Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Application Number: **310280**

Applicant: **Nine Network Australia Pty Ltd**

Respondent: **Department of Justice and Attorney-General**

Decision Date: **14 February 2012**

Catchwords: **RIGHT TO INFORMATION – REFUSAL OF ACCESS – applicant sought information about compliance notices issued to amusement ride operators from the Department of Justice and Attorney-General – whether the information comprises exempt information – section 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) – whether disclosure of the information would, on balance be contrary to the public interest – section 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)**

Contents

REASONS FOR DECISION

Summary

1. Nine Network Australia (**Applicant**) applied to the Department of Justice and Attorney-General (**Department**) for access to compliance notices, cautions, enforceable undertakings, fines or prosecutions issued to amusement ride, fun park or other mobile show ride operators in Queensland during the period 2007-2009.

2. The Department located 35 Improvement Notices and 31 Prohibition Notices and produced a table summarising the notices. After consulting with 26 amusement ride operators as interested third parties, the Department gave partial access to the table and refused access to the names of the amusement rides and owners on the grounds that disclosure of this information would, on balance, be contrary to the public interest.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.

4. On external review, OIC issued a preliminary view to the Department that releasing the relevant information was not, on balance, contrary to the public interest. In response, the Department submitted that disclosure of the relevant information would be contrary to the public interest and could reasonably be expected to prejudice the maintenance of a lawful method or procedure for protecting public safety[1] or a system or procedure for the protection of persons.[2]

5. For the reasons set out below, I set aside the Department's decision refusing access to the relevant information and find that it can be released.

Significant procedural steps

6. Significant procedural steps relating to the application and external review are set out in the Appendix.

Reviewable decision

7. The decision under review is the Department's decision dated 11 May 2010.

Information in Issue

8. The information under consideration comprises the Australian business number of the amusement ride operators, the names of the amusement rides and the names of the amusement ride operators (**Names**) as they appear in the table complied by the Department and the 35 Improvement Notices and 31 Prohibition Notices.[3]

Evidence considered

9. Evidence, submissions, legislation and other material I have considered in reaching my decision is disclosed in these reasons (including footnotes and appendix).

---

[1] Schedule 3, item 10, section 10(g) of the *Right to Information Act 2009* (Qld) (**RTI Act**).
[2] Schedule 3, item 10, section 10(i) of the RTI Act.
[3] In a letter to the OIC dated 24 January 2011, the Department agreed that the Improvement Notices and Prohibition Notices were in scope. The applicant confirmed that he did not seek access to addresses of the amusement device operators in a telephone conversation dated 9 February 2012.

10. I confirm that I have not taken any information or submissions relating to the relevant New South Wales regulatory regime into consideration in reaching this decision.

Relevant law

Right to access information

11. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

12. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises 'exempt information'. Schedule 3 sets out the types of information which the Parliament has considered to be 'exempt information' as its disclosure would, on balance, be contrary to public interest.

13. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest.

14. In making this decision I have considered whether:

- the Names are exempt on the basis that their disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety[4] and/or a system or procedure for the protection of persons, property or the environment;[5] or
- disclosure of the Names would, on balance, be contrary to the public interest.[6]

15. I will consider each issue in turn.

1. Are the Names exempt?

16. Schedule 3 section 10(1)(g) and (i) of the RTI Act provide that information is exempt information if its disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety, or prejudice a system or procedure for the protection of persons, property or the environment.

17. These provisions will apply if the following requirements are met:[7]

a) there exists an identifiable lawful method or procedure for protecting public safety, or there exists a system or procedure for the protection of persons, property or the environment; and
b) disclosure of the Names could reasonably be expected to prejudice that method, system or procedure.

18. I will examine each of these requirements in turn.

[4] Schedule 3 section 10(1)(g) of the RTI Act.
[5] Schedule 3 section 10(1)(i) of the RTI Act.
[6] Section 47(3)(b) and 49 of the RTI Act.
[7] *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at paragraphs 27-36.

(a) Is there an identifiable lawful method, system or procedure for protecting public safety and/or a system of procedure for the protection of persons, property or the environment?

19. Yes, for the reasons that follow.

20. The Department submits that the 'voluntary process' is a method or procedure within the meaning of Schedule 3 section 10(g) and 10(1) of the RTI Act.

21. The Department made a number of submissions concerning the voluntary process. Firstly, it described it as a process 'in which Workplace Health and Safety Queensland (**WHSQ**) seeks to secure voluntary improvements in health and safety from industry.'[8]

22. The Department then listed several examples of the process, including:

> *....after an incident in January 2004 in which a six year old was seriously injured when thrown from a* [named] *ride, WHSQ developed a good working relationship with owners of amusement devices, which resulted in the owners agreeing to modify those devices in the interests of health and safety ahead of Australian standards, International Standards and Manufacturer's Recommendations.*
>
> *Cooperation between WHSQ Inspectors and amusement device owners has now greatly improved, which has resulted in the safety standards of the industry in Queensland being higher. Owners are cooperative with inspectors, proactive with modifications and audits and generally maintain their amusement devices to a higher standard.*
>
> *Following an incident where a child fell out of a Ferris Wheel in New South Wales, owners and Australian regulators cooperatively together agreed to enclose all patrons of Ferris wheels and gondola style rides in a cage.*[9]

23. The Department also described the process in the following manner:

    a) Following an incident (such as the incidents described above), WHSQ investigates and identifies possible causes

    b) WHSQ then drafts a safety alert and sends it in draft form to engineers known to WHSQ as being regularly engaged by amusement device owners and to the three peak bodies in the amusement device industry to obtain comment and feedback before the alert is finalised; and

    c) WHSQ also consults on a programme of implementation for the proposed alert, which may include the implementation deadline and inspectors viewing proposed changes to rides at owners' sites.[10]

24. The Department went on to submit:

> *The voluntary process falls within the meaning of the words 'lawful method or procedure for protecting public safety' on a fair reading of the words as they appear in the RTI Act…..It is a lawful method or procedure for improving the safety of persons who use amusement devices. Amusement devices are open to the general public. The process is therefore a lawful method or procedure for protecting public safety.*[11]

[8] Department's submission to OIC dated 20 July 2010.
[9] Statutory declaration of WHSQ Chief Safety Engineer dated 30 July 2010.
[10] Statutory declaration of WHSQ Chief Safety Engineer dated 16 December 2010.
[11] Crown Law submission dated 24 January 2011.

25. In summary and based on the submissions set out above, I understand the voluntary process to be a process of cooperation and consultation between WHSQ, the amusement device operators and other stakeholders in the industry, aimed at improving the safety of amusement devices and achieving industry best practice, over and above and minimum standards legislated by the *Workplace Health and Safety Act 1995* (Qld) (**WHS Act**).

26. On the basis of the matters set out above, I am satisfied that:

- the voluntary process falls within the meaning of a method or procedure for protecting public safety and protecting persons; and
- the first requirement for exemption under Schedule 3 section 10(1)(g) and 10(1)(i) of the RTI Act is met.

(b) Whether disclosure of the Names could reasonably be expected to prejudice the relevant method or procedure?

27. No, for the reasons that follow.

28. The Department has provided extensive submissions regarding the meaning of 'could reasonably be expected to' including that:

> *In Cockroft's case, the phrase, could reasonably be expected to was said to be something which is distinct from the 'irrational, absurd or ridiculous'. Whilst, the phrase 'irrational, absurd or ridiculous' is no substitute for the words actually used by the RTI Act, they provide a valid contrast to what 'could reasonably be expected to' means. Thus, if a particular expectation is not 'irrational, absurd or ridiculous' then that suggests (although not conclusively) that the prejudice 'could reasonably be expected.'*[12]

29. However, I note the following comment of the Federal Court in Cockroft:[13]

> *In our opinion, in the present context, the words, 'could reasonably be expected to prejudice the future supply of information' were intended to receive their ordinary meaning. That is to say, they require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous…It is undesirable to attempt any paraphrase of these words.*

30. I am also mindful of the High Court's relevant comments in *McKinnon v Department of Treasury*:[14]

> *Thus, when their Honours said, as they did, that the words required a 'judgment 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 certain consequences, they are not to be understood as having used the latter expression as a paraphrase of the former. Rather, they are to be understood, and have since been understood, as doing no more than drawing an emphatic comparison. To do more would have been, as their Honours correctly said, 'to place an unwarranted gloss upon the relatively plain words of the Act'.*

31. On the basis of the matters set out above, I am satisfied that:

- the term 'could reasonably be expected to' requires that the relevant expectation is:
    i. reasonably based; and

[12] Crown Law's submission dated 24 January 2011.
[13] (1986) 10 FCR 180 (**Cockroft)**.
[14] (2006) 228 CLR 423.

ii. neither irrational, absurd or ridiculous,[15] nor merely a possibility[16]

- whether the expected consequence is reasonable requires an objective examination of the relevant evidence[17]
- the expectation must arise as a result of disclosure, rather than from other circumstances;[18] and
- it is not necessary for a decision-maker '*to be satisfied upon a balance of probabilities*' that disclosing the relevant information will produce the anticipated prejudice.[19]

32. With respect to prejudice, I have previously said that prejudice should be given its ordinary meaning—to detrimentally impact.[20] Accordingly, if disclosure of the Names could reasonably be expected to detrimentally impact the voluntary process, this requirement will be met.

33. The Department makes a number of submissions regarding the effect of disclosing the Names, including that:

> *Disclosure of the information in issue would damage the relationship between WHSQ and amusement device owners, contributing in a return to the previous situation where owners were reticent to provide information to WHSQ and the standards of safety in the rides were generally lower*
>
> *This damage would result from the prejudicial impact on the business reputations caused by the public release of that information*
>
> *This would involve a return to the 'minimum compliance' mentality where operators would be less likely to voluntarily agree to health and safety improvements that go beyond Australian and industry standards and WHSQ would be left to rely on only their regulatory powers and therefore the release of the information in issue would be prejudicial to public health and safety in Queensland in relation to amusement devices.*
>
> *Disclosure could reasonably be expected to prejudice the willingness of industry to participate in the voluntary process. Without industry participation, there would be no process. Secondly, as a result of prejudice to the effectiveness of the process that could reasonably be expected from disclosure, this is a real possibility that WHSQ will no longer continue to use the process. A reasonable expectation of such prejudice to the effectiveness of the process that there is a real possibility WHSQ will no longer continue to use the process is sufficient to amount to prejudice to the maintenance of the process.*[21]

34. OIC consulted 26 amusement device operators. A small number responded. Of the operators who replied, the following submissions are relevant to the effect of disclosure of relevant information on the voluntary process:

> *…butchers do not sell contaminated sausages that cause illness and expect to have their customers return for more. Ride owners do not operate unsafe rides that injure their customers and expect them to return for more. Releasing this information will be highly detrimental to this spirit of mutual cooperation that currently exists and that has been*

[15] *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.
[16] *Murphy and Treasury Department* (1995) 2 QAR 744.
[17] *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraphs 45-47.
[18] *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 54.
[19] *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009).
[20] See *Daw and Queensland Rail* (220020, 24 November 2010) at paragraph 17 for a succinct exposition of the meaning of 'prejudice' as used throughout the RTI Act.
[21] Statutory declaration of Chief Safety Inspector, 30 July 2010.

established by all parties over a number of years. It will re-create the 'us and them' attitude that previously existed between operators and Department staff.[22]

…if the applicant (as a television station) put all the notices together, they would make her, and the industry as a whole, look bad.[23]

35. I have carefully considered the submissions made by the Department and operators that disclosure of the Names could reasonably be expected to:

- damage the relationship between WHSQ and operators; and
- prejudice the voluntary process.

36. Based on the evidence before me, I am not satisfied that the Department and operators' expectation of damage and prejudice to the voluntary process by disclosure is reasonably based given that:

- It is clear from the operators' submissions (set out at paragraph 34) that they recognise the commercial benefit to operating rides in the safest manner possible, being that "*… customers …* [will] *return for more …*" if they do so.

- The operators also recognise that the voluntary process has a positive effect on their businesses as it facilitates safety improvements.

- I do not consider it reasonable to expect that disclosure of the relevant information will result in prejudice to the voluntary process (being a decrease in cooperation by the operators), given the operators' recognition that it is in their commercial interest to operate safe rides and the voluntary process facilitates safety improvements.

- The Department's submission that without industry cooperation, WHSQ may cease using the voluntary process, is similarly not reasonably based given my finding that the owners' have a commercial motivation to operate safe rides (in order to maintain a profitable businesses) which provides an incentive for them to cooperate with WHSQ and participate in the voluntary process.

37. With respect to the Department's submission that the voluntary process operates outside the regulatory process, as an additional optional process, I note that the Names relate to improvement and prohibition notices issued under the WHS Act. Given that this is a mandatory legislative scheme, it is unreasonable to suggest that disclosure of information obtained under it would cause prejudice to the voluntary process. There is also no evidence before me to suggest that an obligation of confidence attaches to information provided to WHSQ by operators during audits.

38. After carefully considering all of the relevant information before me and on the basis of the matters set out above, I am satisfied that in the circumstances of this review:

- there is insufficient evidence before me to conclude that disclosure of the Names could reasonably be expected to prejudice the relevant voluntary process
- the second requirement for exemption under Schedule 3 section 10(1)(g) and 10(1)(i) of the RTI Act is not met; and
- the Names do not comprise exempt information under the RTI Act, the disclosure of which could reasonably be expected to prejudice the maintenance

[22] Letter dated 6 August 2010 sent by three amusement device operators.
[23] Oral submission from amusement ride operator, 20 August 2010.

of a lawful method or procedure for protecting public safety or prejudice a system or procedure for the protection of persons, property or the environment.

2. Would disclosure of the Names be contrary to the public interest?

39. No, for the reasons that follow.

40. In determining whether disclosure of the Names would, on balance, be contrary to the public interest I must:[24]

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

Irrelevant factors

41. I have examined the irrelevant factors in schedule 4 of the RTI Act and do not consider that any irrelevant factors arise here.

Factors favouring disclosure in the public interest

42. After carefully considering all of the information before me, I am satisfied that the factors favouring disclosure of the Names include that disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability[25]
- contribute to positive and informed debate on important issues or matters of serious interest[26]
- reveal environmental or health risks or measures relating to public health and safety;[27] and
- contribute to safe, informed and competitive markets.[28]

Factors favouring nondisclosure in the public interest

43. After carefully considering all of the information before me, I am satisfied that the factors favouring nondisclosure of the Names may include that disclosure could reasonably be expected to prejudice:

- the business, commercial or financial affairs of persons or entities[29]
- the protection of an individual's privacy[30]
- public safety;[31] and

---

[24] Section 49(3) of the RTI Act.
[25] Schedule 4, part 2, item 1 of the RTI Act.
[26] Schedule 4, part 2, item 2 of the RTI Act.
[27] Schedule 4, part 2, item 14 of the RTI Act.
[28] *Channel Seven and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at paragraph 35. (**Seven and Redlands**).
[29] Schedule 4, part 3, item 2 and item 15 of the RTI Act.
[30] On the basis that it could reasonably be expected to cause a public interest harm because this would disclose personal information of a person, whether living or dead (schedule 4, part 4 item 6 of the RTI Act) and that disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy (schedule 4, part 3 item 3 of the RTI Act).
[31] Schedule 4, part 3, item 7 of the RTI Act.

- the effectiveness of testing or auditing processes.[32]

Balancing factors favouring disclosure and nondisclosure in the public interest

44. First I will consider the factors favouring disclosure.

45. I note that the objective of the WHS Act is to:

> *…prevent a person's death, injury or illness being caused by a workplace, by a relevant workplace area, or by workplace activities…The Act imposes health and safety obligations on various entities associated with workplaces (including owners of plant).*[33]

46. One way in which this is achieved is through authorised inspectors undertaking audits of workplaces (including amusement parks) and where necessary, issuing improvement notices and prohibition notices under the Act.

Increasing accountability and positive, informed debate[34]

47. The Department has provided the applicant with copies of the improvement and prohibition notices from which the names of the amusement rides and their owners have been removed. The information that has been released goes some way to increasing accountability and informed debate by disclosing information about the way in which WHSQ undertakes its regulatory role.

48. In my view, there is a clear public interest in people being able to discuss and understand the way in which regulatory entities such as WHSQ undertake their responsibilities under the WHS Act and that this public interest would be advanced by disclosure of the improvement and prohibition notices in their entirety.

49. On this basis, I am satisfied that:

- disclosure of the Names would advance government accountability and positive, informed debate by allowing members of the public to see which amusement rides and operators have received improvement and prohibition notices (and link them with the content of the notices);[35] and
- this factor favouring disclosure should be afforded moderate weight in the circumstances of this review.

Revealing environmental or health risks or measures relating to public health and safety[36]

50. As disclosure of the Names would identify rides and owners who have received improvement and prohibition notices (and link them with the content of the notices), I am satisfied that disclosure of this information could reasonably be expected to reveal risks relating to public safety. [37]

51. Some operators submit that they have been issued improvement notices for minor breaches (such as a faulty double adaptor) and that this should be taken into

[32] Schedule 4, part 3, item 21 of the RTI Act.
[33] Statutory declaration of the Chief Safety Engineer dated 30 July 2010.
[34] Schedule 4, part 2, item 1 and item 2 of the RTI Act.
[35] The Department acknowledged the public interest in WHSQ discharging their responsibilities transparently, efficiently and accountably in their decision dated 11 May 2010.
[36] Schedule 4, part 2, item 14 of the RTI Act.
[37] Schedule 4, part 2, item 14 of the RTI Act.

consideration. While I accept that records of minor breaches will not always reveal serious safety concerns, they do show that the WHS Act has been breached (albeit in a relatively minor way).

52. I am also mindful that the object of the WHS Act is to prevent a person's death, injury or illness and that a substantial amount of information in the improvement and prohibition notices relates to more serious breaches of the WHS Act.

53. On the basis of the matters set out above, I am satisfied that disclosure of the Names would advance the public interest in revealing risks to public safety and that this factor favouring disclosure should be afforded significant weight in the circumstances of this review.

Safe, informed and competitive markets

54. I have previously found a public interest in safe, informed and competitive marketplaces.[38] To date, the applicant has received the improvement and prohibition notices from which the names of the rides and the operators have been removed. Receiving the notices without further identification does not advance the public interest in safe and informed markets.

55. The applicant submits that:

> *…as a parent with children who has made use of such rides, I am most unhappy that details of compliance shortcomings on such rides are likely to be kept secret and outside of disclosure under the Right to Information Act. I believe other parents would be angry too.*[39]

56. I accept the applicant's submission that disclosure of Names would enable the public to make more informed choices about how they choose to use amusement rides. Disclosure of this information will considerably increase the information available to consumers and significantly advance the public interest in informed and transparent markets by identifying the rides and the owners which have received notices.

57. Additionally, disclosure will place the amusement ride operators and the industry in general on notice that information about how they comply with their obligations under the WHS Act may be disclosed to the public under the RTI Act, which could reasonably be expected to increase compliance in the amusement industry generally.[40]

58. I note the operators' submission that '*…ride owners do not operate unsafe rides that injure their customers and expect them to return for more*' and consider that disclosure of the Names may well make ride owners even less likely to operate unsafe rides because members of the public may be able to see the rides which have received improvement or prohibition notices.

59. On the basis of the matters set out above, I am satisfied that this factor favouring disclosure should be afforded significant weight in the circumstances of this review.

60. Next I will consider the factors favouring nondisclosure.

[38] Seven and Redlands at paras 33 to 45.
[39] Applicant's submission to OIC dated 6 August 2010.
[40] In this regard I note the comments of Consumer Focus UK and the study of health inspection scoring in Los Angeles County discussed and relied on by me in Seven and Redlands: see paragraph 45 and note 36 of that decision.

Prejudice private, business, professional, commercial or financial affairs

61. The Department decided that disclosure of the relevant information could reasonably be expected to prejudice the business affairs of the amusement operators by identifying them in connection with improvement and prohibition notices.

62. I accept this submission and consider that disclosure could reasonably be expected to increase public scrutiny of amusement operators, which may prejudice their business, commercial or financial affairs[41] by damaging their reputations and/or deterring existing or potential customers from patronising their businesses.

63. As to the extent of the prejudice and the weight to be attributed to this factor, I consider that the age of the information and the fact that the operators have addressed the issues recorded in the improvement and prohibition notices lessens any prejudicial effect that could now reasonably be expected to flow from disclosure.

64. Some operators object to the random nature of the inspections and argue that the notices do not give a 'fair' reflection of the industry. While I understand not every ride is inspected at any given audit, notices issued as a result of inspections reveal information recorded by authorised officers who have formed a reasonable belief as to the commission of an offence under the WHS Act. This information is reliable and credible, even if not all rides are inspected at every audit. After careful consideration of this point, I am satisfied that the random nature of the inspections does not increase the prejudicial effect that could now reasonably be expected to flow from disclosure.

65. On the basis of the matters set out above, I am satisfied that this factor favouring nondisclosure should be afforded moderate weight in the circumstances of this review.

Personal information and privacy[42]

66. The Department decided that disclosure of names of amusement ride operators could reasonably be expected to cause a public interest harm by disclosing personal information of individuals.[43]

67. The vast majority of the relevant information relates to business information in the form of business names and does not comprise personal information. Where it does contain personal information, it is linked to business information and the weight accorded to an individual's right to privacy in these circumstances is low.

68. On the basis of the matters set out above, I am satisfied that these factors should be afforded little weight in the circumstances of this review.

Prejudice to public safety

69. The Department submits that disclosure of the Names could reasonably be expected to prejudice public safety[44] because of the prejudice to industry cooperation that disclosure of the information in issue would cause.[45]

70. As this is the same argument raised by the Department in support of its claim for exemption, I repeat and rely upon my findings at paragraph 38 of this decision and

[41] Schedule 4, part 3, item 2 and item 15 of the RTI Act.
[42] Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.
[43] Schedule 4, part 4, section 6 of the RTI Act.
[44] Schedule 4, part 3, item 7 of the RTI Act.
[45] Statutory Declaration of the Chief Safety Engineer dated 30 July 2010.

confirm that disclosure of the Names could not reasonably be expected to prejudice a system or procedure for protecting public safety.

71. Accordingly, I find that this factor favouring nondisclosure should be afforded no weight in the circumstances of this review.

Prejudice the effectiveness of testing or auditing processes

72. Finally, the Department decided that disclosure of the Names could reasonably be expected to prejudice the effectiveness of testing or auditing processes because:

> *…while the inspectors have statutory powers to carry out this task, the audit process is, I understand, assisted by the inspectors fostering cooperative approaches with the ride operators. I am of the view that disclosure of the information … could reasonably be expected to adversely affect the ability of inspectors to carry out the audit process and therefore to prejudice the effectiveness of the relevant ride safety audit procedure.*

73. This submission misconceives the nature of the statutory regime under which the WHSQ inspectors work. WHSQ is a regulatory agency responsible for enforcing the obligations set out in the WHS Act.

74. The only way in which the prejudice anticipated in the various exemption provisions cited could reasonably be expected to occur would be if WHSQ was to abandon its statutory responsibilities and regulatory duties.

75. In other words, while a cooperative relationship with industry participants may in some circumstances be desirable, it is not necessary to ensure the protections enshrined in the WHS Act are maintained.

76. Ride operators are required to comply with the safety standards set out in the WHS Act or face the penalties set out in that Act. WHSQ in turn is charged with upholding that scheme. This is not a consensual or cooperative regime. Rather, it is a mandatory framework that ultimately demands compliance on the part of industry participants.

77. The Department submits that the voluntary process assists the formal audit process and makes it easier for inspectors to do their jobs. The voluntary process may foster cooperation, but I do not accept it is necessary to ensure the effectiveness of the audit process. WHSQ Inspectors have statutory powers and operators must comply with those powers or face penalty.

78. For the reasons set out above, I find that disclosure of the Names could not reasonably be expected to prejudice the effectiveness of relevant auditing processes under the WHS Act.

79. On this basis, I am satisfied that this factor favouring nondisclosure should be afforded no weight in the circumstances of this review.

Summary

80. Of the factors favouring disclosure, I find that the public interest in enhancing WHSQ's accountability and promoting public discussion about the way in which WHSQ performs its role under the WHS Act should be afforded moderate weight. I find that the public interest in having safe, informed and competitive marketplaces and the public interest in revealing health and safety risks should each be afforded significant weight in the circumstances of this review.

81. Weighing against these factors is the public interest in avoiding prejudice to the amusement operators' commercial and business affairs and the public interest in protecting an individual's privacy and personal information, to which I afforded moderate and low weight respectively.

82. In summary and after carefully considering all of the matters set out above, I find that the public interest factors favouring disclosure of the Names significantly outweigh those favouring nondisclosure.

83. Accordingly, I find that disclosure of the Names would not, on balance, be contrary to the public interest.

DECISION

84. I set aside the Department's decision to refuse access to the Names and find that this information:

- does not comprise exempt information under section 47(3)(a) of the RTI Act; and
- would not, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act.

85. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

_____

Jenny Mead
Right to Information Commissioner

Date: 14 February 2012

APPENDIX

Significant procedural steps

Date	Event
22 February 2010	Applicant applied to the Department of Justice and Attorney-General (**Department**) for access to compliance notices issued to amusement ride operators between 2007-2009.
11 May 2010	The Department issued its decision.
1 July 2010	Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
8 July 2010	OIC notified the applicant and the Department that the application has been accepted for external review.
13 July 2010	OIC conveyed a preliminary view to the Department.
26 July 2010	OIC wrote to relevant third parties, informing them of the external review and inviting them to make submissions.
30 July 2010	The Department made submissions in response to OIC's preliminary view.
5 August 2010	OIC sought additional submissions from the Department.
20 August 2010	The Department made submissions in response to OIC's preliminary view.
27 August 2010	OIC wrote to Department requesting further submissions.
2 September 2010	The Department provided further submissions to OIC.
2 September 2010	OIC responded to the Department's submissions.
17 September 2010	The Department made further submissions to OIC.
20 September 2010	OIC wrote to the applicant and the Department inviting them to make submissions regarding the scope of the access application.
24 September 2010	The Department made further submissions to OIC (regarding scope).
17 December 2010	OIC conveyed an additional preliminary view to the applicant and the Department.
24 January 2011	The Department made submissions in response to the preliminary view.
25 October 2011	OIC wrote to the Department, inviting it to make further submissions.
7 November 2011	The Department provided further submissions.