Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015)**
Application Number:	**100106 (remitted matter 310596)**
Applicant:	**Underwood**
Respondent:	**Minister for Housing and Public Works**
Decision Date:	**29 September 2015**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - access refused to information about other individuals - personal information and privacy - whether disclosure would, on balance, be contrary to public interest - whether access may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether Minister has taken all reasonable steps to locate the documents but the documents cannot be found or do not exist - sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)**

REASONS FOR DECISION

Summary

1. The applicant applied to the former Minister for Community Services and Housing[1] under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to '*the complete file*' concerning her public housing tenancy and herself.

2. The Former Minister located 38 pages of information. By decision dated 30 March 2011, the Former Minister granted the applicant full access to 34 pages, and partial access to four pages, on the basis these four pages contained contrary to public interest information.

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Former Minister's decision to refuse the applicant access to information. The applicant also submitted that the Former Minister had failed to locate all relevant information.

[1] The application (dated 28 February 2011) was lodged with the former Department of Communities (**Communities**). As it requested documents located in the Office of the-then Minister for Community Services and Housing (**Former Minister**), it appears the application was transferred from Communities to the Former Minister. In accordance with section 31(1) of the RTI Act, the Former Minister directed an officer of Communities to deal with the access application.

4. OIC did not determine substantive issues arising from the applicant's external review application, but decided[2] not to further deal with that application, in accordance with section 94(1)(a) of the RTI Act.

5. The applicant appealed OIC's decision to the Queensland Civil and Administrative Tribunal (**QCAT**). By decision dated 23 October 2014,[3] QCAT set aside OIC's decision and remitted the matter to OIC to be dealt with according to the provisions of the RTI Act.

6. OIC reopened the external review and I have considered the matter afresh. I have decided that disclosure of the information to which the Former Minister refused access would, on balance, be contrary to the public interest. Therefore, access to that information may be refused. I have further decided that access may be refused to additional information requested by the applicant, on the grounds that the information is nonexistent or unlocatable.

Background

7. The period between OIC's original decision and this decision has seen two changes of government and various machinery of government changes. The respondent is now the Minister for Housing and Public Works and Minister for Science and Innovation ('**Current Minister**'). Unless otherwise indicated, I will for ease of reference refer to both the Former and Current Ministers jointly as '**the Respondent**'.[4]

8. Significant procedural steps are as set out in the appendix to these reasons.

Reviewable decision

9. The decision under review is the Respondent's decision dated 30 March 2011 to release documents subject to the deletion of contrary to public interest information under section 75 of the RTI Act.

Evidence considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).

Information in issue

11. As noted, the Respondent located 38 pages, numbered '1-38'. 34 were released to the applicant in full. Four – numbered '1', '22', '23' and '24' – were released in part. The information in issue in this review comprises the segments of information on these four pages to which access was refused, being:

    - mobile telephone numbers of public officers redacted from pages 1 and 22 (**Mobile Telephone Numbers**); and
    - segments of information concerning third parties redacted from pages 23 and 24 (**Third Party Segments**).

[2] OIC in this decision also decided to refuse to deal with three other external review applications lodged by the applicant, each seeking review of decisions made or taken to have been made by Communities.
[3] *Underwood and Department of Housing and Public Works; Minister for Housing and Public Works and Information Commissioner* (APL075-12), per Justice Cullinane.
[4] The Department authorised to deal with the application on the Respondent's behalf is no longer Communities, but the Department of Housing and Public Works (**HPW**).

Procedural issues

12. The applicant has raised a number of procedural issues with which it is necessary to deal prior to turning to the substantive issues in this review.

File numbering

13. The applicant has, through the course of this review, protested that the review or file number adopted by OIC following remittal by QCAT – 100106 – differs from the number used by OIC in originally dealing with her application for review (ie, 310596). The applicant has questioned OIC's motives in changing the file numbering.[5] The change of numbering is a purely administrative measure. It reflects the fact that OIC's original file was closed following our 9 February 2012 decision and that following remittal by QCAT in October 2014, the matter was to be considered afresh: it was therefore allocated a fresh matter number.[6]

14. OIC has consistently cross-referenced the earlier file number as against the current matter in our correspondence with the applicant. Whilst we may not have acceded to her repeated requests that we also include the date of her RTI access application in every item of outgoing correspondence,[7] I am satisfied that the applicant has been supplied with sufficient information to allow her to 'keep track' of this review in both its pre-and post-remittal iterations.

15. By letter dated 13 January 2015, for example, OIC advised the applicant that we had opened '*File 100106 – which relates to a decision dated 30 March 2011 in relation to your application dated 28 February 2011 to the relevant Minister*', going on to include a table describing OIC's current file reference (100106), corresponding original reference (310596), and corresponding Departmental reference (R0870).

16. In my letter to the applicant dated 25 February 2015, I again described the change in numbering, expressly noting that the letter concerned '*…what was external review no. 310596. OIC has reopened this external review, under the number 100106.*' By way of further example, my letter dated 18 June 2015 recorded each of the current and previous file reference numbers in both the reference header at the top of the letter, and the subject line.

17. The numbering issue has, in short, been clearly explained to the applicant. She has been furnished with information sufficient to allow her to trace the progress of this review, before and after remittal. Any suggestion that the adoption by OIC of a fresh matter number was some '*sleight of hand manipulation*'[8] intended to advantage OIC or prejudice the applicant is groundless and is repudiated.

Request for submissions

18. The applicant requested that she be provided with all submissions lodged by the Respondent, in both the original review, and on remittal. Exercising my discretion under 95(1)(a) of the RTI Act, I have chosen not to do so, for the reasons explained in my letter to the applicant dated 18 June 2015:

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[5] Contending in her letter dated 11 March 2015 that OIC may be seeking to '*…camouflage your Key Performance Indicators – the previous number is an application for the 2011 year, whilst the new reference number is seen as a reference for the 2015 year*'.

[6] Which would not seem to be an unconventional practice – I note that the former New South Wales Administrative Decisions Tribunal, by way of example, appears to have done similarly: see *Camilleri v Commissioner of Police NSW Police Force* [2013] NSWADT 80.

[7] As made, for example, in her letter dated 2 July 2015.

[8] As above.

> *I note your request for a copy of the Respondent's submissions; the procedure to be followed on external review is a matter for OIC: section 95(1)(a) of the RTI Act. In order that participants may focus on issues salient to the review, I have opted for a procedure by which all information necessary to enable to you to address those issues is conveyed in the body of my correspondence. I am satisfied that this procedure is adequate to permit participants to understand applicable law, each other's positions, and my preliminary view, and to enable participants to formulate appropriate submissions as necessary. This procedure will also serve to ensure compliance with section 108 of the RTI Act, and that the review is conducted with as much expedition as possible, as required under section 95(1)(b) of the RTI Act.*

19. I have ensured that anything that the Respondent has put to me and which I have taken into account in making my decision has been conveyed to the applicant. I have also advised the applicant of any preliminary view I have formed in the course of the review, where such view has been adverse to her interests, and ensured that she has been apprised of the evidence on which I have based that view. I am satisfied that the applicant has been afforded procedural fairness in the circumstances of this review.

Determination of this review independently of the applicant's other remitted external reviews

20. The applicant's external review application the subject of this review comprises one of four lodged with OIC by the applicant in January and April 2011. The applicant submits that as these four applications were originally determined by way of OIC's 9 February 2012 decision, and together remitted to OIC by a single QCAT decision, I must now determine them as a whole, rather than individually – that this specific review[9] '*cannot be finalized until your office effectively decides*'[10] the other external review applications the subject of QCAT's 23 October 2014 decision.

21. I can identify nothing that requires me to decide all four remitted review applications together.[11] The terms of QCAT's decision remitting these reviews were simply that they be determined according to the provisions of the RTI Act. The order contains no stipulation that they be determined together, and there is nothing in the RTI Act nor the law generally of which I am aware that requires me to do so. To the contrary, the procedure to be determined on external review is entirely a matter within the discretion of the Information Commissioner.[12]

22. I note that the four review applications the subject of OIC's 9 February 2012 decision involve considerable subject matter overlap. This is unsurprising, given that the underlying RTI access applications[13] all seek information concerning the applicant and her tenancy. However, the information in issue in this review is limited in quantity,[14] and the issues to be determined are discrete and amenable to being resolved on their own, independently of the balance of the remitted reviews – each of which, it must be remembered, involve a different respondent[15] to the Respondent in this review.

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[9] Which concerns an RTI access application that was the latest in time of the four that became the subject of the external review applications determined together in OIC's 9 February 2012 decision.
[10] Submissions dated 2 July 2015.
[11] Which I note is an argument at odds with the applicant's position as expressed in correspondence to OIC following the 9 February 2012 decision. In a letter dated 29 February 2012, the applicant stated that '[t]*he combination of four applications has never been agreed to…they cover separate periods of access to documentation and consequently the decisions on each application are not identical and/or have changed circumstances requiring/regarding access*.'
[12] Section 95(1)(a) of the RTI Act.
[13] Dated 13 September 2010, 2 December 2010, 25 February 2011 and 28 February 2011, this last date being the date of the access application the subject of this review, 100106.
[14] See paragraph 11.
[15] HPW. It is also worth repeating that, as noted in paragraph 4, OIC's 9 February 2012 decision did not deal with substantive refusal of access issues, but was a decision not to deal further with this and the other three remitted applications under section 94(1)(a) of the RTI Act, on the basis that the applications were vexatious. As noted, QCAT set this decision aside.

23. I have commenced consideration of the balance of the remitted review applications. As discussed below,[16] I did identify some information in one of these matters[17] that caused me to seek submissions from the Respondent in relation to certain of its refusal of access claims in the review the subject of these reasons. The nature of that information and the circumstances surrounding its creation have been explained to the applicant, and the information itself[18] made available to her to respond as appropriate.

24. There are several thousand pages in issue across the other remitted reviews, and I do not claim to have at this stage closely scrutinised each. Nevertheless, OIC's preliminary review of that information has not suggested the existence of other material which might be reasonably likely to influence my views on the issues to be determined in this review. I can identify nothing which ought to cause me to do other than meet my obligations under 95(1)(b) of the RTI Act: to resolve this matter as expeditiously as the requirements of the Act and a proper consideration of the matters before me allow.

25. For the sake of completeness, and although her submissions on the point are not clear, I note that it may be that the applicant is seeking to argue that the adequacy of the Respondent's searches for relevant information in this review – a matter she contests – cannot properly be resolved until the adequacy of agency searches in the balance of remitted reviews is also assessed and determined. That, in other words, it would be premature and prejudicial for me to find, say, that there is no reasonable basis to expect further additional documents exist in the possession or under the control of the Respondent, if such documents were to be subsequently identified in dealing with the balance of the remitted applications.

26. I reject this proposition. As noted above, the balance of the remitted reviews involve a different respondent (HPW), and different considerations apply. Importantly, addressing the question of what is a 'document of a Minister' involves, as discussed further below, separate considerations to the question of what is a 'document of an agency' which may be relevant in those other reviews. Critically, the definition of the former specifically excludes documents falling within the definition of the latter.[19]

27. It may be that as the balance of the remitted reviews are progressed that documents requested by the applicant by way of her application to the Respondent are located on one or more of the departmental files the subject of her other access applications. That does not of itself mean that it would be premature for me to find that the Respondent's searches were reasonable and sufficient, for the very reason that as documents in the possession or under the control of an agency, any such documents would not, in accordance with section 13 of the RTI Act, comprise documents of a Minister.

28. I will now turn to consider the substantive issues to be determined in this review.

Issues for determination

29. The issues for determination are whether access to information can be refused on the grounds that:

    i. it is nonexistent or unlocatable; or
    ii. its disclosure would, on balance, be contrary to the public interest.

[16] See paragraphs 84-85.
[17] Review no. 100105.
[18] Redacted so as to avoid disclosure of information claimed to be contrary to public interest information.
[19] Section 13 of the RTI Act, discussed further at paragraph 53.

Nonexistent/unlocatable information – 'sufficiency of search'

30. The applicant contends that not all documents relevant to her application have been identified and dealt with by the Respondent. Having carefully reviewed the submissions made by the applicant,[20] I understand her principal contentions to be that:

- only '*two, three or four*' pages of a '*32 plus page…Ministerial*' briefing were disclosed in response to her application;[21] and
- there ought to exist additional documents beyond the 38 pages located by the Respondent, the applicant noting that, by way of example, she lodged several submissions with the Respondent over a number of years, none of which were located.[22]

Relevant law

31. Under the RTI Act, a person has a right to be given access to documents of a Minister.[23] However, this right is subject to other provisions of the RTI Act, including grounds on which a Minister may refuse access to documents.[24] Relevantly, a Minister may refuse access to documents[25] which:

- do not exist;[26] or
- have been (or should be) in a Minister's possession, but cannot be located.[27]

32. A document is nonexistent if the agency or Minister dealing with the access application is satisfied that the document does not exist.[28]

33. The RTI Act is silent on how an agency or a Minister can be satisfied that a document does not exist. The Information Commissioner has previously explained that, when key considerations such as agency or Ministerial functions, responsibilities, practices and procedures are taken into account, establishing nonexistence may not require searches, as relevant considerations may adequately account for such nonexistence (it being the case, for example, that an agency's or Minister's processes do not involve creation of a requested document).[29]

34. Where, however, searches have been undertaken, an agency or Minister must demonstrate that it has taken all reasonable steps to locate responsive documents prior to deciding that the documents are nonexistent,[30] taking into account key considerations as summarised above.[31]

35. Similarly, an agency or Minister must demonstrate that it has taken all reasonable steps to find requested documents when seeking to rely on section 52(1)(b) of the RTI

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[20] Submissions annexed to the applicant's application for external review dated 4 April 2011 and received by OIC on 5 April 2011, and those made in the course of the review on remittal.
[21] Submissions dated 10 March 2015.
[22] In this regard, see particularly the annexures to the applicant's application for external review dated 4 April 2011, where under the heading 'Please outline why you dispute the decision', she states that '[t]*here has been an insufficient search – there is not a single page of any of my submissions sent direct to the Minister…I personally sent more than 38 pages to the Minister's Office – the documentation provided partially relates to my submissions the Minister of Aug 2009, 6 September 2010 and 10 January 2011*'.
[23] Section 23 of the RTI Act.
[24] These grounds are set out in section 47 of the RTI Act.
[25] Under section 47(3)(e) of the RTI Act.
[26] Section 52(1)(a) of the RTI Act.
[27] Section 52(1)(b) of the RTI Act.
[28] Section 52(1)(a) of the RTI Act.
[29] *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (***PDE***), at [37], concerning provisions in the repealed *Freedom of Information Act 1992* (Qld) equivalent to sections 47(3)(e) and 52 of the RTI Act.
[30] *PDE*, at [44].
[31] *PDE*, at [49].

Act; ie, to refuse access to documents on the basis the documents are unlocatable. In assessing reasonableness in this context, regard should be had to the circumstances of the case and key considerations of the kind alluded to in paragraph 33.[32]

Consideration

36. In this case, searches were undertaken in an effort to locate responsive documents. In assessing whether the Respondent may rely on section 52 of the RTI Act, it is[33] therefore necessary for me to consider whether the Respondent's search efforts have been sufficient – whether it has taken all reasonable steps to locate requested information.[34]

37. As a starting point, while I accept the applicant's claims that she did lodge a considerable volume of documentation with the Respondent, the quantity of information located by the Respondent – 38 pages – does not of itself cause me to question the reasonableness or adequacy of the Respondent's search efforts. OIC's experience with external reviews involving requests for Ministerial documents indicates that Ministerial offices do not as a general rule hold or retain significant quantities of information, particularly operational information of the kind identified in the attachment to the applicant's 4 April 2011 external review application and submissions. Documentation such as correspondence concerning a Minister's portfolio responsibilities is generally forwarded to the relevant portfolio Department, for action and retention.[35] The Respondent confirmed as much in this case, advising OIC that:[36]

> *In relation to other officers and documents mentioned in Ms Underwood's attachment, these would be retained by the Department…and would not form a part of documents/records held by the Office of the Minister.*

38. In this context, the volume of the information located in processing the applicant's request does not, on its face, appear to be unreasonable, and does not of itself give me cause to call into question the sufficiency of the Respondent's search efforts.

39. As regards the 32-page 'Ministerial' briefing the applicant specifically contends ought to exist, I note that three of the 38 pages located by the Respondent comprise a 'Correspondence Brief,' consisting of a single-page briefing and a two-page '*Attachment 1: Additional Background Information*', relevantly given the page numbers '22', '23', and '24' by the Respondent in the course of processing the applicant's access application. This is the only document that I can identify which resembles a 'Ministerial' briefing of the kind the applicant submits was partly released to her.

40. Although the applicant has not clearly articulated an argument in this regard, it may be that the numbering applied to these three pages by the Respondent in the course of processing the applicant's access application – the numbers '22', '23', and '24' – has led her to believe that they form part of a larger document; i.e. that they form pages '22-24' of some longer briefing note. I am satisfied that this is not the case, and that those numbers are merely numbers stamped or superimposed on these pages subsequent to their creation for the purpose of enabling the Respondent to keep track of documentation while dealing with – collating, marking-up, and making a decision in relation to – the applicant's RTI request. This is common practice, and one which, in this case, seems to me reasonably obvious by both the fact that these numbers form part of the sequence '1-38' applied to all responsive pages identified by the

[32] *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21].
[33] As I advised the applicant in my letters dated 25 February 2015 and 18 June 2015.
[34] See paragraphs [34] and [53]-[55] of *PDE*. See also section 130(2) of the RTI Act.
[35] Rendering such material a 'document of an agency', access to which may be requested by way of application directed to the appropriate Department or agency: see further paragraph 53.
[36] Letter from Communities on the Respondent's behalf, dated 20 May 2011.

Respondent, and that the second page of the Attachment to the Correspondence Brief is marked with its own 'original' page number – relevantly, '2'.

41. There is nothing else appearing on the face of the Correspondence Brief nor any other objective evidence before me suggesting that it is in any way incomplete. There is nothing to suggest that it is missing any pages, nor that it formed part of a larger document, nor that it had annexed to it any additional information (ie, beyond 'Attachment 1', accounted for above). In short, it appears to me to be a complete document – one comprised of three, not 32, pages, all of which have been released to the applicant, subject only to redaction of limited segments of information.

42. As to the applicant's general assertion that further documents should exist, I have noted above that Ministerial offices do not ordinarily hold large amounts of documentation. While I accept, as noted, that the applicant likely did deliver to the Respondent a considerable amount of information, in the absence of objective evidence to the contrary, I have no reason to suspect that the Respondent retained possession of that information and/or that additional documents ought to exist in the Respondent's possession or under the Respondent's control. It would seem to me that on this basis alone, the Respondent would be justified in refusing access to further documents, on the basis they do not exist in the Respondent's possession or control.

43. Importantly, however, even if there was some objective evidence suggesting the existence of additional 'documents of a Minister', I consider that the Respondent has taken all reasonable steps to locate that information. These steps include:

- searches conducted in 2011; and
- further searches of the Queensland State Archives initiated by the Respondent and undertaken in May 2015.

2011 searches

44. In March 2011 the Respondent conducted file and email searches for information concerning:

- Unit 1/1412 Sandgate Road, Nundah; and
- Helen Underwood.

45. These searches located the 38 pages discussed above. No additional documents were located.[37]

46. OIC put the applicant's sufficiency of search contentions to the Respondent on commencing our original external review in 2011. On the Respondent's behalf, Communities advised OIC that '[n]*o additional documents were located following our request to the Minister's Office to undertake further searches.*'

47. It is not entirely clear whether further searches were undertaken in May 2011; search records[38] accompanying Communities' advice as cited in the preceding paragraph appear to be dated March 2011 and may therefore relate to the Respondent's initial search efforts. In any event, even if no further efforts were undertaken in May 2011, I consider that the original inquiries conducted in March 2011 were appropriately framed and adequate in the circumstances.

[37] Communities' letter dated 20 May 2011.
[38] See for example the table entitled 'Record of Searches for IP Act access application' enclosed with this letter.

Further searches – May 2015

48. In May 2015 the Respondent inquired of the Queensland State Archives as to whether there were any further relevant documents among records concerning the Former Minister. Searches were conducted over 2.5 hours. No additional information was located.[39]

Conclusion

49. As noted above, I can identify no objective evidence pointing to the existence of additional relevant documents. Even if there was, I consider the search efforts undertaken by the Respondent to have been reasonable in the circumstances of this case, and I am unable to identify any further avenues of search or inquiry that might now reasonably be pursued. In the circumstances, I consider that the Respondent:

- has taken all reasonable steps to locate documents within the scope of the applicant's access application; and
- is, in the circumstances of this case, entitled to refuse access to any additional information on the basis that it is nonexistent or unlocatable.[40]

Applicant's submissions as to nonexistent/unlocatable documents

50. I conveyed the substance of paragraphs 31-39 and 41-49 to the applicant by letters dated 25 February 2015 and 18 June 2015. The applicant has continued to maintain that the Respondent has failed to locate and deal with all relevant information. The applicant's submissions, however, amount to little more than unsubstantiated assertion or bald rejection of the explanations conveyed in my correspondence. In response to my reasoning as regards the supposed 32-page Ministerial briefing,[41] for example, she simply asserts that:[42]

> *…we have some pages out of a total document and many other documents are missing…*
>
> *…I disagree totally there is nothing on the face of that document or any other objective evidence before me suggesting that the document formed part of or had annexed to it any additional information….*

51. As explained above, I have carefully scrutinised the Correspondence Brief, which appears to be the 'Ministerial' briefing the applicant contends forms part of a larger, missing, whole. I do not think that I can explain my findings any more clearly than I have above. It is sufficient to note that the document presents to me as a complete document, and there is nothing in the applicant's submissions to dissuade me from that view, nor my findings as to the adequacy of the Respondent's searches.

52. The applicant further submits that:

> *…there ought to be an audit trail showing dates; what documentation has been transferred to relevant agency as a repository for the Minister's information; and this ought to be accessible at any time… The Minister's Office ought to be able to recall the specific information from the agency to comply with an order to make a decision according to law.*[43]

[39] HPW letter and enclosures forwarded on behalf of the Respondent, dated 21 May 2015.
[40] In accordance with sections 47(3)(e) and 52(1) of the RTI Act.
[41] See paragraph 41.
[42] Applicant's submissions dated 2 July 2015.
[43] As above.

53. I understand the applicant here to be arguing that the transfer of possession or control of documents from a Minister to an agency (as discussed at paragraph 37) ought not 'defeat' her request for access as directed to the Respondent – that the Respondent should simply 'recall' any relevant documents from the Department. This argument is misconceived. As noted above,[44] the definition of 'document of a Minister' specifically excludes documents of an agency; documents fielded or created by a Minister but which are then transferred into the possession or control of a Department or other portfolio agency are no longer documents of a Minister susceptible to an access application to that Minister, but documents of the relevant agency, which may be requested by separate access application directed to that agency.[45]

54. The applicant also, as best as I can comprehend, argues that she has been given contradictory information by OIC as to the existence of relevant information. In her submissions dated 10 March 2015 she contends that:

> [d]*uring the period 30 March 2011 and 9 February 2012 I was advised OIC had all the information from the Agency.*
> *…*
> *Having been advised OIC had all the information possibly about June/July 2011 and today being advised information is not locatable – suggests I was given the wrong information in about June/July 2011.*

55. I addressed these submissions in my letter to the applicant dated 18 June 2015, explaining as follows:[46]

> *I am not aware of what advice it is you contend OIC gave you at this earlier time, however I note that any reference to 'information' at that time could only have comprised a reference to receipt by us of the 38 pages located by the Respondent in response to your application, and/or information necessary to form a preliminary view on sufficiency of search issues, ie, information as to searches etc discussed in this and my earlier letter* [dated 25 February 2015]. *To be clear, the Respondent has to my knowledge never located – and certainly OIC has never held – any information of the kind requested by you in your access application beyond the 38 pages noted above. This point is the very essence of the sufficiency of search issues I am required to determine in this review.*

56. The applicant made further submissions on this point in her letter to OIC dated 2 July 2015. They are somewhat difficult to decipher, although as best as I can determine, she maintains that OIC provided her with advice to the effect as outlined in paragraph 54 during the course of the initial review (ie, review no. 310596). I have reviewed the file created by OIC during our initial external review. I cannot identify any communication suggesting the applicant was advised of the existence of documents beyond the 38 pages noted above. If the applicant did receive advice from OIC as to receipt of 'all the information', she appears unfortunately to have misinterpreted it.

57. To reiterate, I am satisfied the Respondent's search efforts have been reasonable. Access to further information may be refused, on the basis that it is nonexistent and/or unlocatable.

Contrary to public interest information

58. This information comprises the Mobile Telephone Numbers and Third Party Segments, as described in paragraph 11.

[44] Paragraphs 26 and 27.
[45] Advice which I conveyed to the applicant in my letter dated 18 June 2015: see note 12 of that letter.
[46] Note 15 of that letter.

Relevant law

59. It is Parliament's intention that access should be given to a document unless giving access would, on balance, be contrary to the public interest.[47] The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, a public interest consideration is one which is common to all members of the community, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of a particular individual.

60. In deciding whether disclosure would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:

- 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 disclosing the information would, on balance, be contrary to the public interest.[48]

61. Schedule 4 of the RTI Act contains non-exhaustive lists of various factors that may be relevant in determining the balance of the public interest.

Consideration

62. I can identify no irrelevant factors arising in the circumstances of this case, and I have taken none into account in making my decision. I will now consider whether the balance of the public interest favours disclosure or nondisclosure of the Mobile Telephone Numbers and Third Party Information respectively.

Mobile Telephone Numbers

Factors favouring disclosure

63. I acknowledge the general public interest in furthering access to government-held information.[49] I cannot, however, identify any other public interest considerations favouring disclosure of the Mobile Telephone Numbers. I cannot see how disclosure of limited and particular personal contact details could, for example, enhance government accountability,[50] promote open discussion of public affairs,[51] or contribute to positive and informed debate on important issues or matters of serious interest.[52]

64. The applicant has not specifically argued a case for access to the Mobile Telephone Numbers during this review, beyond the general assertion that she is '…*being denied any opportunity to have wrong information corrected*.'[53] The submissions annexed to the applicant's application for external review, however, contain various contentions as to why information should be disclosed to her, including that she was being denied the

[47] Section 44(1) of the RTI Act. Where disclosure would, on balance, be contrary to the public interest, access may be refused under sections 47(3)(b) and 49 of the RTI Act.
[48] Section 49(3) of the RTI Act.
[49] Implicit in, for example, the objects of the RTI Act.
[50] Schedule 4, part 2 item 1 of the RTI Act.
[51] As above.
[52] Schedule 4, part 2, item 2 of the RTI Act.
[53] Applicant's submissions dated 10 August 2015. She did also state that '…*it was your* [ie, OIC's] *staff that wished to pursue access to mobile telephone numbers in order that a precedent could be established*' (submissions dated 2 July 2015). I am not aware of any such view having been communicated by OIC to the applicant. Even if it was, it would not amount to a public interest case for disclosure nor a suggestion that OIC considered that such a case existed.

'*right to know the details of seemingly fabricated information ie perpetuating and compounding one's persecution and prolific defamation*'.[54]

65. Insofar as the submissions canvassed in the paragraph above are relevant, they would appear to me to be meaningfully applicable only to the Third Party Segments, and I have addressed them in that context below. There is no evidence that the Mobile Telephone Numbers are incorrect,[55] and I cannot see how mere contact numbers could be said to '*perpetuate and compound…persecution and…defamation*' in any way so as to arguably merit disclosure.

Factors favouring nondisclosure

66. A factor favouring nondisclosure arises where disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy.[56] OIC has previously found that disclosure of the mobile telephone numbers of public officers could reasonably be expected to lead to this prejudice.[57] This is because such information allows officers to be contacted directly and outside of work hours. As the Assistant Information Commissioner has noted:[58]

> *I acknowledge that agency employees are provided with mobile telephones to perform work associated with their employment. However, I also consider that a mobile telephone number which allows an individual to be contacted directly and potentially outside of working hours, falls outside the realm of routine work information and attracts a certain level of privacy.*

67. I agree. As I have noted, disclosure of mobile telephone numbers permits potential contact with a public officer when off duty and/or engaged in private activity, thus giving rise to a reasonable expectation of intrusion into to the officer's private life or 'personal sphere'.

68. Accordingly, I am satisfied that disclosure of the Mobile Telephone Numbers could reasonably be expected to prejudice the protection of associated individuals' right to privacy, and that the nondisclosure factor therefore applies.

Balancing the public interest

69. As noted at paragraph 63, I recognise the general public interest in promoting access to government-held information. There are, however, no broader accountability or transparency considerations standing to be advanced by disclosure of the Mobile Telephone Numbers, and in the circumstances I think this consideration favouring disclosure warrants only minimal weight.

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[54] Paragraph 3 of those submissions.

[55] And thus no basis on which to reasonably conclude that their disclosure would reveal that they were incorrect, out of date, misleading etc., a factor favouring disclosure: schedule 4, part 2, item 12 of the RTI Act. Even if this information were incorrect, I cannot see that refusing the applicant access to it 'denies' her the opportunity to 'correct' it (see paragraph 64), as the right to amend information contained in the *Information Privacy Act 2009* (Qld) only applies to an individual's own personal information: section 41 of that Act.

[56] Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others: see *0P5BNI and Department of National Parks, Recreation, Sport and Racing* (Unreported, Queensland Information Commissioner, 12 September 2013), 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 August 2008, at paragraph 1.56.

[57] See, for example *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012), paragraphs [18]-[21] (***Kiepe***).

[58] *Kiepe*, at [20].

70. Weighing against disclosure is the public interest in avoiding prejudice to the protection of an individual's right to privacy. There is a clear public interest in ensuring that government respects personal privacy, including the privacy of its employees. I accord this consideration significant weight.

71. Balancing relevant factors against one another, I consider the substantial public interest in safeguarding individual privacy outweighs the general public interest in promoting access to government-held information.

72. Disclosure of the Mobile Telephone Numbers would, on balance, be contrary to the public interest.[59] Access may be refused to this information.[60]

Third Party Segments

73. The Third Party Segments comprise information relating to dealings that persons other than the applicant had with Communities, which at the time the information was recorded was the agency responsible for managing the applicant's tenancy.

Factors favouring disclosure

74. I recognise the public interest in disclosing information that may serve to ensure public agencies operate transparently and accountably. Disclosure of the Third Party Segments could – by allowing the applicant to be fully apprised of issues concerning her tenancy, and the Respondent's management of same – reasonably be expected to advance this public interest.[61] As the Third Party Segments were apparently taken into account by Communities in managing the applicant's tenancy, disclosure could also reasonably be expected to reveal background or contextual information that informed a government decision.[62]

75. I further note that, as information concerning the applicant and her tenancy, the Third Party Segments arguably comprise the applicant's personal information, giving rise to the factor favouring disclosure to an individual of their own personal information.[63] Again, as with the Mobile Telephone Numbers, the general public interest in promoting community access to government-held information is also relevant.

76. As with the Mobile Telephone Numbers, the applicant did not make any detailed submissions as to public interest factors that might favour disclosure of the Third Party Segments during the course of this review on remittal. In her application for external review, however, she contended that she was:[64]

> *…being denied the right to know the details of seemingly fabricated information ie perpetuating and compounding ones persecution and prolific defamation*
>
> *…I am being denied the right to have the information amended*
>
> *…I am being denied the right to have notations made to the records where they are inaccurate, incomplete, out of date or misleading.*

[59] In accordance with the balancing exercise prescribed in section 49 of the RTI Act.
[60] Under section 47(3)(b) of the RTI Act.
[61] Enlivening the public interest factor set out in schedule 4, part 2, item 1 of the RTI Act.
[62] Schedule 4, part 2, item 11 of the RTI Act.
[63] Schedule 4, part 2, item 9 of the RTI Act. Section 12 of the *Information Privacy Act 2009* (Qld) defines personal information 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*'. This definition applies for the purposes of the RTI Act: section 10 and schedule 6 of the latter.
[64] The applicant also annexed to her application for external review the list of factors favouring disclosure in the public interest contained in schedule 4, part 2 of the RTI Act. I do not consider it necessary to extend these already lengthy reasons by engaging with each, it being sufficient to note that I have assessed factors favouring disclosure and consider that only those discussed above apply in the circumstances of this case.

77. A factor favouring disclosure will arise for balancing where disclosure of information could reasonably be expected to reveal that that information itself is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.[65] There is nothing on the face of the Third Party Segments, nor in any other information before me, to suggest that the facts recorded in the Third Party Segments are anything other than correct. Accordingly, I do not consider this factor arises to be considered in this case.[66] For the sake of completeness, I note that even if I were incorrect in this regard, and the factor could be said to apply, I nevertheless consider the balance of the public interest would favour nondisclosure of the Third Party Segments.

Factors favouring nondisclosure

78. Telling against disclosure of the Third Party Segments is the fact that as information identifying persons other than the applicant (or from which their identity could reasonably be ascertained), it comprises those individuals' personal information. The Segments therefore comprise shared personal information of both the applicant and the relevant third parties. I must have regard to the fact that disclosure to the applicant would therefore entail disclosure of the personal information of a person other than the applicant, thus giving rise to the public interest harm recognised in schedule 4, part 4, section 6 of the RTI Act.

79. I also consider that an individual's interactions with and supply of information to a public agency comprise private actions falling within the individual's 'personal sphere.'[67] Disclosure of the Third Party Segments could therefore reasonably be expected to prejudice protection of an individual's right to privacy.[68]

Balancing the public interest

80. Ensuring government accountability, enhancing government transparency and ensuring citizens are supplied with information sufficient to inform them of the basis on which government decisions affecting them are made are important public interest considerations, as is promoting individual access to a person's own personal information.

81. I note, however, that the bulk of the information requested by the applicant has been released to her – including most of the Correspondence Brief, in which the Third Party Segments appear and which describes information relied on by Communities and the general manner in which that agency dealt with her. I consider the applicant has thus been provided with information sufficient to allow her to generally understand issues that affected her tenancy, and the Respondent's actions in responding to those issues. In this regard, I consider that relevant pro-disclosure considerations should be given moderate weight.

82. On the other hand, members of the public are generally entitled to expect that personal information collected from them by a government agency will be handled appropriately,

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[65] Schedule 4, part 2, item 12 of the RTI Act.

[66] And nor does it appear to be a case in which procedural fairness considerations might arise to favour disclosure, the substance of any matters potentially adverse to the applicant having been disclosed to her.

[67] OIC has previously found that the fact of a person's dealings with an agency concerns a central aspect of their '*personal sphere*': *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [23], *0P5BNI and Department of National Parks, Recreation, Sport and Racing* (Unreported, Queensland Information Commissioner, 12 September 2013) at [45]. I agree with the conclusions reached in these cases.

[68] Schedule 4, part 3, item 3 of the RTI Act. In my letter to the applicant dated 25 February 2015, I also noted the Respondent's concern (as cited at page 4 of the decision under review) that routine disclosure of information of this kind may prejudice the future flow of information, thus impairing the Respondent's capacity to regulate and administer public housing (a nondisclosure factor: schedule 4, part 3, item 13 of the RTI Act). In reaching my final decision, however, I have not taken that factor into account. Taking into account all relevant circumstances, I do not consider there is sufficient material before me to enliven the factor.

and not subject to routine and unconditional[69] disclosure to others. I consider that safeguarding individual privacy and avoiding public interest harm by protecting personal information are public interest considerations warranting relatively substantial weight, and which outweigh any considerations favouring disclosure in this case.

83. Disclosure of the Third Party Segments would, on balance, be contrary to the public interest.[70] Access to this information may therefore be refused.[71]

84. In determining the weight that should be accorded to the factors favouring nondisclosure of the Third Party Segments – and in reaching the conclusion expressed in the preceding paragraph – I have had careful regard to the fact that information reviewed in another of the external reviews remitted to OIC by QCAT[72] suggests that the substance of the Third Party Segments appearing on page 24 may previously have been communicated to persons acting on behalf of the applicant. This information comprises:

- two internal Departmental records of conversations between an officer responsible for managing the applicant's tenancy and a relative of the applicant on 20 September 2010, and the officer and a tenancy advocate on 28 September 2010, and
- an email from the officer to the tenancy advocate dated 29 September 2010.

85. Having identified the above information – the '**Other Review Information**' – I wrote to the Respondent,[73] and invited its submissions as to why access to relevant Third Party Segment information should be refused.

86. The Respondent reaffirmed its refusal of access claims,[74] relevantly drawing my attention to an email[75] forwarded to OIC by Communities during the initial conduct of this review in 2011, which rejected any suggestion the applicant herself was aware of relevant information. While not conclusive,[76] there is nothing before me to contradict this submission. I also note that it is buttressed, to some extent, by a further email from Communities dated 12 August 2011, advising that the officer described in paragraph 84 – the officer responsible for managing the applicant's tenancy – could not confirm that the applicant would have been told the information contained in the Third Party Segments.

87. The Respondent further submitted[77] that any prior release would only diminish and not negate privacy interests attaching to this information. This is an important point with which I concur, for unlike refusal of access claims based on confidentiality of information,[78] prior release to or knowledge by an access applicant of personal information of another is not necessarily fatal to a refusal of access claim based on privacy interests.[79]

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[69] The right of access contained in section 23 of the RTI Act provides for no restrictions on the use to which information accessed under it may be put.
[70] Section 49 of the RTI Act.
[71] Under section 47(3)(b) of the RTI Act.
[72] 100105 (formerly 310595).
[73] Via letter dated 8 April 2015.
[74] Letter dated 30 April 2015.
[75] Dated 1 August 2011. The Respondent also relied on a Communities' file note created in the course of processing a separate access application lodged by the applicant with that agency (now the subject of review no. 100103), and which recorded the view that an individual's identity was 'confidential'; I have not ultimately taken that file note into account, as it is undated and I cannot be certain as to the time or incidents to which it relates.
[76] It being difficult to see that Communities could have been in a position to give evidence as to what the applicant's representatives may have communicated to her.
[77] Letter dated 30 April 2015.
[78] Such as exemption claims based on the breach of confidence exemption prescribed in schedule 3, section 8 of the RTI Act, or legal professional privilege as reflected in schedule 3, section 7.
[79] Generally only diminishing the weight that should be given to any relevant privacy interests, rather than eliminating them as factors for balancing altogether.

88. I wrote to the applicant by letters dated 18 June 2015 and 28 July 2015, explaining the nature of the Other Review Information, how it had caused me to revisit my initial preliminary view, and my ultimate conclusion that the balance of the public interest did indeed, as contended by the Respondent and explained above, favour nondisclosure.[80] I also had HPW forward documents containing the Other Review Information to the applicant, appropriately redacted so as to ensure nondisclosure of information claimed to be contrary to the public interest.[81]

89. The applicant has in reply made various submissions, many of which are difficult to decipher, relate to peripheral issues canvassed elsewhere in these reasons or which it is otherwise unnecessary for me to address. Having carefully reviewed all of her submissions, it appears to me that the applicant's key argument in support of her case for access to the Third Party Segments is that if relevant information has been communicated to her, she should be entitled to access that information.[82]

90. The crux of this issue,[83] however, is that there is no evidence before me confirming the communication of the Third Party Segments to the applicant. The Other Review Information does, as I have made clear to the applicant, suggest that the formers' substance (or at least, the substance of the segments on page 24) was communicated to others acting on the applicant's behalf – there is, however, nothing to confirm communication of the personal information in the Segments to the applicant. The applicant has put before me nothing to suggest that I should consider otherwise.

91. I should also stress that even if it could be shown that this information had been made known to the applicant, I nevertheless consider that in all the circumstances of this case – particularly the fact that it relates to an individual's private dealings with a public agency, and the relative lack of weight attributable to factors favouring disclosure[84] – the Third Party Segments would retain a privacy interest sufficient to justify nondisclosure.

92. I acknowledge that the applicant is aware of a considerable amount of information concerning events described in the Correspondence Brief, both as a consequence of information released to her by the Respondent pursuant to her RTI access application, and because she was intimately involved in events to which the Correspondence Brief and the Third Party Segments contained in it pertain. In these circumstances, it is arguable that the privacy interests attaching to the personal information embodied in the Third Party Segments may not be of the same magnitude as might ordinarily be the case. Having said that, members of the community are, as I have noted above,[85] entitled to expect that the personal information they convey to a government agency will not be subject to unconditional disclosure to others. For the reasons discussed above, I am therefore satisfied that the factors favouring nondisclosure retain sufficient weight so as to justify refusal of access in this case.

Further matter raised in applicant's letter dated 10 August 2015

93. Before ending these reasons, I should canvass a further submission made by the applicant. This submission is that the Other Review Information released to her by

[80] My letter dated 28 July 2015 also explained that OIC had during the original external review in this matter (ie, 310596) conveyed preliminary views to the Respondent that disclosure of the Third Party Segments would not, on balance, be contrary to the public interest. As preliminary views formed by other delegates during a review process conducted more than four years ago, they are obviously not binding on me in dealing with this matter afresh on remittal.
[81] Relevant portions of redacted information appearing in the Other Review Information are substantially similar to that contained in the Third Party Segments on page 24. HPW claims that they comprise contrary to public interest information.
[82] See the applicant's submissions dated 2 July 2015, where on the third page at paragraph 9(b) she states '…*if it has already been communicated to persons acting on my behalf, this ought not to be a reason for its non disclosure*.'
[83] As noted in paragraph 86.
[84] As discussed at paragraph 81.
[85] Paragraph 82.

HPW at my request is '*irrelevant*', as it predates the Third Party Segments and '*does not refer to the Ministerial correspondence in question*…*suggest*[ing] *collusion between your office and the Department…to not make available any relevant information.*'[86]

94. This submission is misconceived, and suggests that the applicant may have failed to comprehend what it is that was being communicated to her. Of course the Other Review Information does not refer to the Correspondence Brief in which the Third Party Segments appear – the former is part of the very primary source material on which the summary of events concerning the applicant's tenancy as contained in the Correspondence Brief appears to be based. My point was that if it had been already been relayed to the applicant – e.g., by her representatives, presumably at or about the time it was communicated to those representatives – then any privacy interest attaching to the same or similar information subsequently repeated in the Third Party Segments may have been diminished to the point it may no longer have warranted protection from disclosure.

95. Far from suggesting 'collusion', the fact that I put the Other Review Information to the Respondent – and was prepared to revisit my initial preliminary view – reflects that I have conducted this review independently and impartially, and have subjected evidence and arguments presented by all participants to appropriately critical scrutiny.

DECISION

96. For the reasons set out above, I vary the decision under review and find that:

- access to the Mobile Telephone Numbers and Third Party Segments may be refused under section 47(3)(b) of the RTI Act, as their disclosure would, on balance, be contrary to the public interest under section 49 of the RTI Act; and
- access to any additional information may be refused under section 47(3)(e) of the RTI Act, on the basis that it is nonexistent or unlocatable under section 52(1) of the RTI Act.

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

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Clare Smith
Right to Information Commissioner

Date: 29 September 2015

[86] Paragraphs 6(d) and 7 of the applicant's 10 August 2015 submissions.

APPENDIX

Significant procedural steps

External review 310596	
Date	**Event**
28 February 2011	The Department received the access application under the RTI Act and OIC understands it was transferred to the Respondent. The access application was for the applicant's complete file including 6 categories of information. The Respondent authorised an officer of Communities to deal with the access application under section 31(1) of the RTI Act.
30 March 2011	The Respondent located 38 pages and issued a decision to the applicant.
5 April 2011	OIC received the application for external review of the decision.
21 April 2011	OIC informed the applicant and the Respondent (through Communities) that the external review application had been accepted. OIC asked the Respondent to provide submissions on a number of issues.
25 May 2011	OIC received the Respondent's submissions dated 20 May 2011.
28 July 2011	OIC issued a preliminary view to the Respondent in relation the Third Party Segments and invited the Respondent to provide submissions in support of its case.
1 August 2011	OIC received the Respondent's submissions in response to the preliminary view.
2 August 2011 and 12 August 2011	OIC reiterated its preliminary view to the Respondent as regards the Third Party Segments.
12 August 2011	OIC received further submissions from the Respondent in response to OIC's preliminary view.
9 February 2012	OIC decided not to further deal with the applicant's external review application, finalising external review no. 310596.
External review 100106 (remitted matter 310596)	
23 October 2014	QCAT set aside OIC's decision dated 9 February 2012, and remitted the matter to OIC. OIC opened review no. 100106.
24 December 2014	OIC asked HPW on behalf of the Respondent to provide submissions on refusal of access and sufficiency of search issues.
9 February 2015	The Respondent (through HPW) provided the requested submissions.
25 February 2015	OIC issued a preliminary view to the applicant that access may be refused to: • the Mobile Telephone Numbers and Third Party Segments on the basis their disclosure would, on balance, be contrary to the public interest, and • any additional or further information, on the basis such information was non-existent or unlocatable. OIC invited the applicant to provide submissions in support of her case.
11 March 2015	OIC received submissions from the applicant in reply to the preliminary view.
8 April 2015	OIC issued a revised preliminary view to the Respondent, referring to the Other Review Information and inviting submissions in reply.

External review 100106 (remitted matter 310596)	
Date	**Event**
30 April 2015	The Respondent provided submissions in reply to OIC's 8 April 2015 preliminary view.
6 May 2015	OIC wrote to the Respondent, inviting submissions on the status of the information in issue.
21 May 2015	The Respondent replied to OIC's 6 May 2015 letter, detailing additional searches of Queensland State Archives for relevant information.
18 June 2015	OIC wrote to the applicant, reaffirming OIC's original preliminary view dated 25 February 2015 and inviting further submissions from the applicant.
2 July 2015	OIC received submissions from the applicant in reply to OIC's 18 June 2015 correspondence.
21 July 2015	OIC asked the Respondent to forward the Other Review Information to the applicant.
28 July 2015	OIC wrote to the applicant, further detailing steps taken and information relevant to the Third Party Segments. OIC again invited the applicant to provide submissions in support of her case.
10 August 2015	OIC received submissions from the applicant in reply to OIC's 28 July 2015 letter.