



## Decision and Reasons for Decision

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**Citation:** *G53 and Board of Professional Engineers of Queensland [2025] QICmr 43 (30 June 2025)*

**Application Number:** 317121

**Applicant:** G53

**Respondent:** Board of Professional Engineers of Queensland

**Decision Date:** 30 June 2025

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications with agency's legal advisers - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - waiver and improper purpose - whether access to information may be refused on the basis that it is exempt - sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

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

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - whether information may be deleted on the basis it is irrelevant - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - NONEXISTENT OR UNLOCATABLE DOCUMENTS - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents can be refused on the ground they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Board of Professional Engineers of Queensland (**Board**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access certain categories of documents '*generated and/or in the possession of the Board*' subsequent to the referral of a nominated Fire Engineering Peer Review Report (**Report**) to the Board.<sup>1</sup>
2. The applicant subsequently agreed<sup>2</sup> to narrow the terms of his original request, by excluding certain types of information (**Access Application**).
3. Although the Board purported to make a decision in respect of the Access Application,<sup>3</sup> it did not make that decision within the required statutory timeframe.<sup>4</sup> The Board was therefore taken to have made a deemed decision refusing access to the requested information (**Deemed Decision**).<sup>5</sup>
4. Notwithstanding this, the applicant applied for internal review of the Board's purported decision,<sup>6</sup> which the Board also purported to confirm on internal review.<sup>7</sup>
5. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review,<sup>8</sup> submitting that the Board was not entitled to rely upon section 40 of the RTI Act and raising concern that the Board had not provided a list of all responsive documents and their categorisation.
6. On external review, the Board located almost 1000 pages of documents relevant to the Access Application and disclosed some of that information to the applicant. The applicant is dissatisfied with the level of information which has been disclosed to him.
7. For the reasons set out below, I set aside the Deemed Decision and, in respect of the information remaining in issue in this review, I find that:
  - some information is exempt, and access to it may be refused on that basis
  - access may be refused to certain information, as its disclosure would, on balance, be contrary to the public interest
  - some information is irrelevant to the Access Application and has been validly deleted from documents disclosed to the applicant; and
  - access to any further information relevant to the Access Application may be refused on the basis that it does not exist.

### Background

8. The Board was established under the *Professional Engineers Act 2002* (Qld) (**PE Act**).<sup>9</sup> The Board regulates the engineering profession in Queensland<sup>10</sup> and its functions

<sup>1</sup> Access application dated 28 September 2022. The date range nominated in the access application is '*10 June 2019 - present/contemporary*'. The application became compliant on 12 October 2022, when the applicant paid the application fee.

<sup>2</sup> Applicant's email to the Board dated 12 October 2022.

<sup>3</sup> In the purported decision dated 17 November 2022, the Board decided to refuse to deal with the access application under section 40 of the RTI Act.

<sup>4</sup> The processing period expired on 16 November 2022.

<sup>5</sup> Under section 46 of the RTI Act. OIC notified this assessment to the Board on 16 March 2023 and the Board did not contest it.

<sup>6</sup> On 15 December 2022 (**Internal Review Application**).

<sup>7</sup> By letter dated 17 January 2023.

<sup>8</sup> On 13 February 2023 (**External Review Application**).

<sup>9</sup> Section 77 of the PE Act.

<sup>10</sup> General information about the Board can be accessed at < <https://bpeq.qld.gov.au/>>.

include conducting or authorising investigations about the professional conduct of registered engineers.<sup>11</sup>

9. In late 2020, the Queensland Building and Construction Commission (**QBCC**) referred the Report to the Board. The Board decided, in respect of that referral, to conduct an investigation into the conduct of two registered engineers (**Engineers**).<sup>12</sup>
10. Separate to the QBCC referral, the applicant also made complaints to the Board about the Engineers and another individual. Those separate complaints were made after the applicant lodged the Access Application. By letter dated 6 July 2023, the Board notified the applicant of its decision to take no further action concerning the applicant's complaints (that is, the Board decided not to investigate the complaints).<sup>13</sup> When doing so, the Board also provided the applicant with an overview of the actions taken by the Board in respect of the QBCC referral, including the investigation decision made by the Board in respect of that referral (which was also to take no further action).
11. During the review, the applicant expressed his dissatisfaction with the Board's decisions concerning the QBCC referral and his complaints.<sup>14</sup> Those decisions are not reviewable decisions under the RTI Act.

### Reviewable decision

12. Although the External Review Application sought review of the Board's purported internal review decision, the decision under review is the Deemed Decision.<sup>15</sup>

### Evidence considered

13. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). The significant procedural steps relating to the external review are set out in the Appendix.
14. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>16</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.<sup>17</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>18</sup>

<sup>11</sup> The Board's functions are identified in section 80 of the PE Act.

<sup>12</sup> Under section 74 of the PE Act, the Board is required to give notice of its investigation decision to certain people.

<sup>13</sup> The applicant provided a copy of this letter to OIC, with his submission dated 8 September 2023.

<sup>14</sup> Refer, for example, to the applicant's submission received 13 February 2025. In this submission, the applicant raised a specific concern that the Board had prevented him from participating in the Board's investigation of the QBCC referral and had prevented him accessing information about it.

<sup>15</sup> Taken to have been made on 16 November 2022 (section 46(1)(a) of the RTI Act).

<sup>16</sup> Section 21 of the HR Act.

<sup>17</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>18</sup> I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.

## Information in issue

15. During the review, the Board disclosed a number of documents<sup>19</sup> to the applicant, subject to the redaction of certain portions of information.
16. Following these disclosures, the applicant confirmed that he did not seek access to:
  - duplicate documents identified by OIC; correspondence with him; internal QBCC emails which had previously been disclosed by QBCC under the RTI Act; and information unrelated to the applicant or his complaints;<sup>20</sup> and
  - documents which had been identified by OIC as falling outside the scope of the Access Application.<sup>21</sup>
17. The applicant initially confirmed that he sought access to only some, but not all, of the information which had been redacted in the documents disclosed by the Board—for example, the applicant indicated he did not seek access to redacted personal information (such as contact email addresses and telephone numbers) which had been redacted in the Bundle A, B and C Documents.<sup>22</sup> However, the applicant subsequently submitted that *'Names, contact details (excluding residential addresses), email addresses, signatures, information about personal circumstances/qualifications and references to/summaries of information ought to be disclosed'*.<sup>23</sup> As it is unclear whether the applicant has agreed to exclude any redacted information within the Bundle A, B, C and D Documents from consideration, it is necessary to deal with all of that redacted information in these Reasons for Decision.
18. The remaining undisclosed information (**Information in Issue**) to which the applicant continues to seek access comprises:
  - 20 undisclosed documents<sup>24</sup> which QBCC maintains comprise exempt information (**Category A Information**)<sup>25</sup>
  - 16 documents<sup>26</sup> which QBCC maintains would, on balance, be contrary to the public interest to disclose (**Category B Information**)
  - the information redacted on 31 pages of the Bundle A Documents (**Bundle A Redactions**)<sup>27</sup>

<sup>19</sup> Namely, 94 pages on 23 August 2023 (**Bundle A Documents**); 162 pages on 19 February 2024 (**Bundle B Documents**) and 39 pages on 10 April 2024 (**Bundle C Documents**). Additionally, and in the interest of resolving the review, the Board agreed to disclose a further 108 pages of information (**Bundle D Documents**), notwithstanding the Board confirmed its position that those documents comprised exempt information (and these documents were disclosed by the Board on 18 December 2024).

<sup>20</sup> Applicant's submission dated 8 September 2023.

<sup>21</sup> Applicant's submission dated 29 August 2024.

<sup>22</sup> In the applicant's submission dated 29 August 2024, the applicant confirmed that he sought access to redacted information in the Bundle A, Bundle B and Bundle C Documents. However, the applicant confirmed he continued to seek access to *'the named Officers or individuals to whom such email addresses and telephone number relate'* within those documents. In the applicant's submission received 18 February 2025, the applicant indicated he had provided a 'comprehensive list of particular redacted information and relevant page numbers' he sought to access in the Bundle A and B Documents (which did not address all of the redacted information within those documents). Notwithstanding this, the applicant also confirmed, in that same submission, that he sought access to *all* the information redacted from the Bundle A, B and D Documents.

<sup>23</sup> Applicant's submission received 13 February 2025.

<sup>24</sup> Documents numbered 2, 16, 17, 19, 20, 21, 23, 26, 27, 28, 31, 35, 38, 42, 44, 45, 75, 78, 81 and 89.

<sup>25</sup> When the applicant identified the Category A Information he sought to access (applicant's submission dated 29 August 2024) he did not list Document numbered 2. However, when the applicant subsequently confirmed his disagreement with OIC's preliminary view about the Category A Documents (applicant's submission received 13 February 2025). Accordingly, Document 2 (which OIC had identified, in preliminary views, as being part of the Category A Documents) has been addressed in these Reasons for Decision.

<sup>26</sup> Documents numbered 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 55, 56, 57, 59 and 83, which comprise 115 pages.

<sup>27</sup> There were 94 pages in the Bundle A Documents and portions of information were redacted on pages 1, 2, 3, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 76, 77, 81, 87 and 88 of 94 in the bundle.

- the information redacted on 22 pages of the Bundle B Documents (**Bundle B Redactions**)<sup>28</sup>
- the information redacted on 8 pages of the Bundle C Documents (**Bundle C Redactions**),<sup>29</sup> and
- the information redacted on 121 pages of the Bundle D Documents (**Bundle D Redactions**).

### Issues for determination

19. The issues for determination are whether:

- the Category A Information comprises exempt information on the basis that it is subject to legal professional privilege
- disclosure of the Category B Information would, on balance, be contrary to the public interest
- the applicant is entitled under the RTI Act to access the Bundle A, B, C and D Redactions; and
- access to any further documents relevant to the Access Application may be refused on the basis they do not exist or cannot be located.

### Preliminary matters

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

### ***Applicant's dissatisfaction with the nonacceptance of his informal resolution proposal***

21. In the External Review Application, the applicant indicated that he would agree to resolve the review<sup>30</sup> if the Board was *'simply prepared to deal with the RTI Request in accordance with the RTI Act'*. The applicant subsequently submitted that *'[r]ather than return the access application to the decision-maker, it appears a pseudo-decision has been made that is, in fact, not compliant with the RTI Act'*.<sup>31</sup> He further submitted that, as the Board had *'abandoned its original position'* on external review, OIC should have negotiated for the Access Application to be returned to the Board to be dealt with under the RTI Act.
22. External review is a merits review process<sup>32</sup> and the RTI Act confirms that the procedure to be followed on external review is within the discretion of the Information Commissioner.<sup>33</sup> While the RTI Act requires the Information Commissioner to promote settlement of external review applications,<sup>34</sup> it does not empower the Information

<sup>28</sup> There were 162 pages in the Bundle B Documents and portions of information were redacted on pages 1, 2, 4, 5, 7, 9, 11, 13, 15, 17, 20, 23, 26, 29, 31, 33, 35, 36, 83, 84, 132 and 135 of 162 in the bundle. I note that the redaction boxes on pages 139 and 140 (of mobile telephone numbers of QBCC officers) appeared in documents when they received by the Board. On this basis, the applicant was notified that this removed information was not being considered on external review. The applicant did not contest this notified approach.

<sup>29</sup> There were 39 pages in the Bundle C Documents and portions of information were redacted on pages 6, 7, 14, 15, 21, 28, 33 and 39 in the bundle.

<sup>30</sup> As contemplated by section 90 of the RTI Act.

<sup>31</sup> Applicant's submission dated 6 October 2023.

<sup>32</sup> Which is an administrative reconsideration of a case that can be described as 'stepping into the shoes' of the primary decision-maker, to determine the correct and preferable decision. In *Mokbel v Queensland Police Service* [2023] QCATA 158 (**Mokbel**), Judicial Member DJ McGill SC relevantly observed at [12] that *'...it is clear that the legislative focus was on the protection of the right to access information by means of a merits review by an independent specialist Commissioner who was able to examine the relevant material and decide whether or not there was a right to access in accordance with the Act'*. Although these observations were made in respect of external review under the *Information Privacy Act 2009* (Qld) (**IP Act**), they are also relevant to external review under the RTI Act.

<sup>33</sup> Section 95 of the RTI Act.

<sup>34</sup> Section 90(1)(b) of the RTI Act.

Commissioner to remit an access application to an agency on external review. Accordingly, in this matter, the agreement of **both** external review participants was required to resolve the external review application on the basis of the applicant's proposal.

23. The applicant's resolution proposal (as set out in the External Review Application) was conveyed to the Board.<sup>35</sup> It was not accepted. Although I acknowledge that the applicant was disappointed with this, I do not accept the applicant's contention<sup>36</sup> that the Board's nonacceptance of his resolution proposal is evidence of the Board's '*non-commitment*' to the RTI Act or that it is a deliberate act to prevent him accessing information.
24. Ultimately, in the absence of both external review participants agreeing to the applicant's informal resolution proposal, the external review process necessarily continued.

### ***Applicant's request for a further prescribed written notice***

25. When seeking internal review, the applicant submitted that the Board's decision did not provide a '*comprehensive list of responsive documents and their categorisation, and the reasons for that categorisation and/or refusal of access*'.<sup>37</sup> The External Review Application included an almost identical submission. During the review, the applicant further submitted that:<sup>38</sup>

*However, and to date, I am not in possession of any Prescribed Written Notice containing specific details about documents identified and why they were released or not released. BPEQ has never provided any Notice or these specific details ...*

*Under the RTI Act, I am required to be provided with a Prescribed Written Notice containing specific details. Until I am given such information, the access application has not been dealt with under the RTI Act, I am unable to provide any specific or meaningful response to enquiries that rely on my knowledge of such information, and the External Review cannot be concluded. I kindly request a Prescribed Written Notice containing specific details about documents and why they were released or not released ...*

26. Although the applicant has extensive experience with the operation of the RTI Act (having made, over several years, many access applications, and many external review applications to OIC), I consider (for the reasons stated below) that the applicant's request to be issued with a further prescribed written notice in this matter suggests a misunderstanding of the external review process.
27. As noted in paragraphs 3 and 4 above, in its purported decisions, the Board refused to deal with the Access Application under section 40 of the RTI Act. The details required to be specified in an agency's prescribed written notice depend on the nature of the agency's decision.<sup>39</sup> Notably, section 54(2)(f) of the RTI Act confirms that, for a refusal to deal decision under section 40, the prescribed written notice is to specify the applicable exemption provision in schedule 3 and the reasons for classifying information as exempt. Further, section 40(2) of the RTI Act specifically confirms that, in refusing to deal with an application, the agency is *not* required to identify any, or all, of the documents.
28. Having considered the relevant legislative provisions, I am satisfied that the Board was not required, in its purported decisions, to provide the applicant with '*specific details*

<sup>35</sup> As noted in the Appendix.

<sup>36</sup> Refer to the applicant's submission received 13 February 2025.

<sup>37</sup> Internal Review Application, which also included the following statement: '*The applicant does not agree with the failure to present and discuss all categories of documents, the categorisation of documents as exempted, or the blanket refusal*'.

<sup>38</sup> Applicant's submission dated 6 October 2023.

<sup>39</sup> This is made clear by section 54(2) of the RTI Act.

about documents identified and why they were released or not released', as the applicant contended.<sup>40</sup>

29. While the applicant was notified of the provisions referenced in paragraph 27 above,<sup>41</sup> he further submitted<sup>42</sup> that:

*Therefore BPEQ's Internal Review Decision dated 17 January 2023 [sic] to refuse to deal with the access application under s40 of the RTI Act was not only wrong, but no longer exists (because according to you, BPEQ has now dealt with the access application on External Review):*

- a. BPEQ wrongly "relied upon" s40 of the RTI Act when it made its "decision" under review. Therefore s40, and more specifically s40(2) of the RTI Act, was never relevant to the access application.*
- b. In any event, BPEQ has now dealt with the access application, superceding the Internal Review Decision.*

*It was and remains a requirement for BPEQ to fulfil its obligations under the RTI Act. To the extent BPEQ has now dealt with the access application, ss36, 54 and 191 of the RTI Act must be complied with.*

*...*

*On this External Review, I am disadvantaged by BPEQ's (at best) mistakes, and your purported exercise of discretion, to process and finally arrive at a conclusion to my properly made access application under the RTI Act. If BPEQ approached the access application appropriately, and made a compliant decision under the RTI Act, I would have been furnished with a Prescribed Written Notice and a schedule of documents like [reference to submission attachment].*

*Such a procedural requirement, and compliance with the RTI Act, remains now on External Review, and ought to be complied with.*

30. I understand, from the above submission, that the applicant's position is that, after the Board had confirmed to OIC that it no longer relied upon section 40 of the RTI Act, the Board was required to issue a further prescribed written notice to him. However, where an agency changes its disclosure position on external review, the RTI Act does not require the agency to issue a further prescribed written notice to an applicant. This is because, when a valid application for external review is made to OIC, the relevant agency is '*functus officio*' from that point on and has no jurisdiction to continue to deal with the applicant or their access application. On external review, OIC is (as I have noted above) conducting a merits review process.<sup>43</sup>

31. Here, the applicant exercised his right to seek external review and OIC confirmed acceptance of the External Review Application in letters sent to both the applicant and the Board.<sup>44</sup> As part of the ensuing merits review process:

- OIC conveyed a preliminary view<sup>45</sup> to the Board that it was not entitled to rely upon section 40 of the RTI Act; and
- the Board, accepting that view, notified OIC of its disclosure position for documents located as responsive to the Access Application.

<sup>40</sup> Although it was only identified during the review that the Board's purported decision dated 17 November 2022 had not been issued within the statutory timeframe, I also note, for completeness, that section 46(2) of the RTI Act does not require an agency to provide specific details about the documents for which a deemed decision is taken to have been made under section 46(1)(a) of the RTI Act.

<sup>41</sup> On 24 June 2024.

<sup>42</sup> Applicant's submission dated 29 August 2024.

<sup>43</sup> Section 105(1)(b) of the RTI Act also empowers the Information Commissioner to make any decision in relation to an access application that could have been decided by the agency.

<sup>44</sup> Dated 16 March 2023.

<sup>45</sup> It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

### **Applicant's request for provision of a schedule of documents**

32. In addition to requesting a further prescribed written notice from the Board, the applicant also requested that he be provided with a '*comprehensive list of responsive documents*' on external review.<sup>46</sup>
33. The RTI Act does not require the Information Commissioner, on external review, to provide an applicant with a list of documents to which access has been refused. On the contrary, section 108(1) of the RTI Act requires the Information Commissioner to take necessary steps to avoid the disclosure to an applicant of information that is claimed to be exempt information or contrary to the public interest information.<sup>47</sup> This provision clearly restricts the level of detail which can be provided to an applicant on external review about the nature and content of information which an agency claims is exempt information or contrary to the public interest information. In *Mokbel*, the Queensland Civil and Administrative Tribunal (**QCAT**) considered an applicant's request to be provided with a list of refused documents in an external review. I consider the following finding by Judicial Member McGill in *Mokbel*<sup>48</sup> concerning section 121 of the IP Act (which is in identical terms to section 108 of the RTI Act) is apposite:

*The terms of s 121 indicate that there is no obligation to provide such information, and it is a matter for the discretion of the Commissioner as to the extent to which information about what documents claimed to be exempt are in existence, and to what extent the access applicant is to be provided with access to them.*

34. To the extent the applicant argued that, without the schedule of documents, he was at a disadvantage,<sup>49</sup> I note that OIC conveyed preliminary views to the applicant which broadly described the nature of undisclosed information and explained the basis for its nondisclosure.<sup>50</sup> The applicant was invited to provide submissions in response, and the applicant provided a number of submissions to OIC, contesting the nondisclosure of information.<sup>51</sup> Accordingly, the applicant has been appraised of the basis for nondisclosure of the Information in Issue and has been afforded a number of opportunities to put forward submissions supporting his request for its disclosure. In these circumstances, I am satisfied that the applicant was able to properly respond to OIC and has been afforded due process in this review.

### **Conduct of agency officers**

35. The applicant has raised specific conduct concerns about certain government officers.<sup>52</sup> Broadly, those concerns relate to how the applicant perceives certain officers had influence over, or directed, the decisions made by the Board in respect of both the Access Application<sup>53</sup> and the Board's investigation related to the QBCC referral. In addition, the applicant contends that the Board is '*deliberately seeking to mislead, and delay, the disclosure of information under the RTI Act*'.<sup>54</sup>
36. In conducting a merits review in this matter, OIC is considering afresh the applicant's entitlement to access the information requested in the Access Application. Given this, OIC's external review jurisdiction does not extend to addressing the applicant's concerns

<sup>46</sup> For example, in the External Review Application.

<sup>47</sup> Section 108(3) of the RTI Act prohibits the Information Commissioner from including in a decision, any information that is claimed to be exempt information or contrary to the public interest information.

<sup>48</sup> At [11].

<sup>49</sup> For example, in the applicant's submission dated 29 August 2024.

<sup>50</sup> As set out in the Appendix.

<sup>51</sup> As set out in the Appendix.

<sup>52</sup> Applicant's submissions dated 13 March 2024 and 21 March 2024 and the submission received 13 February 2025.

<sup>53</sup> The applicant submitted this constitutes a breach of section 175 of the RTI Act (submission dated 13 March 2024).

<sup>54</sup> The applicant submitted this constitutes a breach of section 177 of the RTI Act (submission dated 13 March 2024).



about the Board's investigation processes or its decisions related to the QBCC referral and the applicant's complaints about the Engineers.<sup>55</sup>

37. Section 110 of the RTI Act requires the Information Commissioner, after conducting an external review, to make a written decision affirming, varying or setting aside the agency decision under review. Apart from sections 113<sup>56</sup> and 130(2) of the RTI Act, OIC's jurisdiction on external review also does not extend to investigating or providing any remedy to an applicant in respect of their concerns about the conduct of the agency (and its officers). While the applicant considers section 113 of the RTI Act has been '*enlivened*' in this matter,<sup>57</sup> that section does not empower or obligate the Information Commissioner, in a decision issued pursuant to section 110 of the RTI Act, to address or make findings about alleged conduct deficiencies of agency officers in dealing with an access application. Additionally, the RTI Act does not require the Information Commissioner to account to an applicant about any decision made to exercise, or not exercise, the disciplinary power contained in section 113 of the RTI Act.
38. For these reasons, I am satisfied that I am not required, in these Reasons for Decision, to address the officer conduct concerns raised by applicant.

### ***The external review process***

39. The applicant submitted that an OIC decision-maker was substituted without his '*knowledge or consent*'.<sup>58</sup> As I have already noted, the process to be followed on an external review is as determined by the Information Commissioner. As the OIC officer who originally dealt with this matter (**Officer 1**) was unavailable for a period of time, another OIC officer (**Officer 2**) took over carriage of the external review. As OIC is a relatively small office with limited numbers of experienced RTI officers, this situation is not unusual. While the applicant appears to believe there was some nefarious reason for Officer 1 no longer being involved, the sole reason for the change was to ensure that the applicant's external review continued to be progressed, notwithstanding OIC's staffing changes.
40. The applicant also requested<sup>59</sup> the '*disqualification*' of Officer 2 from this external review, alleging that Officer had shown actual and, in the alternative, apprehended bias towards him. While I do not agree that the applicant's submission provides evidence of the alleged bias, I am the decision-maker for this decision and, for completeness, I confirm that I am not aware of any actual, perceived or potential conflict of interest that should preclude me acting as the decision-maker in this matter.<sup>60</sup>
41. The applicant has asserted that, under the RTI Act, the Board '*enjoys a close "working with" relationship with the OIC, rather than a party to the External Review that is subject to the powers and directions of the OIC*'.<sup>61</sup> I entirely reject this assertion, and note that

<sup>55</sup> As I have noted above, the Board's investigation decision and its decision about the applicant's complaints are not reviewable decisions under the RTI Act.

<sup>56</sup> Section 113 of the RTI Act empowers the Information Commissioner, in certain circumstances, to notify an agency at the completion of an external review about an agency's officer conduct in the administration of the RTI Act.

<sup>57</sup> In his submission dated 29 August 2024, the applicant submitted that '*s113 of the RTI Act must be enlivened*' and, in the submission received 13 February 2025, the applicant maintained that section 113 of the RTI Act had been enlivened and he '*urged*' the Information Commissioner (to whom he had addressed the submission) to '*enforce it*'.

<sup>58</sup> Applicant's submission received 13 February 2025.

<sup>59</sup> Applicant's submission received 13 February 2025.

<sup>60</sup> To the extent the applicant's concern could be interpreted as raising any issue of apprehended bias, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias—refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

<sup>61</sup> Applicant's submission received 13 February 2025.

it is based only on statements made by the Board that it was '*working with*' OIC to bring the external review to a close. In this regard, I confirm that the RTI Act:

- obligates participants to an external review to provide assistance to the Information Commissioner, when reasonably requested;<sup>62</sup> and
- contemplates that the Information Commissioner may receive evidence (including from an agency) in the absence of an access applicant.<sup>63</sup>

42. Finally, the applicant raised a further concern that '*crushing time and writing limits*'<sup>64</sup> were imposed upon him. I disagree. I have already noted that the procedure to be taken on external review is, subject to the Act, at the discretion of the Information Commissioner. Although, as noted above, the applicant has had past experience with OIC's external review processes, details of those processes were notified to the applicant on a number of occasions during this review.<sup>65</sup> The RTI Act also requires that external reviews be conducted with as much expedition as the requirements of the Act, and a proper consideration of the review issues, allow.<sup>66</sup> As evidenced by the Appendix, the applicant was afforded a number of extensions of time for his responses and he provided submissions to OIC, in support of his position, on eight occasions. I also note that the majority of the applicant's submissions contained embedded links to other documents and two of the applicant's submissions were in excess of 20 pages in length. In these circumstances, I am satisfied that the applicant was afforded appropriate response timeframes, which enabled him to respond to OIC about the reviewable issues.

## Category A Information

### Relevant law

43. The RTI Act gives a right of access to documents of government agencies.<sup>67</sup> However, this access right is subject to other provisions of the RTI Act, including grounds on which access may be refused. These grounds are to be interpreted narrowly.<sup>68</sup>

44. Access may be refused to information to the extent the information comprises exempt information.<sup>69</sup> Relevantly, information will qualify as exempt where if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>70</sup> Legal professional privilege protects confidential communications between a lawyer and their client, made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or, for use in legal proceedings either on foot or reasonably anticipated, at the time of the relevant communication.<sup>71</sup> The privilege:

- will extend to copies of unprivileged documents made for the dominant purpose of obtaining legal advice; and
- may protect communications between salaried employee legal advisers of a government department or statutory authority and his/her employer as the client

<sup>62</sup> Section 96 of the RTI Act.

<sup>63</sup> Section 108(2) of the RTI Act.

<sup>64</sup> Applicant's submission received 13 February 2025.

<sup>65</sup> For example, general information about the timeframes for submissions was provided in the attachments to OIC's letters to the applicant dated 22 August 2023, 14 September 2023, 24 June 2024 and 14 November 2024.

<sup>66</sup> Section 95(1)(b) of the RTI Act.

<sup>67</sup> Section 23(1)(a) of the RTI Act.

<sup>68</sup> Section 47(2)(a) of the RTI Act.

<sup>69</sup> Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act identifies the types of information which Parliament has determined will comprise exempt information under the RTI Act.

<sup>70</sup> Schedule 3, section 7 of the RTI Act. This exemption reflects the requirements for establishing legal professional privilege at common law.

<sup>71</sup> *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] HCA 26 at [23]-[25].

(including communications through other employees of the same employer) provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character, notwithstanding the employment.<sup>72</sup>

45. Qualifications and exceptions to legal professional privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to legal professional privilege, and therefore whether the information comprises exempt information under the RTI Act.

### ***The parties' submissions***

46. On external review, it is the Board's position that Category A Information comprises exempt information.
47. The applicant does not accept that the Category A Information meets the requirements of legal professional privilege. The applicant summarised his position as follows.<sup>73</sup>

*In summary, an investigation of a complaint about a RPEQ is an administrative function only under the PE Act. The LPP Exemption to documents may not be invoked, if at all, until BPEQ prepares or receives a report about a RPEQ under ss69 or 71. An administrative function carried out under the PE Act is open to access and disclosure under the RTI Act.*

48. The applicant further submitted that any legal privilege in the Category A Information has been waived.<sup>74</sup>

### ***Findings***

49. While I am constrained about the manner in which I can describe the Category A Information,<sup>75</sup> I can confirm that it broadly comprises legal advice (or drafts thereof) provided by the Board's internal legal advisers to the Board; the internal forwarding of/references to the seeking/providing of such legal advice; a discussion between those internal legal advisers about the internal legal advice; and two documents between the Board's internal and external legal advisers, seeking/providing legal advice.<sup>76</sup>
50. The applicant submitted that the decision in *Robertson v Singtel Optus Pty Ltd*<sup>77</sup> (**Robertson**) 'affirms [his] position that BPEQ documents responsive to [his] access application do not attract the Legal Professional Privilege exemption under the RTI Act'.<sup>78</sup> The applicant also referenced<sup>79</sup> the decision in *Commissioner of Taxation v PricewaterhouseCoopers*<sup>80</sup> (**PWC**) in support of his position. Noting again the restrictions placed upon me by section 108 of the RTI Act, I confirm that the Category A Information is of a different nature to the information which the Federal Court considered

<sup>72</sup> *Waterford v Commonwealth* (1987) 163 CLR 54 at 95 per Mason and Wilson JJ.

<sup>73</sup> Applicant's submission dated 6 October 2023.

<sup>74</sup> For example, applicant's submissions dated 6 October 2023, 13 March 2024 and 21 March 2024.

<sup>75</sup> Section 108 of the RTI Act.

<sup>76</sup> During the review and when conveying a preliminary view to the applicant, slightly more detail was provided to the applicant to confirm these broad descriptions of the Category A Information.

<sup>77</sup> [2023] FCA 1392. I also note that, in *Robertson* at [87] and [89], the Federal Court summarised the relevant legal principle as follows: *Under the common law, legal professional privilege applies to confidential communications made for the dominant purpose of the client obtaining legal advice or for use in litigation or regulatory investigations or proceedings. The protection is confined to confidential communications made for the dominant purpose of giving or obtaining (including preparation for obtaining) legal advice or the provision of legal services, including legal representation in litigation or other proceedings. ... In summary, the purpose for which a document was created is a matter of fact to be determined objectively, having regard to the evidence, the nature of the document and the parties' submissions.*

<sup>78</sup> Applicant's submission dated 4 December 2023. In the applicant's submission dated 28 August 2024 the applicant further submitted that the Category A Information 'are excluded from exemption for the reasons under *Robertson v Singtel Optus*'.

<sup>79</sup> Applicant's submission received 13 February 2025.

<sup>80</sup> [2022] FCA 278 (25 March 2022).

in both *Roberston* and *PWC*.<sup>81</sup> For this reason, I consider the findings in both *Roberston* and *PWC* can be distinguished on this basis.

51. The applicant further submitted that there ‘*cannot be any claim of LPP attached to correspondence and documents exchanged between BPEQ and an investigator, and any purported purpose of seeking or providing legal advice in that context cannot prevail, because the relationship is not one of a lawyer-client*’.<sup>82</sup> As noted above, only two documents within the Category A Information comprise communications between the Board and its external legal advisers. Having carefully reviewed the content of these documents, I can confirm that, while these external advisers were appointed as investigators concerning the QBCC referral, these communications record the seeking and providing of legal advice and do not record administrative requests or steps specifically associated with the advisers’ role as investigators under the PE Act.
52. There is no evidence before me to indicate that the Category A Information has been disclosed outside of the lawyer-client relationship. I am satisfied that this information was communicated confidentially. I am also satisfied that the necessary professional relationship exists between the Board (as the client) and both its internal and external legal advisers, and that the communications were created for the dominant purpose of seeking or providing legal advice. Therefore, after careful review of the Category A Information, I am satisfied that it meets the requirements for legal professional privilege.
53. At common law, a person who would otherwise be entitled to the benefit of legal professional privilege (in this case, the Board) may waive the privilege.<sup>83</sup> However, once a factual basis for a claim of legal professional privilege has been established, the party asserting that privilege has been waived bears the onus of establishing such waiver.<sup>84</sup> Additionally, while legal professional privilege will not apply to legal communications made in the furtherance of a fraud or crime,<sup>85</sup> a person alleging legal professional privilege is lost for reasons of illegality must do more than make vague or generalised contentions of crimes or improper purpose.<sup>86</sup>
54. The applicant has identified a number of documents<sup>87</sup> which he believes confirm that privilege in the Category A Information has been waived.<sup>88</sup> Having carefully considered those referenced documents,<sup>89</sup> I am satisfied that they do not provide evidence that there has been any express or implied waiver of legal professional privilege in the Category A Information. While the applicant also contended that the Board ‘*set up a system that operates in the darkness to generate preferred outcomes*’ and that the Board has been ‘*knowingly and falsely attaching professional legal privilege tokens to information about*

<sup>81</sup> The information considered in *Roberston* related to a highly public data breach and broadly comprised a publicly referenced investigation report prepared by a technical expert (not a lawyer) about the data breach, and documents provided to the technical expert for the purpose of preparing that report. The documents considered in *PWC* were a sample of documents (emails and attachments to emails involving an external, multidisciplinary partnership (PWC) that provided services to its multinational corporate client) for which legal professional privilege was initially claimed in response to notices to produce issued during a tax audit. After assessing the privilege claim on a document-by-document basis to determine if they met the requirements of legal professional privilege, the Federal Court made factual findings that some, but not all, of the sample documents were privileged.

<sup>82</sup> Applicant’s submission dated 6 October 2023.

<sup>83</sup> *Mann v Carnell* (1999) 201 CLR 1 (**Mann**) at page 13 (Gleeson CJ, Gaudron, Gummow and Callinan JJ). Waiver may be express (eg by the deliberate and intentional disclosure of the privileged communication to persons outside the relationship of privilege) or implied (eg where the conduct of the person entitled to the benefit of privilege is inconsistent with the maintenance of privilege (refer to *Mann* at page 13 and *Osland v Secretary, Department of Justice* [2008] 234 CLR 275 at page 296-297 (Gleeson CJ, Gummow, Heydon and Kiefel JJ).

<sup>84</sup> *Sanrus Pty Ltd & Ors v Monto Coal 2 Pty Ltd & Ors* [2019] QSC 144 at [28], citing *New South Wales v Bettfair Pty Ltd* (2009) 180 FCR 543 at 556 [54].

<sup>85</sup> *Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Limited & Ors* [2014] QSC 303 (**Fletcher**) at [51].

<sup>86</sup> In *Fletcher* at [61], McMurdo J observed that a party alleging legal professional privilege does not apply is required to establish ‘a *prima facie* case’ that the relevant communications were for the purpose of facilitating the alleged misconduct.

<sup>87</sup> Including documents which he had received separate to this external review process.

<sup>88</sup> In the applicant’s submissions dated 13 March 2024 and 21 March 2024.

<sup>89</sup> Or the applicant’s referenced content of them, where a full copy of the documents was not available to me on external review.

*its activities*',<sup>90</sup> he has offered no evidence that any specific communication within the Category A Information was created in furtherance of an illegal, improper or dishonest purpose. Accordingly, having carefully considered the applicant's submissions (including the supporting information he provided) and the content of the Category A Information, I am also satisfied that there is nothing before me which indicates that the improper purpose exception arises in this matter to displace legal professional privilege in any of the Category A Information.

55. For the above reasons, I am satisfied that the Category A Information meets the requirements of legal professional privilege and that no qualification or exception to the privilege arises in respect of that information. Accordingly, I find that access to the Category A Information may be refused, as it comprises exempt information.<sup>91</sup>

## **Category B Information**

### ***Relevant law***

56. Access may also be refused where the disclosure of information would, on balance, be contrary to the public interest.<sup>92</sup>
57. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens.<sup>93</sup> This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual.
58. In deciding whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:<sup>94</sup>
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
59. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my decision. I have also kept in mind the RTI Act's pro-disclosure bias.<sup>95</sup>

### ***The parties' submissions***

60. It is the Board's position that disclosure of the Category B Information would, on balance, be contrary to the public interest.
61. The applicant does not accept this position and submitted<sup>96</sup> that:

<sup>90</sup> Applicant's submission received 13 February 2025.

<sup>91</sup> Under sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

<sup>92</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>93</sup> Refer to Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

<sup>94</sup> Section 49 of the RTI Act.

<sup>95</sup> Section 44 of the RTI Act.

<sup>96</sup> Applicant's submission dated 6 October 2023.

- the public interest factors in schedule 4, part 2, items 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 16, 17 and 18 of the RTI Act apply to favour disclosure of the Category B Information and should be given ‘a high weighting’;<sup>97</sup> and
- no public interest factors which favour nondisclosure are relevant to the Category B Information.

## Findings

62. Noting the obligations placed upon me by section 108 of the RTI Act, I confirm that the Category B Information broadly comprises correspondence between the Board and the Engineers concerning the QBCC referral. These documents include information provided by the Engineers in response to the Board’s requests issued under section 41(3) of the PE Act.<sup>98</sup> There is also a significant level of duplication within the Category B Information.
63. The applicant contended<sup>99</sup> that ‘[a]ny public interest balancing exercise should include, and account for, a comparison of the Building Code of Australia and the [Report], with BPEQ’s letter dated 6 July 2023 (reporting BPEQ’s expert’s findings)’. I disagree. As I have noted above, section 49 of the RTI Act prescribes how I am required, as the decision-maker in this matter, to decide whether disclosure of the Category B Information would, on balance, be contrary to the public interest. This does not obligate me to make factual findings about the accuracy, or otherwise, of the Board’s decisions concerning the subject matter of applicant’s complaints or the QBCC referral.

## Irrelevant factors

64. I have not taken any irrelevant factors<sup>100</sup> into account in making my decision about the Category B Information.

## Factors favouring disclosure

### Accountability and transparency

65. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government’s accountability<sup>101</sup>
  - inform the community of the Government’s operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;<sup>102</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>103</sup>

<sup>97</sup> In respect of the public interest factors in schedule 4, part 2, items 5, 6, 12, 16 and 17 of the RTI Act, in summary, the applicant submitted (in his submission dated 6 October 2023) that these factors applied due to what he perceived as deficiencies in the Board’s handling of the QBCC referral matter. In particular, the applicant submitted that the Board’s decision in that regard ‘*simply could not believably be made by any other competent engineers either within or on the board of BPEQ*’.

<sup>98</sup> Section 41(3) of the PE Act states: *To help the board decide whether to act under subsection (2), the board may give the registered professional engineer a notice stating he or she may make a submission to the board about the complaint or ground for disciplining the registered professional engineer within the reasonable time stated in the notice.*

<sup>99</sup> Applicant’s submission dated 29 August 2024.

<sup>100</sup> Including those listed in schedule 4, part 1 of the RTI Act.

<sup>101</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>102</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>103</sup> Schedule 4, part 2, item 11 of the RTI Act.

66. Generally, there is a public interest in the Board addressing complaints received about registered engineers in an accountable fashion, noting that the PE Act stipulates what notifications (and publications) are required in respect of the various investigation decisions it is empowered to make. However, this public interest does not extend to affording complainants (or others) a right to second-guess or reinvestigate the Board's investigations.
67. I consider the factors in paragraph 65 above apply to favour disclosure of the Category B Information. As to the weight to be afforded to them, I noted above that the Board notified the applicant about its decision concerning his complaints and, when doing this, also provided the applicant with an overview of its investigation process and decision concerning the QBCC referral. The information which has been disclosed to the applicant during this review has also provided the applicant with information about the Board's processes (and steps taken within the timeframe nominated in the Access Application) concerning the QBCC referral. I consider these disclosures by the Board have significantly discharged these public interest factors, by enabling scrutiny of the Board's investigation and decision-making processes and providing some background and contextual information about its decisions. While disclosure of the Category B Information will provide the applicant with a more complete picture of the information obtained by the Board concerning the QBCC referral (and its decision to conduct an investigation), I do not consider that its disclosure would further advance the Board's accountability and transparency in any significant way. On this basis, I afford the factors referenced in the preceding paragraph moderate weight in favour of disclosure.
68. Under the RTI Act, public interest factors arise where disclosing information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest<sup>104</sup> and ensure effective oversight of expenditure of public funds.<sup>105</sup>
69. The applicant outlined why he considered these factors applied to favour disclosure of the Category B Information, as follows:<sup>106</sup>
- (2) *Because fire events and the loss of property and life receive regular media coverage, and failures of professional engineers to ensure adequate design, construction and safety, and BPEQ's regulation of same, is a matter of serious interest,*
- (4) *Because payments to external law firms to investigate matters that are not legal, but engineering (which involves disciplines of reproducible science and mathematics) which should be within the purview [sic] of other engineers either within or on the board of BPEQ, are questionable; especially if their results are wrong.*
70. However, the applicant has not otherwise explained how he considers these factors are enlivened in respect of the Category B Information. While I acknowledge the QBCC referral and the subject matter of the applicant's complaints are of particular importance to the applicant, I am not satisfied that disclosing the Category B Information could, given its nature, be reasonably expected to contribute to positive and informed debate on important issues or matters of serious interest. On this basis, I do not consider the public interest factor in schedule 4, part 2, item 2 of the RTI Act applies. Given the nature of the Category B Information—which does not concern payments to an external investigator (as referenced in the applicant's submission set out in the preceding paragraph)—I also consider that the factor in schedule 4, part 2, item 4 of the RTI Act does not apply.

<sup>104</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>105</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>106</sup> Applicant submission dated 6 October 2023.

### **Agency conduct deficiencies**

71. Where disclosure of information could reasonably be expected to allow or assist inquiry into possible conduct deficiencies of agencies or officials, or reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct, public interest factors favouring disclosure will arise.<sup>107</sup> The applicant referenced certain steps taken by the Board in its investigation of the QBCC referral and submitted that *'[i]t is clear on its face that this matter demonstrates BPEQ's handling of complaint(s) about RPEQ's is deficient'*.<sup>108</sup> Apart from outlining what he perceives as deficiencies in the Board's investigation processes, the applicant has not identified how he considers disclosure of this particular Category B Information would allow or assist inquiry into, or substantiate his claims about, agency or official conduct deficiencies. Having carefully considered the Category B Information,<sup>109</sup> I am satisfied that there is nothing within it which gives rise to any expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency conduct deficiencies. Accordingly, I am satisfied the factors in schedule 4, part 2, items 5 and 6 of the RTI Act do not apply to favour disclosure of the Category B Information.

### **Information incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant**

72. A public interest factor favouring disclosure also arises in circumstances where disclosing information could reasonably be expected to reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>110</sup> While the applicant submitted that, in reaching its decision about the QBCC referral, the Board relied upon *'tangential, inconsequential and irrelevant evidence'*,<sup>111</sup> the applicant did not enunciate how he considered disclosure of the Category B Information would reveal that it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
73. As I have noted above, the Category B Information includes information which the Engineers provided in response to notices issued by the Board under section 41(3) of the PE Act (that is, information provided before the Board decided to conduct an investigation concerning the QBCC referral). The applicant's submissions confirm his disagreement with the Engineers' fire 'solutions' (which were the subject of the Report) and the outcome of the report prepared by the Board's expert. That disagreement does not, of itself, support his position that this public interest factor applies to significantly favour disclosure. The applicant further argued that the opinions and recollections of the Engineers must *'not only be well documented, but objective'*.<sup>112</sup> However, by its very nature, information that is provided to the Board in response to a section 41(3) notice would be expected to include the provider's opinions on the subject matter of the notice, which are necessarily shaped by the provider's perspectives, recollections and subjective impressions. This inherent subjectivity does not of itself mean that the Category B Information is incorrect or unfairly subjective. Having reviewed the content of the Category B Information, there is nothing before me which supports the applicant's assertion that this public interest factor applies to favour disclosure of the Category B Information.

<sup>107</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>108</sup> Applicant's submission dated 6 October 2023.

<sup>109</sup> Which are primarily between the Board and the Engineers.

<sup>110</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>111</sup> Applicant's submission dated 6 October 2023.

<sup>112</sup> Applicant's submission dated 29 August 2024.



### ***Fair treatment and procedural fairness***

74. Under the RTI Act, factors favouring disclosure will also arise where disclosing information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies<sup>113</sup> and contribute to the administration of justice generally, including procedural fairness.<sup>114</sup> The public interest factor relating to fair treatment is about providing information to advance fair treatment in an applicant's future dealings with agencies.<sup>115</sup> I also note that the fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.<sup>116</sup>
75. Here, the Engineers were the subjects of both the QBCC referral and the applicant's complaints. In respect of the applicant's complaints, on the information before me, it appears that, having considered the information provided by the applicant with those complaints, the Board decided to take no further action and notified the applicant of this decision. The Board's notification also identified another complaint avenue which was open to the applicant if he was dissatisfied with the Board's decision.
76. While the applicant was not the complainant in the Board's investigation of the QBCC referral, he has provided detailed submissions about why he considered he was a person affected by the Board's investigation concerning the QBCC referral (and therefore should have been afforded the right to participate in, and received information via, the Board's investigation process).<sup>117</sup> In summary, the applicant submitted that he has been '*directly and significantly affected*' by the conduct of the Engineers; he considers that the Board failed to properly deal with the QBCC referral matter; and he believes the Board has '*patently*' not fairly dealt with him.<sup>118</sup> In considering whether these factors are enlivened in respect of the Category B Information, I am not required to reach a factual finding about whether the applicant is, or is not, such an affected person for the purpose of the Board's investigation concerning the QBCC referral.
77. Having carefully reviewed the Category B Information and the applicant's submissions, I do not consider there is any reasonable expectation that disclosing the Category B Information would significantly contribute to fair treatment or procedural fairness for the applicant or any other individual. Taking the nature of the Category B Information into account, to the extent these public interest factors may apply, I afford them only low weight.

<sup>113</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>114</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>115</sup> *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [101], where the Information Commissioner's delegate found that the public interest factor in schedule 4, part 2, item 10 of the RTI Act '*does not require a decision maker to ensure that an applicant is provided with sufficient information to enable that applicant to be subjectively satisfied that he or she received fair treatment rather, it is about providing information to ensure fair treatment in future dealings*'.

<sup>116</sup> *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J. Accordingly, the person who is the subject of a decision must be provided with an opportunity to deal with adverse information that is credible, relevant and significant to the decision (*Kioa* at 629 per Brennan J citing *Bushell v Environment Secretary* [1981] A.C., at p. 97. (Lord Diplock)). Accordingly, the principle of procedural fairness does not generally extend to a complainant in the same manner in which it applies to the subject of an investigation.

<sup>117</sup> In this regard, the applicant argued that he was deliberately excluded from participating in the investigation and from accessing information (refer, for example, to the applicant's submission received 13 February 2025).

<sup>118</sup> Applicant's submission dated 6 October 2023.

### **Administration of justice for a person**

78. A public interest factor favouring disclosure will also arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person.<sup>119</sup> In determining whether this public interest factor applies, I must consider whether:<sup>120</sup>
- the applicant has suffered loss, damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law<sup>121</sup>
  - the applicant has a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
79. While the applicant's submissions identify the reasons why he considers the Board's handling of the QBCC referral was deficient,<sup>122</sup> he has not identified any particular remedy he wishes to evaluate or pursue. Nor has the applicant explained how disclosure of this particular Category B Information is required to enable him to pursue, or evaluate, any remedy that may be available to him. For this reason and based on the information which is before me, I do not consider this factor applies to favour disclosure of the Category B Information.

### **Protection of the environment and enforcement of the criminal law**

80. Where disclosing information could reasonably be expected to contribute to the protection of the environment or reveal environmental or health risks or measures relating to public health and safety, factors favouring disclosure will arise.<sup>123</sup> The RTI Act also recognises a further disclosure factor, where disclosing information would reasonably be expected to contribute to the enforcement of the criminal law.<sup>124</sup>
81. The applicant submitted these factors apply to the Category B Information for the following reasons:<sup>125</sup>

*To the extent that rectification of noncompliant buildings and the taking of disciplinary action against RPEQ's who commit offences against the PE Act protects people and the environment from harm, injury, death, or otherwise damage, particularly by fire...  
It is reasonable to anticipate that parties involved in the process employed by BPEQ have committed offences against the criminal law.*

82. Given the nature of the Category B Information, there is nothing before me which leads to any reasonable expectation that its disclosure would contribute to the protection of the environment or reveal the risks or measures mentioned in schedule 4, part 2, item 14 of the RTI Act. Noting the particular offences the applicant alleges have been committed, the applicant's submissions provide no detail of how disclosing this particular Category B Information could be expected to contribute to the enforcement of the law in respect of those alleged offences. On the information which is before me, I can identify no reasonable expectation that disclosing the Category B Information would contribute to the enforcement of the criminal law. I therefore do not consider these factors apply.

<sup>119</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>120</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16]-[17].

<sup>121</sup> In *Deemal-Hall v Office of the Director of Public Prosecutions* [2024] QCATA 131 (*Deemal-Hall*), Judicial Member DJ McGill SC confirmed, at [12], that this public interest factor 'refers to the ordinary processes for the administration of justice for a person'.

<sup>122</sup> Applicant's submission dated 6 October 2023.

<sup>123</sup> Schedule 4, part 2, items 13 and 14 of the RTI Act.

<sup>124</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>125</sup> Applicant's submission dated 6 October 2023.

### Other considerations

83. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, and given the nature of the Category B Information, I cannot identify any other public interest considerations favouring its disclosure.<sup>126</sup>

### Factors favouring nondisclosure

#### Personal information and privacy

84. The RTI Act recognises that disclosure of information could reasonably be expected to cause a public interest harm where it discloses personal information of a person<sup>127</sup> and that a public interest factor also arises where disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>128</sup> The concept of '*privacy*' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.<sup>129</sup>
85. In respect of these factors, the applicant submitted that '*The information in the investigation, and administrative function, of BPEQ, is subject to release under the RTI Act.*'<sup>130</sup> Information held by the Board which is relevant to the Access Application may be subject to disclosure under the RTI Act. However, the question to be addressed here is whether the factors referenced in the preceding paragraph apply to favour nondisclosure of the Category B Information.
86. I am satisfied that the Category B Information includes a substantial amount of personal information of individuals other than the applicant. To the extent the applicant contends the factors in paragraph 84 above '*should be removed*',<sup>131</sup> I note that where information meets the definition of personal information, the public interest harm factor in schedule 4, part 4, section 6 of the RTI Act applies.<sup>132</sup> I am also satisfied that, given its nature, disclosing the Category B Information under the RTI Act, where there can be no restriction on its use, dissemination or republication, would intrude on the privacy of these individuals.
87. As to the weight to be afforded to these nondisclosure factors, most of the Category B Information includes, as I have previously noted, information which the Engineers provided in response to notices the Board issued to them pursuant to section 41(3) of the PE Act. For information of this nature, I consider these individuals would have expected the Board would use the information they provided to determine, under section 41 of the PE Act, whether to investigate the referred matter (and in any subsequent processes following that decision, such as an investigation). However, these individuals would not, in my view, have anticipated further disclosure of such information

<sup>126</sup> The Category B Information does not comprise the applicant's personal information (schedule 4, part 2, item 7 of the RTI Act). I also cannot see how disclosing the Category B Information could, for example, contribute to the maintenance of peace and order (schedule 4, part 2, item 15 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of the Category B Information.

<sup>127</sup> Schedule 4, part 4, item 6(1) of the RTI Act. Section 12 of the IP Act relevantly 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*'.

<sup>128</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>129</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

<sup>130</sup> Applicant's submission dated 6 October 2023.

<sup>131</sup> Applicant's submission dated 6 October 2023.

<sup>132</sup> Refer to *Deemal-Hall*.

under the RTI Act. In this context, I consider that disclosing this component of the Category B Information under the RTI Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. In respect of the small amount of remaining Category B Information, I consider the level of prejudice and public interest harm that could reasonably be expected to arise from its disclosure would be slightly lower, given its limited nature.

88. Accordingly, I afford these factors significant weight in respect of most of the Category B Information and moderate weight in respect of the remaining Category B Information.

### ***Unsubstantiated allegations***

89. A nondisclosure factor also arises where disclosing information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.<sup>133</sup>
90. As noted in paragraph 10 above, when the Board informed the applicant of its decision about his complaints, the Board also provided an overview of its investigation decision concerning the QBCC referral. In both matters, the Board decided to take no further action against the Engineers. In these circumstances, I consider this factor applies to strongly favour nondisclosure of the Category B Information and I have afforded it significant weight.
91. The applicant disagrees with the Board's decisions not to take further action. He submitted that the various complaints against the Engineers were, in his view, substantiated and he considers this '*weighs most heavily in the public interest to understand how BPEQ could possibly determine otherwise*'.<sup>134</sup> The applicant's view appears to stem from his position that the findings in the Report should be preferred over those relied upon by the Board in its investigation decision. Having carefully considered the applicant's submissions and the content of the Board's notification to the applicant about its decision concerning his complaints, I cannot accept his characterisation of the complaint outcome. On this basis, I do not consider the applicant's referenced submission reduces, or negates, the weight that I have afforded to this nondisclosure factor.

### ***Balancing the relevant factors***

92. For the reasons outlined above, I am satisfied that the public interest considerations relating to privacy and the protection of other individual's personal information<sup>135</sup> warrant significant weight for most of the Category B Information, and moderate weight for the balance. I have also afforded significant weight to the public interest factor concerning fair treatment of individuals where information relates to unsubstantiated allegations.<sup>136</sup>
93. On the other hand, I have identified a number of factors which apply to favour disclosure (such as those relating to government accountability and transparency, fair treatment and procedural fairness).<sup>137</sup> However, given the nature of the Category B Information, I have afforded only moderate or low weight to them.

<sup>133</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>134</sup> Applicant's submission dated 6 October 2023.

<sup>135</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>136</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>137</sup> Schedule 4, part 2, items 1, 3, 10, 11 and 16 of the RTI Act.

94. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Category B Information outweigh the factor favouring disclosure. Accordingly, I find that disclosure of the Category B Information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>138</sup>

## Bundle A Redactions

### Relevant law

95. As noted in paragraph 56 above, access may be refused where the disclosure of information would, on balance, be contrary to the public interest.
96. Section 73 of the RTI Act also permits an agency to delete information that is not relevant to the access application from a document before giving access to a copy of the document. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the access application.<sup>139</sup>

### Findings

97. The nature of most of the Bundle A Redactions is evident from the disclosed information surrounding each redaction. Noting the limits placed upon me about the detail I can provide in these Reasons for Decision about this redacted information,<sup>140</sup> I confirm that it falls into the following broad categories:<sup>141</sup>
- (a) the name (appearing at the top of 11 pages) of the Board officer who printed, or converted, the located documents to PDF as part of the administrative processes involved in providing copies of documents to OIC on external review
  - (b) parts of Board meeting minutes which are not related to the subject matter of the Access Application
  - (c) signatures of Board officers<sup>142</sup>
  - (d) the telephone numbers and/or email addresses of Board officers (within email sender/recipient details or signature blocks) where the name or title of the relevant officer has been disclosed
  - (e) the names, contact details (email and telephone), signatures and/or title of individuals who are not Board officers; and
  - (f) an internal document link to a specified Board paper.
98. In summary, the applicant submitted that these redactions were unnecessary, inconsistent and, in some cases, *'intended to conceal identity'*.<sup>143</sup> Although the applicant's submissions alleged that some of the Bundle A Redactions were *'conflated/not addressed by Preliminary View'*,<sup>144</sup> I note that OIC conveyed a preliminary view to the applicant,<sup>145</sup> which identified the nature of the redactions (in slightly more detail) by reference to each page on which they appeared. I have, however, carefully reviewed all of the applicant's submissions concerning the Bundle A Redactions.

<sup>138</sup> Under section 47(3)(b) of the RTI Act.

<sup>139</sup> *Van Vennendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>140</sup> Under section 108 of the RTI Act.

<sup>141</sup> During the review and when conveying preliminary views to the applicant, slightly more detail was provided to the applicant when describing the Bundle A Redactions.

<sup>142</sup> Although the applicant indicated he did not seek access to one particular signature, the Bundle A Redactions are not limited to one individual's signature. Accordingly, for completeness, I have addressed the redaction of all signatures in these Reasons for Decision.

<sup>143</sup> Applicant's submission received 18 February 2025.

<sup>144</sup> Applicant's submission received 18 February 2025.

<sup>145</sup> By letter dated 14 November 2024.

### Category (a) and (b) redactions

99. Having carefully considered the terms of the Access Application and the Category (a) and (b) redactions, I am satisfied that these redactions are not relevant to the Access Application. On this basis, I find the applicant is not entitled to access this redacted information, as it has been validly deleted<sup>146</sup> from the Bundle A Documents disclosed by the Board.

### Category (c), (d), (e) and (f) redactions

100. I have taken no irrelevant considerations into account in making my decision about this redacted information.
101. For the redacted name of a non-public sector individual which appears on one page within the Category A Redactions, I can identify no public interest factors which favour its disclosure.
102. Given the differing nature of the remaining redactions, I consider that the public interest factors relating to government accountability and transparency<sup>147</sup> apply to favour some, but not all, of that information, to varying degrees, as set out below.
103. Where the Category (c) redactions appear, I note that the name or title of the relevant officer has been disclosed by the Board. Given this, I do not consider disclosure of the signatures of these identified officers will further advance the Board's accountability or transparency in any way and I afford no weight to these factors.
104. For the Category (f) redaction, the applicant submitted that redaction of the '*Descriptive source path of location of information*' was unnecessary.<sup>148</sup> However, the applicant has not explained how he considers any public interest factor would apply to favour disclosure of this information. The documents which are identified as being available to Board officers via this redacted document link are identified in the information which has been disclosed within this particular email communication. In these circumstances, I do not consider the disclosure of an internal document link would advance government accountability and transparency in any notable way. Accordingly, I afford no weight to these public interest factors.
105. While I consider that disclosure of the Category (d) redactions may, to some extent, promote government accountability and transparency, I note that the Board has disclosed the names and titles of the officers about whom these telephone numbers and/or email addresses relate. In this context, I afford low to no weight to these factors favouring disclosure.
106. In respect of the Category (e) redactions, while the applicant identified what he believed were the redacted names of other agency officers that had been redacted, I am unable to confirm the accuracy, or otherwise, of the applicant's assumptions in this regard. The Category (e) redactions appear on 4 pages of correspondence. The substantive content of this correspondence and the involved agency has been disclosed. In most cases, the Board has also disclosed the title of the agency officer involved in the communication with the Board. I consider these disclosures have substantially advanced Board's accountability. Given the nature of the Category (e) Information I consider its disclosure

<sup>146</sup> Under section 73 of the RTI Act.

<sup>147</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>148</sup> Applicant's submission received 18 February 2025.

will, in a limited way, further advance the Board's accountability and for that reason I afford these public interest factors low weight in favour of its disclosure.

107. Noting the disclosed content of the Bundle A Documents and the limited nature of the Category (c), (d), (e) and (f) redactions, I do not consider that the public interest factors relating in schedule 4, part 2, items 2, 4, 5, 6, 10, 11, 12, 13, 14, 16, 17 or 18 of the RTI Act apply to favour disclosure.<sup>149</sup>
108. As the Category (c), (d), (e) and (f) redactions includes identifying details or may allow the identities of such individuals to be ascertained, I am satisfied the nondisclosure considerations relating to personal information and privacy are enlivened.<sup>150</sup>
109. As to the weight to be afforded to these factors, I consider the prejudice and harm that could reasonably be expected to arise from disclosure of the non-public sector individual's name would be substantial. Accordingly, I afford significant weight to these nondisclosure factors in respect of that name.
110. In respect of the remaining Category (c), (d), (e) and (f) redactions, I note that, generally, information created in the course of a public sector officer's employment is considered to be their routine personal work information and, as such, does not attract a high privacy interest and the harm arising from disclosure is considered to be low.<sup>151</sup> In respect of mobile phone numbers and direct extensions, I consider these are different to other officer contact details (such as email addresses or general office phone numbers) in that they allow an individual to be contacted directly and potentially outside of office hours. This gives rise to a reasonable expectation of a greater level of intrusion into an officer's personal sphere and, accordingly, for information of this nature, I afford moderate weight to these nondisclosure factors. For the redacted Board officer email addresses, where they have been previously disclosed to the applicant, it is reasonable to conclude that disclosing such personal work information again to the applicant would not further impact the individuals' privacy in any significant respect and that only minimal harm could reasonably be expected to arise from the further disclosure. I afford only low weight to these nondisclosure factors in respect of that type of personal information. For the remaining redacted information, I consider there would be a slightly higher level of privacy intrusion and harm that could be expected to arise from disclosure. Having noted the context in which these remaining types of personal information appears, I afford these nondisclosure factors moderate weight.
111. For the reasons outlined above, I am satisfied the public interest factors favouring nondisclosure of the name of a non-public sector individual are determinative of the public interest and access to that redacted information would be contrary to the public interest.
112. In respect of the remaining the Category (c), (d), (e) and (f) redactions, I acknowledge that the public considerations favouring disclosure and nondisclosure for some parts of it are finely balanced. However, I am satisfied that the moderate and low weight that I have afforded to privacy considerations and the protection of the personal information outweigh the low weight that I have afforded to the applicable government accountability considerations. I therefore find that disclosure of the remaining Category (c), (d), (e) and

<sup>149</sup> For completeness, I also note that this redacted information does not include the applicant's personal information and the public interest factor in schedule 4, part 2, item 7 of the RTI Act therefore does not apply.

<sup>150</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>151</sup> Routine personal work information can include, for example, a work email address, a work phone number or an opinion given in a professional capacity.

(f) redactions would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>152</sup>

## Bundle B Redactions

113. As with the Bundle A Redactions, the nature of most of the Bundle B Redactions is evident from the disclosed information surrounding each redaction. Again, I am constrained<sup>153</sup> as to the level of detail I can provide about this redacted information, however, I can confirm that it broadly comprises:

- the name (appearing at the top of 2 pages) of the Board officer who printed, or converted, the located documents to PDF as part of the administrative processes involved in providing copies of documents to OIC on external review (**Administrator Name**)
- the residential and/or email addresses of the Engineers, where their names have been disclosed;<sup>154</sup> and
- email sender/recipient blocks within internal Board email chains.

114. In support of his position that the Bundle B Redactions should be disclosed, the applicant has only submitted that these redactions were unnecessary.<sup>155</sup>

## Findings

### Administrator Name

115. As I have noted above, the Administrator Name appears as a result of an administrative process associated with providing PDF copies of documents to OIC. Accordingly, for the same the reasons outlined in paragraph 99 above, I am satisfied that the Administrator Name is not relevant to the Access Application and has been validly deleted from the Bundle B Documents.<sup>156</sup>

116. I have taken no irrelevant considerations into account in making my decision about the remaining Bundle B Redactions.

### Contact details

117. The majority of the Bundle B Redactions comprises the Engineer's contact details (residential and/or email addresses). The Engineers are not public sector officers. Their names have, where they appear in the Bundle B Documents, been disclosed by the Board. In these circumstances, I can identify no public interest factors which apply to favour the disclosure of these contact details—for example, there is nothing before me which reasonable indicates that disclosing these contact details could be expected, in any way, to promote government accountability and transparency, advance the applicant's fair treatment or contribute to the administration of justice.<sup>157</sup>

118. I am satisfied these redacted contact details comprise the personal information of the Engineers<sup>158</sup> and their disclosure could be expected to intrude on the privacy of these individuals. Accordingly, I consider the nondisclosure factors in schedule 4, part 3, item 7

<sup>152</sup> Under section 47(3)(b) of the RTI Act.

<sup>153</sup> By section 108 of the RTI Act.

<sup>154</sup> There is a significant level of duplication of this type of redacted information.

<sup>155</sup> Applicant's submissions received 18 February 2025.

<sup>156</sup> Under section 73 of the RTI Act.

<sup>157</sup> On this basis and noting the nature of this redacted information, I am satisfied that the public interest factors in schedule 4, part 2, items 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17 and 18 of the RTI Act do not apply.

<sup>158</sup> Noting they appear with the disclosed identities of these individuals.



and schedule 4, part 4, section 6 of the RTI Act apply to this information. As to the weight to be afforded to these factors, I consider this is highly personal information and its disclosure would allow these individuals to be contacted directly and potentially outside of office hours. For these reasons, I consider disclosing these redacted contact details could reasonably be expected to cause a significant level of harm and prejudice. On this basis, I afford these factors significant weight in favour of nondisclosure.

119. For these reasons, I am satisfied that considerations concerning personal information and privacy apply to significantly favour nondisclosure of these redactions and, on the information before me, I am unable to identify any public interest considerations which favour disclosure, taking the nature of this information into account. I therefore find that disclosure of these contact details within the Category B Redactions would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>159</sup>

### **Email sender/recipient blocks**

120. These Bundle B Redactions appear at the top of 2 pages and the substantive content of the communications on those pages has been fully disclosed to the applicant. To the extent the factor in schedule 4, part 2, item 1 of the RTI Act applies (relating to government accountability), I afford it no weight given the limited nature of these redactions. On the information before me, I can identify no other public interest factors which apply to favour disclosure of this information.<sup>160</sup>
121. On the other hand, I consider a minimal level of prejudice and harm could be expected to arise from disclosure of this routine personal work information, noting the context in which it appears. For this reason, I afford low weight to the public interest factors in schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.
122. Accordingly, while the balancing of the applicable public considerations may again be closely balanced, I am satisfied that the weight I have afforded to the nondisclosure factors outweighs the weight of the applicable disclosure factor. On this basis, I find that disclosure of the two final redactions within the Category B Redactions would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>161</sup>

### **Bundle C Redactions**

123. On 14 November 2024, OIC conveyed a preliminary view to the applicant about the Bundle C Redactions, which confirmed these redactions appeared on only 8 pages and generally comprised the description column in itemised invoices the Board received from an external law firm.<sup>162</sup> I note that all other information within these invoices has been disclosed to the applicant, including the total amounts charged to the Board in each invoice and the individual item charges, by date.
124. The applicant confirmed he did not accept the preliminary view and sought access to the Bundle C Redactions. In support of his position, the applicant outlined his disagreement with the expert report which the Board relied upon when making its investigation decision (concerning the QBCC referral) and submitted:<sup>163</sup>

<sup>159</sup> Under section 47(3)(b) of the RTI Act.

<sup>160</sup> On this basis and noting the nature of this redacted information, I am satisfied that the public interest factors in schedule 4, part 2, items 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17 and 18 of the RTI Act do not apply.

<sup>161</sup> Under section 47(3)(b) of the RTI Act.

<sup>162</sup> Noting the restriction placed upon me under section 108 of the RTI Act, I can provide no further detail about this information.

<sup>163</sup> Applicant's submission received 13 February 2025.

*I disagree in the strongest possible terms that other information which has been disclosed to me has provided me with significant understanding of the investigation process and its outcome: because the only process and outcome I can see is that BPEQ has set up a system that operates in the darkness to generate preferred outcomes in spite of sound evidence and opinion to the contrary.*

## **Findings**

125. I have taken no irrelevant considerations into account in making my decision about the Bundle C Redactions.
126. Notwithstanding the submission referenced in paragraph 124 above, I consider the information which has been disclosed by the Board during the external review has enabled scrutiny of the steps taken by the Board in dealing with the QBCC referral and the costs paid by the Board to the appointed investigators within the date range of the Access Application. For this reason, my view is that such disclosed information has substantially advanced the public interest factors relating to the government accountability and transparency and the oversight of expenditure of public funds.<sup>164</sup> Given the nature of the Bundle C Redactions, I consider its disclosure could be expected to further advance the public interest factors in schedule 4, part 2, items 1 and 11 of the RTI Act, to some extent, by providing additional information about the steps taken by the Board's appointed investigators. In the circumstances, I afford these factors low weight.
127. On the information before me, and taking into account the particular nature of the Bundle C Redactions, I do not consider that the public interest factors in schedule 4, part 2, items 2, 3, 4, 5, 6, 7, 10, 12, 13, 14, 16, 17 and 18 of the RTI Act apply.
128. Given the nature of an investigation under the PE Act, it is reasonable to expect that the investigator would have interacted with the Engineers, who are the subject of the investigation, during the timeframe nominated in the Access Application. On this basis, a reasonable expectation arises that the Bundle C Redactions would include some personal information of the Engineers. For the reasons discussed in respect of the Category B Information, I consider this raises personal information and privacy considerations<sup>165</sup> which significantly favour nondisclosure of such personal information.
129. Under the RTI Act factors favouring nondisclosure arise where disclosure information could reasonably be expected to prejudice the private, business, professional or commercial or financial affairs of entities<sup>166</sup> and trade secrets, business affairs or research of an agency or person.<sup>167</sup> The RTI Act also recognises that there is a public interest harm in disclosing information that has a commercial value to an agency or another person and its disclosure could reasonably be expected to destroy or diminish the commercial value of the information.<sup>168</sup>
130. While the investigation of the QBCC referral matter was conducted under the PE Act, that legislation does not mandate any particular investigation process. I therefore consider disclosure of the redacted information could be expected to cause some level of prejudice the commercial and financial affairs of the appointed investigators, by revealing their investigation methodologies and procedures. While some of these methodologies and procedures may not be novel, and some of the steps taken by the investigators may be evident from other disclosed information, I consider there remains

<sup>164</sup> Schedule 4, part 2, items 1, 3, 4 and 11 of the RTI Act.

<sup>165</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>166</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>167</sup> Schedule 4, part 3, item 15 of the RTI Act.

<sup>168</sup> Schedule 4, part 4, section 7(1)(b) of the RTI Act.

a potential for the disclosure of the redacted information to negatively impact the value of the methodologies and procedures which these appointed investigators would bring to an investigation they are appointed to conduct. On this basis, I afford these public interest factors moderate to low weight.

131. For the reasons outlined above:

- I have identified two public interest factors (schedule 4, part 2, items 1 and 11 of the RTI Act) which apply to favour disclosure of the Bundle C Redactions, however, taking into account the nature of this redacted information, I consider these factors are deserving of only low weight
- on the other hand, I have afforded significant weight to the public interest considerations relating to privacy and the protection of personal information<sup>169</sup> in respect of the Engineer's personal information within the Bundle C Redactions. I also consider the nondisclosure factors which relate generally to commercial and financial affairs apply and are deserving of moderate to low weight.

132. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Bundle C Redactions outweigh the applicable factors favouring disclosure. Accordingly, I find that disclosure of the Bundle C Redactions would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>170</sup>

### Bundle D Redactions

133. Similar to the Bundle A and B Redactions, the nature of most of the Bundle D Redactions is evident from the disclosed information surrounding each redaction. Noting again that I am precluded from describing this information in any detail,<sup>171</sup> I confirm that it broadly includes the following types of information:

Information Type Identifier	Description
A	the name of the Board officer who printed, or converted, the located documents to PDF as part of the administrative processes involved in providing copies of documents to OIC on external review
B	details of Board investigations unrelated to the subject matter of the Access Application (including the identities of other individuals)
C	the residential and/or email addresses of the Engineers (where their names have been disclosed) <sup>172</sup> and details related to qualifications and employment <sup>173</sup>
D	contact details (including mobile numbers and email addresses) of Board officers (including within email sender/recipient details or signature blocks) where the name of the relevant officer has been disclosed <sup>174</sup>
E	signatures <sup>175</sup> where the name of the name of the signatory has been disclosed

<sup>169</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>170</sup> Under section 47(3)(b) of the RTI Act.

<sup>171</sup> By section 108 of the RTI Act.

<sup>172</sup> Redacted information of this nature appears on 20 pages.

<sup>173</sup> Including redacted footers within certain email chains.

<sup>174</sup> Redacted information of this nature appears on 32 pages.

<sup>175</sup> The substantive content of the documents in which these redacted signatures appear has been disclosed by the Board.

F	the contact details (including email addresses and telephone numbers) of the investigators where their names have been disclosed <sup>176</sup> and the name and contact details of a private sector employee who is not an appointed investigator
G	information about the expert appointed to the investigation of the QBCC referral matter, including the expert's qualifications and employment
H	information of other non-public sector individuals (including their qualifications and employment) where (in most cases) their name has been disclosed
I	information summarising or referencing the information within the Category B Information, which was provided by the Engineers in response to the Board's requests issued under section 41(3) of the PE Act
J	The investigator's draft investigation plan

134. As the descriptions in the preceding paragraph indicate, the majority of the Bundle D Redactions duplicate, or are of the same nature, as the Bundle A and B Redactions. I also note that there is a significant level of duplication within the Bundle D Redactions.
135. The applicant confirmed he seeks access to all the Bundle D Redactions but has provided no submissions in support of his position.

### **Findings**

136. For the reasons that follow, I find that the applicant is not entitled under the RTI Act to access the Category D Redactions. In reaching this finding, I have not taken into account any irrelevant considerations.
137. For the same reasons outlined in paragraph 99 above, I am satisfied that the Type A Information is not relevant to the Access Application and has been validly deleted from the Bundle D Documents.<sup>177</sup> Having carefully reviewed the terms of the Access Application and the Type B Information, I am satisfied that this information is also not relevant to the Access Application and it has been validly deleted.<sup>178</sup>
138. For the reasons set out on paragraphs 117-119 in respect of the Engineers contact details, I find that disclosure of this component of the Type C Information would, on balance, be contrary to the public interest and access to it may be refused on that basis.<sup>179</sup>
139. In respect of the balance of the Type C Information, I am not satisfied that disclosing these particular details about the Engineers' employment could be expected to advance the Board's accountability<sup>180</sup> in any meaningful way. On this basis, and to the extent this public interest consideration applies, I afford it low to no weight. Given the limited nature of this information, I also consider that the public interest factors in schedule 4, part 2, items 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17 and 18 of the RTI Act do not apply to favour disclosure of this redacted information. I am satisfied this information, which includes information identifying the Engineer's employer, is their personal information and its disclosure could reasonably be expected to lead to some level of prejudice to the Engineers' privacy. However, the limited nature of this information is such that I consider

<sup>176</sup> Redacted information of this nature appears on 30 pages.

<sup>177</sup> Under section 73 of the RTI Act.

<sup>178</sup> Under section 73 of the RTI Act.

<sup>179</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>180</sup> Schedule 4, part 2, item 1 of the RTI Act.

the nondisclosure factors concerning personal information and privacy<sup>181</sup> are only deserving of low weight. On balance, I am satisfied that the weight I have afforded to the nondisclosure factors outweighs the weight afforded to the applicable factor which favours disclosure. Accordingly, I find that the balance of the Type C Information would also, on balance, be contrary to the public interest and access to it may be refused on that basis.<sup>182</sup>

140. For the reasons in paragraphs 100-112 above which concern the Category (d) redactions in Bundle A, I find that disclosure of the Type D Information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>183</sup>
141. The Type E Information comprises the personal information of the identified signatories. I afford moderate weight to the nondisclosure factor in schedule 4, part 4, section 6 of the RTI Act, given the highly personal nature of an individual's signature. As the identity of the signatory to whom these signatures relate has been disclosed, I do not consider disclosing the signatures could be expected to advance the Board's accountability, in any meaningful way.<sup>184</sup> I also consider that the public interest factors in schedule 4, part 2, items 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17 and 18 of the RTI Act do not apply to favour disclosure of these redacted signatures, given the limited nature of this information. On balance, I am satisfied that the weight I have afforded to the applicable nondisclosure factor outweighs the weight afforded to the applicable factor which favours disclosure. Accordingly, I find that the Type E Information would, on balance, be contrary to the public interest and access to it may be refused on that basis.<sup>185</sup>
142. For the Type F Information, I note that most of it relates to the appointed investigators and their names have disclosed where this component of the Type F Information appears. These individuals are not public-sector officers. Taking into account the context in which the Type F Information appears, I consider its disclosure could only be expected to marginally advance the Board's accountability.<sup>186</sup> On the other hand, I am satisfied that the public interest factors concerning personal information and privacy<sup>187</sup> apply to favour nondisclosure of the Type F Information. To the extent this information relates to a non-public sector individual who was not an appointed investigator, I afford these factors moderate weight in favour of nondisclosure, as I expect a high level of harm could be expected to arise from disclosure (taking into account that the RTI Act places no restriction on the use, dissemination or republication of information which has been disclosed in response to an access application). However, I accept that a lower level of prejudice and harm could be expected to arise from disclosing the Type F Information which relates to the appointed investigators. For this reason, I afford these factors low weight. As a result, the applicable factors which favour nondisclosure of the Type F Information outweigh the applicable factor favouring disclosure and access to the Category F Information may be refused,<sup>188</sup> as its disclosure would, on balance, be contrary to the public interest.
143. When providing an overview of the steps taken concerning the QBCC referral (as referenced in paragraph 10 above), the Board confirmed to the applicant that a registered engineer had been appointed to assist that investigation. I accept that disclosure of the

<sup>181</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>182</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>183</sup> Under section 47(3)(b) of the RTI Act.

<sup>184</sup> On this basis I afford no weight to the public interest factor in schedule 4, part 2, item 1 of the RTI Act.

<sup>185</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>186</sup> On this basis I afford low to no weight to the public interest factor in schedule 4, part 2, item 1 of the RTI Act. On the information me and taking the limited nature of the Type F Information into account, I also consider that the public interest factors in schedule 4, part 2, items 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, 17 and 18 of the RTI Act do not apply to favour disclosure.

<sup>187</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>188</sup> Under sections 47(3)(b) and 49 of the RTI Act.

Type G Information will provide additional information relating to that appointment decision. On this basis, I consider the factors in schedule 4, part 2, items 1 and 11 of the RTI Act apply and are deserving of moderate weight. To the extent the Type G Information includes the expert's charging rate, I do not consider disclosure of that particular (and limited) information could be expected, in any meaningful way, to ensure oversight of expenditure of public funds.<sup>189</sup> On the information before me and taking the nature of the Type G Information into account, I also consider that the public interest factors in schedule 4, part 2, items 2, 3, 5, 6, 7, 10, 12, 13, 14, 16, 17 and 18 of the RTI Act do not apply to favour disclosure of this information. On the other hand, I am satisfied that the Type G Information is the appointed experts' personal information, as it identifies and is about this individual, and its disclosure would lead to some level of prejudice to that individual's privacy. Some of this information is highly personal in nature.<sup>190</sup> Having carefully reviewed the Type G Information, I am satisfied that disclosure of the highly personal components of it would lead to a significant level of harm and prejudice, however, only a moderate level of prejudice and harm could be expected to arise in respect of the remaining Type G Information. Accordingly, I afford significant and moderate weight to these public interest factors relating to personal information and privacy.<sup>191</sup> On balance, the applicable factors which favour disclosure of the Type G Information are outweighed by the applicable factors favouring nondisclosure. For this reason, I find that disclosure of the Type G Information would, on balance, be contrary to the public interest and access to it may be refused.<sup>192</sup>

144. Having carefully reviewed the Type H Information, I am satisfied that its disclosure would provide some further context to a particular Board decision concerning the QBCC referral.<sup>193</sup> For this reason, and noting the limited nature and context in which this information appears, I consider the public interest factors in schedule 4, part 2, items 1 and 11 of the RTI Act are deserving of only low weight. Otherwise, on the information which is before me, I do not consider the public interest factors in schedule 4, part 2, items 2, 3, 5, 6, 7, 10, 12, 13, 14, 16, 17 and 18 of the RTI Act apply to favour disclosure of this information. The Type H Information also comprises the personal information of the individuals about whom they relate and I am satisfied that its disclosure would cause some level of prejudice to the privacy of these individuals. Taking into account the nature of the Type H Information, and the context in which it appears, I afford significant weight to the public interest factors relating to personal information and privacy (noting again that the RTI Act places no restriction on the use, dissemination or republication of information which has been disclosed in response to an access application). For these reasons, I find that disclosure of the Type H Information would, on balance, be contrary to the public interest,<sup>194</sup> as the applicable factors which favour nondisclosure outweigh the applicable factors which favour disclosure.
145. As I have noted above, the Type I Information summarises or references some of the Category B Information. Accordingly, and for the reasons provided in respect of the Category B Information, I consider disclosure of the Type I Information would also, on balance, be contrary to the public interest and access to it may be refused on that basis.<sup>195</sup>

<sup>189</sup> On this basis, I afford no weight to the factor in schedule 4, part 2, item 4 of the RTI Act for that component of the Type G Information.

<sup>190</sup> For example, it includes the expert's residential and business addresses. It also includes the experts' charging rate and the expert's Curriculum Vitae which, by its nature, provides details of the expert's work history (including details of other matters the expert had been involved in).

<sup>191</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

<sup>192</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>193</sup> Section 108 of the RTI Act prevents me from providing any further details in this regard.

<sup>194</sup> And access to the Type H Information may therefore be refused under sections 47(3)(b) and 49 of the RTI Act.

<sup>195</sup> Under sections 47(3)(b) and 49 of the RTI Act.

146. Given the nature of the Type J Information, I consider its disclosure would provide some additional information about steps the appointed investigators had initially proposed to conduct in undertaking the investigation for the QBCC referral. Its disclosure may also provide some context to the Board's appointment decision. In this regard, I note that the information which has been disclosed by the Board confirms that some of the described steps were taken with the period of time nominated in the Access Application. In these circumstances, I consider the factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act apply to favour disclosure of the Type J Information and are deserving of moderate to low weight. Otherwise, on the information before me, I do not consider the public interest factors in schedule 4, part 2, items 2, 5, 6, 7, 10, 12, 13, 14, 16, 17 and 18 of the RTI Act apply to favour disclosure of this information. As noted in paragraph 130 above, the PE Act does not mandate any particular investigation process. I consider disclosure of the Type J Information could therefore be expected to cause some level of prejudice the commercial and financial affairs of the appointed investigators, by revealing the investigation methodologies and procedures they proposed to bring to the investigation of the QBCC referral. I consider a reasonable expectation arises that disclosure of the Type J Information could negatively impact the value of those methodologies and procedures, enlivening the public interest factors in schedule 4, part 3, items 2 and 15 and schedule 4, part 4, section 7(1)(b) of the RTI Act. As to the weight to be afforded to these factors, I note that some of these methodologies and procedures are not novel. As noted above, some of the nominated processes relevant to the timeframe of the Access Application are also reflected in the information which has been disclosed by the Board. In the circumstances, I afford these public interest factors favouring nondisclosure moderate weight. I acknowledge that the public considerations favouring disclosure and nondisclosure are therefore finely balanced for the Type J Information. However, I am satisfied that the moderate and low weight that I have afforded to applicable disclosure factors is slightly outweighed by the applicable nondisclosure factors. For this reason, I find that disclosure of the Type J Information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>196</sup>

## Adequacy of the Board's searches

### Relevant law

147. Access may be refused to a document where the document is nonexistent or unlocatable.<sup>197</sup>
148. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to be considered.<sup>198</sup>
149. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for

<sup>196</sup> Under section 47(3)(b) of the RTI Act.

<sup>197</sup> Sections 47(3)(e) and 52(1) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document but it cannot be found—section 52(1)(b) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act.

<sup>198</sup> These factors include the administrative arrangements of government; the agency's structure; the agency's functions and responsibilities (Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it); the agency's practices and procedures (including but not exclusive to its information management approach); and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates. These factors were identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (*PDE*). These factors continue to be considered by the Information Commissioner in assessing whether a document does not exist, see for example, *D82 and Queensland Police Service* [2024] QICmr 62 (19 November 2024) at [11]-[12] and *G52 and Department of the Premier and Cabinet* [2025] QICmr 24 (7 May 2025).

the nonexistent document are adequately explained by the agency.<sup>199</sup> However, searches may be relied on to satisfy the decision-maker that a document does not exist—if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.<sup>200</sup> What constitutes reasonable steps will vary from case to case.<sup>201</sup>

150. To determine whether a document exists, but is unlocatable, requires consideration of whether there are reasonable grounds to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find it.<sup>202</sup> In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors referenced above.<sup>203</sup>
151. Under section 130(2) of the RTI Act, the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.<sup>204</sup> QCAT has confirmed that this '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.<sup>205</sup>
152. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>206</sup> However, there is a practical onus placed on the applicant, where the applicant contests the adequacy of an agency's searches, to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.<sup>207</sup>
153. In assessing an agency's searches, the Information Commissioner has also confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.<sup>208</sup>

### **Steps taken by the Board to locate requested documents**

154. As noted in paragraph 6 above, the Board located almost 1000 pages of documents relevant to the Access Application. OIC asked the Board to provide information about its record keeping systems and its search process for locating the documents requested in the Access Application.
155. The Board submitted<sup>209</sup> that:

<sup>199</sup> For example, where a particular document was not created because the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document.

<sup>200</sup> As set out in *PDE* at [49].

<sup>201</sup> As the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

<sup>202</sup> Section 52(1)(b) of the RTI Act.

<sup>203</sup> *Pryor* at [21].

<sup>204</sup> The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review.

<sup>205</sup> *Webb v Information Commissioner* [2021] QCATA 116 at [6].

<sup>206</sup> Section 87(1) of the RTI Act.

<sup>207</sup> *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

<sup>208</sup> *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

<sup>209</sup> By email on 16 November 2023.



- its internal record keeping process is to save all documents (including any incoming/outgoing correspondence) in real time to the relevant file in the Board's Network Drive and, on this basis, all documents are located in one centralised location
- searches were conducted of the Network Drive using specific search terms relevant to the Access Application<sup>210</sup>
- those searches located 1 file relating to the investigation of the Engineers; and
- the file contained all documents relating to that matter, including emails, letters, statutory notices, correspondence, meeting minutes, legal advices and other documents regarding the QBCC referral.

### ***Applicant's submissions***

156. The applicant submitted that he believed the following documents had not been located by the Board, based on his understanding of the Board's investigations of engineers and subsequent '*Board RTI decisions*':<sup>211</sup>

- *File Notes*
- *Initial or Preliminary Report(s)*
- *Internal Memoranda*
- *Correspondence with relevant third parties such as builder, certifier, etc*
- *Correspondence with investigation subject parties*
- *Investigation Summary*
- *Statements*
- *Job "to do" lists*
- *Written instruments appointing investigator(s)*
- *All correspondence and attachments with investigator(s) - including a Brief*
- *Section 45 (PE Act) Notice(s) - and drafts*
- *All correspondence and attachments with expert(s) - including a Brief*
- *All reports - and drafts*
- *Case Manager documents and correspondence; and*
- *Other Notices - and drafts*

157. The applicant also submitted that, based on documents which had been disclosed by the Board during the review, additional specific documents were missing.<sup>212</sup>

### ***Findings***

158. The question I must consider is whether the Board has taken all reasonable steps to locate documents responsive to the Access Application. This entails consideration of whether the Board has conducted sufficient searches of all locations where the documents in question could reasonably be expected to be found.

159. While the applicant suggested that the Board ought to have searched the email accounts of Board officers,<sup>213</sup> there is nothing before me which calls into question either the accuracy of the Board's explanation of its record keeping process or the efficacy of its searches.

<sup>210</sup> These included "Peer Review Report", the names of the Engineers, the property address nominated in the Access Application, a letter nominated in the Access Application and the author of another report referenced in the Access Application.

<sup>211</sup> Applicant's submission dated 6 October 2023. The applicant provided an identical listing of missing documents in his submission dated 28 August 2024, in support of which the applicant included a partially redacted 2022 Board's decision letter, issued in response to a separate access application.

<sup>212</sup> Applicant's submission dated 6 October 2023. While the applicant also argued, in this submission, that documents referenced in the Board's decision concerning his complaints were missing, the applicant subsequently accepted (in his submission dated 29 August 2024) that those referenced documents post-dated the Access Application and he no longer sought access to them in this review.

<sup>213</sup> Applicant's submission dated 29 August 2024.

160. The applicant's primary argument is that the locating of additional categories of documents in response to a separate access application is evidence that the Board has not conducted all reasonable searches in this matter.<sup>214</sup> The applicant considers that this is not suspicion or mere assertion and, in this regard, he submitted that he has discharged the practical onus referenced in paragraph 152 above.<sup>215</sup> I disagree. The fact that certain types of documents exist in respect of a separate access application which sought documents related to a different Board investigation matter does not, of itself, provide evidence (or raise any reasonable expectation) that the same types of documents would exist and be responsive to the Access Application.

161. Here, I note that some of the documents located by the Board:

- are types of documents which the applicant submitted were not located (for example, correspondence with the subjects of the Board's investigation); and
- have been partially disclosed to the applicant (for example, written instruments and notices of investigator appointments, correspondence with investigators and section 45 notices).

162. The applicant further submitted<sup>216</sup> that the Board is entitled to access files held by the appointed investigators and their appointed expert and that further responsive documents within these files are missing. The right of access under the RTI Act applies to documents which are in possession or under the control of the agency to whom the application is made.<sup>217</sup> Here, the terms of the Access Application requested (my emphasis) '*any/all documents **generated and/or in the possession of** the Board and specifically excluded duplicates*'. Based on the specific wording of the Access Application, I do not consider it sought documents which were not, at the date of the Access Application, in the physical possession of the Board. However, if I am wrong, I consider that, to the extent the Board has any present legal entitlement to access documents held in the external files referenced by the applicant, it is reasonable to conclude that those documents would comprise duplicate copies of documents which have been located by the Board (that is, the investigator/expert copies of communications sent or received). In reaching these factual conclusions, I have specifically taken into account the date range specified in the Access Application and the investigation status within that time period.<sup>218</sup>

163. Late in the external review process, the applicant submitted<sup>219</sup> that he considered, based on the Board's estimated volume of documents that would responsive to a separate access application, the Board had failed to locate a '*significant number of documents that are properly responsive*' to the Access Application. The question to be determined here is whether the Board has taken all reasonable steps to locate documents

<sup>214</sup> More specifically, in the applicant's submission dated 29 August 2024, he submitted, when referencing document categories dealt with in the provided Board decision letter concerning a separate access application: '*Documents such as these are reasonably expected to form part of any BPEQ "investigation" process. However, such documents have not been located in response to my access application.*'

<sup>215</sup> Applicant's submission dated 29 August 2024.

<sup>216</sup> Submission received 13 February 2025.

<sup>217</sup> Sections 12 and 24 of the RTI Act. The Information Commissioner has previously found that a document will be '*under the control of*' an agency where the agency has a present legal entitlement to take physical possession of the document (*Price and the Nominal Defendant* (1999) 5 QAR 80 at [18], cited with approval in *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 30 (26 November 2015) at [15]). Refer also to the findings of Justice Hoeben in *Carmody v Information Commissioner & Ors* [2018] QCATA 14 at [67] on this issue.

<sup>218</sup> In the applicant's submissions received 13 February 2025, he submitted: '*Chiefly, the investigators final report and the expert report must be located and disclosed.*' However, by virtue of the complaint outcome letter that the applicant received from the Board, he is aware that neither the expert, nor the investigators, had completed their reports as at the date the Access Application was received by the Board.

<sup>219</sup> Applicant's submission dated 26 June 2025. I note that this document also contains submissions relating to separate external review applications the applicant has made to OIC.

responsive to this Access Application. The fact more documents may have been located as potentially responsive to his separate access application (which sought different documents under the IP Act) does not give rise to any reasonable expectation that the Board has failed to take reasonable steps to locate documents responsive to the Access Application. While I have carefully considered the applicant's submission, I do not consider it provides any relevant evidence which calls into question the accuracy of the information provided by the Board (as outlined in paragraph 155 above) or the efficacy of the Board's conducted searches in this matter. The applicant further submitted<sup>220</sup> that he considered responsive documents (I understand this to mean documents responsive to the separate access application) '*are also properly considered responsive*' to the Access Application.<sup>221</sup> I disagree. The terms of the Access Application set the parameters for the Board's searches and the applicant cannot unilaterally expand the terms of the Access Application on external review.

164. Based on my consideration of the entirety of the information before me (including the Access Application, the located documents and the parties' submissions), I consider that the Board has conducted appropriate searches of relevant record keeping systems for documents responsive to the Access Application.

165. Accordingly, I am satisfied that the Board has taken all reasonable steps to locate documents relevant to the Access Application and access to any further documents relevant to the Access Application may be refused,<sup>222</sup> on the basis they do not exist.

## DECISION

166. For the reasons set out above, I set aside the Deemed Decision and, in respect of the Information in Issue, I find that:

- the Category A Information comprises exempt information and access to it may be refused on that basis<sup>223</sup>
- access may be refused to the Category B Information, as its disclosure would, on balance, be contrary to the public interest<sup>224</sup>
- the applicant is not entitled to access some information within the Bundle A, B, C and D Redactions, as it is irrelevant to the Access Application<sup>225</sup>
- access may be refused to the remaining Bundle A, B, C, and D Redactions, as its disclosure would, on balance, be contrary to the public interest;<sup>226</sup> and
- access to any further information relevant to the Access Application may be refused on the basis that it does not exist.<sup>227</sup>

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**S Winson**  
**Acting Information Commissioner**  
**Date: 30 June 2025**

<sup>220</sup> Applicant's submission dated 26 June 2025.

<sup>221</sup> More specifically, the applicant submitted: *To the extent there are any unique documents responsive to the [referenced separate access application] that have not been captured by the access applications under External Reviews 317121 [and another external review matter], I raise sufficiency of search concerns.*

<sup>222</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

<sup>223</sup> Under sections 47(3)(a) and 48 of the RTI Act.

<sup>224</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>225</sup> Section 73 of the RTI Act.

<sup>226</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>227</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
13 February 2023	OIC received the applicant's external review application.
16 March 2023	OIC notified the applicant and the Board that the application for external review had been accepted. The notification to the Board also confirmed OIC's view that the relevant processing period had expired on 16 November 2022 and the Board was taken to have made a deemed decision under section 46 of the RTI Act.
28 March 2023	OIC conveyed a preliminary view to the Board that it was not entitled to refuse to deal with the application under section 40 of the RTI Act and invited the Board to provide a submission about its disclosure position. OIC also conveyed the applicant's informal resolution proposal to the Board and invited a response to that proposal.
3 April 2023	At the Board's request, OIC granted an extension of time for the Board's response.
26 April 2023	At the Board's request, OIC granted a further extension of time for the Board's response.
22 May 2023	OIC received the Board response, which confirmed that the Board no longer relied upon section 40 of the RTI Act but relied upon certain refusal grounds for certain located information.
22 August 2023	OIC asked the Board to send redacted documents (reflecting the Board's disclosure position) to the applicant. OIC notified the applicant that the Board no longer relied upon section 40 of the RTI Act, confirmed that redacted documents reflecting the Board's disclosure position would be sent to the applicant and conveyed a preliminary view to the applicant about the information which the Board had not agreed to disclose. OIC asked the applicant to confirm if he wished to proceed with the external review and invited the applicant to provide a submission if he disagreed with OIC's preliminary view.
23 August 2023	The Board sent redacted documents to the applicant.
8 September 2023	OIC received the applicant's submissions, which contested aspects of the preliminary view and raised concerns about the sufficiency of the Board's searches.
14 September 2023	OIC conveyed a further preliminary view to the applicant and invited the applicant to provide a submission if he did not accept the preliminary view.
26 September 2023	At the applicant's request, OIC granted an extension of time for the applicant's response.
6 October 2023	OIC received the applicant's further submissions.
16 November 2024	OIC received information from the Board about its record keeping systems and searches.
4 December 2023	OC received a further submission from the applicant.

Date	Event
8 February 2024	OIC conveyed a preliminary view to the Board.
15 February 2024	OIC received the Board's confirmation that it agreed to release further information to the applicant. OIC notified the applicant that the Board would shortly disclose further information to him.
19 February 2024	The Board sent redacted documents to the applicant.
22 February 2024	OIC received the Board's submissions and confirmation of its agreement to disclose some further information to the applicant.
13 March 2024	OIC received a further submission from the applicant.
21 March 2024	OIC received a further submission from the applicant.
5 April 2024	OIC asked the Board to send the applicant a copy of the further information it had agreed to disclose.
10 April 2024	The Board sent redacted documents to the applicant.
4 June 2024	OIC conveyed a further preliminary view to the Board.
18 June 2024	OIC received the Board's further submissions.
24 June 2024	OIC conveyed a further preliminary view to the applicant and invited the applicant to provide a submission if he did not accept the preliminary view. OIC conveyed a further preliminary view to the Board and invited the Board to provide submissions.
18 July 2024	At the applicant's request, OIC granted an extension of time for the applicant's response.
27 August 2024	At the applicant's request, OIC granted a further extension of time for the applicant's response.
29 August 2024	OIC received the applicant's further submissions.
14 November 2024	OIC conveyed a further preliminary view to the applicant and invited the applicant to provide a submission if he did not accept the preliminary view.
15 November 2024	OIC conveyed a further preliminary view to the Board and asked the Board to identify its disclosure position for the information addressed in the further preliminary view.
29 November 2024	At the applicant's request, OIC granted a further extension of time for the applicant's response.
2 December 2024	OIC received the Board's confirmation of its disclosure position and its agreement, in the interests of resolving the external review, to disclose additional documents to the applicant.
10 December 2024	OIC asked the Board to send the applicant a copy of the further information it had agreed to disclose in the interests of resolving the review. OIC notified the applicant that the Board had agreed, in the interests of resolving the review, to disclose further documents and conveyed a preliminary view about the information not being disclosed within those documents.

Date	Event
12 December 2024	At the applicant's request, OIC granted a further extension of time for the applicant's response.
18 December 2024	The Board sent redacted documents to the applicant.
29 January 2025	The applicant was provided with further time to provide any submissions he wished to make in respect of OIC's preliminary view.
13 February 2025	OIC received the applicant's further submissions.
18 February 2025	OIC received the applicant's further submissions.
14 May 2025	OIC notified the applicant that: <ul style="list-style-type: none"> <li>• a formal decision would be issued to finalise the external review; and</li> <li>• no further information was required from the applicant pending the issue of the decision.</li> </ul>
26 June 2025	Notwithstanding the notification sent 14 May 2025, OIC received a further submission from the applicant.