



## Decision and Reasons for Decision

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**Citation:** *Frecklington, MP and Premier and Minister for Trade [2020] QICmr 15 (18 March 2020)*

**Application Number:** 314768

**Applicant:** Mrs Deb Frecklington MP, Leader of the Opposition

**Respondent:** Premier and Minister for Trade

**Decision Date:** 18 March 2020

**Catchwords:** ADMINISTRATIVE LAW – RIGHT TO INFORMATION — JURISDICTION - whether declarations of interests made under the *Ministerial and Other Office Holders Staff Act 2010 (Qld)* are documents of a Minister – section 23(1)(b) of the *Right to Information Act 2009 (Qld)* – whether a declaration ‘relates to the affairs of an agency’ – section 13 of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW – RIGHT TO INFORMATION — REFUSAL OF ACCESS – EXEMPT INFORMATION – INVESTIGATION BY PRESCRIBED CRIME BODY - information obtained, used or prepared by a prescribed crime body for an investigation in performance of prescribed functions – whether exempt information to which access may be refused – sections 47(3)(a) and 48 and schedule 3, section 10(4) of the *Right to Information Act 2009 (Qld)*

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the respondent under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to ‘*the current and any superseded Declarations of Interest of the Premier’s Chief of Staff...*’, for the period 1 May 2017 to 25 July 2019 (**Declarations**).
2. The respondent, while noting that it was reasonable to expect that the Declarations were in existence, nevertheless decided<sup>1</sup> to refuse access on the basis of nonexistence,<sup>2</sup> reasoning that the Declarations were not documents of a Minister subject to the RTI Act.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review. During the review, the Crime and Corruption Commission (**CCC**) advised that it had obtained copies of the Declarations for an investigation in performance of its prescribed functions. Information of this kind comprises exempt information, to which access may be refused under the RTI Act.<sup>3</sup>

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<sup>1</sup> Decision of the Department of Premier and Cabinet (**Department**) dated 9 August 2019, made under direction from the respondent.

<sup>2</sup> Under sections 47(3)(e) and 52 of the RTI Act.

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

4. The respondent maintains that the Declarations<sup>4</sup> are not documents of a Minister subject to the RTI Act. In the alternative, the respondent submits that access to the Declarations may be refused, on the grounds they comprise exempt information.
5. Having carefully considered all relevant issues, I have concluded that in the circumstances of this particular matter, the Declarations are documents of a Minister subject to the RTI Act. As information obtained by CCC for an investigation, the Declarations are, however, exempt information, to which access may be refused.

## Background

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

## Reviewable decision

7. The decision under review is the decision dated 9 August 2019.

## Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and Appendix).
9. I have also had regard to the *Human Rights Act 2019* (Qld),<sup>5</sup> particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,<sup>6</sup> and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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.*'<sup>7</sup>

## Information in issue

10. The information in issue comprises several Declarations falling within the date range of the access application.

## Issues for determination

11. In this decision, I must determine whether:
  - a. the Declarations comprise documents of a Minister within the meaning of section 23(1)(b) of the RTI Act; and, if so
  - b. whether grounds exist for refusing access to those documents, under section 47(3) of the RTI Act.
12. I have addressed these issues in turn.

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<sup>4</sup> Copies of which were obtained and examined by me.

<sup>5</sup> **HR Act** - which came into force on 1 January 2020.

<sup>6</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 [11].

<sup>7</sup> **XYZ**, [573].

## Document of a Minister

13. Section 23(1)(b) of the RTI Act provides that, subject to the Act, a person has a right to be given access under the Act to documents of a Minister.
14. Section 13 of the RTI Act relevantly defines document of a Minister to mean a '*document...in the possession, or under the control, of the Minister that **relates to the affairs of an agency***'.<sup>8</sup>
15. The expression '*relates to the affairs of an agency*' was judicially considered in an analogous context in *Office of the Premier v Herald and Weekly Times*<sup>9</sup> (*HWT*). In that case, the Victorian Court of Appeal relevantly held that:<sup>10</sup>

[77] *...the phrase is clearly restricted to the business of those entities that fall within the definition of 'agencies' and not more generally to the business of government. Moreover, it is restricted to the 'affairs' of an agency which must include at least the business and activities of the agency. In addition 'affairs' must include an agency's 'concerns' in the sense of the area of governmental responsibility the agency is designed to discharge, or the area of government policy it is designed to implement, in keeping with its function of supporting the Minister with respect to a ministerial portfolio.*

...

[79] *...a document 'relates to the affairs of an agency', if it bears a direct or indirect relationship to the business and activities of an agency, or the agency's area of governmental responsibility, or to arrangements between government departments or other agencies and external entities, including arrangements between agencies and Ministerial advisers from the Office of the Premier.*

16. As a decision of an intermediate appeal court concerning identical statutory language, I consider *HWT* an appropriate guide to the interpretation of section 13 of the RTI Act.
17. Early in my review, I formed the preliminary view (**Initial Preliminary View**) that the Declarations did not '*relate to the affairs of an agency*'. Key points informing<sup>11</sup> this Initial Preliminary View were that:
  - under the *Ministerial and Other Office Holder Staff Act 2010* (Qld) (**MOOHS Act**), Ministerial staff such as the former Chief of Staff are not employed by an agency;<sup>12</sup> they are employed by the State<sup>13</sup> to serve their '*employing member*',
  - while the chief executive of the Department formally employs a staff member, he or she only does so on the recommendation of the Premier,<sup>14</sup> and as '*authorised agent for the State*';<sup>15</sup> and
  - under section 24(1) of the MOOHS Act, declarations are to be given to the '*employing Member*' (and not, for example, to the chief executive of the Department).

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<sup>8</sup> My emphasis.

<sup>9</sup> [2013] VSCA 79 (12 April 2013) (Tate JA), considering equivalent provisions of the Victorian *Freedom of Information Act 1982*.

<sup>10</sup> My emphasis.

<sup>11</sup> Matters ascertained through my own inquiries, the decision under review containing limited reasoning as to why the Department considered the Declarations did not relate to the affairs of an agency (section 95(1)(c) of the RTI Act empowers the Information Commissioner to inform herself on any matter in any way the commissioner considers appropriate).

<sup>12</sup> And do not become a public service employee: section 11(a) of the MOOHS Act.

<sup>13</sup> Section 11(c) of the MOOHS Act.

<sup>14</sup> Section 6 of the MOOHS Act.

<sup>15</sup> Section 36(2) of the MOOHS Act.

18. Taking these matters into account, my Initial Preliminary View was that the Declarations did not relate to the affairs of an agency, but the affairs of a given staff member, and that staff member's relationship with their '*employing member*'.<sup>16</sup>
19. After further consideration, however, my view shifted. I now consider that in this specific case, the Declarations can be characterised as relating to the affairs of an agency, and can therefore be described as documents of a Minister for the purposes of section 23(1)(b) of the RTI Act.
20. I have set out above the test for assessing whether a document relates to the affairs of an agency, as stated in *HWT*. While not without limit, it is nevertheless broad, requiring, ultimately, only that a document bear a direct or indirect relationship to:
  - the business and activities of an agency; or
  - the agency's area of governmental responsibility; or
  - arrangements between government departments and other agencies and external entities.
21. Having carefully considered matters, I consider that the Declarations do relate, directly or indirectly, to the affairs of an agency: ie, the Department of the Premier and Cabinet.
22. This particular agency's affairs are of broad remit and include to:<sup>17</sup>

*lead, advise, collaborate, coordinate, broker, facilitate, communicate, and monitor to deliver on the government's objectives for the community ... build trust in a strong, responsive and accountable system of government and achieve transformational outcomes for Queenslanders.*
23. The respondent has portfolio responsibility for the Department,<sup>18</sup> its area of governmental responsibility, and the affairs the Department is established to pursue and advance.
24. Ministerial staff within the Office of the Premier, such as the former Chief of Staff, are employed '*to assist ... [the Premier] in the performance of their duties. Staff provide support to the Minister in fulfilling portfolio responsibilities*':<sup>19</sup> in the present context, to assist the respondent in meeting her portfolio responsibilities for the Department and its affairs, including those summarised in the extract from the Department's Strategic Plan set out above.
25. Declarations of interest are, in turn, required of those staff to enable avoidance of any conflicts between a staff member's interests and the staff member's responsibilities – in this case, supporting the respondent in fulfilling portfolio or governmental responsibilities that include ensuring the Department can '*build trust in a strong, responsive and accountable system of government*'.
26. The Declarations undoubtedly relate to the affairs of their author. Taking all relevant circumstances into account, however, I also consider that they can be fairly characterised as also bearing '*a direct or indirect relationship to the business and activities of an agency [ie, the Department], or the agency's area of governmental responsibility*'.

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<sup>16</sup> I conveyed this preliminary view to the applicant by letter dated 1 October 2019. The applicant did not accept that preliminary view, lodging submissions in reply – my final view on this issue as explained below has, however, been formed independently of those submissions, and it is therefore not necessary to canvass them in these reasons.

<sup>17</sup> Departmental Strategic Plan 2019-2023: <https://www.premiers.qld.gov.au/publications/categories/plans/strategic-plan/assets/dpc-strategic-plan-2019-2023.pdf> (accessed 4 March 2020). The Department's stated principles as set out in this document include to '*inspire trust in the system of government by demonstrating integrity, transparency and accountability in everything we do.*'

<sup>18</sup> The Premier is charged with administering the Department under the *Administrative Arrangements Order (No. 1) 2019*.

<sup>19</sup> Queensland Ministerial Handbook 2019, page 15 (accessed 4 March 2020).

27. In other words, as mechanisms for ensuring staff accountability and avoiding conflicts of interest between personal staff interests and their responsibilities in assisting the Premier to administer DPC, the Declarations bear, at the least, an indirect<sup>20</sup> relationship to DPC's broad-scale '*business and activities*' in promoting integrity and accountable government, and the Department's area of governmental responsibility as the lead agency in the Queensland Public Service '*providing leadership for the public sector*'.<sup>21</sup>
28. The Declarations are documents of a Minister within the meaning of section 13 of the RTI Act, and are therefore documents subject to the right of access conferred by section 23(1)(b) of the RTI Act.

### **Respondent's submissions**

29. I conveyed the thrust of the above reasoning to the respondent during the review.<sup>22</sup> The Department<sup>23</sup> (on behalf of the respondent) did not accept that reasoning, relevantly submitting that the Declarations:<sup>24</sup>

*...are not used by government in the course of delivering agency functions and services, nor do the impact on how the business of government is delivered by an agency. Rather, the completion and submission of a Declaration...assists the staff member and their Minister to identify and put in place management actions for the staff member to address any conflict of interest, or perceived conflict of interest...*

...

[the Declarations do] *not include or bear any direct or indirect relationship to:*

- *the business activities of the department*
- *the department's area of government responsibility*
- *any arrangements between the department and any other agencies of government, or the Office of the Premier.*

30. In support of the respondent's position, the Department referred particularly to a decision of the Victorian Civil and Administrative Tribunal, *Hon Tim Smith MP v Hon Daniel Andrews MP (Premier) (Review and Regulation)*<sup>25</sup> (**Smith v Andrews**). In that case, it was determined that internet browser histories of staff within a Victorian Ministerial office did not, having regard to their '*general character and content*',<sup>26</sup> relate to the affairs of an agency. The browser histories were therefore not subject to the *Freedom of Information Act 1982* (Vic).
31. I acknowledge the decision in *Smith v Andrews*, and, insofar as it repeats or re-phrases the *HWT* test stated above, accept the Tribunal's reasoning.<sup>27</sup> On the other hand, the question of whether particular documents have a direct or indirect relationship to the affairs of an agency is a question of fact, turning on the specific circumstances of a given case.<sup>28</sup>

<sup>20</sup> Ie, other than direct or immediate, paraphrasing relevant aspects of the Macquarie Dictionary definition of 'indirect' (7<sup>th</sup> edition).

<sup>21</sup> Department's website: <https://www.premiers.qld.gov.au/about-us.aspx> Accessed 9 March 2020.

<sup>22</sup> Letter dated 28 November 2019.

<sup>23</sup> For the respondent.

<sup>24</sup> Submissions dated 23 December 2019, which also noted the fact that the Declarations are kept confidentially by the respondent (as, indeed, is required by the MOOH Act) and are not used by any agency in pursuit of agency business – potentially relevant, but not determinative, considerations.

<sup>25</sup> [2017] VCAT 340 (10 March 2017) (Member Wentworth).

<sup>26</sup> [39], citing Tate JA in *HWT*.

<sup>27</sup> Including, for example, the Member's statement that while '*the phrase "relates to" is to be a given a broad interpretation, on the authority of...[HWT] "the affairs of an agency" is restricted to the business, activities and responsibilities of, and arrangements made with and by, an agency*': [50], extracted on page 3 of the Department's 23 December 2019 submissions.

<sup>28</sup> As the Member in *Smith v Andrews* put it, the '*answer [to the question of whether documents are subject to a statutory right of access] turns on the meaning of words and phrases in the Act and their application to the facts of this case*' [3].

32. With this in mind, I consider that a decision dealing with qualitatively different documents than those before me – browser histories of general internet usage, as against declarations of interest made by a Ministerial staffer pursuant to statutory accountability obligations employed to assist the respondent in administering an agency responsible for ‘*building trust in...an accountable system of government*’ – can only be of relatively limited assistance in the present case.
33. Ultimately, resolving the threshold issue of whether the Declarations are documents of a Minister is, as I have noted, a question of fact, to be determined by reference to the specific circumstances of this case. Having regard to the matters canvassed above – the ‘general character’ or nature of the documents themselves,<sup>29</sup> their role and the purpose for their creation, and the broad-ranging affairs of the Department – I consider that they are. Contrary to the Department’s submission extracted in paragraph 29 above, my view is that the Declarations in issue in this case do bear an at least indirect relationship to the affairs of the Department, for the reasons explained above.
34. Having decided that the Declarations are documents of a Minister subject to the RTI Act, I will now explain why access to those documents may be refused.

### Exempt information

35. The primary object of the RTI Act is to give a right of access to information in the government’s possession or under the government’s control unless, on balance, it is contrary to the public interest to give the access.<sup>30</sup> The Act is to be applied and interpreted to further this primary object.<sup>31</sup>
36. Section 23 of the RTI Act gives effect to the Act’s primary object, by conferring, as noted above, a right to be given access to documents. This right is subject to other provisions of the RTI Act,<sup>32</sup> including grounds on which access may be refused.<sup>33</sup> These grounds relevantly allow an agency to refuse access to information, to the extent it comprises exempt information.<sup>34</sup>
37. Types of exempt information are set out in schedule 3 of the RTI Act. For the purposes of this decision, the type stated in schedule 3, section 10(4) of the RTI Act is relevant. Schedule 3, section 10(4) – the **PCB Exemption** – provides that information is exempt information if it consists of information obtained, used or prepared for an investigation by, relevantly, a prescribed crime body, in performance of the prescribed functions of the prescribed crime body.
38. Aware of the fact CCC – a prescribed crime body for the purposes of the PCB Exemption<sup>35</sup> – was enquiring into matters concerning the author of the Declarations, I considered it prudent to request<sup>36</sup> that CCC advise me as to whether the Declarations had been obtained by CCC for an investigation by it in performance of its prescribed functions.<sup>37</sup>
39. By letter dated 29 October 2019, CCC affirmed that the Declarations had been obtained by it for the purposes of an investigation in performance of its prescribed functions.

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<sup>29</sup> Ie, instruments for managing possible conflicts of interest among staff of the respondent, the Chief Minister of the executive responsible for administration of a lead accountability Department whose stated principles include to ‘*inspire trust...by demonstrating integrity, transparency and accountability...*’ (see footnote 17).

<sup>30</sup> Section 3(1) of the RTI Act.

<sup>31</sup> Section 3(2) of the RTI Act.

<sup>32</sup> Section 23(1) of the RTI Act.

<sup>33</sup> Section 47 of the RTI Act. The grounds are to be interpreted narrowly (section 47(2)(a) of the RTI Act), and the Act is to be interpreted with a pro-disclosure bias (section 44 of the RTI Act).

<sup>34</sup> Section 47(3)(a) and 48 of the RTI Act.

<sup>35</sup> Schedule 3, section 10(9) of the RTI Act.

<sup>36</sup> Letter dated 22 October 2019, enclosing a notice to produce information under section 103 of the RTI Act.

<sup>37</sup> Being CCC’s crime, intelligence and corruption functions: schedule 3, section 10(9) of the RTI Act.

40. In view of CCC's advice, I am satisfied that the requirements for establishing the PCB Exemption in relation to the Declarations are met. The respondent relies on that exemption,<sup>38</sup> and, in the circumstances, I consider that access to the Declarations may be refused, on the grounds they comprise exempt information under sections 47(3)(a) and 48 of the RTI Act.<sup>39</sup>

### **Applicant's submissions**

41. The applicant does not accept that the Declarations qualify for exemption under the PCB Exemption. In summary terms, the applicant submits<sup>40</sup> that CCC is not conducting an 'investigation' for the purposes of the PCB Exemption, but merely 'assessing' a complaint.<sup>41</sup>
42. Alternatively, the applicant contends that only parts of the Declarations will be relevant to any CCC investigation – that these relevant parts may be '*deleted and the balance of the documents released*'.<sup>42</sup>
43. On the first point, the PCB Exemption is a relatively strict exemption, requiring only that certain matters of fact be established in relation to information connected with the functions of prescribed crime bodies.
44. The prescribed crime body in question in this case – CCC – has, as noted above, given specific and direct advice that those matters are established. I accept that advice.
45. The requested Declarations therefore comprise exempt information in their entirety, to which access may be refused.
46. Although not strictly necessary for me to do so, I also note that the concept of '*investigation*' as used in the PCB Exemption has been interpreted relatively broadly in past decisions of the Information Commissioner, to encompass the examination or consideration of a complaint.<sup>43</sup>
47. While the applicant contests the continued relevance of the lead of these decisions,<sup>44</sup> I note that the approach adopted in earlier decisions appears consistent not only with dictionary definitions of the word '*investigation*',<sup>45</sup> but, importantly, the concept as it is

<sup>38</sup> Submissions dated 23 December 2019.

<sup>39</sup> The PCB Exemption is subject to an exception (schedule 3, section 10(6) of the RTI Act), however that exception only applies where information is 'about' an applicant, and the investigation has been finalised. I am unaware of the status of CCC's investigation – the Declarations, however, are clearly not 'about' the applicant, and therefore the exception has no application.

<sup>40</sup> Submissions dated 6 November 2019, 22 November 2019 and 20 December 2019, relying in part on CCC media commentary as to its handling of relevant matters, testimony of the Chairperson of CCC to the Parliamentary Crime and Corruption Commission, and correspondence received by the applicant's Deputy from CCC concerning its approach to complaints. The applicant further submitted that applying the PCB Exemption in the manner as explained in these reasons would lead to a '*perverse outcome*', potentially precluding access to '*documents which have been connected to the subject of a complaint to the CCC, even if that complaint was summarily dismissed*' (submission dated 22 November 2019, summarising 6 November 2019 submissions). While I note the applicant's submissions, I am required to apply the law, including the PCB Exemption, as enacted by the legislature; if information meets the requirements for exemption as prescribed in a given case (as I consider it does in this case) then access to that information may be refused.

<sup>41</sup> See sections 35(1)(a) and (g) of the *Crime and Corruption Act 2001* (Qld) (**CC Act**), cited in the applicant's 6 November 2019 submissions.

<sup>42</sup> Submissions dated 20 December 2019, repeating submissions initially made on 6 November 2019.

<sup>43</sup> Including as part of any assessment process: *Springborg and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party, Director-General of the Department of Justice and Attorney General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**), at [55]-[59] (considering the material equivalent of schedule 3, section 10(4) of the RTI Act contained in the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**); *McMahon and Crime and Misconduct Commission* [2014] QICmr 16 (1 May 2014), [14]-[17].

<sup>44</sup> *Springborg*, decided under the FOI Act, which in contrast to the RTI Act did not contain express requirements that the former be administered with a pro-disclosure bias, or that grounds for refusing access to information be read narrowly (see footnote 33).

<sup>45</sup> The word being undefined in the RTI Act. Relevant definitions of '*investigation*' include '[A]n inquiry or examination to ascertain facts; the act or process of investigating: *Taciak v Cmr of Australian Federal Police (1995) 131 ALR 319*: Butterworths Australia Legal Dictionary; '*the act or process of investigating; a careful search or examination in order to discover facts, etc*' Collins Online Dictionary (accessed 28 November 19); '*...a searching inquiry in order to ascertain facts; a detailed or careful examination.*' Macquarie Dictionary (7<sup>th</sup> edition).

defined in the CC Act itself (and on which relevant decisions are based): '*investigate includes examine and consider*'.<sup>46</sup>

48. Accordingly, even the act of 'assessing' a complaint, as the respondent characterises CCC activity in this case, would seem to me to require the acts of 'examining' or 'considering' that complaint, and/or to otherwise fall within the acceptable '*natural range of meaning*'<sup>47</sup> of the word 'investigation', as ordinarily defined.<sup>48</sup>
49. As for the applicant's subsidiary submission summarised in paragraph 42, where information has been obtained by a prescribed crime body such as CCC for an investigation – as have the Declarations in this case – it will qualify for exemption under the PCB Exemption. That some or all of the information obtained may not ultimately be used by the prescribed crime body is, in this context, strictly irrelevant. This is clear from Parliament's use of both the words '*obtained*' and '*used*' in the PCB Exemption. This phrasing reflects a recognition that information may be obtained (ie, gathered or acquired) by a prescribed crime body, particularly in the initial stages of an investigation, with only parts of that information subsequently being '*used*' by the prescribed body as the investigation develops – and an intention that, in either case, such information should, as here, qualify for exemption under the PCB Exemption.<sup>49</sup>

### Other submissions

50. The respondent also submitted that the Declarations comprise information disclosure of which would, on balance, be contrary to the public interest.<sup>50</sup> Given my findings that the Declarations comprise exempt information, it is not necessary that I address this ground for refusing access.<sup>51</sup>

### DECISION

51. I vary the decision under review, by finding that the Declarations are documents of a Minister subject to the RTI Act, but that access to those documents may be refused, for the reasons explained above.
52. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Louisa Lynch**  
**Right to Information Commissioner**

**Date: 18 March 2020**

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<sup>46</sup> CC Act, schedule 2.

<sup>47</sup> *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [55] per Carmody J, in finding that interpreting the natural and ordinary meaning of a non-technical word or term as appearing in a statute is a question of fact ([54]-[55]).

<sup>48</sup> Particularly where, as here, any assessment has involved '*further enquiries*' over a reasonable period of time: CCC media release dated 1 October 2019 (<https://www.ccc.qld.gov.au/news/allegations-relating-premiers-former-chief-staff-update>), the relevant complaint having been fielded on 29 July 2019 (media release dated 15 August 2019: <https://www.ccc.qld.gov.au/news/update-assessment-allegations-relating-premiers-chief-staff>). (Both media releases accessed 25 February 2020.)

<sup>49</sup> Noting, too, that information obtained for an investigation may not contain direct references to matters the subject of investigation – it may well be, however, that that fact is of itself critical to the particular investigation. In other words, what is not stated may, in a given case, be as or more important than what is: matters which would be revealed were any part of '*obtained*' information to be disclosed, contrary to Parliament's intention as expressed in the PCB Exemption.

<sup>50</sup> A separate ground for refusing access to information: sections 47(3)(b) and 49 of the RTI Act.

<sup>51</sup> See *7CLV4M and Department of Communities* (Unreported, Queensland Information Commissioner, 21 December 2011) at [20], where the Assistant Information Commissioner explained that when considering non-disclosure, the logical first step is to consider whether the information comprises exempt information and, only if it does not, is it necessary to complete the steps set out in section 49 of the RTI Act to decide whether disclosing particular information is contrary to the public interest. This approach was referred to with approval on appeal to the Queensland Civil and Administrative Tribunal: *BL v Office of the Information Commissioner, Department of Communities* [2012] QCATA 149, [15]-[16].



**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
9 August 2019	OIC received the application for external review.
13 August 2019	OIC requested, and the Department (on behalf of the respondent) supplied, procedural documents.
13 September 2019	OIC advised the applicant and the Department that the application for external review had been accepted.
1 October 2019	OIC conveyed a preliminary view to the applicant and requested submissions in response.
2 October 2019	OIC requested information from the Department.
15 October 2019	OIC received submissions from the applicant and the Department.
17 October 2019	OIC received the requested information from the Department.
22 October 2019	OIC issued the CCC a notice to produce information under section 103 of the RTI Act.
29 October 2019	OIC received the information requested from the CCC under the notice to produce.
5 November 2019	OIC conveyed a preliminary view to the applicant and requested submissions in response.
6 November 2019	OIC received submissions from the applicant.
21 November 2019	OIC confirmed its preliminary view to the applicant.
22 November 2019	OIC received submissions from the applicant.
28 November 2019	OIC conveyed a revised preliminary view to the Department and requested submissions in response.
20 December 2019	OIC received additional submissions from the applicant.
23 December 2019	OIC received submissions from the Department.
21 January 2019	OIC conveyed a further preliminary view to the applicant.