



Decision and Reasons for Decision

Citation: *K75 and Department of Housing and Public Works [2024] QICmr 66 (25 November 2024)*

Application Number: 316475

Applicant: K75

Respondent: Department of Housing and Public Works

Decision Date: 25 November 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CONTEMPT OF PARLIAMENT - Parliamentary briefing documents - whether disclosure would infringe privileges of Parliament - whether exempt information - sections 47(3)(a) and 48 and schedule 3, section 6(c)(i) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - information about other individuals - accountability and transparency - personal information and privacy - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for evidence of conduct referrals about other individuals - whether the existence of responsive information can be neither confirmed nor denied - section 55 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. In 2021, the applicant applied¹ to the Department of Energy and Public Works² (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access two broad categories of documents, namely, 'evidence' of nominated conduct referrals and information about the applicant and his property.
2. The Department decided³ to neither confirm nor deny the existence of documents responsive to the first part of the access application (**Item 1 Documents**) and, in respect of the balance of the access application:
 - refused to deal with part of it because the applicant had made a previous application for the same documents (**Item 2 Documents**); and
 - refused access to documents responsive to the balance of the request on the basis they were nonexistent.
3. The applicant then applied⁴ to the Office of the Information Commissioner (**OIC**) for review of the decision, as he did not agree the Department was entitled to neither confirm nor deny the existence of Item 1 Documents and he considered certain further documents should have been located.⁵
4. During the external review, the Department located and disclosed information to the applicant. The applicant remains dissatisfied with the level of information which has been disclosed.
5. For the reasons set out below, I vary the Department's decision and find that:
 - some located information comprises exempt information and access to it may be refused⁶
 - access may be refused to certain information on the basis that its disclosure would, on balance, be contrary to the public interest⁷
 - the Department is entitled to neither confirm nor deny the existence of the Item 1 Documents;⁸ and
 - access to any further documents may be refused on the basis they do not exist or cannot be located.⁹

¹ Access application dated 2 September 2021. The date range specified in the access application is 'January 2019-current'. The access application was received on 2 September 2021 and, as such, the date range of the application is 1 January 2019 to 2 September 2021.

² Due to machinery of government changes that occurred subsequent to the date of the decision under review, the relevant functions of the Department of Energy and Public Works have been transferred to the Department of Housing and Public Works. For ease of reference, I have simply referred to the relevant agency as the Department in this decision.

³ Decision dated 9 November 2021.

⁴ External review application dated 7 December 2021 (**External Review Application**).

⁵ In respect of the Department's decision refusing to deal with his request for the Item 2 Documents, the applicant did not contest that the Item 2 Documents had been requested in a previous access application which he had made to the Department or that the Department was entitled to refuse to deal with part of the access application on that basis. Accordingly, the Department's decision about the Item 2 Documents is not addressed in this decision. For completeness, I note that while the applicant did raise concerns in the External Review Application about the adequacy of information which had been released by the Department in response to his previous access application, the Department's decision about that previous access application has been the subject of a separate, completed external review.

⁶ Under section 47(3)(a) of the RTI Act.

⁷ Under section 47(3)(b) of the RTI Act.

⁸ Under section 55 of the RTI Act.

⁹ Under sections 47(3)(e) and 52 of the RTI Act.

Reviewable decision

6. The decision under review is the Department's decision dated 9 November 2021.

Evidence considered

7. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). Significant procedural steps taken by OIC in conducting this review are set out in the Appendix.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),¹⁰ particularly the right to seek and receive information.¹¹ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹² I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent Victorian legislation,¹³ that '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.¹⁴

Information in issue

9. As noted in paragraph 3 above, in the External Review Application, the applicant contested that the Department was entitled to neither confirm nor deny the existence of the Item 1 Documents and he submitted that certain further documents relevant to the access application existed and were missing. The applicant subsequently provided additional details about the further documents he considered to be missing.¹⁵
10. The Department was asked to provide information about the searches it had conducted¹⁶ and to address the details provided by the applicant about missing documents.¹⁷ As a result of further searches conducted by the Department during the external review, 353 pages of additional documents were located as responsive to the second part of the access application (**Additional Documents**). The Department disclosed some of the Additional Documents to the applicant, subject to the deletion of small portions of information,¹⁸ and the Department submitted that the remaining Additional Documents comprised exempt information under schedule 3, section 6(c)(i) of the RTI Act.
11. Accordingly, the information which remains in issue in this review (**Information in Issue**) comprises:
- 309 pages of the Additional Documents (**Briefs**); and

¹⁰ Relevant provisions of which commenced on 1 January 2020.

¹¹ Section 21(2) of the HR Act.

¹² XYZ v Victoria Police (General) [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and Horrocks v Department of Justice (General) [2012] VCAT 241 (2 March 2012) at [111].

¹³ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁴ XYZ at [573]. This approach, in the context of the *Information Privacy Act 2009* (Qld) (**IP Act**) and RTI Act, was endorsed by McGill J in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

¹⁵ By emails dated 14 February 2022 and 28 February 2022.

¹⁶ By letter dated 31 January 2022.

¹⁷ By letter dated 1 March 2022.

¹⁸ OIC received confirmation from the Department that the Additional Documents, incorporating such redactions, had been sent to the applicant on 7 September 2022.

- the small portions of information removed from 14 pages of the Additional Documents disclosed to the applicant (**Third Party Information**).

Issues for determination

12. The issues for determination are whether:

- access to the Briefs may be refused on the basis they comprise exempt information¹⁹
- access to the Third Party Information may be refused on the basis its disclosure would, on balance, be contrary to the public interest²⁰
- the Department is entitled to rely upon section 55 of the RTI Act in respect of the applicant's request to access the Item 1 Documents; and
- access to further documents relevant to the access application may be refused on the basis that they do not exist or cannot be located.²¹

13. The applicant provided a number of submissions to OIC.²² While I have carefully reviewed all of those submissions, certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act.²³ Accordingly, in reaching this decision, I have only considered and addressed the applicant's submissions to the extent they are relevant to the issues for determination on external review.

Preliminary matters

14. Before considering the issues for determination, it is necessary to deal with the following preliminary matters arising from concerns expressed in the applicant's submissions.

15. Under the RTI Act:

- the procedures to be followed on external review are, subject to the Act, within the discretion of the Information Commissioner, and external review proceedings are required to be conducted with as much expedition as the requirements of the Act and a proper consideration of the matters before the Information Commissioner allow;²⁴ and
- the RTI Act permits the Information Commissioner to delegate all or any of the Commissioner's powers under the Act.²⁵

¹⁹ Sections 47(3)(a) and 48 of the RTI Act.

²⁰ Sections 47(3)(b) and 49 of the RTI Act.

²¹ Sections 47(3)(e) and 52 of the RTI Act.

²² As set out in the Appendix.

²³ In the External Review Application, the applicant raised concerns about the Department's processing of the access application, including his perception that the time taken to issue the decision under review was 'exorbitant'. Apart from section 113 of the RTI Act (which empowers the Information Commissioner to give certain notifications to an agency or Minister at the completion of an external review), OIC's external review jurisdiction does not extend to investigating received complaints about an agency's conduct or processes, or the way it has handled a particular application. Therefore, I have not addressed the applicant's concerns in this regard in these reasons for decision. For completeness, I also note that, on the information before me, there is no evidence which suggests that the Information Commissioner should issue any notice under section 113 of the RTI Act. The applicant also raised a concern (in the External Review Application and subsequently in his email dated 22 July 2024) that he had not received a refund of the paid application fee, which he had requested on financial hardship grounds. The RTI Act prescribes circumstances in which an application fee is required to be refunded (sections 34(3) and 46(1) of the RTI Act), however, none of those circumstances arose in this matter. Otherwise, the RTI Act does not require an agency to refund a paid application fee on financial hardship grounds. Nor does the RTI Act empower the Information Commissioner to require an agency to refund a paid application fee on financial hardship grounds.

²⁴ Section 95(1)(a) of the RTI Act.

²⁵ Section 145 of the RTI Act.

16. In an email received on 22 July 2024, the applicant contended that a particular OIC officer was not authorised to conduct this external review during 2022. I can confirm that the OIC officer in question was appropriately authorised to conduct the review in 2022.
17. In any event, I am the delegated decision-maker in this matter.²⁶ There is no actual, perceived or potential conflict of interest of which I am aware that should preclude me acting as the decision-maker in this matter.²⁷ I am also satisfied that the External Review Application has been properly considered on its merits and the applicant has been afforded several opportunities to put forward submissions and relevant information supporting his position.
18. I will now turn to consideration of the substantive issues to be determined in this review.

Briefs

19. While the RTI Act prevents me from describing the Briefs in any detail,²⁸ they broadly comprise Ministerial briefs prepared for specific Parliamentary sitting dates and a small amount of correspondence directly associated with those Ministerial briefs. I can also confirm that the Briefs contain a significant amount of information which is not relevant to the access application, as it does not (in any way) concern the applicant.
20. It is the Department's position on external review that the exemption in schedule 3, section 6(c)(i) of the RTI Act applies to the Briefs.

Relevant law

21. The access right under the RTI Act²⁹ is subject to limitations, including grounds for refusal of access. One refusal ground is where information comprises exempt information.³⁰
22. Under schedule 3, section 6(c)(i) of the RTI Act information qualifies as exempt information where its public disclosure would infringe the privileges of Parliament (**Exemption**).
23. Section 9 of the *Constitution of Queensland 2001* (**Queensland Constitution**) relevantly states:

9 Powers, rights and immunities of Legislative Assembly

- (1) *The powers, rights and immunities of the Legislative Assembly and its members and committees are—*
 - (a) *the powers, rights and immunities defined under an Act; and*
 - (b) *until defined under an Act—the powers, rights and immunities, by custom, statute or otherwise, of the Commons House of Parliament of the*

²⁶ In accordance with my delegation, the Right to Information Commissioner was consulted on this decision before it was issued.

²⁷ In this regard, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias—refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

²⁸ Section 108 of the RTI Act requires the Information Commissioner (or delegate) to avoid disclosure of information which is claimed to be exempt information or contrary to the public interest information.

²⁹ Section 23 of the RTI Act.

³⁰ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act identifies the types of information which will comprise exempt information.

United Kingdom and its members and committees at the establishment of the Commonwealth.

...

- (2) *In this section—
rights includes privileges.*

24. The *Parliament of Queensland Act 2001* (Qld) (**Parliament Act**) further defines the 'powers rights and immunities' of Parliament,³¹ as referred to in section 9(1)(a) of the Queensland Constitution. In this regard, section 8 of the Parliament Act relevantly provides:

8 Assembly proceedings can not be impeached or questioned

- (1) *The freedom of speech and debates or proceedings in the Assembly cannot be impeached or questioned in any court or place out of the Assembly.*
(2) *To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had in relation to the Assembly immediately before the commencement of the subsection.*

25. The phrase 'proceedings in the Assembly'³² is in turn defined in section 9 of the Parliament Act as follows:

9 Meaning of proceedings in the Assembly

- (1) **Proceedings in the Assembly** include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.
(2) Without limiting subsection (1), **proceedings in the Assembly** include—
(a) giving evidence before the Assembly, a committee or an inquiry; and
(b) evidence given before the Assembly, a committee or an inquiry; and
(c) presenting or submitting a document to the Assembly, a committee or an inquiry; and
(d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry
(e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and
(f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and
(g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee.

...

- (5) *For this section, it does not matter what the nature of the business transacted by a committee is or whether the business is transacted under this Act or otherwise.*

26. The Exemption can also apply to a document prepared specifically for use by a Minister for conducting business in the Assembly,³³ even if it is not actually used.³⁴

27. Accordingly, for the Exemption to apply to Briefs, I must be satisfied that:³⁵

³¹ Section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Qld) provide that 'Parliament' means 'Legislative Assembly'.

³² 'Assembly' as used in the Parliament Act means 'Legislative Assembly': section 3 and definition in the Schedule to the Parliament Act.

³³ *Moriarty and Department of Health* (Unreported, Queensland Information Commissioner, 15 September 2010) at [10].

³⁴ Further, I note section 37 of the Parliament Act, which sets out what contempt of the Assembly means, and the Standing Orders of the Legislative Assembly (in particular, Part 10, Chapter 43, which deal with powers rights and immunities of the Legislative Assembly, and the examples of contempt which are listed in Order 266).

- (a) the Briefs were prepared for the purposes of, or incidental to, the transacting of business of the Parliament; and
- (b) their public disclosure would hinder, impede or impair the making of similar communication in the future for the purpose of transacting the business of Parliament, thereby breaching or infringing the 'freedom from impeachment' privilege enshrined in section 8(1) of the Parliament Act.

Findings

28. In September 2022, OIC conveyed a preliminary view to the applicant³⁶ that the Exemption applied to the Briefs and access to them may be refused as they comprised exempt information. Although the applicant was invited to respond to that preliminary view, he did not directly contest it.³⁷
29. Having carefully reviewed the Briefs, I am satisfied that they were prepared for purposes of, or incidental to, the transacting of business of the Parliament. Consistent with *Waratah Coal*, which involved information of a similar nature to the Briefs, I am further satisfied that public disclosure of the Briefs would hinder or impair the production of similar documents in the future, and thus 'impeach' proceedings in Parliament. In this regard, I note the findings of the New South Wales Supreme Court, in considering a request for disclosure of analogous Commonwealth Parliament briefing documents:³⁸

...production of these documents would "impeach"... "proceedings in Parliament".... It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament.

³⁵ These principles were set out in *Waratah Coal Pty Ltd and Department of State Development Infrastructure and Planning* (Unreported, Queensland Information Commissioner, 10 December 2012) (*Waratah Coal*) and were more recently applied in *X10 and Queensland Building and Construction Commission* [2024] QICmr 37 (13 August 2024).

³⁶ As set out in the Appendix. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

³⁷ In the applicant's email dated 22 July 2024 (which is the only submission OIC received from the applicant addressing the preliminary view conveyed in September 2022) he submitted: *Under the RTI Act s87 the agency has the onus of establishing the decision was justified i. Given that in both Reviews the Agency provided additional documents, it is established that the agency was not justified in its decision. ii. The outcome of the External Reviews should report this in a new Decision for accountability and transparency.* For completeness, I note that the External Review Application did contest the application of the Exemption to documents located as responsive to a separate access application, in the following terms: *In the IP Application 22016P [Department decision-maker] claimed that documents could be withheld as they would infringe the Privilege of Parliament. She claimed this in relation to briefing notes that were never used in Parliamentary debate or presented to Parliament. She also did this despite releasing other documents that were clearly labelled as being for Parliamentary Briefing purposes. This is plainly inconsistent and is clearly being dishonestly used by Agencies to unlawfully attempt to hide documents from disclosure under RTI/IP Applications. Considering that many months have already passed since the withheld Briefing Notes were specifically claimed to have prepared for use in Parliament it seems that the only way that we are able to obtain the information/documents to confirm the accuracy or otherwise is via RTI. It is also plainly obvious the information/document is no longer relevant and completely out of date now which favours disclosure.* The Department's decision refusing access to information located in response to that referenced separate access application is not the decision under review in this matter.

³⁸ Re *OPEL Networks Pty Ltd (in liq)* (2010) 77 NSWLR 128 at [118] (Austin J), which was referenced in *Hart MP and Queensland Building and Construction Commission* [2022] QICmr 7 (18 February 2022) at 18. I further note that, for information disclosed in response to an access application, the RTI Act does not place any restriction on its use, dissemination or publication.

30. I am therefore satisfied that the Exemption applies to the Briefs and access to the Briefs may be refused on that basis.³⁹
31. Where information meets the requirements of an exemption under the RTI Act, it is not necessary to then proceed to also consider the public interest balancing steps set out in section 49 of the RTI Act.⁴⁰

Third Party Information

32. The Third Party Information includes a mobile telephone number of a public service officer and information identifying, or about, individual/s other than the applicant.⁴¹ There is also a significant level of duplication within the Third Party Information.
33. It is the Department's position on external review that disclosing the Third Party Information would, on balance, be contrary to the public interest. When notifying the applicant that the Department had located the Additional Documents, OIC also identified the Department's disclosure position for information within those documents and conveyed a preliminary view to the applicant about the Third Party Information. Although the applicant was invited to respond to that preliminary view, he did not directly contest it.⁴²

Relevant law

34. Under the RTI Act, access may be refused to information where its disclosure would, on balance, be contrary to the public interest.⁴³
35. 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.⁴⁴ This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual.
36. In deciding whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:⁴⁵
- 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.
37. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my

³⁹ Under sections 47(3)(a) and 48 and schedule 3, section 6(c)(i) of the RTI Act. Accordingly, I am satisfied that the Department has discharged its review onus under section 87(1) of the RTI Act that access may be refused to the Briefs.

⁴⁰ This was confirmed by the Queensland Civil and Administrative Tribunal in *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [10] and *Mokbel v Queensland Police Service* [2023] QCATA 157 at [30]. On external review, the Information Commissioner also has no discretion to disclose exempt or contrary to the public interest information (as specifically stated in section 105(2) of the RTI Act).

⁴¹ Section 108 of the RTI Act precludes me from describing this component of the Information in Issue in any further detail.

⁴² As noted in footnote 37, the applicant's email dated 22 July 2024 comprises his response to OIC's preliminary view.

⁴³ Sections 47(3)(b) and 49 of the RTI Act.

⁴⁴ Refer to Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

⁴⁵ Section 49 of the RTI Act.

decision. I have also kept in mind the RTI Act's pro-disclosure bias⁴⁶ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.⁴⁷

Findings

38. I have not taken any irrelevant factors⁴⁸ into account in making my decision.

Public interest factors favouring disclosure

39. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability;⁴⁹
- 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 community;⁵⁰ and
- reveal the reason for a government decision and any background or contextual information that informed the decision.⁵¹

40. The information which the Department has disclosed to the applicant has, to some extent, advanced these factors relating to government accountability and transparency, as it generally identifies the applicant's various complaints and how they have been handled. I do not consider the disclosure of a mobile telephone number of one public sector officer, whose name and title have been disclosed to the applicant, would further advance government's accountability or transparency. On this basis, I afford these factors no weight in respect of the mobile telephone number. For the remaining Third Party Information, I consider that its disclosure could, to some degree, be expected to further advance these public interest factors. Given the relatively limited nature of this remaining Third Party Information, I afford these accountability and transparency factors only low weight in favour of its disclosure.

41. A public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.⁵² Given the nature of the Third Party Information and the context in which it appears, I do not consider this factor applies to favour its disclosure.

42. Under the RTI Act, factors favouring disclosure will also arise in circumstances where disclosing information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official⁵³ and reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁵⁴ As noted above, this information appears in documents which generally identify the applicant's various complaints and how they have been handled. Having carefully reviewed the Third Party Information and the applicant's submissions, I am satisfied that there is nothing within the Third Party Information which gives rise to any expectation that its disclosure would allow or assist

⁴⁶ Section 44 of the RTI Act.

⁴⁷ Section 47(2)(a) of the RTI Act.

⁴⁸ Including those identified in schedule 4, part 1 of the RTI Act.

⁴⁹ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 3 of the RTI Act.

⁵¹ Schedule 4, part 2, item 11 of the RTI Act.

⁵² Schedule 4, part 2, item 2 of the RTI Act.

⁵³ Schedule 4, part 2, item 5 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 6 of the RTI Act.

inquiry into, reveal or substantiate, agency or official conduct deficiencies. On this basis, I find these factors do not apply to favour disclosure of the Third Party Information.

43. Public interest factors favouring disclosure will also arise where disclosing information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies⁵⁵ and contribute to the administration of justice generally, including procedural fairness.⁵⁶ Again, I note that the Third Party Information appears in documents which generally concern the applicant's various complaints about other individuals. In general terms, procedural fairness considerations arise for the person who is the subject of an investigation or decision.⁵⁷ Here, this is not the applicant. I also note that the information which has been disclosed confirms that, in respect of the decision issued in respect of one of the applicant's complaints, the applicant was afforded review rights in the event he was dissatisfied with that decision.⁵⁸ In all the circumstances of this matter and taking the nature of the Third Party Information into account, I find that the public interest factors relating to fair treatment and the general administration of justice do not apply to favour disclosure.
44. A further public interest factor will favour disclosure where disclosing information could reasonably be expected to contribute to the administration of justice for a person.⁵⁹ There is nothing before me which indicates that disclosure of the Third Party Information is required to assist the applicant to pursue, or evaluate, any particular remedy. Accordingly, I do not consider this factor applies to favour disclosure of the Third Party Information.
45. Where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant, a factor favouring disclosure of that information will arise.⁶⁰ Having reviewed the applicant's submissions and the Third Party Information, there is nothing before me which suggests that the Third Party Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Therefore, I am also satisfied that this public interest factor does not apply to the Third Party Information.
46. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, I cannot identify any other public interest considerations favouring disclosure of the Third Party Information.⁶¹

⁵⁵ Schedule 4, part 2, item 10 of the RTI Act.

⁵⁶ Schedule 4, part 2, item 16 of the RTI Act.

⁵⁷ The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

⁵⁸ The complaint decision is not the reviewable decision being considered in this external review.

⁵⁹ Schedule 4, part 2, item 17 of the RTI Act. In determining whether this factor applies, I must consider whether: (i) the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law; (ii) the applicant has a reasonable basis for seeking to pursue the remedy; and (iii) disclosing this particular information would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing (*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) at [16] and recently in *V43 and the Council of the City of Gold Coast; X20 (Third Party)* [2024] QICmr 43 (19 September 2024) at [17]).

⁶⁰ Schedule 4, part 2, item 12 of the RTI Act.

⁶¹ I cannot see how disclosing the Third Party Information could, for example, ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); contribute to the maintenance of peace and order (schedule 4, part 2, item 15 of the RTI Act); or contribute to the enforcement of the criminal law (schedule 4, part 2, item 18 of the RTI Act). I also note that the Third Party Information does not include the applicant's personal information and the factor in schedule 4, part 2, item 7 of the RTI Act therefore does not apply. In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of the Third Party Information.

Public interest factors favouring nondisclosure

47. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁶² and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁶³
48. I am satisfied that the Third Party Information comprises the personal information of individuals other than the applicant.⁶⁴ I am also satisfied that some level of prejudice to the privacy of other individual/s could reasonably be expected to arise from disclosure of the Third Party Information.
49. As to the weight to be afforded to these factors, I note that, generally, information created in the course of a person's employment is considered to be their routine personal work information and, as such, does not generally attract a high privacy interest and the harm arising from disclosure is generally considered to be low.⁶⁵ Although the numbers of work issued mobile telephones may be routine personal work information of public sector officers, I consider they are of a different nature to other officer contact details (such as email addresses or general office phone numbers) because they would allow the officer to be contacted outside of office hours. Here, this gives rise to a reasonable expectation of intrusion into the officer's personal sphere. I am satisfied that disclosing information of this nature under the RTI Act (where there can be no restriction on its use, dissemination or publication) would be a substantial intrusion into the privacy of this officer and the extent of the harm that would arise from its disclosure would also be substantial. Accordingly, for the mobile telephone number within the Third Party Information, I afford moderate weight to these nondisclosure factors.
50. The remaining Third Party Information appears in the context of the applicant's various complaints. Given this context and the highly personal nature of this information, I am satisfied that its disclosure under the RTI Act would be a significant intrusion into the privacy of the individual/s about whom it relates and the extent of the harm that could be expected to arise from its disclosure would also be significant. On this basis, I afford significant weight to these factors which favour nondisclosure of this remaining Third Party Information. Noting the subject matter of the documents requested in the access application, I acknowledge that the applicant may be aware of some of the Third Party Information. However, I do not consider this negates the right to privacy or the harm disclosure of the Third Party Information could reasonably be expected to cause (noting again there can be no restriction on the use, dissemination or republication of information disclosed under the RTI Act).

⁶² Schedule 4, part 4, section 6 of the RTI Act.

⁶³ Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in *'For your information: Australian Privacy Law and Practice'* Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

⁶⁴ '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'.

⁶⁵ Routine personal work information can include, for example, a work email address, a work phone number, or an opinion given in a professional capacity.

Balancing the public interest factors

51. For the reasons outlined above, I am satisfied that considerations relating to privacy and the protection of the personal information of other individuals⁶⁶ warrant moderate weight in respect of a mobile telephone number and significant weight in respect of the remaining Third Party Information.
52. On the other hand and taking into account the information which has been disclosed, I consider the factors relating to government accountability and transparency⁶⁷ are deserving of no weight in respect of a mobile telephone number and low weight in respect of the remaining Third Party Information.
53. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Third Party Information outweigh the factors favouring disclosure. For this reason, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁶⁸

Neither confirm nor deny

Relevant law

54. Section 55 of the RTI Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it exists, would *contain* prescribed information. This provision is intended to apply in situations where revealing that the agency does, or does not, have documents in response to an application, due to the specific wording of the request, would reveal information to which an agency would normally be entitled to refuse access.
55. ‘Prescribed information’ is defined⁶⁹ as exempt information mentioned in schedule 3, sections 1, 2, 3, 4, 5, 9 or 10 of the RTI Act or personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
56. Section 55(4) of the RTI Act also confirms that a decision neither confirming nor denying the existence of a document is a decision refusing access to a document under section 47 of the RTI Act.

Applicant’s submissions

57. The access application described the requested Item 1 Documents as ‘evidence’ of the referrals made by a nominated government Minister to the ‘*Qld Police Service (QPS) and Crime & Corruption Commission (CCC)*’ about the conduct of two nominated individuals, ‘*including copies of the actual referrals themselves*’.
58. The applicant submitted⁷⁰ that the Item 1 Documents exist because the Minister had ‘*personally confirmed via text message and in person that these referrals have been done*’.⁷¹ The applicant also submitted⁷² that:

⁶⁶ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁶⁷ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁶⁸ Under section 47(3)(b) of the RTI Act. Accordingly, I am satisfied that the Department has discharged its review onus under section 87(1) of the RTI Act that access may be refused to this information.

⁶⁹ In schedule 5 of the RTI Act.

⁷⁰ External Review Application.

⁷¹ The applicant provided no evidence to OIC in support of this submission.

⁷² External Review Application.

- the Department did not specify *‘how the release would be contrary to public interest’*
- the Department did not give consideration to its discretion in section 49(5) of the RTI Act, to release documents; and
- *‘A quick reading of the factors favouring disclosure listed in Schedule 4 Part 2 confirms that there are numerous factors that directly apply to our situation that were not taken into account as lawfully required to be done by [Department decision-maker]. Very few (if any) of the factors favouring nondisclosure apply to our situation or the documents and none have’.*

59. In January 2022, OIC conveyed a preliminary view to the applicant that the Department was entitled to neither confirm nor deny the existence of the Item 1 Documents. By email dated 14 February 2022, the applicant contested that preliminary view and outlined the enquiries he had made (outside the RTI Act process) seeking to access this information. The applicant also submitted that:⁷³

- the Minister had *‘himself personally’* claimed the requested documents exist⁷⁴
- the Minister was required to make the referrals *‘otherwise he has himself engaged in Criminal Conduct’*;⁷⁵ and
- he has a lawful right to pursue criminal and misconduct proceedings against the Minister if the referrals were not made *‘as required by law’*.⁷⁶

60. Otherwise, the applicant’s submissions do not address the entitlement of the Department to rely upon section 55 of the RTI Act in respect of the Item 1 Documents.

Findings

61. There is nothing in the material provided by the applicant in this external review which independently confirms the applicant’s assertions that the requested referrals were made by the nominated government Minister. Further, nothing in these reasons should be taken to confirm or deny that any such referrals were made or that the Item 1 Documents exist.

62. As noted in paragraph 58 above, the applicant believes the Item 1 Documents exist.⁷⁷ Under schedule 3, section 10(4) of the RTI Act, information is exempt if it is obtained, used or prepared for an investigation by a prescribed crime body. If the referrals nominated in the access application exist, they would include information provided to a prescribed crime body,⁷⁸ however, there is no information before me about any investigation by such a prescribed crime body. For this reason, I am unable to determine whether the Item 1 Documents would, if they exist, contain information which is exempt under schedule 3, section 10(4) of the RTI Act.

63. However, if the Item 1 Documents do exist, I am satisfied that they would *contain* personal information because they would identify, and contain information about, individuals other than the applicant. Accordingly, I have considered below whether the disclosure of such personal information would, on balance be contrary to the public interest.

⁷³ Applicant email dated 14 February 2022.

⁷⁴ The applicant provided no evidence to OIC in support of this submission.

⁷⁵ The applicant provided no further details to OIC about this particular submission.

⁷⁶ The applicant provided no further details to OIC about this particular submission.

⁷⁷ The access application was made to the Department. It therefore seeks to access documents which are in the possession, or under the control, of the Department. However, the applicant’s submissions do not explain why he considers that conduct referrals made by the nominated Minister would, if they exist, be stored within the Department’s record-keeping systems.

⁷⁸ The Crime and Corruption Commission is a prescribed crime body under schedule 3, section 10(9) of the RTI Act.

64. There are strong public interest factors favouring the nondisclosure of this type of personal information, such as those relating to the personal information and privacy of those who are the subject of any such referrals.⁷⁹ If the Item 1 Documents did exist, I consider their nature requires that substantial weight be afforded to these public interest factors favouring nondisclosure.
65. Although the applicant identified what he considers to be criminal conduct and a remedy that would be available to him if the Item 1 Documents do **not** exist, it is unclear how disclosure of the Item 1 Documents would, if they existed, contribute to the enforcement of the criminal law, advance the applicant's fair treatment in his dealings with any agency or contribute to the administration of justice, including procedural fairness, for the applicant or any individual. For these reasons, I consider that, if the Item 1 Documents did exist, the public interest factors in schedule 4, part 2, items 10, 16, 17 and 18 of the RTI Act would not apply to favour their disclosure. As noted above, the applicant has not otherwise raised any specific public interest considerations which favour disclosure. While there is a general public interest in disclosing information that demonstrates actions taken by agencies in investigating and dealing with conduct concerns,⁸⁰ this is not the information sought by the applicant - here, the applicant is seeking 'evidence' of conduct referrals he considers have been made by, and about, other individuals.⁸¹ Further, given the specific terms of the applicant's request, I do not consider the factors relating to government accountability⁸² would, if the Item 1 Documents exist, apply to favour disclosure. I do not have any objective evidence before me which supports the applicant's assertions that the requested referrals were made by the nominated Minister. However, if such referrals did exist, I consider their disclosure may, to some extent, allow or assist inquiry into, or reveal or substantiate, deficiencies in an agency's or officer's conduct.⁸³ While this gives rise to public interest factors which favour disclosure, taking the relatively limited nature of the requested Item 1 Documents into account, I do not consider these factors would carry sufficient weight to outweigh the weight I have afforded to the factors discussed in paragraph 64 above.
66. For these reasons, I am satisfied that the Item 1 Documents, if they exist, would include the personal information of individuals other than the applicant and the disclosure of that personal information would, on balance, be contrary to the public interest. Accordingly, I find that the Item 1 Documents, if they exist, would contain prescribed information, and the Department is therefore entitled to neither confirm nor deny the existence of those documents under section 55 of the RTI Act.⁸⁴
67. For completeness, I address below the applicant's remaining submissions outlined in paragraph 58.
68. In respect of the applicant's contention that more detail should have been provided in the decision under review, I note that section 55(2) of the RTI Act specifically confirms that an agency may give a prescribed written notice of its decision that does not include the details mentioned in sections 191(a) or (b) of the RTI Act—instead, that provision enables the agency to state that it neither confirms nor denies the existence of a

⁷⁹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act. While it is possible that public interest factors in schedule 4, part 3, items 6, 8 and 9 of the RTI Act may apply, I do not have sufficient information before me to make any finding that, if the Item 1 Documents did exist, these factors would apply to favour nondisclosure.

⁸⁰ Giving rise to the public interest factor in schedule 4, part 2, item 3 of the RTI Act.

⁸¹ On this basis, I do not consider the factor in schedule 4, part 2, item 3 of the RTI Act would, if the Item 1 Documents existed, apply to favour disclosure.

⁸² Schedule 4, part 2, items 1 and 11 of the RTI Act.

⁸³ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁸⁴ Accordingly, I am satisfied that the Department has discharged its review onus under section 87(1) of the RTI Act in respect of the applicant's request to access the Item 1 Documents.

document but, assuming existence of the document, it would be a document to which access would be refused under section 47(3) to the extent it comprised prescribed information. I am therefore satisfied that the decision under review complied with the requirements of section 55(2) of the RTI Act.

69. External review under the RTI Act is a merits review process⁸⁵ of government decisions about access to, and amendment of, documents. Under section 105(1)(b) of the RTI Act, the Information Commissioner is empowered to make any decision in respect of an access application that could have been made by the agency.⁸⁶ As the applicant has submitted, section 49(5) of the RTI Act provides that, despite an agency being entitled to refuse access to all or part of a document under section 47(3)(b) of the RTI Act, the agency *may* decide to give access. While this provision provides an agency with a *discretionary* power to release information where a ground of refusal applies, section 105(2) of the RTI Act specifically confirms that, if it is established on external review that a document is an exempt or contrary to the public interest document, or it contains exempt or contrary to the public interest information, the Information Commissioner does *not* have power to direct that access to that document, or information, is to be given.

Nonexistent or unlocatable documents

70. As noted in paragraphs 9 and 10 above, the applicant submitted that documents relevant to the access application existed and were missing and, in addressing the applicant's submissions in this regard, the Department conducted further searches and located the Additional Documents.
71. Following the Department's further searches and its disclosure of some of the Additional Documents, the applicant has made no further submission contesting the adequacy of the Department's searches and he has not identified any further documents which he considers to be missing. He has, however, submitted that:⁸⁷

Under the RTI Act s87 the agency has the onus of establishing the decision was justified

- i. Given that in both Reviews the Agency provided additional documents, it is established that the agency was not justified in its decision.*
- ii. The outcome of the External Reviews should report this in a new Decision for accountability and transparency.*

Relevant law

72. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁸⁸ However, where a document is nonexistent or unlocatable, access to it may be refused.⁸⁹

⁸⁵ That is, external review is an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to reach the correct and preferable decision.

⁸⁶ As such, in making a decision, the Information Commissioner (or delegate) may rely on RTI Act provisions which are different to those relied upon by the agency in the decision under review.

⁸⁷ Applicant's email dated 22 July 2024.

⁸⁸ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

⁸⁹ Sections 47(3)(e) and 52 of the RTI Act.

73. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁹⁰ 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.⁹¹
74. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:⁹²
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities
 - 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.
75. By considering the above key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency.⁹³ 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. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
76. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.⁹⁴ What constitutes reasonable steps will, as noted above, vary case by case as the search inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the circumstances.⁹⁵
77. On an external review, the agency or Minister who 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.⁹⁶ However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.⁹⁷ Suspicion and mere assertion will not satisfy this onus.⁹⁸

⁹⁰ Section 52(1)(a) of the RTI Act.

⁹¹ Section 52(1)(b) of the RTI Act.

⁹² These factors are identified in *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* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (*PDE*). These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].

⁹³ 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.

⁹⁴ In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors (*Pryor* at [21]).

⁹⁵ Such steps may, for example, include inquiries and searches of all relevant locations identified after consideration of relevant key factors.

⁹⁶ Section 87(1) of the RTI Act.

⁹⁷ See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

Findings

78. The question I must consider is whether the Department has taken all reasonable steps to locate documents relevant to the access application.
79. The Department relies on the searches it has conducted to justify its position that reasonable steps have been taken to locate documents responsive to the access application. In support of its position, the Department has provided information⁹⁹ to OIC about the searches conducted both in processing the access application and on external review. In summary, that information confirms that:
- searches were conducted of a number of the Department's record keeping systems (including network drives such as G Drive, H Drive and eDRMS, Mincor and Microsoft Outlook¹⁰⁰, the DLO email directory, HR drives and content manager)
 - the searched systems were the locations where the Department considered it was reasonable to expect that documents relevant to the access application would be stored
 - searches were also conducted of electronic diaries (in Microsoft Outlook) and personal diaries; and
 - these searches were conducted by a number of senior officers.
80. Having reviewed the terms of the access application and considered all of the information before me (including the External Review Application, the applicant's submissions, the documents located by the Department and the Department's search submissions), I consider that the Department has conducted appropriately targeted searches of locations where it would be reasonable to expect the documents requested in the access application (including the particular documents which the applicant initially submitted were missing) would be located. I consider that any further responsive documents would be located within the record keeping systems which have been searched by the Department.
81. Accordingly, I am satisfied that the Department has taken reasonable steps to locate documents relevant to the access application and access to any further documents relevant to the access application may be refused on the basis they do not exist or cannot be located.¹⁰¹

DECISION

82. For the reasons set out above, I vary the Department's decision and find that:
- access may be refused to the Briefs, as they comprise exempt information¹⁰²
 - access may be refused to the Third Party Information on the basis that disclosure of that information would, on balance, be contrary to the public interest¹⁰³
 - the Department was entitled to neither confirm nor deny the existence of the Item 1 Documents;¹⁰⁴ and

⁹⁸ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁹⁹ Including a search records and certifications.

¹⁰⁰ Which encompasses emails and calendars. Searches were also conducted of Office of the Director-General and Director-General's emails and calendars.

¹⁰¹ Under section 47(3)(e) of the RTI Act.

¹⁰² Under sections 47(3)(a) and 48 of the RTI Act.

¹⁰³ Under sections 47(3)(b) and 49 of the RTI Act.

- access to any further documents relevant to the access application may be refused on the basis they do not exist or cannot be located.¹⁰⁵

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

T Lake
Principal Review Officer
Date: 25 November 2024

¹⁰⁴ Under section 73 of the RTI Act.

¹⁰⁵ Under sections 47(3)(e) and 52 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
7 December 2021	OIC received the applicant's external review application.
31 January 2022	OIC notified the applicant that the application for external review had been accepted, conveyed a preliminary view to the applicant and invited him to provide a submission (by 14 February 2022) if he wished to contest the preliminary view. OIC notified the Department that the application for external review had been accepted and requested information from the Department.
4 February 2022	OIC received the requested information from the Department.
14 February 2022	OIC received the applicant's submission.
15 February 2022	At the applicant's request, OIC granted an extension of time (to 28 February 2022) for the applicant's response to the preliminary view.
28 February 2022	OIC received the applicant's further submission.
1 March 2022	OIC asked the Department to address the applicant's 28 February 2022 submission about documents which he had identified as missing. OIC provided an update to the applicant.
3 May 2022	At the Department's request, OIC granted an extension of time (to 17 May 2022) for the Department's requested response.
5 May 2022	OIC provided an update to the applicant.
24 May 2022	At the Department's request, OIC granted a further extension of time (to 30 May 2022) for the Department's requested response.
1 June 2022	At the Department's request, OIC granted a further extension of time (to 10 June 2022) for the Department's requested response.
8 July 2024	OIC received the Department's submission, together with a copy of the Additional Documents.
1 August 2022	OIC asked the Department to provide further information.
30 August 2022	OIC received the Department's submission.

Date	Event
1 September 2022	<p>OIC wrote to the applicant to (i) notify him that the Department had located the Additional Documents and agreed to disclose some of the information within them; (ii) convey a preliminary view to the applicant about the information not being disclosed; (iii) invite him to provide a submission (by 16 September 2022) if he wished to contest the preliminary view; and (iv) notified the applicant that, in the absence of his response by the due date, the review would proceed on the basis he was satisfied with the disclosed information and the review would be finalised under section 90(4) of the RTI Act.</p> <p>OIC asked the Department to send the applicant a copy of the information in the Additional Documents which the Department had agreed to disclose.</p>
7 September 2022	OIC received the Department's confirmation that information had been sent to the applicant.
14 September 2022	At the applicant's request, OIC granted the applicant a significant extension of time (to 7 December 2022) for any response he wished to make to the preliminary view.
20 December 2022	In the absence of a response from the applicant, OIC notified the applicant and the Department that the external review had been finalised under section 90(4) of the RTI Act.
3 June 2024	The Information Commissioner wrote to the applicant to (i) notify that the review remained open, due to an identified administrative issue with the 20 December 2022 closure notices; (ii) invite the applicant to provide (by 24 June 2024) any outstanding submissions he wished to make addressing the substantive issues in the preliminary view conveyed to him on 1 September 2022; and (iii) notify him that, in the absence of any further submissions by the due date, the review would be finalised under section 90(4) of the RTI Act.
25 June 2024	At the applicant's request, OIC granted an extension of time (to 22 July 2024) for the applicant to provide any outstanding submissions he wished to make addressing the substantive issues in the preliminary view sent on 1 September 2022.
22 July 2024	OIC received the applicant's submission, which requested that the outcome of the external review be reported in a decision.
29 July 2024	OIC notified the Department that the review remained open and the applicant had requested that a decision be issued.
2 September 2024	OIC conveyed a further preliminary view to the applicant and confirmed the next step in the review would be the issue of a formal decision to finalise the review.