that disclosing the Contract Information would allow or assist enquiry into, reveal or substantiate, any deficiencies in the conduct of QBCC or its officers; or
- indicates that disclosing the Contract Information would itself reveal that QBCC continued to communicate with Mr X as the applicant contended.

108. For the above reasons, I afford no weight to the public interest factors favouring disclosure relating to allowing or assisting inquiry into, or substantiating claims about, deficiencies in the conduct of an agency or official.¹³⁹

Administration of justice for a person

109. The applicant submitted¹⁴⁰ that this factor favouring disclosure¹⁴¹ should be afforded high weight and that he (and a Councillor) were personally subject to false and misleading representations of a government agency.

110. In determining whether this public interest factor favouring disclosure applies, I must consider whether:

- the applicant and/or a Councillor have suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law

¹³⁵ External review application.

¹³⁶ Submissions dated 2 November 2017.

¹³⁷ Submissions dated 2 November 2017. Paragraph 56 of these submissions identifies seven separate statements the applicant contends are '*demonstrably false and misleading*'.

¹³⁸ Submissions dated 2 November 2017.

¹³⁹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

¹⁴⁰ Submissions dated 2 November 2017.

¹⁴¹ Schedule 4, part 2, item 17 of the RTI Act.

- the applicant and/or a Councillor have a reasonable basis for seeking to pursue the remedy; and
- disclosing the information held by an agency would assist the applicant and/or a Councillor to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.¹⁴²

111. The applicant's submissions in this review do not identify what adverse effects that he, or the Councillor, have suffered as a result of the '*false and misleading representations*'. However, the applicant has previously submitted to the Information Commissioner¹⁴³ that his health and amenity have been significantly affected and the integrity of his property has been compromised by the decisions QBCC has made in respect of his various complaints. Given this, I acknowledge the applicant's view that he has been adversely affected. However, there is nothing in the information before me which indicates that a Councillor has suffered any adverse consequences resulting from the allegedly false and misleading representations to which, the applicant contends, the Councillor was also subjected.

112. As noted in paragraph 106 above, the applicant considers information already released to him reveals that QBCC made false and misleading representation to him and a Councillor. Also, as noted in paragraph 97 above, the applicant has been given access to information which discloses, to a large degree, the nature of QBCC's investigations and the evidence QBCC considered. Accordingly, I consider that the information released to the applicant has provided him with a level of detail about the investigations undertaken and decisions made by QBCC that would enable him to evaluate whether a remedy is available and worth pursuing against any entity or individual in respect of the adverse effects he considers have occurred as a result of those decisions.

113. Taking into consideration the nature of the Contract Information (such as construction contract terms and values, QBCC insurance premium information and other insurance details) and the information that has been released to the applicant, I am satisfied that disclosing the Contract Information would not assist the applicant (or a Councillor) in evaluating or pursuing any remedy that may be available to address the wrongs that he submitted have been suffered as a consequence of the '*false and misleading representations*' or QBCC's decisions regarding the applicant's complaints. Therefore, I afford no weight to this public interest factor.¹⁴⁴

Advance fair treatment and procedural fairness

114. The applicant submitted¹⁴⁵ that disclosure of the Contract Information would advance his fair treatment, as well as fair treatment of a Councillor, and that high weight should be afforded to the public interest factors favouring disclosure that arise where disclosing information could reasonably be expected to:

- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;¹⁴⁶ and
- contribute to the administration of justice generally, including procedural fairness.¹⁴⁷

¹⁴² *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

¹⁴³ Refer, for example, to paragraph 79 in *McCrystal No. 3*.

¹⁴⁴ Schedule 4, part 2, item 17 of the RTI Act.

¹⁴⁵ Submissions dated 2 November 2017.

¹⁴⁶ Schedule 4, part 2, item 10 of the RTI Act.

¹⁴⁷ Schedule 4, part 2, item 16 of the RTI Act.

115. The public interest factor relating to advancing the fair treatment of individuals does not require a decision-maker to ensure that a person is provided with sufficient information to enable them to be subjectively satisfied that they received fair treatment. Rather, it is about providing information to ensure fair treatment in a person's future dealings with agencies.¹⁴⁸
116. As previously noted, QBCC investigated a number of the applicant's complaints about Mr X and cancelled LJ Technical's licence on the ground that Mr X was an influential person. I also note that the information released to the applicant includes:
- the Proposal Notice and the Cancellation Notice
 - information about QBCC's investigation of the applicant's various complaints; and
 - information which confirms QBCC declined to investigate certain of the applicant's complaints (on the basis that the matters raised by the applicant in those complaints had already been investigated by QBCC).
117. I again acknowledge the applicant's view that he has been adversely affected by QBCC's decisions concerning his complaints. However, taking into consideration the nature of the Contract Information, there is no evidence before me which indicates that disclosing this information (for example, construction contract terms and contract and insurance values) could reasonably be expected to advance the fair treatment of the applicant in his future dealings with QBCC or any other government entity. Further, if the applicant intends to refer any of the matters raised in his submissions on external review to other agencies or complaint handling bodies, I am also satisfied that provision of the Contract Information will not advance his fair treatment in dealing with those other agencies and bodies, as the information that has already been disclosed to the applicant is sufficient to enable him to make such referrals.
118. The applicant has not identified how disclosure of the Contract Information would advance the fair treatment of the Councillor in accordance with the law in that Councillor's future dealing with agencies. Based on the information available to me, I am unable to determine how disclosure of the Contract Information would advance such fair treatment of the Councillor.
119. For these reasons, I am satisfied that disclosure of the Contract Information would not advance the applicant's (or the Councillor's) fair treatment in their dealings with QBCC and other government agencies and bodies. Accordingly, I consider that no weight should be afforded to the factor favouring disclosure relating to advancing fair treatment.¹⁴⁹
120. The applicant is the complainant in, rather than the subject of, the various complaints referred to in paragraph 7 above. Accordingly, the procedural fairness requirements vis-a-vis the applicant would be significantly different to those to be afforded to a respondent to a complaint. As noted previously, the applicant's submissions on external review raise his concerns about the correctness of some of QBCC's decisions regarding his complaints and certain representations QBCC made in response to his complaints. Additionally, the applicant submitted¹⁵⁰ that:

As you are also aware, following [the site visit] and other relevant events the QBCC and its officers refused to investigate allegations, or denied allegations could be substantiated...

¹⁴⁸ F60XCX and Department of Natural Resources and Mines [2017] QICmr 19 (9 June 2017) at [89]-[90].

¹⁴⁹ Schedule 4, part 2, item 10 of the RTI Act.

¹⁵⁰ Submissions dated 12 January 2018.

121. In this regard, I note that the information that has been released to the applicant confirms the applicant was notified:

- when QBCC investigated certain of his complaints, including those concerning Mr X (and the outcomes of those investigations); and
- when QBCC decided not to further investigate matters raised in certain of the applicant's complaints (including as they related to complaints about Mr X).

122. Given these circumstances, the nature of the Contract Information and the publicly accessible information concerning QBCC's cancellation of LJ Technical's licence, I consider that disclosure of the Contract Information (being construction contract terms, contract values and insurance information) would not contribute to procedural fairness for any individual or entity. For these reasons, I consider that the factor favouring disclosure relating to the administration of justice, including procedural fairness¹⁵¹ does not arise in respect of the Contract Information.

123. For the sake of completeness, I note that even if I were incorrect in this regard, and the factor could be said to apply, it nonetheless warrants low to no weight in favour of disclosing the Contract Information, given the nature of the Contract Information.

Disclosure would reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant

124. The RTI Act also recognises that a public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.¹⁵²

125. The applicant asserts that this factor favouring disclosure should be afforded high weight.¹⁵³

126. The applicant is not a party to the construction or insurance arrangements for Property 1 or Property 2.

127. As previously noted, it is clear from the applicant's submissions that he considers certain QBCC's decisions concerning his complaints are incorrect and that QBCC has made false and misleading representations to him and a Councillor. However, the applicant has not identified or addressed how disclosure of the Contract Information (being contractual terms, contract values and insurance information) could reasonably be expected to reveal that the Contract Information itself is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.

128. The applicant submits¹⁵⁴ that '*Any discrepancy in value, or significantly inflated value, of a contract is a significant factor favouring disclosure in the public interest*'. To the extent the Contract Information comprises construction contract values, I also note that:

- the applicant is not a party to the commercial arrangements recorded in the Contract Information

¹⁵¹ Schedule 4, part 2, item 16 of the RTI Act.

¹⁵² Schedule 4, part 2, item 12 of the RTI act.

¹⁵³ Submissions dated 2 November 2017.

¹⁵⁴ Submissions dated 2 November 2017.

- the applicant's complaints to QBCC included complaints that LJ Technical had not met the financial requirements of its licence;¹⁵⁵ and
- the information released to the applicant includes information about QBCC's conclusion that LJ Technical met the minimum financial requirements for its licence.

129. There is nothing on the face of the Contract Information, nor any other information before me, to suggest that the details recorded in the Contract Information are not correct or that the applicant could be possessed of knowledge that the Contract Information is not correct (given the Contract Information is information about contractual and insurance arrangements to which the applicant is not a party). There is also nothing before me which indicates that the applicant could be possessed of requisite expertise to make a determination that values within the Contract Information were significantly inflated.

130. For these reasons, I do not consider this factor¹⁵⁶ arises to be considered in respect of the Contract Information.

131. Again, for the sake of completeness, I note that even if I were incorrect in this regard, and the factor could be said to apply, it nonetheless warrants low to no weight in favour of disclosing the Contract Information, given the nature of the Contract Information.

Contribute to enforcement of the criminal law

132. The applicant submitted¹⁵⁷ that this public interest factor¹⁵⁸ should be afforded high weight in favour of disclosure of the Contract Information. More specifically, the applicant:

- alleges¹⁵⁹ QBCC *'is demonstrated making false and misleading representations to the Applicant and [a Councillor] regarding decisions the QBCC made that are demonstrably wrong'*
- sets out a series of statements appearing in documents that have been released, which he considers are *'demonstrably false and misleading'*; and
- as noted in paragraph 128 above, generally questioned whether the contract values within the Information in Issue accurately reflect the values of building works undertaken by LJ Technical.

133. The applicant's submissions do not, however, identify how disclosure of the Contract Information could reasonably be expected to contribute to the enforcement of the criminal law.

134. As previously noted:

- QBCC cancelled LJ Technical's licence and classified LJ Technical as an excluded company by reason of Mr X being an influential person; and
- after investigation of the applicant's complaint that LJ Technical had not met the financial requirements of its licence, QBCC concluded that LJ Technical had met those requirements.

¹⁵⁵ The applicant submitted that LJ Technical had exceeded the *'maximum revenue'* for its licence. *'Maximum Revenue'* forms part of the QBCC's financial requirements for licensees. QBCC's Minimum Financial Requirements Policy, is available at <<http://www.qbcc.qld.gov.au/maximum-revenue>>.

¹⁵⁶ Schedule 4, part 2, item 12 of the RTI Act.

¹⁵⁷ Submissions dated 2 November 2017.

¹⁵⁸ Schedule 4, part 2, item 18 of the RTI Act.

¹⁵⁹ Submissions dated 2 November 2017.

135. To the extent the applicant's submissions assert that disclosure of the Contract Information would reveal that QBCC made false and misleading statements, I note that the applicant considers that information already released to him substantiates his concerns. To the extent the applicant's submissions could be taken to assert that the contract values within the Information in Issue may be fraudulent, there is nothing before me which indicates that the applicant could be possessed of requisite expertise to make such a determination. In any event, disclosure of the Contract Information is not required to enable the applicant to refer such allegations to appropriate government agencies.
136. In these circumstances and given the nature of the Contract Information and the context in which it appears, I am satisfied there is no reasonable expectation that disclosure of the Contract Information could contribute to the enforcement of the criminal law. Accordingly, I do not consider that this factor favouring disclosure¹⁶⁰ arises for consideration in relation to the Contract Information.
137. Again, for the sake of completeness, I note that even if I were incorrect in this regard, and the factor could be said to apply, it nonetheless warrants low to no weight, given the nature of the Contract Information.

Iniquity

138. The applicant generally submitted that the factors favouring nondisclosure of the Contract Information '*are overcome by Iniquity*' and access to all documents held by QBCC documenting the building and construction activity of Mr X and LJ Technical cannot be refused '*as the documents represent Iniquity*'.¹⁶¹
139. In making these submissions, the applicant has incorporated by reference specific parts of the submissions he made to the Information Commissioner in completed external review 312924.¹⁶²
140. For ease of reference in this decision, I have adopted the applicant's wording and simply refer to this concept as **Iniquity**.
141. I have considered and agree with the Information Commissioner's understanding and consideration of the applicant's previous submissions concerning the application of Iniquity, which are set out at paragraphs 103 and 109-110 of *McCrystal No. 1*.¹⁶³ As noted in paragraph 102 of *McCrystal No. 1*, the applicant's submissions included that to establish Iniquity '*a prima facie case of illegal activity or improper purpose must first be brought, rather than merely the suggestion of the activity*' and '*by virtue of the QBCC's own findings of illegal activity, a prima facie case is already made out since it is already established that disclosure of the Information in Issue **will in fact disclose the existence of an iniquity that is a crime, civil wrong or serious misdeed of public importance***' (applicant's emphasis).
142. In this review, the applicant submits that LJ Technical being an excluded company '*because [Mr X] is named as an Influential Person for the duration of the company's license, which is in fact evidence that the company's affairs were illegal or for an improper purpose*'.¹⁶⁴

¹⁶⁰ Schedule 4, part 2, item 18 of the RTI Act.

¹⁶¹ Submissions dated 2 November 2017.

¹⁶² Specifically paragraphs 112-276 of submissions dated 12 July 2017 in external review 312924. I note that the applicant's submissions in this regard have been considered and addressed in *McCrystal No. 1* at [100]-[113] and that the applicant also incorporated these submissions by reference in external review 313173, which were addressed in paragraphs [106]-[112] of *McCrystal No. 3*.

¹⁶³ For the sake of brevity, I have not set these out in this decision.

¹⁶⁴ Submissions dated 2 November 2017.

143. As noted in paragraph 10 above, QBCC's publicly accessible records confirm that LJ Technical is an excluded company by reason of Mr X being a listed influential person and it is not currently licensed by QBCC to undertake building works. I consider that this, of itself, is not evidence that LJ Technical's commercial arrangements, such as those recorded in the Contract Information, were illegal or for an improper purpose. The applicant submitted¹⁶⁵ that such a conclusion is '*factually wrong*', however, the applicant has not otherwise identified how disclosure of the Contract Information (being contractual terms, contract values and insurance information) could reveal '*a crime, civil wrong or serious misdeed of public importance*'.
144. Given QBCC's cancellation of LJ Technical's licence (and the reasons for that cancellation), the nature of the Contract Information and the context in which it appears, I am not satisfied that a factor favouring disclosure relating to Iniquity arises in respect of the Contract Information. There is nothing before me, apart from the applicant's assertions, which suggests that disclosing the Contract Information could reveal a crime, civil wrong or serious misdeed of public importance.
145. Again, for the sake of completeness, I note that even if I were incorrect in this regard, and such a factor could be said to apply, I nevertheless consider that it warrants no weight in favour of disclosing the Contract Information, given the nature of that information and the extensive information that has already been released to the applicant.

Other factors

146. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the Contract Information. Taking into consideration the nature of the Contract Information, I cannot see how its disclosure could, for example, ensure the effective oversight of expenditure of public funds,¹⁶⁶ contribute to the protection of the environment¹⁶⁷ or reveal environmental or health risks or measures relating to public health and safety.¹⁶⁸

Factors favouring nondisclosure

147. The RTI Act recognises public interest factors favouring nondisclosure will arise where disclosure of information could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities¹⁶⁹
 - cause a public interest harm because it would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person, and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government¹⁷⁰
 - prejudice the protection of an individual's right to privacy¹⁷¹
 - cause a public interest harm because it would disclose personal information of a person, whether living or dead;¹⁷² and

¹⁶⁵ Submissions dated 2 November 2017.

¹⁶⁶ Schedule 4, part 2, item 4 of the RTI Act.

¹⁶⁷ Schedule 4, part 2, item 13 of the RTI Act.

¹⁶⁸ Schedule 4, part 2, item 14 of the RTI Act.

¹⁶⁹ Schedule 4, part 3, item 2 of the RTI Act.

¹⁷⁰ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁷¹ Schedule 4, part 3, item 3 of the RTI Act.

¹⁷² Schedule 4, part 4, item 6(1) of the RTI Act.

- prejudice the flow of information to the police or another law enforcement or regulatory agency.¹⁷³

Business and commercial information of entities

148. Most of the Contract Information can be characterised as the private, business, professional, commercial or financial affairs of entities. It includes, or refers to, the terms of commercial arrangements for building works entered into by LJ Technical and the value of such commercial arrangements and associated insurances. On the evidence before me, most of the Contract Information is information that is not publicly available.
149. The Contract Information was either:
- provided to QBCC, in response to QBCC's requests for information, in the context of QBCC's investigations into the applicant's complaints; or
 - appears in information maintained or produced by QBCC as part of its regulatory responsibilities.¹⁷⁴
150. There is a legitimate public interest in ensuring that the affairs of private businesses are not unduly impacted or prejudiced by the mere fact that their information comes into the possession of government by, in this case, the exercise of regulatory responsibility (including complaint investigation).
151. Building construction is a competitive industry in Queensland. As noted in paragraph 143 above, I consider that the publicly accessible information regarding the reason for cancellation of LJ Technical's licence is not, of itself, evidence that LJ Technical's business and financial affairs, such as those recorded in the Contract Information, were illegal or for an improper purpose. However, LJ Technical's licence is currently cancelled and, in my view, this makes it unlikely that disclosure of the Contract Information will prejudice the ability of LJ Technical to currently compete for building construction work in Queensland.
152. However, the Contract Information relates to works undertaken or contracted to be undertaken in the last two to three years and, as noted in paragraph 74 above, proceedings are ongoing before QCAT in respect of QBCC's decision to cancel LJ Technical's licence. In these circumstances, I do consider that revealing contractual terms and values for those building works could reasonably be expected to cause some prejudice to LJ Technical's goodwill. Accordingly, I afford the nondisclosure factor relating to prejudice to LJ Technical's business and commercial affairs moderate to low weight.¹⁷⁵
153. However, the Contract Information relates not only to LJ Technical – it also relates to the entities that contracted with LJ Technical to undertake building works. Details of the works that certain entities may have contracted LJ Technical to undertake at their properties, the commercial arrangements entered into for those works and the consideration they agreed to pay for those works, are matters that concern the private, commercial and business affairs of those entities.
154. I consider that the entities with whom LJ Technical contracted would have expected that QBCC would use the Contract Information for the purpose of undertaking QBCC's regulatory responsibilities but would not otherwise disclose the information.

¹⁷³ Schedule 4, part 3, item 13 of the RTI Act.

¹⁷⁴ For example, insurance statements that QBCC sent to parties who contracted with LJ Technical.

¹⁷⁵ Schedule 4, part 3, item 2 of the RTI Act.

155. Given the nature of the Contract Information, I consider that disclosure of the Contract Information could reasonably be expected to prejudice the business, commercial and financial affairs of the entities with whom LJ Technical contracted and cause a public interest harm, by having an adverse effect on those affairs. I therefore afford significant weight to the nondisclosure factors relating to protection of those other entity's private, business, professional commercial and financial information.¹⁷⁶

Personal information and privacy of other individuals

156. Factors favouring nondisclosure will also arise under the RTI Act where disclosure of information could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;¹⁷⁷ and
- cause a public interest harm because it would disclose personal information of a person, whether living or dead.¹⁷⁸

157. 'Personal information' is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

158. The Contract Information includes the private contact details for an individual other than the applicant and information (including contractual details and signatures) relating to the building construction arrangement entered between LJ Technical and an individual whose identity is evident from the information that has been released to the applicant. I am satisfied these types of information comprise the personal information of those individuals.

159. The Contract Information includes information that was provided to QBCC for the purpose of QBCC's investigations of the applicant's complaints and insurance statements produced by QBCC as part of its regulatory responsibilities. The personal information therefore appears in that context.

160. The applicant submitted:¹⁷⁹

It is not my fault that the information in issue may be considered ... to be personal information in circumstances where that personal information is in fact the evidentiary information that reveals unlawful activity by individuals and entities, and false and misleading representations by the QBCC.

161. I understand this submission to mean that:

- the applicant considers the personal information within the Contract Information comprises evidence of his concerns that certain individuals were influenced or controlled by Mr X, that the activities of LJ Technical were unlawful and that certain statements made by QBCC are false and misleading; and
- any public interest factors relating to the protection of personal information and privacy are outweighed by the evidentiary value of that information.

¹⁷⁶ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁷⁷ Schedule 4, part 3, item 3 of the RTI Act.

¹⁷⁸ Schedule 4, part 4, item 6(1) of the RTI Act.

¹⁷⁹ Submissions dated 2 November 2017.

162. I have carefully considered the personal information appearing in the Contract Information in the context of the applicant's submissions. As discussed in paragraphs 16 and 17 above, OIC's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies. This does not extend to investigating or confirming the applicant's concerns that Mr X may have influenced or controlled the information provided to QBCC's investigations or the contact details of individuals which appear in the Contract Information.
163. As I have previously noted, I consider that the cancellation of LJ Technical's licence is not, of itself, evidence that LJ Technical's business and financial affairs (such as those recorded in the building construction arrangements it entered with individuals) were illegal or for an improper purpose. Further, there is no material before me which indicates that the false and misleading representations identified in the applicant's submissions concern the personal information appearing in the Contract Information. In these circumstances, I do not consider that disclosing the personal information appearing within the Contract Information could reasonably be considered to be 'evidence' of unlawful activity and/or the false and misleading representations identified by the applicant.
164. I consider that the personal information within the Contract Information, which came into the possession of QBCC during the exercise of its regulatory responsibilities, concerns the private aspects of individuals' lives and that its disclosure would therefore reasonably be expected to prejudice the protection of their right to privacy. Given the nature and context of the personal information appearing in the Contract Information, its disclosure would be a significant intrusion into the privacy of these individuals. Accordingly, in respect of the personal information appearing in the Contract Information, I afford significant weight to the nondisclosure factor relating to prejudicing the protection of an individual's right to privacy.¹⁸⁰
165. It is relevant then to consider the extent of the harm that could result from disclosing the personal information of these other individuals under the RTI Act.
166. Members of the public whose personal information comes into the possession of government have a legitimate expectation that their right to privacy would be protected. Disclosure of personal information under the RTI Act could therefore erode the public's confidence that their personal information would be protected. As noted in paragraph 159 above, the personal information within the Contract Information appears in information provided to QBCC in the course of its investigations of the applicant's complaints and in insurance statements produced by QBCC as part of its regulatory responsibilities. I consider the individuals about whom this information relates would have expected that QBCC would protect this personal information, and that they would not have anticipated disclosure of such information under the RTI Act, where there can be no restriction on its use, dissemination or republication.
167. Taking into consideration the nature and context of the personal information appearing in the Contract Information, I consider that the extent of the harm that could be anticipated from disclosing that personal information under the RTI Act would be significant. Accordingly, I afford the nondisclosure factors relating to the protection of personal information¹⁸¹ significant weight in respect of the personal information appearing in the Contract Information.

¹⁸⁰ Schedule 4, part 3, item 3 of the RTI Act.

¹⁸¹ Schedule 4, part 4, section 6(1) of the RTI Act.

Flow of information

168. The RTI Act recognises that a factor favouring nondisclosure of information arises where disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.¹⁸²
169. As previously noted, most of the Contract Information appears in information provided to or obtained by QBCC in the context of QBCC's investigations into the applicant's complaints and some, but not all, of the information provided by other individuals to the investigation has been released by QBCC. As noted at paragraph 95 above, the public interest does not extend to affording complainants the right to second-guess or reinvestigate such investigations.
170. Under the QBCC Act, QBCC may investigate a licensee's compliance with its licence conditions, such as relevant financial requirements, and has power to obtain information from the licensee in certain circumstances.¹⁸³ Additionally, persons appointed as investigators under the QBCC Act¹⁸⁴ have a range of powers including, in certain circumstances, to require production of documents and the attendance of person to provide information.¹⁸⁵ However, the efficacy of QBCC's investigations of complaints received by it is also facilitated by QBCC being able to cooperatively obtain information from a range of individuals and entities.
171. On the information before me, including information that has been released to the applicant, QBCC obtained information from a range of individuals for the investigation of the applicant's various complaints through a combination of formal notifications seeking production of documents¹⁸⁶ and communications with various parties seeking information to investigate the received complaints.
172. Given this position, I consider there is a strong public interest in protecting the free flow of information to QBCC for investigation purposes. I also consider that routinely disclosing information provided by such individuals to QBCC would tend to discourage individuals from cooperating with QBCC and providing relevant information to future QBCC investigations, particularly in the absence of formal notifications requiring production of specific information. This, in turn, would significantly change the manner in which QBCC was able to conduct its investigations.
173. The applicant submitted¹⁸⁷ that such a conclusion is:
- '... factually wrong because the individuals in question were responding to inquiries by the QBCC regarding unlawful activity, at risk of incurring penalty or consequences to QBCC-licenses. Further, RTI access applications do not represent routine disclosure. It is relevant to again emphasise that these individuals, and the QBCC, have been demonstrated to be making false and misleading representations.*
174. I acknowledge that penalties exist under the QBCC Act for failure to comply with certain formal notifications requiring production of information to QBCC. However, as noted above, QBCC does not always issue formal notifications requesting the information it seeks to investigate received complaints. While I have carefully considered the

¹⁸² Schedule 4, part 3, item 13 of the RTI Act.

¹⁸³ Refer to section 50C of the QBCC Act.

¹⁸⁴ Part 9, division 2 of the QBCC Act relates to the appointment and qualifications of investigators.

¹⁸⁵ Refer, for example, to Part 9, division 5 of the QBCC Act.

¹⁸⁶ For example, pages 21-24 in File 1263834 Hard File A (which have been released to the applicant, comprise a notice issued to LJ Technical, pursuant to section 50C of the QBCC Act, requiring production of certain financial information for a compliance audit.

¹⁸⁷ Submissions dated 2 November 2017.

applicant's submissions, I remain of the view that if QBCC were to disclose information received during investigations in response to any access application seeking such information, that type of routine disclosure would tend to discourage individuals from cooperating with QBCC and providing relevant information to future QBCC investigations in the absence of formal notifications for production of information. This would, in turn, impact how QBCC conducts its investigations and would make future investigative processes more formal and, potentially, adversarial. Such a change could, in my view, also adversely impact the resources and time required by QBCC to complete future investigations.

175. For these reasons, I afford the public interest factor relating to protecting the flow of information to QBCC¹⁸⁸ significant weight.

Balancing the public interest

176. I consider the factors relating to the protection of the private, business, professional, commercial or financial affairs of the entities which contracted with LJ Technical, the personal information and privacy of individuals and the flow of information to QBCC in its investigations outweigh the relevant factors favouring disclosure of the Contract Information, and therefore, disclosing that information would, on balance, be contrary to the public interest. Accordingly, I find that access to the Contract Information may be refused.¹⁸⁹

Findings – Other Property Information

177. The Other Property Information does not relate to the applicant's complaints concerning Property 1 and Property 2. Rather, it relates to building works undertaken by LJ Technical at other properties and includes the addresses (including real property descriptions), owner information (including names and contact details), contract values and insurance details for building works at those properties.
178. The applicant generally submitted¹⁹⁰ that it is in the public interest that the compliance of LJ Technical's building works at other properties '*be reviewed*'. More particularly, the applicant submitted¹⁹¹ that:

... other building work performed by LJ Technical Control Construction Pty Ltd is likely to be noncompliant with the requirements of the Building Code of Australia and ought to be reviewed, where it represents defective building work which was carried out by the contractor, illegally and for an improper purpose by [Mr X]. It is in the Public Interest that the compliance of these buildings be reviewed.

179. As previously noted in paragraph 17 above, OIC does not have jurisdiction to address, make findings or provide any remedy to the applicant regarding his concerns about the compliance of building works with a building code. Accordingly, my 'review' of the Other Property Information is restricted to whether that information should be disclosed.

Irrelevant factors

180. I do not consider that any irrelevant factors arise in respect of the Other Property Information.

¹⁸⁸ Schedule 4, part 3, item 13 of the RTI Act.

¹⁸⁹ Under section 47(3)(b) of the RTI Act.

¹⁹⁰ External review application.

¹⁹¹ External review application.

Factors favouring disclosure

181. I refer to the applicant's submissions set out at paragraph 89 above regarding the public interest factors favouring disclosure which he considers are relevant to the Contract Information. The applicant made the same submissions¹⁹² concerning the Other Property Information. The applicant has also made more specific submissions about certain of those public interest factors favouring disclosure, as they relate to the Other Property Information, which I will address below.
182. The applicant submitted¹⁹³ that the Other Property Information, '*although concerning another property, is anticipated to enhance understanding of QBCC's knowledge of the activity of the Influential Person*'.
183. Given the nature of the Other Property Information (that is, information about building works that were not the subject of his complaints to QBCC), I do not consider that its disclosure could reasonably be expected to enhance the applicant's understanding of how QBCC investigated his complaints about LJ Technical's building works at Property 1 and Property 2 or his complaints about Mr X acting as an influential person for LJ Technical at those properties.
184. Paragraphs 97-99 above set out my reasoning about how the accountability and transparency factors had been advanced by the information that has been provided to the applicant. I repeat and rely on my reasons for finding that the accountability and transparency factors carry a low weight, however, I note that while the Other Property Information is of a similar nature to the Contract Information (in that it includes names and contact details, contract values and insurance details), it does not relate to the applicant's complaints concerning building works at Property 1 and Property 2 or his complaints about Mr X being an influential person of LJ Technical. Given this, I consider that disclosing the Other Property Information would advance the accountability and transparency public interest factors to a lesser degree than the Contract Information.
185. The applicant also submitted¹⁹⁴ that the value of certain building work at properties other than Property 1 and Property 2:
- appears to be inconsistent with the total value of works performed for LJ Technical for a particular financial year '*further suggesting activity that is illegal or for an improper purpose*'; and
 - is '*significantly inflated*'.
186. In support of the above submissions, the applicant provided OIC with a copy of publicly accessible details for a particular property and submitted that the value noted in that publicly accessible information was '*significantly inflated when anecdotally the works should not have cost more than \$5,000*'.¹⁹⁵
187. In this regard, I note that:

¹⁹² Paragraph 70 of the applicant's submissions dated 2 November 2017 states that the factors specified in paragraph 63-67 apply to each category of the contrary to the public interest information. The submissions in paragraph 63-67 reference Iniquity and list factors and weightings submitted in respect of the Information in Issue (that is, the public interest factors in schedule 4, part 2, items 1, 3, 5, 6, 10, 11, 12, 16, 17 and 18 of the RTI Act should each be afforded high weight, and the public interest factor in schedule 4, part 2, item 2 of the RTI Act should be afforded moderate weight).

¹⁹³ Submissions dated 2 November 2017.

¹⁹⁴ External review application.

¹⁹⁵ External review application. In this regard, I note that the applicant's submissions concerning ownership of this property do not reflect the property ownership noted in the publicly accessible information provided by the applicant.

- the applicant is not a party to the construction or insurance arrangements for these other properties
- there is nothing on the face of the Other Property Information, nor any other information before me, to suggest that the values recorded in the Other Property Information are not correct or that the applicant could be possessed of the requisite knowledge or expertise to determine that such values are not correct
- the applicant's complaints to QBCC included his concerns that LJ Technical was not compliant with the financial requirements of its licence; and
- the information that has been released to the applicant confirms that QBCC investigated the concerns raised by the applicant about LJ Technical's compliance with the financial requirements of its licence¹⁹⁶ and determined that LJ Technical met those requirements.

188. I have carefully reviewed the Other Property Information and the content of the information that has been released to the applicant. As noted above, this information does not relate to the building works which were the subject of the applicant's complaints to QBCC and QBCC's investigation determined that LJ Technical met the financial requirements of its licence. For the reasons set out in paragraphs 93-145 above in respect of the Contract Information, I afford the same weight to the factors favouring disclosure regarding the Other Property Information.

189. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and, taking into consideration the nature of the Other Property Information, I can identify no other public interest considerations telling in favour of disclosure of the Other Property Information.

Factors favouring nondisclosure

190. As noted above, the Other Property Information includes the identifying details of individuals other than the applicant, including their names and contact details. I also consider that addresses and real property descriptions within the Other Property Information would allow the identification of these other individuals to be reasonably ascertainable. Accordingly, I am satisfied that this information is the personal information of those other individuals.

191. The personal information within the Other Property Information appears in QBCC insurance statements produced by QBCC as part of its regulatory responsibilities and in documents obtained or created by QBCC in its investigation of the applicant's various complaints. On the information before me, this is not publicly available information.

192. For the reasons set out in paragraphs 158-167 above in respect of the Contract Information, I also consider that the personal information within the Other Property Information concerns the private aspects of individuals' lives, its disclosure would be a significant intrusion into the privacy of these individuals and the extent of the harm that could be anticipated from disclosing that personal information under the RTI Act would be significant. Accordingly, I afford significant weight to the factors favouring nondisclosure related to protection of personal information and privacy¹⁹⁷ in respect of those portions of personal information within the Other Property Information.

193. Some of the Other Property Information can be characterised as the business, commercial or financial affairs of entities who contracted with LJ Technical for building construction works. That information also appears in QBCC insurance statements

¹⁹⁶ As noted in footnote 155 above, with reference to QBCC's Minimum Financial Requirements Policy.

¹⁹⁷ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

produced by QBCC as part of its regulatory responsibilities and in documents obtained or created by QBCC in its investigation of the applicant's various complaints. On the information before me, this is not publicly available information.

194. For the reasons set out in paragraphs 148-155 above in respect of the Contract Information, and concerning those portions of business, commercial or financial information of entities who contracted with LJ Technical appearing within the Other Property Information, I afford significant weight to the nondisclosure factors relating to protection of private, business, professional commercial and financial information.¹⁹⁸
195. Similarly, for the reasons set out in paragraphs 169-175 above in respect of the Contract Information, I afford significant weight to the nondisclosure factor relating to protecting the flow of information.¹⁹⁹

Balancing the public interest

196. For the reasons set out above, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure of the Other Property Information and its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that access to the Other Property Information may be refused.²⁰⁰

Findings – Employment Information

197. The Employment Information, which comprises details of the commercial arrangement between Company Y and Mr X, was information provided to QBCC in the context of LJ Technical's submission responding to the Proposal Notice and QBCC's investigation of the applicant's complaints concerning Mr X. The existence and general nature of that commercial relationship between Company Y and Mr X has been disclosed in the information released to the applicant.
198. The applicant submitted that:

[Mr X] is also understood to also be an "employee" of [Company Y], a company that is not licensed with the QBCC but is the Principal Contractor carrying out building work at the [Property 2] site under a license lending agreement with [Mr R] (trading as [a business name]).²⁰¹

The scope of the access application requires the release of all documents held by QBCC concerning the building and construction activity of [Mr X] and associated entities. [Company Y] carried out building and construction work under the QBCC Act when it engaged in fire protection work at [Property 1] (under [Mr X's] instruction) and was the Principal Contractor at [Property 2].²⁰²

199. The Employment Information has not been refused on the basis that it is outside the scope of, or irrelevant to, the access application. Accordingly, to the extent the applicant's submissions argue that the Employment Information should not be refused as it is relevant to the access application, I will not address them.

¹⁹⁸ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁹⁹ Schedule 4, part 3, item 13 of the RTI Act.

²⁰⁰ Under section 47(3)(b) of the RTI Act.

²⁰¹ External review application.

²⁰² Submissions dated 2 November 2017.

Irrelevant factors

200. I do not consider that any irrelevant factors arise in respect of the Employment Information.

Factors favouring disclosure

201. The applicant submitted that:

- any reference to Mr X and his personal information should be disclosed;²⁰³ and
- *'the content of the information already released has no bearing on further information that is to be released, that the Applicant is entitled to access'*²⁰⁴

202. I refer to the applicant's submissions set out at paragraph 89 above regarding the public interest factors favouring disclosure which he considers are relevant to the Contract Information. The applicant made the same submissions²⁰⁵ concerning the Employment Information. I have carefully reviewed the Employment Information (being details of the commercial arrangement between Company Y and Mr X), the context in which it was provided to or obtained by QBCC and the content of the information that has been released to the applicant. For the reasons set out in paragraphs 93-145 above in respect of the Contract Information, I afford the same weight to those factors favouring disclosure regarding the Employment Information.

203. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and, taking into consideration the nature of the Employment Information, I can identify no other public interest considerations telling in favour of disclosure of the Employment Information.

Factors favouring nondisclosure

204. The Employment Information comprises the commercial arrangement between Company Y and Mr X. It appears in documents obtained by or provided to QBCC for the purpose of QBCC's investigation of the applicant's various complaints.

205. The information can be characterised as business and commercial information of Company Y, as it involves staffing arrangements for Company Y's business. The Employment Information also relates to the personal circumstances of Mr X, as it records the terms and conditions of his employment. It is therefore also the personal information of Mr X. On the evidence available to me, while the existence and general nature of the Employment Information has been disclosed to the applicant, the Employment Information is not publicly available.

206. I have carefully considered the Employment Information and the context in which it appears or was provided to QBCC. For the reasons set out in paragraphs 150-175 above in respect of the Contract Information, I afford significant weight to the public interest factors relating to protection of private, business, professional commercial and financial information,²⁰⁶ personal information and privacy²⁰⁷ and the flow of information to QBCC²⁰⁸ in respect of the Employment Information.

²⁰³ External review application.

²⁰⁴ Submissions dated 2 November 2017.

²⁰⁵ Refer to footnote 192 above.

²⁰⁶ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

²⁰⁷ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

²⁰⁸ Schedule 4, part 3, item 13 of the RTI Act.

Balancing the public interest

207. For the reasons set out above, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Employment Information and its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that access to the Employment Information may be refused.²⁰⁹

Findings – Licence Information

208. As previously stated, QBCC regulates the building industry throughout Queensland. The Licence Information relates to regulatory matters concerning LJ Technical as a QBCC licensed entity. As noted in paragraph 134 above, QBCC investigated concerns in the applicant's complaints that LJ Technical was not compliant with the financial requirements of its licence and determined (after conducting a compliance audit) that LJ Technical met those requirements.

209. The Licence Information includes information about LJ Technical's licence and LJ Technical's financial information which was provided to or obtained by QBCC for the compliance audit.

210. The applicant submitted that:

- financial information subject to financial audit represents the building and construction activity of Mr X²¹⁰
- *'the content of the information already released has no bearing on further information that is to be released, that the Applicant is entitled to access'*²¹¹ and
- the names and details of LJ Technical, Mr X and other specified individuals *'all represent Iniquity. Protection of this information attracts no weight'*.²¹²

Irrelevant factors

211. I do not consider that any irrelevant factors arise in respect of the Licence Information.

Factors favouring disclosure

212. I refer to the applicant's submissions set out at paragraph 89 above regarding the public interest factors favouring disclosure which he considers are relevant to the Contract Information. The applicant made the same submissions²¹³ concerning the Licence Information.

213. In considering how disclosure of the Licence Information could advance the accountability and transparency factors,²¹⁴ I have also considered how, if at all, these public interest factors have been advanced by the information that has been provided to the applicant.

214. In this regard, I note that the information that has been released to the applicant confirms that:

²⁰⁹ Under section 47(3)(b) of the RTI Act.

²¹⁰ External review application.

²¹¹ Submissions dated 2 November 2017.

²¹² Submissions dated 2 November 2017.

²¹³ Refer to footnote 192 above.

²¹⁴ Schedule 4, part 2, items 1, 2 and 11 of the RTI Act.

- LJ Technical made application for a 'Builder – Medium Rise' licence, which was refused²¹⁵
- QBCC undertook a compliance audit of LJ Technical and issued notices to LJ technical requesting a range of financial records for the purpose of that audit²¹⁶
- LJ Technical provided financial records to QBCC in response to the notice²¹⁷
- QBCC determined, after conclusion of the financial audit, that LJ Technical met the minimum financial requirements for its licence.²¹⁸

215. Additionally, and as previously noted, the publicly accessible information confirms that LJ Technical's licence has been cancelled and it is an excluded company by reason of Mr X being an influential person.

216. In terms of the public interest, I consider that the released and publicly accessible information affords the public (and the applicant personally) some understanding of how QBCC investigates compliance with the financial requirements of building licences. However, the released information confirms that QBCC conducted an investigation of the applicant's complaint that LJ Technical was not compliant with the financial requirement of its licence and determined that LJ Technical was complaint with those requirements. Taking this into account, I am not satisfied that disclosing the Licence Information would, in any significant way, further advance QBCC's accountability and transparency. Accordingly, I afford moderate weight to the accountability and transparency factors²¹⁹ favouring disclosure of the Licence Information.

217. I have carefully reviewed the Licence Information (being information about LJ Technical's licence and financial information), the context in which it was provided to or obtained by QBCC and the content of the information that has been released to the applicant. For the reasons set out in paragraphs 100-145 above in respect of the Contract Information, I afford the same weight to those factors regarding the Licence Information.

218. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and, taking into consideration the nature of the Licence Information, I can identify no other public interest considerations telling in favour of disclosure of the Licence Information.

Factors favouring nondisclosure

219. Most of the Licence Information is the business and commercial information of LJ Technical. To the extent the Licence Information includes financial information, this is relatively recent information, relating to the last two to three years. On the evidence available to me, the Licence Information is information that is not publicly available.

220. I have carefully considered the Licence Information and the context in which it appears or was provided to QBCC. For the reasons set out in paragraphs 149-155 above in respect of the Contract Information, I afford significant weight to the public interest factors relating to protection of an entity's private, business, professional commercial and financial information.²²⁰

²¹⁵ For example, information released on page 1306 in File 1263834 *Compliance EDRMS* confirms this.

²¹⁶ The Category One Additional Documents released to the applicant included a notice addressed to LJ Technical, dated 12 November 2015, requiring provision of a range of financial records to QBCC (released in File 1263834 *Compliance – Financial Documents*).

²¹⁷ For example, information released page 49 in File 1263834 *Hard File A* and the pages released in File 1263834 *Compliance – Financial Documents* confirms this.

²¹⁸ For example, information released on page 1 in File 1263834_5 *Case Notes* confirms this.

²¹⁹ Schedule 4, part 2, items 1, 2 and 11 of the RTI Act.

²²⁰ Schedule 4, part 3, item 2 of the RTI Act and schedule 4, part 4, section 7(1)(c) of the RTI Act.

221. The Licence Information also includes a small amount of personal information about individuals other than the applicant.
222. The applicant submitted that protection of personal information in the Licence Information *'attracts no weight'*.²²¹
223. I have carefully considered the small amount of personal information appearing in the Licence Information. For the reasons set out in paragraphs 158-167 above in respect of the Contract Information, I afford significant weight to the factors favouring nondisclosure related to protection of personal information and privacy²²² in respect of those portions of personal information within the Licence Information.
224. Similarly, for the reasons set out in paragraphs 169-175 above in respect of the Contract Information, I afford significant weight to the nondisclosure factor relating to protecting the flow of information.²²³

Balancing the public interest

225. For the reasons set out above, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Licence Information and its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that access to the Licence Information may be refused on this basis.²²⁴

Findings – Separate Investigation Information

226. The Separate Investigation Information is information obtained by, or provided to, QBCC regarding its investigation about construction at a site where Hypersonic Construction (and other entities) were previously involved. This information is unrelated to any of the applicant's complaints and is unrelated to LJ Technical's building and construction activities.
227. As noted in paragraphs 69 and 70 above:
- based on information appearing in the applicant's complaint to QBCC dated 17 February 2015, it appears that Mr X may have been involved in building and construction work of Hypersonic Construction; and
 - Hypersonic Construction is a deregistered company, its QBCC licence is cancelled and QBCC rectification directions issued to it have not been satisfied.
228. The applicant submits that:
- File reference 1076714 relates to Mr Z, a QBCC licensed individual, and it would be *'unusual'* that Mr X would be *'discovered as related to'* Mr Z²²⁵
 - the refusal of some information on the ground of unsubstantiated allegations is incorrect to the extent the unsubstantiated allegations are those raised in his 11 July 2016 complaint because QBCC *'unjustly refused to investigate and make a determination on those allegations'*²²⁶

²²¹ Submissions dated 2 November 2017.

²²² Schedule 4, part 3, item 3 of the RTI Act and schedule 4, part 4, item 6(1) of the RTI Act.

²²³ Schedule 4, part 3, item 13 of the RTI Act.

²²⁴ Under section 47(3)(b) of the RTI Act.

²²⁵ External review application.

²²⁶ External review application.

- he considers it likely that disclosure of this information will substantiate his allegation that Mr X has been an Influential Person in the affairs of Mr Z²²⁷
- if the Separate Investigation Information contains ‘reference to [Mr X], his contact details, associates or known aliases (as a QBCC permanently-excluded individual) – *inter alia iniquity – the documents must be released*’.²²⁸

Irrelevant factors

229. I do not consider that any irrelevant factors arise in respect of the Separate Investigation Information.

Factors favouring disclosure

230. I refer to the applicant’s submissions set out at paragraph 89 above regarding the public interest factors favouring disclosure which he considers are relevant to the Contract Information. The applicant made the same submissions²²⁹ concerning the Separate Investigation Information.

231. As noted above, the Separate Investigation Information comprises information provided to or obtained by QBCC concerning a site where entities including Hypersonic Construction were involved in building work. Given the publicly accessible information concerning the current status of Hypersonic Construction and its QBCC licence, I afford moderate weight to the accountability and transparency factors²³⁰ favouring disclosure of the Separate Investigation Information.

232. I have carefully reviewed the Separate Investigation Information. As noted above, this information does not relate to the building works conducted by LJ Technical at Property 1 and Property 2 which were the subject of the applicant’s complaints to QBCC and QBCC’s investigations. For the reasons set out in paragraphs 93-145 above in respect of the Contract Information, I afford the same weight to those factors regarding the Separate Investigation Information.

233. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and, taking into consideration the nature of the Separate Investigation Information, I can identify no other public interest considerations telling in favour of disclosure of the Separate Investigation Information.

Factors favouring nondisclosure

234. The Separate Investigation Information includes both the business and commercial information of entities and the personal information of individuals other than the applicant. On the evidence before me, this information is not publicly available and I consider that the individuals and entities who provided the information, or about whom it relates, would have expected that QBCC would only use this information for undertaking its investigation of a complaint, and would not have anticipated disclosure of such information under the RTI Act.

235. I have carefully considered the Separate Investigation Information and the context in which it was provided to QBCC. For the reasons set out in paragraphs 149-167 above in respect of the Contract Information, I afford significant weight to the nondisclosure

²²⁷ Submissions dated 2 November 2017. More specifically, the applicant submits that his allegation included the ‘*authorship of “the 5 May 2016 letter” – and these relevant documents concern that company*’.

²²⁸ Submissions dated 2 November 2017.

²²⁹ Refer to footnote 192 above.

²³⁰ Schedule 4, part 2, items 1, 2 and 11 of the RTI Act.

factors relating to protection of an entity's private, business, professional commercial and financial information²³¹ and protection of personal information and privacy²³² in respect of the Separate Investigation Information.

236. Similarly, for the reasons set out in paragraphs 169-175 above in respect of the Contract Information, I afford significant weight to the nondisclosure factor relating to protecting the flow of information.²³³

Balancing the public interest

237. For the reasons set out above, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Separate Investigation Information and, therefore, its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that access to the Separate Investigation Information may be refused.²³⁴

Findings – Third Party Information

238. The Third Party Information comprises identifying information of individuals other than the applicant, including their names and contact details (such as mobile telephone numbers and email addresses), information about their personal circumstances (including their qualifications and work histories) and their recollections and opinions. In some instances, it is quite clear from the released information whose personal information has been refused.²³⁵

239. The applicant generally submitted²³⁶ that:

In this RTI request, the refusal to release the personal information of an individual (for example their name, telephone number or email address) is complicated by instances in which the documents in issue reflect someone who is acting deceitfully and posing as another individual, or is utilising personal information that has otherwise been attributed to another individual.

It is understood that [Mr X] has used a variety of telephone numbers, email addresses, and identities of individuals (real or not) in order to engage in building and construction activity illegally or for an improper purpose.

Appropriate investigations by the QBCC as detailed in the RTI documents themselves, or a Decision Maker who has sought to obtain authorisation from the individual(s) concerned, ought to reveal what truly is and is not considered to be an individual's personal information.

This raises the issue of whether personal information is actually information that belongs to a given individual, or if it is instead information that is deceitfully attributed to a given individual (real or not) and is instead being used illegally and for an improper purpose by [Mr X].

The Office of the Information Commissioner is also invited to consider that the email addresses used by [Mr X] are consistently from the free web-based email service Hotmail. It is highly unusual that any individual would create a Hotmail account for a given email address and then share that account for the use and execution of documents by more than one individual or an individual other than themselves.

240. As discussed in paragraphs 16 and 17 above, OIC's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies and does not extend to investigating or confirming the applicant's concerns:

²³¹ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

²³² Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

²³³ Schedule 4, part 3, item 13 of the RTI Act.

²³⁴ Under section 47(3)(b) of the RTI Act.

²³⁵ For example, the email address refused on page 4 in File 1263834 *Regulatory Services* is the email address of Mr Q.

²³⁶ External review application.

- that certain individuals were ‘*influenced by or ostensibly controlled by*’ Mr X;²³⁷ and
- about who may be ‘*posing*’ as another individual or may have used the contact details of individuals or provided the information to QBCC’s investigations which appears within the Information in Issue.

241. The applicant also submitted²³⁸ that ‘*The OIC does have the jurisdiction to release the names of individuals and a company engaged in Iniquity, ... in circumstances when the QBCC has refused to release that information ...*’. In this regard, I note that while agencies may decide to exercise discretion to release contrary to the public interest information, OIC cannot.²³⁹

Irrelevant factors

242. I do not consider that any irrelevant factors arise in respect of the Third Party Information.

Factors favouring disclosure

243. I refer to the applicant’s submissions set out at paragraph 89 above regarding the public interest factors favouring disclosure which he considers are relevant to the Contract Information. The applicant made the same submissions²⁴⁰ concerning the Third Party Information.

244. The applicant more specifically submitted that references to Mr X and his personal information have been ‘*inconsistently or incorrectly redacted throughout the RTI decision*’ and he considers that ‘*on occasion, reference to [Mr X] is redacted, and it appears this redaction may be an attempt to conceal the activities of other entities or the QBCC itself (and might therefore be a reflection upon that entities permission, knowingly or not, of the activities of Mr X at that relevant time)*’.²⁴¹

245. OIC is required to apply the provisions of the RTI Act to the particular information and circumstances of each case. Accordingly, it does not follow that the disclosure of Mr X’s personal information would not, on balance, be contrary to the public interest simply because some references to Mr X may appear in the information QBCC has released.

246. The applicant submitted²⁴² that he considers that the information released to him indicates QBCC decided LJ Technical’s director had committed an offence of “False or misleading Information/Declaration”²⁴³ and he seeks background and contextual information for that QBCC decision and considers that this person should no longer be entitled to hold a QBCC licence.

247. The information referenced by the applicant in support of this submission relates to QBCC’s investigation of the applicant’s complaints about Mr X being an influential person. Given the nature of the Third Party Information and the basis of QBCC’s cancellation of LJ Technical’s licence, I do not consider that its disclosure would further advance QBCC’s accountability and transparency in respect of its investigations of the applicant’s complaints. To the extent that the applicant’s submissions seek further information about a decision the applicant believes was made about LJ Technical’s

²³⁷ External review application.

²³⁸ Submissions dated 2 November 2017.

²³⁹ Section 105(2) of the RTI Act.

²⁴⁰ Refer to footnote 192 above.

²⁴¹ External review application. In support of this submission, the applicant specifically referred to information redacted on pages 57-58 in File 1263834 Ministerials and page 1817 in File 1263834 Compliance EDRMS, some of which was released to the applicant during the external review.

²⁴² External review application.

²⁴³ The applicant’s submissions refer to page 1712 in File 1263834 Compliance EDRMS.

director, who is not Mr X, I do not consider such further information, if it existed, would fall within the scope of the Sixth Application.

248. The applicant also made the following submissions, which are similar to submissions made in respect of the Contract Information:

- any building and construction activity of Mr X is illegal and for an improper purpose and, accordingly, any reference to him and his personal information ought to be released in full²⁴⁴
- *'The fact that [Mr X] was using these contact details on behalf of a QBCC-licensed private sector business was in itself evidence of conducting business illegally and for an improper purpose, and weighs heavily in favour of Public Interest disclosure. However these contact details were sometimes attributed to other individuals, which would appear to be a deliberate tactic by [Mr X] to covertly carry out building and construction activity'*²⁴⁵
- he believes that certain individuals who provided information to QBCC made representations that were *'disingenuous'* and those have been engaged in activities in furtherance of Mr X's illegal building and construction activities²⁴⁶
- *'The content of the information already released has no bearing on further information that is to be released, that the Applicant is entitled to access'*²⁴⁷
- *'In circumstances where the QBCC made false and misleading representations to the Applicant and [a Councillor] and in doing so, knowingly permitted an Influential Person to continue to engage in unlawful activity, no weight can be attached to the refusal to release information about individuals appearing in records maintained or produced by the QBCC as part of its regulatory responsibilities; considering also that these individuals have occasioned Iniquity. This information must be released'*²⁴⁸ and
- responses provided by LJ Technical to the Proposal Notice *'in fact demonstrate further illegal activity'*.²⁴⁹

249. The Third Party Information includes information of the same kind as the personal information appearing in the Contract Information (that is, contact details, signatures and information about the personal circumstances of individuals other than the applicant). I have carefully reviewed the Third Party Information, the context in which it appears and the content of the information that has been released to the applicant. For the reasons set out in paragraphs 93-145 above, I afford the same weight to those factors regarding the Third Party Information.

250. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and, taking into consideration the nature of the Third Party Information, I can identify no other public interest considerations telling in favour of disclosure of the Third Party Information.

Factors favouring nondisclosure

251. As noted in paragraph 238 above, the Third Party Information includes identifying information of individuals other than the applicant, information about their personal circumstances and their recollections and opinions. Accordingly, I am satisfied that this information is the personal information of those individuals.

²⁴⁴ External review application.

²⁴⁵ External review application.

²⁴⁶ External review application.

²⁴⁷ Submissions dated 2 November 2017.

²⁴⁸ Submissions dated 2 November 2017.

²⁴⁹ External review application.

252. The applicant submitted that he believes that certain individuals who may be referenced in the Information in Issue do not exist, as they are an alias used by Mr X, and those references are therefore not the personal information of a person²⁵⁰ and no weight can be attributed to the intrusion into the privacy of any reference or personal details attributed to such individuals²⁵¹. Further, as noted in paragraph 239 above, the applicant has raised concerns that certain personal information in the Information in Issue may in fact be information of Mr X posing as other individuals. While it is beyond my jurisdiction to investigate or confirm the applicant's concerns in this regard, I am satisfied on the material before me that the Third Party Information identifies individuals who appear to exist, whether by pseudonyms or otherwise.
253. The publicly available names of directors of QBCC licensed companies which appear in the documents located by QBCC have been released to the applicant. The applicant submitted²⁵² that the "Western" or "English" name of directors of QBCC licensed companies, or any nickname or known alias of such individuals, should also be released.
254. While I consider that the privacy of the names²⁵³ of such directors is diminished by reason of those names being publicly available, including on QBCC's website and on signage at the relevant construction site, I do not consider that westernised names of any such individuals are so publicly available. While the applicant may be aware that certain individuals may at times refer to themselves by such westernised versions of their names, such references are not reflected in the publicly available information identifying directors of QBCC licensed companies.
255. I consider that the Third Party Information, which came into the possession of QBCC during the exercise of its regulatory functions, concerns the private aspects of individuals' lives and that its disclosure would therefore reasonably be expected to prejudice the protections of their right to privacy. Accordingly, I afford significant weight to the nondisclosure factor relating to prejudicing the protection of an individual's right to privacy.²⁵⁴
256. The applicant also submitted²⁵⁵ that:
- telephone numbers, including mobile telephone numbers, of Mr X, the director of LJ Technical and other individuals are publicly available information and '*represent the carriage of Iniquity*'; and
 - that '*Emails from an address with an associated "sender line" attract public interest factors favouring disclosure if the name of the signature in the body of the email does not correlate with the sender line*' and should therefore be released.
257. I am satisfied, on the material before me, that:
- the names are those of individuals who are not officers of a QBCC licensed company
 - the telephone numbers (including mobile telephone numbers) are the contact numbers of individuals and are not publicly available information; and
 - the email addresses are private email addresses of individuals, not the email addresses of a QBCC licenced company, and such email addresses are not publicly available.

²⁵⁰ External review application.

²⁵¹ Submissions dated 2 November 2017.

²⁵² Submission dated 2 November 2017.

²⁵³ That is, the given names of individuals, as listed in QBCC's publicly available records.

²⁵⁴ Schedule 4, part 3, item 3 of the RTI Act.

²⁵⁵ Submissions dated 2 November 2017.

258. I also confirm that, in the documents released to the applicant, where the name of an email addressee has been disclosed and an email address has been refused, the email address, on its face, corresponds to the person whose name has been released.²⁵⁶
259. It is relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the RTI Act.
260. As noted in paragraph 166 above, disclosure under the RTI Act of personal information in the possession of government could erode the public's confidence that their personal information would be protected. The Third Party Information appears in information obtained by or provided to QBCC or recorded by QBCC for the purpose of QBCC's investigations of the applicant's various complaints. I consider the individuals about whom this information relates would have expected QBCC to protect their personal information and they would not have anticipated further disclosure of such information under the RTI Act.
261. Taking into consideration the nature of the Third Party Information and the context in which it appears, I consider that the extent of the public interest harm that could be anticipated from its disclosure under the RTI Act is significant. For these reasons, I afford significant weight to the nondisclosure factor relating to the protection of personal information²⁵⁷ for the Third Party Information.
262. For the reasons set out in paragraphs 169-175 above in respect of the Contract Information, I afford significant weight to the nondisclosure factor relating to protecting the flow of information.²⁵⁸

Balancing the public interest

263. For the reasons set out above, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Third Party Information and its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that access to the Third Party Information may be refused.²⁵⁹

Nonexistent or unlocatable documents

Relevant law

264. Access to a document may be refused if the document is nonexistent or unlocatable.²⁶⁰ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.²⁶¹ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found.²⁶²
265. To be satisfied that a document is *nonexistent*, the Information Commissioner has previously recognised that a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including.²⁶³

²⁵⁶ For example, on pages 2 and 4 in File 1263834 *Regulatory Services*.

²⁵⁷ Schedule 4, part 4, section 6(1) of the RTI Act.

²⁵⁸ Schedule 4, part 3, item 13 of the RTI Act.

²⁵⁹ Under section 47(3)(b) of the RTI Act.

²⁶⁰ Sections 47(3)(e) and 52 of the RTI Act.

²⁶¹ Section 52(1)(a) of the RTI Act.

²⁶² Section 52(1)(b) of the RTI Act.

²⁶³ *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* [2009] QICmr 7 (9 February 2009) (**PDE**).

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach); and
- other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

266. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. This is the case in circumstances where it is ascertained 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. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.²⁶⁴ What constitutes reasonable steps will vary from case to case as the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

267. To determine whether a document exists, but is *unlocatable*, the RTI Act requires consideration of whether there are reasonable grounds 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.²⁶⁵ In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.²⁶⁶

Steps taken by QBCC to locate documents

268. QBCC provided OIC with a copy of its search records and certifications²⁶⁷ for its processing of the Sixth Application. In summary, the documents provided to OIC show that:

- searches were conducted of the following records:
 - QBCC's electronic document records management system (**EDRMS**)
 - QBCC's hard copy files
 - QBCC's contractor management system
- searches of QBCC's electronic records were conducted using relevant participant numbers,²⁶⁸ categories²⁶⁹ and keywords²⁷⁰ in QBCC's EDRMS and a manual inspection of documents; and

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.

²⁶⁴ As set out in *PDE* at [49]. See also section 130(2) of the RTI Act.

²⁶⁵ Section 52(1)(b) of the RTI Act.

²⁶⁶ *Pryor* at [21].

²⁶⁷ Submissions received 9 January 2017.

²⁶⁸ Including the additional file numbers identified by the applicant in his response to QBCC (referred to in paragraph 32 above) concerning the scope of the Sixth Application.

²⁶⁹ Such as regulatory services, compliance, contact centre, insurance resolution services, ministerials and ministerial correspondence.

²⁷⁰ Being Mr X and LJ Technical.

- enquiries were made of QBCC's Licensing Entitlement Unit and Ministerial Liaison Unit to identify any additional documents not stored in QBCC's EDRMS.
269. As previously noted, in excess of 4600 pages were located by QBCC, together with video and audio recordings.
270. On external review, the applicant queried why the Draft Letters had not been located and identified nine categories of documents²⁷¹ which, in his view, existed and should have been located by QBCC.
271. I have set out my reasons for not dealing with the applicant's request for the Category A, B, C, E and I documents earlier in this decision.
272. In respect of the remaining documents identified by the applicant, OIC requested that QBCC conduct further searches for documents responsive to the Sixth Application, including the Draft Letters and the Category D, F, G and H documents identified in paragraph 34 above. In response to OIC's request for further searches, QBCC located the additional documents specified in paragraph 18 above, which specifically included:
- the Draft Letters, which QBCC released to the applicant
 - the Category D document, being the site visit audio, which QBCC partially released to the applicant
 - Category F documents, being 8 pages in folder reference *1263834 Compliance EP Documents*,²⁷² which QBCC released to the applicant apart from one page and small portions of information appearing on four pages; and
 - one Category G document, being a case note, which QBCC partially released to the applicant.
273. No Category H documents were located by QBCC as a result of the further searches.
274. QBCC provided OIC with a copy of its search records and certifications²⁷³ regarding these further searches. In summary, those documents show that QBCC conducted further searches of:
- QBCC's Ministerial and Executive correspondence system
 - QBCC's EDRMS
 - QBCC's Contractor Management system; and
 - QBCC's hard copy files.
275. Subsequent to these further searches, the applicant submitted that he sought access to six additional documents or types of documents.²⁷⁴ Four of these documents or types of documents fell within the Category A, B, D and E documents previously identified by the applicant. Of the remaining two types of documents, I have set out my reasons for not dealing with the applicant's request for metadata descriptions previously in this decision.

Analysis

276. Given QBCC has relied on searches by its officers to demonstrate that all relevant documents have been located, the question I must consider is whether QBCC has taken *all reasonable steps* to locate documents responsive to the access application. This entails consideration of whether QBCC has required appropriate staff to conduct

²⁷¹ As set out in paragraph 34 above.

²⁷² QBCC confirmed to OIC, in submissions dated 27 October 2017, that these documents were located in File 1233834_3.

²⁷³ Submissions received 27 October 2017. The search certifications were completed by two QBCC officers.

²⁷⁴ As referred to in paragraph 35 above.

sufficient searches of all locations where the documents in question could reasonably be expected to be found.

277. In this review, OIC requested that QBCC conduct further searches for the Draft Letters and the Category D, F, G and H documents. QBCC conducted those further searches and provided search records and certifications to OIC regarding those further searches. QBCC located documents relevant to those categories, other than the Category H documents.
278. Based on consideration of the entirety of the searches conducted by QBCC and the information before me, I consider that QBCC has conducted searches of all relevant locations where it was reasonable to expect that the types of information requested in the access application, including the Category H documents, would be found, and ensured that relevant staff have undertaken appropriately targeted searches for such information.
279. For the sake of clarity, QBCC provided the following further information regarding the Category H documents:
- compliance cases and investigations are assigned a case number (or numbers) and other QBCC areas, such as resolution services and the certification unit, use a similar format for maintaining their records; and
 - QBCC's searches for the Category 8 documents, identified by the applicant as '*Other relevant investigations – Notated as 1263834_x (replace x for investigation)*', were conducted on the basis that the applicant's request was for documents in any other '*1263834*' case file which had not been specified in the eight other document categories identified by the applicant.

280. As noted above, the applicant's submission that he also sought records of telephone conversations was received by OIC after QBCC completed the further searches referred to above. In respect of the requested records of telephone conversations, the applicant more specifically submitted:²⁷⁵

*It is also relevant to note that despite the Additional Documents that have been located by the QBCC through the External Review process, documents such as audio recordings of telephone conversations that formed part of the Compliance investigation by the QBCC on or around **July 2014** have also not been located. It is QBCC policy to record these telephone conversations.*

281. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.²⁷⁶ However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.
282. QBCC located a number of audio recordings responsive to the Sixth Application. As noted in *McCrystal No. 1*,²⁷⁷ QBCC previously provided the following information to OIC, in response to a request for information about its audio recording policies:

²⁷⁵ Dated 23 November 2017.

²⁷⁶ Section 87(1) of the RTI Act.

²⁷⁷ At [199].

QBCC's compliance investigation unit routinely makes audio recordings of their telephone calls as part of their law enforcement obligations, however, it is not the standard practice of QBCC's certification section to record telephone conversations

283. While QBCC may have a practice of 'routinely' making audio recordings of telephone calls undertaken by QBCC's compliance investigation unit, this does not, of itself, give rise to any reasonable expectation that additional audio recordings relevant to the Sixth Application exist and have not been located.
284. Based on consideration of the entirety of the searches conducted by QBCC and QBCC's telephone recording practices, I am satisfied that QBCC has conducted searches of all relevant locations where it was reasonable to expect that any additional audio recordings responsive to the Sixth Application would, if they existed, be found.
285. Under section 103 of the RTI Act, where the Information Commissioner has reason to believe that a person has information or a document relevant to an external review, the Information Commissioner may give a written notice to that person requiring the provision of information or documents or their attendance to answer questions relevant to the external review.²⁷⁸
286. In this review, OIC informally requested that QBCC provide information and documents relevant to the review and QBCC cooperated with those requests. On careful consideration of the information and search records and certifications provided to OIC, there is nothing to suggest that the search information provided by QBCC was not credible or that QBCC had not complied with OIC's requests to conduct further searches and provide relevant information to OIC. Therefore, on the material before me and given my satisfaction that QBCC has searched all relevant locations where documents responsive to the Sixth Application would be located, it was not necessary to issue any written notice under section 103 of the RTI Act to QBCC or any of its officers requiring provision of further information or documents to this review.

Conclusion

287. In these circumstances, I am satisfied that:

- QBCC has taken all reasonable steps to locate documents responsive to the Sixth Application, including the Category H documents and additional audio recordings; and
- there are reasonable grounds to be satisfied that the Category H documents and additional audio recordings are nonexistent or unlocatable, and such information may be refused on this basis.²⁷⁹

DECISION

288. I vary QBCC's decision and find that:

- access to the Information in Issue may be refused or deleted on the grounds that its disclosure would, on balance, be contrary to the public interest or it is outside the scope of, or irrelevant to, the Sixth Application;²⁸⁰ and

²⁷⁸ Section 104 of the RTI Act empowers the Information Commissioner to administer an oath or affirmation to such a person required to answer questions.

²⁷⁹ Under sections 47(3)(e) and 52 of the RTI Act.

²⁸⁰ Under section 47(3)(b) of the RTI Act.

- the additional information the applicant contends should have been located by QBCC may be refused on the ground that it does not exist or is unlocatable.²⁸¹

289. I also refuse to deal with part of the applicant's external review application under sections 43(3)(b) and 43(3)(d) of the RTI Act.

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

Assistant Information Commissioner Corby

Date: 7 March 2018

²⁸¹ Under section 47(3)(e) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
25 November 2016	OIC received the external review application.
9 December 2016	OIC notified the applicant that it had accepted the external review application and asked the applicant to provide sufficiency of search submissions identifying the further documents which he believed exist and had not been located by QBCC. QBCC notified QBCC that it had accepted the external review application and asked QBCC to provide information.
5 January 2017	At the applicant's request, OIC granted an extension of time for the applicant to provide his sufficiency of search submissions.
9 and 11 January 2017	OIC received requested information from QBCC.
23 January 2017	OIC received the applicant's sufficiency of search submissions.
February 2017 to July 2017	Initially OIC attempted to progress the applicant's various external reviews concurrently; however, this proved difficult given the volume of interconnected material across the reviews requiring consideration. OIC then progressed two earlier external reviews of the applicant, proceeding on the basis that OIC would deal each of the external reviews in turn.
23 August 2017	OIC requested that the applicant advise whether he continued to seek access to certain types of information.
9 October 2017	OIC requested further information from QBCC.
9 and 10 October 2017	OIC received requested information from QBCC.
13 October 2017	OIC conveyed a preliminary view to QBCC about information OIC considered may be released and requested that QBCC conduct further searches for information relevant to the access application.
17 October 2017	QBCC confirmed to OIC its acceptance of the preliminary view and agreed to release information to the applicant in accordance with the preliminary view.
19 October 2017	OIC conveyed a preliminary view to the applicant that, apart from portions of information on 68 pages, the information that QBCC had decided not to release may be refused or deleted on the basis that its disclosure would, on balance, be contrary to the public interest or it was outside the scope of or not relevant to the access application. OIC invited the applicant to provide submissions if he did not accept the preliminary view.
20 October 2017	QBCC confirmed to OIC that it had released portions of information on 68 pages to the applicant in accordance with the preliminary view.
27 October 2017	OIC declined to grant the applicant's requested extension of time to respond to the preliminary view. OIC received QBCC's search response and additional documents located by QBCC.
2 November 2017	OIC received the applicant's submissions.
3 November 2017	OIC conveyed a preliminary view to QBCC about the additional documents.
7 November 2017	QBCC confirmed to OIC its acceptance of the preliminary view. QBCC agreed to release information to the applicant in accordance with the preliminary view and to redact one audio recording in accordance with the preliminary view.

Date	Event
9 November 2017	OIC conveyed a preliminary view to the applicant concerning the additional documents and invited the applicant to provide submissions if he did not accept the preliminary view.
13 November 2017	QBCC confirmed to OIC that it had released additional documents to the applicant in accordance with the preliminary view.
23 November 2017	OIC received the applicant's further submissions.
27 November 2017	OIC informed the applicant that it did not intend to exercise its discretion to refer matters to QCAT as requested by the applicant.
8 December 2017	OIC received a redacted audio recording from QBCC.
19 December 2017	QBCC confirmed to OIC that it had released the redacted audio recording to the applicant in accordance with the preliminary view.
12 January 2018	OIC received the applicant's further submissions.