



Decision and Reasons for Decision

Citation: *Bowmaker Realty and Department of Justice and Attorney-General; Andrews* [2015] QICmr 19 (17 August 2015)

Application Number: 312139

Applicant: Bowmaker Realty

Respondent: Department of Justice and Attorney-General

Third Party: Andrews

Decision Date: 17 August 2015

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information about the outcome of an investigation into a real estate agent's advertising - applicant's previous conduct - social media webpage - ordinary meaning of 'harassment' and 'intimidation' - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - whether access to information may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld) - whether information is exempt under schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information about the outcome of an investigation into a real estate agent's advertising - accountability of regulatory and law enforcement agencies in relation to consumer protection - privacy of an individual - impact of disclosure on the business affairs of a real estate agent - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Justice and Attorney-General (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information about

the outcome of an investigation by the Office of Fair Trading (**OFT**)¹ regarding a complaint made by the applicant.

2. The Department located ten pages of information, but determined that only two of these pages fell within the scope of the applicant's access application. The Department refused access to the two pages of information on the basis their disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision. In the course of the review, a third party – the subject of the applicant's complaint – was consulted and joined as a participant, and the applicant and Department agreed that some information could be eliminated from consideration in the review.
4. In relation to the remaining information, for the reasons set out below, I have decided to set aside the Department's decision. I find that the remaining information is not exempt information, nor would its disclosure, on balance, be contrary to the public interest. Accordingly, I find there is no basis to refuse access to this information under the RTI Act.

Background

5. The parties to this external review are the Department; the applicant, Bowmaker Realty as represented by Mr Christopher Bowmaker; and a third party, Mrs Jenny Andrews on her own behalf and on behalf of her business, Jenny Andrews Real Estate. The third party was consulted² and joined as a participant³ in the course of the review.
6. Significant procedural steps are set out in the Appendix.

Reviewable decision

7. The decision under review is the Department's decision dated 11 August 2014.

Evidence considered

8. The evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

9. On external review, the applicant and Department accepted that one of the two pages that the Department had, in its decision, refused to disclose was outside the scope of the access application. They also accepted that it would be contrary to the public interest to disclose a small amount of the third party's personal information⁴ on the remaining page.⁵ The third party objected to disclosure of the rest of the information on the remaining page.

¹ The OFT conducted the investigation in its capacity as the agency responsible for the administration of the *Fair Trading Act 1989* (Qld) (**FT Act**).

² In accordance with section 37(1) and 97(4) of the RTI Act.

³ Under section 89(3) of the RTI Act.

⁴ Namely, the third party's residential address and date of birth.

⁵ OIC conveyed preliminary views to the applicant and Department on 1 May 2015. The Department advised OIC that it accepted the preliminary view on 14 May 2015. The applicant was advised that, if the applicant did not respond to the preliminary view within a specified period, the applicant would be taken to have accepted the preliminary view. The applicant did not provide a response within the specified period, and has not since provided a response.

10. The Information in Issue comprises this information. It may be described as a one page document⁶ which records the outcome of OFT's investigation of a complaint made by the applicant against the third party (**Information in Issue**), except for the third party's residential address and date of birth as they appear on the page.⁷

Issues for determination

11. Under the RTI Act, an individual has a right to be given access to a document of an agency.⁸ An agency should decide to give access to information unless giving access would, on balance, be contrary to the public interest.⁹ There are some limitations on the right of access, including grounds for refusal of access.¹⁰
12. The relevant grounds for refusal of access in this review are whether information is exempt¹¹ or whether disclosure of information would, on balance, be contrary to the public interest.¹²
13. As the Department no longer objects to disclosure of the Information in Issue,¹³ the third party has the onus of establishing that the Information in Issue should not be disclosed under the RTI Act.¹⁴ Taking into account the third party's submissions, it is necessary that I consider whether:
- the Information in Issue comprises exempt information, on the basis that its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation;¹⁵ and/or
 - disclosure of the Information in Issue would, on balance, be contrary to the public interest.¹⁶
14. I will consider each of these grounds in turn.

Exempt information – serious act of harassment or intimidation

15. The RTI Act permits an agency to refuse access to information on certain grounds. One such ground is that the information is exempt information.¹⁷ Relevantly in this review, information will be exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.¹⁸
16. The RTI Act does not define '*a serious act of harassment or intimidation*'. Therefore, the terms are given their ordinary meanings.¹⁹ In this regard, the Information

⁶ Referred to as page 10 in the Department's decision dated 11 August 2014.

⁷ Section 108(3) of the RTI Act precludes me from describing the Information in Issue in further detail.

⁸ Section 23 of the RTI Act.

⁹ Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.

¹⁰ Set out in section 47(3) of the RTI Act.

¹¹ Under section 47(3)(a) of the RTI Act. Schedule 3 of the RTI Act sets out the various categories of information which Parliament has decided are exempt from disclosure.

¹² Under section 47(3)(b) of the RTI Act. Schedule 4 of the RTI Act lists various public interest factors for and against disclosure.

¹³ As confirmed by the Department on 14 May 2015.

¹⁴ Section 87 of the RTI Act.

¹⁵ Schedule 3, section 10(1)(d) of the RTI Act.

¹⁶ Schedule 4, part 3, items 2 and 3 and schedule 4, part 4, item 6 of the RTI Act.

¹⁷ Section 47(3)(a) and 48 and schedule 3 of the RTI Act.

¹⁸ Schedule 3, section 10(1)(d) of the RTI Act.

¹⁹ *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [188]. The decision in *Sheridan* concerned section 42(1)(ca) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as this provision. Therefore, the Information Commissioner's findings in *Sheridan* are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

Commissioner has previously accepted²⁰ the following definitions:

- 'harass' includes 'to trouble by repeated attacks, ... to disturb persistently; torment'; and
 - 'intimidate' includes 'to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear'.
17. Significantly, the expected harassment or intimidation must be *serious* in nature before the exemption in schedule 3, section 10(1)(d) will apply. Relevant dictionary definitions of 'serious' include 'weighty or important', 'giving cause for apprehension; critical', and 'having (potentially) important, esp. undesired consequences; giving cause for concern'.²¹ Accordingly, the exemption is not invoked if the expected harassment or intimidation does not meet the serious threshold. This indicates that it was Parliament's intention, when passing this provision, that some degree of low level harassment or intimidation would be tolerated before the exemption could be invoked.²²
18. The term '*could reasonably be expected to*' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,²³ nor merely a possibility.²⁴ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.²⁵ It is not necessary for a decision-maker '*to be satisfied upon a balance of probabilities*' that disclosing the document will produce the anticipated prejudice, or, in this case, serious harassment or intimidation.²⁶
19. Factors that might be relevant in considering whether an event could reasonably be expected to occur include, but are not limited to:²⁷
- past conduct or a pattern of previous conduct
 - nature of the Information in Issue
 - nature of the relationship between the parties and/or relevant third parties; and
 - relevant contextual and/or cultural factors.
20. Importantly, the expectation must arise **as a result of disclosure**,²⁸ rather than from other circumstances.²⁹ In this regard, it is relevant to note the comments of Thomas J of the Queensland Civil and Administrative Tribunal in the matter of *Alexander Watson v Office of the Information Commissioner Queensland & Ors*.³⁰ In that decision, Justice Thomas observed that:
- For the exemption to apply, it must be reasonably expected that a person would be subject to a serious act [of] harassment or intimidation **as a result** of the disclosure of the information, rather than independently or from any other circumstance.*
21. Accordingly, for the harassment and intimidation exemption to apply, I must be satisfied that the disclosure of the Information in Issue, rather than the nature of the pre-existing

²⁰ *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) (**Richards**) at [13] and *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13] applying the *Macquarie Dictionary Online* (Fourth Edition) definitions referred to in *Sheridan* at [194]-[200].

²¹ *Macquarie Dictionary Online* (Fifth Edition).

²² *Sheridan* at [187].

²³ *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**) at [106].

²⁴ *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**).

²⁵ *Murphy* at [45]-[47].

²⁶ *Cockcroft* at [106], cited in *Sheridan* at [192].

²⁷ *Sheridan* at [193] and *Richards* at [19].

²⁸ *Sheridan* at [191].

²⁹ *Murphy* at [54] and *Seven Network (Operations) Limited and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at [19].

³⁰ [2015] QCATA 095 (APL416-14) (**Watson**) at [19] and [21]-[23].

relationship between the relevant parties, could reasonably be expected to cause the serious act of harassment or intimidation.

Analysis

22. The third party submitted³¹ that the applicant has engaged in an ongoing pattern of conduct injurious to the reputation of the third party's business and the third party personally. In support of this contention, the applicant provided³² screen shots of social media comments made about her. These comprised a comment made by the applicant about the third party refusing an offer made by the applicant to buy her business,³³ and a series of social media comments made by the applicant, and by other individuals in response to the applicant, regarding matters that may, in broad terms, be referred to as the third party's business practices and appearance.³⁴ The applicant allowed the other individuals' comments to remain posted as responses to his comments, and in this sense permitted, if not endorsed, them.
23. The third party also provided screen shots of a social media comment made by the applicant about another real estate agent unrelated to this external review. The applicant's comment published a copy of a letter from the agent to one of the applicant's clients (in which the agent offered to assist with selling the client's house) and questioned the practices of the agent. The third party also provided screen shots of subsequent comments made by the applicant and others, in which the conduct of the agent, and the concerns of some individuals about what they perceived to be the applicant's "naming and shaming" of her, were discussed.³⁵
24. The third party also submitted that a social media webpage titled "*DontBelieveJenny*"³⁶ is relevant to OIC's considerations. In relation to this webpage:
- The third party submitted that she spoke with her solicitor about the webpage, but neither she nor her solicitor kept a screen shot or copy of it.
 - OIC conducted internet searches for the webpage,³⁷ however it could not be located.
 - The applicant supplied OIC with a statutory declaration³⁸ which declares '*I did not create or administer a web page called "DontBelieveJenny"*'.
 - The third party supplied OIC with a statutory declaration made by her solicitor,³⁹ in which the solicitor declares that he did not retain a copy of the webpage, but recalls that it did appear to be attributable to the applicant, and contained material that suggested that the third party had engaged in misleading advertising, and should not be trusted or believed.
25. On careful consideration of the third party's submissions and the material provided by her, it is my understanding that she considers that the applicant has made defamatory comments about her on social media, and is likely to engage in similar conduct in future, and to refer to or publish the Information in Issue when doing so.

³¹ Submission received by OIC on 24 December 2014.

³² With her submissions of 24 December 2014.

³³ On *Facebook* on 16 December 2013.

³⁴ On *Facebook*. The comments indicate a date of '9 Feb', however, the year is not apparent.

³⁵ On *Facebook*. The comments indicate a date of '10 Mar' to '15 Mar'. Again, the year is not apparent – however, the real estate agent's letter published by the applicant is dated 9 March 2015, indicating that the comments were made in March 2015.

³⁶ Submissions received by OIC on 24 December 2014, also referred to in requests for extension on 3 May 2015 and 21 June 2015.

³⁷ On 15 June 2015.

³⁸ The applicant sent a copy his statutory declaration to OIC on 22 July 2015.

³⁹ The third party sent a copy of the solicitor's statutory declaration to OIC on 31 July 2015.

26. In order to determine whether or not the harassment and intimidation exemption under the RTI Act applies, I have carefully considered the information before me, including the third party's submissions regarding the applicant's conduct on social media, both towards herself and another real estate agent. I have also considered the applicant's external review application and the Information in Issue itself, and noted that they relate to a complaint made by the applicant about the third party. On the basis of this information, I am satisfied that the applicant has, in the past, made or permitted comments on social media that could be construed as questioning or impugning the integrity or professional conduct of the third party and another real estate agent and, in relation to the other agent, published a document about that agent that came into the applicant's possession. I am also satisfied the relationship between the applicant and both the third party's business and the third party personally is competitive and relatively acrimonious in nature.
27. However, I note that the evidence before me about the applicant's alleged behaviour, as provided by the third party, is limited to the applicant's social media activity. There is no evidence of any physical exchanges or emails, text messages or other electronic communications being sent directly from the applicant to the third party.
28. In *Mathews and University of Queensland*,⁴⁰ the Information Commissioner found that:⁴¹
- The posting of offensive commentary on the internet might not, by itself, be enough to reach the threshold of a 'serious act of harassment or intimidation'. But the malicious nature of the applicant's website including its stated purpose, together with the impact that it has had on the individuals it targets, bring me to the conclusion that this website meets the threshold.*
29. In *Mathews*, the Information Commissioner was able to view the website in question and consider both its content, and the stated malicious purpose of that content. In the present circumstances, the third party submits that the "*DontBelieveJenny*" webpage contains content that would, if viewed by OIC, be sufficient to meet the threshold for serious harassment or intimidation. However, the third party has been unable to produce direct evidence of this webpage to OIC. Accordingly, and in light of the conflicting statements in the statutory declarations, the evidence upon which I can rely is the social media activity supplied by the third party.
30. Additionally, I have before me the Information in Issue itself, which comprises evidence of the outcome of a complaint made by the applicant against the third party. It is clear from this complaint, and the material provided by the applicant and third party to OIC during the course of this external review, that the applicant has, in the past, questioned the professional conduct of other real estate agents, including the third party, has engaged in disparaging commentary and has done so in public forums. It is also clear that the relationship between the applicant and third party has been antagonistic for some time, at least in part as a result of such conduct.⁴²
31. I am satisfied that the applicant's past conduct on social media demonstrates a propensity to engage in disparaging social media activity. Whilst I acknowledge that the applicant's past conduct on social media demonstrates that the applicant will, in all likelihood, publish the Information in Issue if it is disclosed to him, and that if he did so, such conduct may cause the third party and her business distress, on the information

⁴⁰ *Mathews and University of Queensland* (Unreported, Queensland Information Commissioner, 21 September 2012) (*Mathews*).

⁴¹ *Mathews* at [37].

⁴² As evidenced by the screen shot of the applicant's comment on *Facebook* on 16 December 2013.

before me, there is insufficient evidence to establish that such conduct is sufficient to comprise a **serious** act of harassment or intimidation of the nature discussed in *Mathews*. This is because the nature of the social media commentary of the applicant thus far, while competitive, disparaging and at times unpleasant, was not overly malicious, harassing or intimidating, but rather, irksome and annoying. Thus, the social media activity was of the nature that would fall within the low level of harassment and intimidation that parliament envisaged would be tolerated before the exemption provision would be enlivened.

32. Consequently, I am satisfied that the exemption in schedule 3, section 10(1)(d) of the RTI Act does not provide a ground on which access to the Information in Issue may be refused.

Contrary to public interest information

33. Another ground on which access to information may be refused is if its disclosure would, on balance, be contrary to the public interest.⁴³ In assessing the balance of the public interest, the RTI Act requires a decision maker to take the following steps:⁴⁴

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

Analysis

Irrelevant factors

34. In *OKP and Department of Communities*,⁴⁵ OIC applied that the Victorian Court of Appeal decision in *Victoria Police v Marke*,⁴⁶ which supported the proposition⁴⁷ that a decision maker should not:

- assume that disclosure of information to an applicant is disclosure to the world at large; nor
- exclude from consideration evidence about the intended or likely extent of dissemination of information by the applicant.

35. Given the similarity between the provision considered in *Marke*,⁴⁸ the provision considered in *OKP*⁴⁹ and the public interest factors relating to personal information that appear in the RTI Act,⁵⁰ I am satisfied that this proposition continues to correctly state the position in Queensland. That is, the RTI Act does not support the long held and widely utilised assumption that release of documents to an applicant is necessarily release to the world at large. In this regard, I note that the Australian Information

⁴³ Section 47(3)(b) of the RTI Act.

⁴⁴ Section 49(3) of the RTI Act.

⁴⁵ (Unreported, Queensland Information Commissioner, 9 July 2009) (*OKP*) at [28].

⁴⁶ [2008] VSCA 218 (*Marke*).

⁴⁷ Which may be found in the reasons of Weinberg JA and Pagone AJA.

⁴⁸ Section 33(1) of the *Freedom of Information Act 1982* (Vic).

⁴⁹ Section 44(1) of the *Freedom of Information Act 1992* (Qld).

⁵⁰ Schedule 4, part 3, item 3 and part 4, item 6(1) of the RTI Act.

Commissioner has recently considered *Marke* and *OKP* and adopted the same approach.⁵¹

36. On the information before me, there is nothing to suggest that the use and dissemination of the Information in Issue by the applicant is intended or likely to be limited. Indeed, the third party's submissions contend that the applicant is likely to refer to or publish the Information in Issue on social media, and do so in the absence of additional context and explanation that the third party considers to be relevant. In these circumstances, I consider that the third party's submissions may raise what is termed, by the RTI Act, to be an irrelevant factor – namely, that *'disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant'*.⁵² While I acknowledge these concerns, they are deemed to comprise an irrelevant factor under the RTI Act. Accordingly, I cannot have regard to them when applying the public interest test,⁵³ and I have not done so.

Factors favouring disclosure

37. I consider that the following factors favouring disclosure arise for consideration in the circumstances of this review:

- disclosure of the Information in Issue could reasonably be expected to enhance the government's accountability, promote open discussion of public affairs,⁵⁴ and contribute to informed debate on matters of serious interest⁵⁵ – namely how the OFT acts to protect consumers; and
- disclosure of the Information in Issue could reasonably be expected to foster informed and competitive markets,⁵⁶ and thereby discourage and reduce unfair trading practices.

38. In considering these factors, I note the following context:

- the objective of the *Fair Trading Act 1989* (Qld) (**FT Act**) is:

*... to improve consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly.*⁵⁷

- the FT Act applies the *Australian Consumer Law* (Queensland) (**ACL**)⁵⁸
- the FT Act, including the ACL, is administered by the OFT
- the OFT was responsible for investigating the complaint made by the applicant about the third party
- the Information in Issue refers to the provision of the ACL considered by the OFT in relation to the complaint, and records the outcome of the complaint
- there is no legislative requirement for the OFT to publish or otherwise make available information regarding outcomes of this type
- further, the OFT has informed OIC that its existing policies do not make information about such outcomes available to the general public.

⁵¹ *FG and National Archives of Australia* [2015] AICmr 26 at [32]-[44], which in turn was considered in *FH and National Archives of Australia* [2015] AICmr 27 at [20]-[28].

⁵² Schedule 4, part 1, item 3 of the RTI Act.

⁵³ Section 49(3)(d) of the RTI Act.

⁵⁴ Schedule 4, part 2, item 1 of the RTI Act.

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

⁵⁶ *Seven Network Operations and Redland City Council; Third Party* (Unreported, Queensland Information Commissioner, 30 June 2011).

⁵⁷ Section 3 of the FT Act.

⁵⁸ Section 16 of the FT Act.

39. I consider that disclosure of the Information in Issue would facilitate public scrutiny of the OFT performing its regulatory duties. The Information in Issue provides an example of how the OFT performs its functions and could, in my view, provide members of the public with confidence that the OFT undertakes appropriate enforcement action where necessary under the FT Act.
40. Further, I consider that disclosure of the Information in Issue could reasonably be expected to foster a more informed marketplace. A competitive market requires that consumers be provided with information to be able to make informed choices. If information of the nature of the Information in Issue is routinely disclosed, consumers will have more information available to them that is relevant to their choices.
41. Also, I consider that the disclosure of the Information in Issue could reasonably be expected to encourage greater regulatory compliance among businesses generally. If businesses are aware that information about cases under the ACL considered by the OFT will be disclosed as a matter of routine, businesses' expectations that potential clients will become aware of action taken by the OFT to investigate and, where relevant, prosecute regulatory breaches, will increase. Further, businesses will, over time, become better informed regarding the circumstances in which the OFT will take action. In these circumstances, more businesses are likely to comply with the requirements of the FT Act and ACL, and fewer consumers will be subjected to unfair trading practices.
42. In summary, as outlined above, I am satisfied that disclosure of the Information in Issue could reasonably be expected to enhance scrutiny of the OFT's performance of its regulatory functions, foster a more informed marketplace, and increase regulatory compliance with the ACL, thereby reducing the incidence of unfair practices. Usually, I would consider that such public interest factors should be afforded significant weight. However, in the present circumstances, the age of the Information in Issue (close to three years old) supports affording less weight to the public interest factors favouring disclosure. The relatively low level nature of the matter considered and outcome recorded in the Information in Issue⁵⁹ also supports affording less weight, given the relatively limited degree to which such information can advance accountability. Given these considerations, in this review, I consider that the factors set out above should be attributed moderate weight in favour of disclosure.
43. Given the applicant's submission⁶⁰ that *'I made the complaint and I need to know how my government resolved my complaint.'*, I have also considered whether the Information in Issue gives rise to a factor favouring disclosure on the basis that *'[t]he information is the applicant's personal information'*.⁶¹ While it is likely that the complaint made by the applicant would comprise his personal information, the Information in Issue does not comprise the complaint. Instead, it details the outcome of OFT's investigation of the complaint and while this is of personal interest to the applicant, it is not the applicant's personal information.⁶² Accordingly, I am satisfied that the public interest factor *'[t]he information is the applicant's personal information'* is inapplicable in this review.

Factors favouring nondisclosure

⁵⁹ Section 108(3) of the RTI Act precludes me from providing any further detail.

⁶⁰ Email to OIC received 11 October 2014.

⁶¹ Schedule 4, part 2, item 7 of the RTI Act.

⁶² See *McKay and Department of Justice and Attorney-General* (unreported, Queensland Information Commissioner, 25 May 2010) at [79], *G8KPL2 and Department of Health* (unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [29]-[30] and *Minogue and OIC, QH [2012] QCAATA 191*.

44. The following factors favouring nondisclosure arise for consideration in the circumstances of this review:
- the Information in Issue is the third party's personal information⁶³ and its disclosure could reasonably be expected to prejudice the protection of the third party's privacy;⁶⁴ and
 - disclosure of the Information in Issue could reasonably be expected to prejudice or have an adverse effect on the third party's business affairs.⁶⁵
45. The Information in Issue includes reference to the third party's business which contains the third party's name. Accordingly, it is arguable that the Information in Issue comprises the third party's personal information.⁶⁶
46. I consider that the Information in Issue *does* comprise the third party's personal information by simple fact that it includes her name. Accordingly, the personal information / privacy factors favouring nondisclosure are applicable – however, I consider that they should be afforded little to no weight. In arriving at this position, I have noted that the third party's name appears in the context of her business name and is used in her business' advertising, and that the Information in Issue relates to affairs of her business. In such circumstances, I consider that the harm and prejudice to privacy that could reasonably be expected to flow from disclosure are relatively small.
47. At any rate, if it could be said that the Information in Issue does *not* comprise the third party's personal information, then the personal information / privacy factors would not apply at all (and necessarily carry no weight).
48. I also consider that disclosure of the Information in Issue could reasonably be expected to prejudice the business affairs of the third party's business, by harming the third party's business reputation or possibly being used by competitors to discourage potential clients. However, in this regard, I note that the conduct that was the subject of the complaint occurred close to three years ago. I also note the relatively low level nature of the matter considered and outcome recorded.⁶⁷ In these circumstances, I consider that the prejudicial effect that could reasonably be expected to flow from the disclosure of the Information in Issue is somewhat reduced. I therefore afford these factors favouring nondisclosure moderate weight.

Balancing the public interest

49. Given the age and low level nature of the Information in Issue, I consider that both the "accountability" public interest factors favouring disclosure and the "commercial consideration" public interest factors favouring nondisclosure carry moderate weight. While I consider that the weight of these two sets of factors is evenly poised in terms of their impact on the parties to this review, I consider that the factors favouring disclosure carry somewhat more weight overall, given the broader impact of disclosure on accountability beyond the circumstances of the present review, in terms of enhancing

⁶³ Schedule 4, part 4, item 6 of the RTI Act.

⁶⁴ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁵ Schedule 4, part 3, items 2 and 15 and part 4, item 7(1)(c) of the RTI Act.

⁶⁶ 'Personal information' is defined in schedule 6 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld) 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'.

⁶⁷ Section 108(3) of the RTI Act precludes me from providing any further detail.

future regulatory compliance with the ACL, and reducing the incidence of unfair practices. I have concluded that the personal information / privacy factors favouring nondisclosure should be afforded either little to no weight (if they are applicable) or simply no weight (if they are not) and the “commercial consideration” factor carries moderate weight. The factors favouring disclosure and nondisclosure are relatively finely balanced. However, on careful consideration, I am satisfied that the cumulative weight of the factors favouring disclosure slightly outweighs the cumulative weight of the factors favouring nondisclosure. Although the RTI Act’s prodisclosure bias only becomes determinative when applying the public interest test if the factors favouring disclosure and nondisclosure are evenly balanced, this prodisclosure bias fortifies my conclusion in the relatively finely balanced circumstances of this review. Accordingly, I find that disclosure of the Information in Issue is **not**, on balance, contrary to the public interest.

DECISION

50. I set aside the Department’s decision and find that access to the Information in Issue may not be refused on the ground that it is exempt information, nor on the ground that its disclosure would, on balance, be contrary to the public interest and, accordingly, there is no basis to refuse access to the Information in Issue under the RTI Act.
51. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 17 August 2015

APPENDIX

Significant procedural steps

Date	Event
22 July 2014	The Department received the access application.
11 August 2014	The Department issued its decision on the access application.
18 August 2014	OIC received the applicant's application for external review.
26 August 2014	OIC advised the applicant and the Department that the external review application had been accepted and asked the Department to provide information relevant to the review.
26 August 2014	The Department provided OIC with the requested information, including a copy of the information to which access was refused.
9 September 2014	OIC spoke with an officer of the OFT to enquire about whether or not OFT publishes any information about the outcomes of the investigations it carries out.
12 September 2014	OIC wrote to the OFT requesting information about whether or not OFT publishes any information about the outcomes of the investigations it carries out.
29 September 2014	OIC spoke with an officer of the OFT about OFT's response to OIC's enquiry.
1 October 2014	OFT advised OIC it is under no legislative obligation to publish information about the outcomes of its investigations.
11 October 2014	The applicant informed OIC that he still sought access to the Information in Issue.
20 November 2014	OIC notified the applicant that it would be consulting with relevant third party/s.
1 December 2014	OIC spoke with the applicant on the telephone and sought the applicant's views on disclosing the name of the applicant to a third party as part of the consultation process. The applicant confirmed there were no concerns with disclosing this information.
2 December 2014	OIC conveyed a preliminary view to the third party that the Information in Issue should be disclosed and sought the third party's views on its disclosure.
2 December 2014	The third party requested an extension of time until 24 December 2014 to respond to OIC's preliminary view, which was granted.
24 December 2014	The third party provided submissions in response to OIC's preliminary view and confirmed that she maintained her objection to disclosure of the Information in Issue.
30 January 2015	OIC spoke with the third party about her submissions and proposed an informal resolution option (that OIC investigate whether the applicant would agree to be informed of the content of the Information in Issue, but not be provided with a copy of it) – however the third party did not agree to OIC's proposal.
5 March 2015	OIC obtained confirmation that the third party remained registered as a real estate agent.
1 May 2015	OIC conveyed preliminary views to the Department, the applicant and the third party and invited the parties to provide submissions in support of their case by 15 May 2015 if they did not accept the preliminary view.
3 May 2015	The third party wrote to OIC and requested an extension of time until 15 June 2015 to provide a submission in response to OIC's preliminary view.
4 May 2015	OIC informed the third party that the requested extension had been approved.

14 May 2015	The Department wrote to OIC confirming it accepted OIC's preliminary view.
15 June 2015	The third party contacted OIC via telephone to request a further extension of time to provide a submission in response to OIC's preliminary view.
18 June 2015	OIC wrote to the third party, confirming OIC's preliminary view and requesting the third party provide a submission to OIC by 25 June 2015 if the third party maintained her objection to the disclosure of the Information in Issue.
21 June 2015	The third party wrote to OIC and raised a procedural issue requiring OIC's further consideration. The third party requested a further extension of four weeks in order to obtain evidence in support of her submission.
23 June 2015	OIC informed the third party that an extension of time until 7 July 2015 was granted.
24 June 2015	The third party requested information relating to a procedural matter from OIC.
25 June 2015	OIC responded to the third party's query regarding the procedural matter.
26 June 2015	OIC wrote to the applicant requesting the applicant provide information about a social media webpage and advised that failure to cooperate with the request would result in OIC deciding not to further deal with the external review under section 94(1)(c) of the RTI Act.
26 June 2015	The applicant provided an initial response to OIC's request.
30 June 2015	The applicant wrote to OIC confirming his response.
2 July 2015	OIC wrote to the applicant and requested the applicant provide OIC with a statutory declaration by 10 July 2015, confirming the applicant's statements in his emails of 26 and 30 June 2015.
22 July 2015	OIC wrote to the parties confirming that, in absence of a response from the applicant, it had decided not to further deal with the external review under section 94(1)(c) of the RTI Act.
22 July 2015	The applicant provided the requested statutory declaration.
23 July 2015	OIC wrote to the parties and informed them that, given the applicant had provided the requested statutory declaration, the external review had been reopened and that a decision under section 110 of the RTI Act would be the next step in the review.
23 July 2015	The third party wrote to OIC stating she did not agree with OIC reopening the external review and seeking time to provide a submission in response to the applicant's statutory declaration.
24 July 2015	OIC wrote to the third party confirming the bases on which the review had been closed and reopened, and granting the third party until 31 July 2015 to provide a final submission in support of the third party's objection to OIC's preliminary view.
31 July 2015	The third party provided OIC with a copy of a statutory declaration about a social media webpage signed by her solicitor.