



Decision and Reasons for Decision

Citation:	<i>Ensham Resources Pty. Limited & Ors and Department of Environment and Science; Shaw (Third Party) [2020] QICmr 46 (11 August 2020)</i>
Application Number:	314814 and 314891
Applicant:	Ensham Resources Pty. Limited (ACN 011 048 678)
Respondent:	Department of Environment and Science
Third Party:	Shaw
Fourth Party:	Idemitsu Australia Resources Pty Ltd (ACN 010 236 272)
Fifth Party:	Bligh Coal Limited (ACN 010 186 393)
Sixth Party:	Bowen Investment (Australia) Pty Ltd (ACN 002 806 831)
Decision Date:	11 August 2020
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - CONTRARY TO PUBLIC INTEREST INFORMATION - documents relating to an environmental authority - accountability and transparency - prejudice to a deliberative process of government - public interest harm in disclosing deliberative process information - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. On 18 December 2018, the access applicant made two applications under the *Right to Information Act 2009 (Qld) (RTI Act)* to the Department of Environment and Science (**Department**) for access to all documents relating to the Rehabilitation Management Plan¹ (**RMP**) and Ensham Residual Void Project (**ERVP**) administered by the Department² pursuant to an Environmental Authority (**EA**).³
2. The Department consulted Ensham Resources Pty. Limited (**Ensham**)⁴ about disclosure of the information it located in response to both applications. Ensham objected to

¹ (**RMP Application**), Department reference 18-258.

² (**ERVP Application**), Department reference 18-259.

³ EA number EPML00732813.

⁴ Under section 37(1)(a) of the RTI Act.

disclosure of some of the documents, submitting that disclosure would, on balance, be contrary to the public interest and that access should therefore be refused.⁵

3. The Department decided to grant access to some information contrary to Ensham's objections.⁶ Ensham applied for internal review⁷ and the Department affirmed its decisions relating to the RMP Application⁸ and varied its decision relating to the ERVP Application.⁹ Ensham then applied to the Information Commissioner (**OIC**) for external review of the Department's disclosure decisions.¹⁰
4. On external review three additional parties¹¹ were consulted. Those parties also objected to the disclosure of the information in issue and were joined as participants. The Objecting Parties are represented by the same lawyer and have made uniform submissions.
5. The access applicant also applied and was added as a participant in the reviews.
6. I affirm the Department's decisions and find the Objecting Parties have not discharged the onus of demonstrating that:
 - disclosure of the information in issue would, on balance, be contrary to the public interest; and
 - that a decision not to disclose the information in issue is justified.

Background

7. The EA is the environmental authority approved by the Department setting out the conditions under which the Ensham Mine¹² can operate.¹³ The information in issue in these reviews comprises Department communications about amendments to the EA.
8. The Objecting Parties explained that the relevant EA is the subject of an amendment application, submitted to the Department on 26 March 2019, relating to the rehabilitation plan and criteria for final voids, and that the information in issue relates to the Department's preliminary views on the rehabilitation criteria.¹⁴ The Department indicated that it reached a decision on the EA amendment application on 24 July 2020.¹⁵
9. During the external reviews, the Department agreed to disclose information to the access applicant which was not subject to any disclosure objections. Following this, the Objecting Parties confirmed to OIC their view that disclosure of the remaining information in issue, would, on balance, be contrary to the public interest.

⁵ Pursuant to sections 47(3)(b) and 49 of the RTI Act.

⁶ In relation to the RMP Application, Ensham was consulted about 102 pages of information, and the Department decided on 24 May 2019 to grant the access applicant access to 97 full pages and 5 part pages. In relation to the ERVP Application, Ensham was consulted about 205 pages of information, and the Department decided on 14 June 2019 to grant access to 169 full pages and 34 part pages.

⁷ Internal review applications dated 5 July and 7 August 2019.

⁸ Internal review decision dated 2 August 2019.

⁹ On 5 September 2019, deciding to grant the access applicant access to 168 full pages and 35 part pages, with the deletion of personal information of Ensham staff.

¹⁰ External review applications dated 2 September and 3 October 2019.

¹¹ Those parties being Idemitsu Australia Resources Pty Ltd (**Idemitsu**), Bligh Coal Limited and Bowen Investment (Australia) Pty Ltd (**Objecting Parties**). Ensham requested that these parties also be consulted as it considered disclosure would also be of concern them.

¹² I have considered information at: https://environment.des.qld.gov.au/data/assets/pdf_file/0027/98280/epml00732813-part10.pdf > regarding the ownership and operation of the mine.

¹³ Published on the Department website at < <https://apps.des.qld.gov.au/env-authorities/pdf/epml00732813.pdf> >.

¹⁴ Submissions to OIC from the Objecting Parties dated 24 July 2020. In those submissions the Objecting Parties explained that the information in issue was created for the First EA Amendment dated 26 May 2017 but is precursory in nature to the second EA Amendment Application, made on 26 March 2019.

¹⁵ As confirmed in an email from the Department to OIC on 29 July 2020.

10. Significant procedural steps relating to these reviews are set out in the Appendix.

Reviewable decisions

11. The decisions under review are the Department's internal review decisions to Ensham.¹⁶ I have made this decision in relation to both reviewable decisions.¹⁷

Evidence considered

12. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),¹⁸ particularly the right to seek and receive information as embodied in section 21 of the HR Act as it applies to the access applicant.

Information in issue

13. The information in issue in these reviews comprises Department communications about the:

- RMP Application which comprises parts of 46 pages; and
- ERVP Application which comprises parts of 10 pages.

Issue for determination

14. As the decisions under review are 'disclosure decisions', the Objecting Parties have the onus of establishing that a decision not to disclose the information in issue is justified, or that I should give a decision adverse to the access applicant.¹⁹

15. The Objecting Parties claim that access to the information in issue can be refused under section 47(3)(b) of the RTI Act because disclosure of the information in issue would, on balance, be contrary to the public interest. This is therefore the issue I have considered in reaching a decision on whether the Objecting Parties have met the onus of establishing that a decision not to disclose the information in issue is justified.

Relevant law

16. The primary objective of the RTI Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give access.²⁰ Section 23 of the RTI Act establishes a right to be given access to documents, and accordingly a pro-disclosure basis.²¹

17. This right is subject to the grounds on which access to information may be refused.²² These grounds allow access to information to be refused, to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.²³

¹⁶ Dated 2 August 2019 and 5 September 2019.

¹⁷ Noting the similarities in submissions and the information in issue and the broad procedural discretion conferred on the Information Commissioner by section 95(1)(a) of the RTI Act.

¹⁸ Which came into force on 1 January 2020.

¹⁹ Section 87(2) of the RTI Act.

²⁰ Section 3(1) of the RTI Act. The Act must be applied and interpreted to further this primary object: section 3(2) of the RTI Act.

²¹ Section 44(4) of the RTI Act.

²² Section 47(3) of the RTI Act. The grounds are to be interpreted narrowly (section 47(2)(a) of the RTI Act), and the Act is to be administered with a pro-disclosure bias (section 44(4) of the RTI Act).

²³ Sections 47(3)(b) and 49 of the RTI Act.

18. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest²⁴ and explains the steps a decision-maker must take, as follows:²⁵
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

Irrelevant factors

19. I have not taken any irrelevant factors into account in making my decision.

Factors favouring disclosure

20. In its disclosure decisions²⁶ the Department explained that the information in issue was created or collected by the Department in its role as an environmental regulator. As the information in issue relates to the environmental and rehabilitation conditions of the Ensham Mine, the Department considered several factors in favour of disclosure carried significant weight.²⁷
21. I note that the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (Qld), which took effect from 1 November 2019, amended a number of laws²⁸ to ensure that mining companies rehabilitate the land progressively as they mine,²⁹ and ensures the mining company cover the cost of the rehabilitation.³⁰ The Department has acknowledged the *'significant public interest in the mine's rehabilitation – particularly of the voids on the site'* and commenced public consultation in December 2019 of the Major EA amendment application as *'this amendment application proposes an alternative outcome from that detailed in Idemitsu's Environment Impact Statement for the rehabilitation of the voids...'*³¹
22. I have also considered the access applicants contentions that:

Given that the process is for a coal mine, it is our submission in the first instance, that the public interest in the proper administration of the regulation of a coal mine outweighs any prejudice to deliberative functions of Government...

*The access to the documents will confirm the process that has been implemented, the dialogue between the coal mine and the Department and assist the landholder to determine the future uses of their land.*³²

²⁴ Schedule 4 of the RTI Act – a non-exhaustive itemisation of potentially relevant considerations.

²⁵ Section 49(3) of the RTI Act.

²⁶ Specifically its internal review decisions dated 2 August 2019 and 5 September 2019.

²⁷ The access applicant's submissions of 8 April 2020 also raised a number of public interest factors in favour of disclosure.

²⁸ The *Environmental Protection Act 1994* (Qld) (**EP Act**), the *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld), the *Mineral Resources Act 1989* (Qld), the RTI Act and the *Waste Reduction and Recycling Amendment Act 2017* (Qld).

²⁹ The new requirement to submit a progressive rehabilitation and closure plan for mined land with a site-specific environmental authority is relevant to the issues in this review.

³⁰ Then Deputy Premier Trad's introductory speech in Parliament tabling the Bill <<https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/180215/MineralFinance.pdf>>.

³¹ See <<https://www.abc.net.au/radionational/programs/breakfast/ensham-mine-first-test-of-new-qld-mining-rehabilitation-laws/11795750>>. The Department has classified this amendment as a Major amendment under the EP Act.

³² Applicant's submissions to OIC dated 8 April 2020.

23. Having considered the information in issue and the relevant background circumstances, I consider that disclosure of the information in issue could reasonably be expected to:
- promote open discussion of public affairs and enhance the government's accountability³³
 - contribute to positive and informed debate on important issues or matters of serious interest³⁴
 - 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;³⁵ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁶
24. In response to my preliminary assessment of the issues in the reviews,³⁷ the Objecting Parties submitted that:³⁸
- the Ensham Mine and current EA Amendment Application to introduce rehabilitation criteria for final voids has been the subject of considerable public debate; and
 - release of this information therefore has the clear potential to raise undue and unwarranted community concerns and public debate.
25. However, the Objecting Parties also submitted that the public interest factors identified above were irrelevant, or carried very low weight.³⁹
26. Given the community interest in the Ensham Mine and associated EA, I do not agree with the proposition that these public interest factors carry only low weight.⁴⁰ I consider that the information in issue, while limited in nature, forms part of an important regulatory process to ensure that significant mining projects are undertaken in compliance with the relevant environment protection legislation and regulations. The information in issue squarely demonstrates how this process is conducted by the Department. As explained above, this process conducted by the Department forms part of crucial government oversight in relation to environmental and rehabilitation considerations associated with large scale mining projects, such as the Ensham Mine. Accordingly, I am satisfied that the above factors in favour of disclosure carry significant weight.

Public interest factors favouring nondisclosure

27. The Objecting Parties argue that disclosure of the information in issue could reasonably be expected to cause a public interest harm by disclosing deliberative process information (**Deliberative Process Harm Factor**);⁴¹ and could reasonably be expected to prejudice the Department's consideration of the Major amendment to the rehabilitation conditions of the EA (**Deliberative Process Prejudice Factor**).⁴²

³³ Schedule 4, part 2, item 1 of the RTI Act.

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

³⁵ Schedule 4, part 2, item 3 of the RTI Act.

³⁶ Schedule 4, part 2, item 11 of the RTI Act.

³⁷ Dated 20 May 2020.

³⁸ Submissions date 11 June 2020.

³⁹ Submissions received on 11 June 2020.

⁴⁰ The public consultation undertaken by the Department was reported in the media here <<https://www.abc.net.au/radionational/programs/breakfast/ensham-mine-first-test-of-new-qld-mining-rehabilitation-laws/11795750>>.

⁴¹ Schedule 4, part 4, section 4(1) of the RTI Act.

⁴² Schedule 4, part 3, item 20 of the RTI Act. The Objecting Parties did not seek to advance evidence in support of any other nondisclosure factors in this external review.

Deliberative Process Harm Factor

28. The RTI Act recognises that disclosure of ‘*deliberative process*’ documents can reasonably be expected to cause a public interest harm.⁴³ The Information Commissioner has consistently recognised that a deliberative process is considered to be any ‘*thinking processes*’ of the agency.⁴⁴ A document may be considered a deliberative process document, even where the relevant ‘*thinking process*’ has concluded.
29. The RTI Act also specifies that this harm factor will not apply if the deliberative processes include public consultation and that public consultation has commenced.⁴⁵
30. The Information Commissioner has found that information that meets the requirements of the Deliberative Process Harm Factor⁴⁶ include:
- information prepared during consultations undertaken by the Treasurer in deliberating on and evaluating matters in relation to proposed mining projects;⁴⁷ and
 - an agency’s determination of the amount of a financial assurance required in respect of a mining company’s replacement plan of operations.⁴⁸
31. The Department noted that the information in issue ‘*covers only purely procedural or administrative functions that occur when the department completes conditions for any EA*’⁴⁹ and did not accept that it could be considered deliberative process information.
32. On the other hand, the Objecting Parties contend that:⁵⁰
- granting an EA amendment is a statutory decision ... DES retains the discretion to refuse an EA amendment application or to choose which conditions are imposed if it is approved. This process requires deliberation and is not merely procedural in nature...*
33. Having considered the information in issue, I acknowledge that it records the Department’s ‘*thinking processes*’ and that it can be considered deliberative process information. While I note that it reveals minimal information about the Department’s particular considerations and appears to discuss mainly administrative issues, I accept that it can be considered deliberative process information.
34. The Objecting Parties also submitted that the Major amendment application was subject to public consultation, and over 800 responses were received.⁵¹ Once public consultation starts in response to the deliberative process claimed by the applicant, the Deliberative Process Harm Factor no longer applies to the information in issue. In relation to this issue, the Objecting Parties submitted that:⁵²

⁴³ Schedule 4, part 4, section 4(1) of the RTI Act.

⁴⁴ *Eccleston and Department of Family Services and Aboriginal and Islander Affairs (1993) 1 QAR 60 (Eccleston)* at [28]-[30], citing with approval the definition given in *Re Waterford and Department of Treasury (No.2)* (1984) 5 ALD 588 at 606. While *Eccleston* concerns section 41(1)(a) of the repealed FOI Act, it remains relevant to the public interest test under section 49 of the RTI Act and provides useful analysis of the wording still used in schedule 4, part 4, section 4(1) of the RTI Act.

⁴⁵ Schedule 4, part 4, section 4(2) of the RTI Act.

⁴⁶ Schedule 4, part 4, section 4(1) of the RTI Act.

⁴⁷ *North Queensland Conservation Council Incorporated and Queensland Treasury* [2016] QICmr 9 (29 February 2016) at [51].

⁴⁸ *TerraCom Limited and Department of Environment and Science; Lock the Gate Alliance Limited (Third Party)* (No.2) [2018] QICmr 53 (19 December 2018) at [92].

⁴⁹ Department’s internal review decision dated 5 September 2019.

⁵⁰ Submissions to OIC dated 11 June 2020.

⁵¹ The public consultation undertaken by the Department was also reported on by the media here <<https://www.abc.net.au/radionational/programs/breakfast/ensham-mine-first-test-of-new-qld-mining-rehabilitation-laws/11795750>>.

⁵² Objecting Parties’ submission dated 24 July 2020.

...the information in issue was created for the First EA Amendment dated 26 May 2017, which "was but one initial step in an ongoing deliberative process for the setting of rehabilitation criteria for final voids"... The information in issue is, however, essentially preliminary or precursory in nature with respect to the Second EA Amendment Application.

Accordingly, the information in issue was not released as part of the public consultation process conducted in late 2019 for the ongoing deliberative process (or as part of any other public consultation process). A public consultation process was undertaken for the Second EA Amendment Application only. Therefore, the information in issue remains deliberative process information which indicates the Department's preliminary view and which has never been released to the public.

35. I accept the Objecting Parties' submissions that the deliberative process information was not released to the public or subject to a public consultation process and that as a result the Deliberative Process Harm Factor continues to apply.
36. In assessing the weight that can be attributed to the Deliberative Process Harm Factor, I note that the Department maintains that the disclosure of the information in issue would not impact on its deliberative processes and also that it does not consider any deliberative processes are currently ongoing. I also note that some time has passed since the relevant information was communicated and its disclosure at this point in time, where the relevant EA has been subject to further amendment and public consultation, is likely to have minimal harm to any currently ongoing deliberative processes. Having considered the specific content of the information in issue, it is unclear to me how its disclosure could have any measurable harm on deliberative processes. On this basis, I have allocated low weight to this harm factor in favour of nondisclosure.

Deliberative Process Prejudice Factor

37. The Deliberative Process Prejudice Factor will apply where disclosure could reasonably be expected to prejudice a deliberative process of government.⁵³ The Department indicated that it reached a decision on 24 July 2020 in relation to the second EA amendment application and did not consider that disclosure of the information in issue would prejudice any ongoing deliberative process.⁵⁴
38. In response, the Objecting Parties submitted that:⁵⁵

We note that while notice of DES's draft decision has been given to our clients the deliberative process is not complete until the final EA is issued. Under the Environmental Protection Act 1994 (Qld) (EP Act), there is 20 business days from receipt of the s.181 notice for referral of the Application to the Land Court under s.183 of the EP Act. A final decision on the Application will not be made until the expiry of the period for referral or until the completion of the Land Court proceedings.

39. In earlier submissions to OIC, the Objecting Parties also submitted that:⁵⁶
- prejudice can be caused to a deliberative process where release of the document could cause disruptive public debate and require reallocation of resources to deal with the disruption;⁵⁷ and

⁵³ Schedule 4, part 3, item 20 of the RTI Act. It is important to note that this factor may apply in relation to any information – and not simply 'deliberative process' information – if it can be shown disclosure of that information could reasonably be expected to prejudice a deliberative process.

⁵⁴ Department submissions to OIC dated 29 July 2020.

⁵⁵ Submission dated 31 July 2020.

⁵⁶ Submission dated 11 June 2020.

⁵⁷ Citing *Pallara Action Group Inc and Brisbane City Council* (Unreported, Queensland Information Commissioner, 21 September 2012) at [42]-[43] (**Pallara**).

- disclosure could also result in interference with the ability of an agency to objectively consider its options and reach a decision.⁵⁸

40. Further, the Objecting Parties explained that:⁵⁹

Specifically, the Documents in Issue are likely to have a detrimental impact on the government's ability to continue to consider its options and engage in open and frank negotiations with third parties... Further, the deliberative process relates directly to a change in the use of the land, which could cause community concern. The Ensham Mine and the current EA Amendment Application to introduce rehabilitation criteria for final voids has been the subject of considerable public debate.

41. In considering whether the Deliberative Process Prejudice Factor applies in this case, I note that the words '*could reasonably be expected to*' call for a decision-maker to discriminate between what is merely possible or merely speculative, and expectations that are reasonably based.⁶⁰ The Objecting Parties have argued that the threshold for establishing '*could reasonably be expected to*' is satisfied, noting the decision in the Supreme Court of Western Australia of *Department of State Development v Latro Lawyers*⁶¹ and other decisions establishing what constitutes a '*reasonable expectation*'.⁶²
42. Here, I must be satisfied that there is a reasonably based expectation (and not mere speculation or a mere possibility) that disclosure of the information in issue could reasonably be expected to result in the prejudice claimed by the Objecting Parties. The word '*prejudice*' is not defined in the RTI Act or in the *Acts Interpretation Act 1954* (Qld). Therefore, it is appropriate to consider the ordinary meaning of the word. The Macquarie Dictionary contains a number of definitions for the word '*prejudice*'. The most relevant are '*resulting injury or detriment*' and '*to affect disadvantageously or detrimentally*'.⁶³
43. Given the Objecting Parties' contentions that disclosure of the information in issue could reasonably be expected to prejudice a deliberative process of the Department, I wrote to the Department to establish its position on this issue. The Department confirmed that it did not consider any prejudice would result to its deliberative processes from disclosure of the information in issue.⁶⁴
44. The Objecting Parties submitted that previous decisions of the Information Commissioner have held that prejudice to a deliberative process may occur if disclosure of a document would result in disruptive public debate.⁶⁵ However, the Information Commissioner has also held that it is:

*likely to be a rare case where exposure of an individual agency's views on a policy proposal in development would lead to a degree of premature debate, and unnecessary concern and confusion in the community, sufficient to amount to an injury to the public interest.*⁶⁶

⁵⁸ Citing *Pallara* at [42]-[43].

⁵⁹ Submission dated 11 June 2020.

⁶⁰ See *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 at paragraphs 62-63. See also *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160]. Other authorities note that the words '*require a judgement to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous to expect a disclosure of the information could have the prescribed consequences relied upon*': *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at 190.

⁶¹ [2016] WASC 108.

⁶² Providing examples of *Manly v Ministry of Premier and Cabinet* (1996) 14 WAR 550 at page 44; *Apache Northwest Pty Ltd v Department of Mines and Petroleum* [2012] WASC 167, applying *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180.

⁶³ See *Re Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [16].

⁶⁴ Department submissions dated 29 July 2020.

⁶⁵ *Pallara* at [42]-[43], cited by the Objecting Parties in their submissions dated 11 June 2020.

⁶⁶ *Eccleston* at [179]; see also *Barling and Brisbane City Council* [2017] QICmr 47 (15 September 2017) at [32] (*Barling*).

The Information Commissioner has also previously held that the fact of an ongoing deliberative process does not, of itself, permit a conclusion that disclosure would, on balance, be contrary to the public interest.⁶⁷

45. Having considered the information in issue, and without being able to discuss it in any detail,⁶⁸ I generally note that the information that was communicated by the Objecting Parties is not of a particularly sensitive nature and relates to an approved, publicly available EA. Given the Objecting Parties were required to communicate with the Department as the regulatory agency, I do not accept that disclosure of the information in issue could reasonably be expected to⁶⁹ prejudice the Department's ability to conduct future similar communications with third parties.
46. The Objecting Parties have also not specified exactly *how* disclosure of the specific information in issue would prejudice any currently ongoing deliberations. The information in issue itself does not contain any details of any currently proposed amendments nor does it disclose issues that remain under active consideration by the Department. The Objecting Parties argue that the information in issue reveals the Department's preliminary view with respect to the rehabilitation criteria. However, the Department has itself submitted that its deliberations are now complete.⁷⁰ I cannot identify the prejudice to any current or future deliberative process of the Department that could reasonably be expected to result from disclosure of the information in issue.
47. Accordingly, I am satisfied that the Deliberative Process Prejudice Factor does not apply to the information in issue. If I am incorrect in this conclusion, and it is necessary to consider this factor in balancing the public interest, I would give it minimal weight in view of the nature of the information in issue and the considerations summarised above.

Other factors favouring nondisclosure

48. The Objecting Parties bear the onus of establishing that disclosing the information in issue would, as they contend, be contrary to the public interest.⁷¹ However, for completeness, I have considered all factors listed in schedule 4, parts 3 and 4 of the RTI Act, and I can identify no other public interest considerations favouring the nondisclosure of the information in issue⁷² that can be supported in this case. On external review the Objecting Parties have not sought to advance any evidence or submissions in relation to the application of any other factors favouring nondisclosure.⁷³

Balancing the public interest factors

49. The information in issue was created or communicated by the Department as part of its regulatory functions in relation to the EA for the Ensham Mine. The actual information in itself is limited in nature, however, it forms part of an important process within

⁶⁷ *Barling* at [32], citing *Johnson and Department of Transport; Department of Public Works* (2004) 6 QAR 307 at [39]. While *Johnson* was decided under the FOI Act, the comments remain relevant to the objects of the RTI Act.

⁶⁸ As I am prohibited from doing so under section 108(3) of the RTI Act.

⁶⁹ As explained in paragraph 40 above.

⁷⁰ Department submissions to OIC dated 29 July 2020.

⁷¹ Section 87(2) of the RTI Act.

⁷² In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the disclosure of the information in issue.

⁷³ In earlier correspondence to the Department lodged while objecting to disclosure, Ensham sought to rely on public interest factors relevant to personal information and business affairs information. I note that these factors are not relevant to the information in issue in this review and the Objecting Parties have not sought to rely on these factors on external review. Specifically I have turned my mind to the following sections in Schedule 4 of the RTI Act: Part 3 item 15 and Part 4 section 7(1)(c) with respect to prejudice to business affairs, and Part 4, section 6(1) and Part 3, item 3 with respect to privacy and personal information.

government to ensure compliance with environmental protections laws and regulations. I am satisfied that, in addition to the pro-disclosure bias, several factors favouring disclosure carry significant weight due to the potential significance of the EA process, and the level of community interest in the subject matter generally.

50. The nondisclosure considerations advanced by the Objecting Parties with respect to the deliberative processes of the Department, are deserving of low weight. In this case, the Department, which bears responsibility for the relevant deliberative processes, has consistently maintained that disclosure of the information would not prejudice or harm those processes and that it is suitable for disclosure to the access applicant. Further, having considered the Objecting Parties' submissions regarding any currently ongoing deliberations, I consider that the information in issue, which is now over three years old, bears little relevance or impact upon any currently ongoing processes. In the circumstances, I consider that the weight that can be attributed to these weak nondisclosure factors does not outweigh the significant weight that I have attributed to the public interest factors in favour of disclosure.
51. For these reasons, I am not satisfied that the Objecting Parties have established that disclosure of the information in issue would, on balance, be contrary to the public interest.

DECISION

52. I affirm the Department's decisions and find the Objecting Parties have not discharged the onus of demonstrating that:
- disclosure of the information in issue would, on balance, be contrary to the public interest; and
 - that a decision not to disclose the information in issue is justified.
53. I have made this decision in external reviews 314814 and 314891 as a delegate of the Information Commissioner, under section 145 of the RTI Act.

S Martin
Assistant Information Commissioner

Date: 11 August 2020

APPENDIX

Significant procedural steps

Date	Event
2 September 2019	OIC received the first application for external review.
5 September 2019	OIC requested preliminary documents from the Department relating to the first application.
23 September 2019	OIC received the preliminary documents from the Department relating to the first application.
3 October 2019	OIC received the second application for external review.
4 October 2019	OIC requested and received preliminary documents from the Department relating to the second application.
11 October 2019	OIC accepted the first application for external review and requested a copy of the information in issue for the first application from the Department. The Department provided a copy of the information in issue for the first application to OIC.
29 October 2019	The access applicant applied to be a participant in both external reviews.
30 October 2019	OIC accepted the second application for external review and requested a copy of the information in issue for the second application from the Department.
19 November 2019	OIC accepted the access applicant's application to participate in both external reviews.
20 November 2019	OIC received the information in issue for the second application from the Department.
20 December 2019	OIC requested that the Department consult with three additional parties.
20 January 2020	OIC provided the applicant with an update.
14 February 2020	The Department responded to OIC's request for further consultation.
19 February 2020	OIC requested that the Department release some documents to the access applicant. OIC wrote to the access applicant seeking to resolve the reviews based on the released documents, requesting a response by 9 March 2020.
9 March 2020	The access applicant confirmed they wished to proceed with the external reviews.
8 April 2020	OIC received a submission from the access applicant.
15 April 2020	OIC provided an update to the applicant and the Department.
20 May 2020	OIC conveyed a preliminary view to the Objecting Parties. OIC provided an update to the access applicant.
11 June 2020	OIC received a submission from the Objecting Parties.

Date	Event
19 June 2020	OIC requested a submission from the Department.
17 July 2020	OIC received a submission from the Department.
24 July 2020	OIC received a further submission from the Objecting Parties.
31 July 2020	OIC received a further submission from Objecting Parties.