



## Decision and Reasons for Decision

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**Application Number:** 310899

**Applicant:** N31ZEO

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

**Decision Date:** 29 October 2012

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST - application for correspondence between the Office of Liquor and Gaming Regulation and Queensland Police Service about liquor-related incidents at licensed venues - objections to disclosure raised by owner of a venue - accountability of regulatory and law enforcement agencies in relation to licensed venues and public safety - impact of disclosure on the venue's business affairs - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - whether objecting participant has established that decision not to disclose information is justified or that the Information Commissioner should give a decision adverse to the access applicant - section 87(2) *Right to Information Act 2009* (Qld)

### REASONS FOR DECISION

#### Summary

1. An application was made to the Department of Justice and Attorney-General (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to correspondence between the Office of Liquor and Gaming Regulation (**OLGR**)<sup>1</sup> and the Liquor Enforcement and Proactive Strategy (**LEAPS**) coordinator at the Queensland Police Service (**QPS**) in relation to certain licensed venues.
2. The Department contacted owners of the relevant venues, including the external review applicant (**Applicant**), to seek their views on disclosure of the information it had located in response to the application. The Applicant objected to information about its venue being disclosed. The Department decided to grant access to the information on the basis that it was not exempt or contrary to the public interest to disclose under the RTI Act.<sup>2</sup>

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<sup>1</sup> OLGR is part of the portfolio of the Attorney-General and Minister for Justice. For the purpose of section 14 of the RTI Act, the *agency* which deals with requests for information held by OLGR is the Department.

<sup>2</sup> The Department also sought QPS' views on disclosure. The Department has confirmed to OIC that QPS initially objected to disclosure of information and sought internal review of the Department's decision to disclose information. QPS did not however, apply to OIC for external review and therefore, they were not involved in the review process.

3. The Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to disclose information relating to its venue. The Applicant submitted that disclosure would, on balance, be contrary to the public interest and that therefore, access to the information should be refused under the RTI Act. On external review, the Applicant submitted that much of the information consisted of unsubstantiated allegations the disclosure of which would cause unfair prejudice to its business.
4. For the reasons set out below, the Department's decision to disclose information relating to the Applicant's venue is affirmed on the basis that disclosure would not, on balance, be contrary to the public interest under the RTI Act.

### **Background**

5. LEAPS is a program which involves QPS working with OLGR with a view to ensuring compliance with legislation and regulations concerning licensed venues. QPS officers who attend or become aware of liquor-related incidents involving licensed venues create a report and forward this to the QPS LEAPS Coordinator. The LEAPS Coordinator then sends the information to OLGR which assesses the information in the context of its regulatory activities.<sup>3</sup>
6. Significant procedural steps relating to the application and external review are set out in the Appendix to these reasons.

### **Reviewable decision**

7. The decision under review is the Department's internal review decision dated 21 December 2011 granting access to information under the RTI Act.

### **Material considered**

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

### **Information in Issue**

9. The information in issue in this review (**Information in Issue**) consists of two spreadsheets, prepared by the QPS LEAPS Coordinator and sent to OLGR, in accordance with LEAPS processes.<sup>4</sup> The spreadsheets set out:
  - date, time and location of incidents recorded by QPS officers as having occurred at, or in the vicinity of, the Applicant's venue
  - a summary of the facts relating to the incidents, including nature of any offence(s), any resulting arrests and/or description of any injuries sustained; and
  - an indication as to any substance(s) the individuals involved were observed as having been affected by, and level of intoxication (where applicable).
10. The Information in Issue does not include the names of any individuals involved in the incidents.

### **Issue for determination**

11. In this review the Applicant has the onus of establishing that access to the Information in Issue should be refused.<sup>5</sup> The basis on which the Applicant has submitted that access

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<sup>3</sup> See *Commissioner's Circular 27/2010 – Drink Safe Precincts and Banning Orders*, 2 December 2010 at page 2 (available at <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf>).

<sup>4</sup> As described at paragraph 5 above.

should be refused is that disclosure would, on balance, be contrary to the public interest.<sup>6</sup> Accordingly, this is the issue for determination in this review.

12. The Applicant made extensive submissions to OIC to support its view that the Information in Issue should not be disclosed<sup>7</sup> and in making my decision in this review, I have carefully considered all of the submissions. However, in these reasons for decision, I have not referred to any submissions which are unrelated to the application of public interest factors as they are not relevant to the issue for determination.

### Relevant law

13. Under the RTI Act, an individual has a right to be given access to documents of an agency.<sup>8</sup> Access should be given to a document unless disclosure would, on balance, be contrary to the public interest.<sup>9</sup> The right of access is subject to some limitations, including grounds on which access to information may be refused.<sup>10</sup> One ground for refusal of access is where disclosure would, on balance, be contrary to the public interest.<sup>11</sup>
14. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>12</sup> and explains the steps that a decision-maker must take<sup>13</sup> in deciding the public interest as follows:
- (i) identify any irrelevant factors and disregard them
  - (ii) identify relevant public interest factors favouring disclosure and nondisclosure
  - (iii) balance the relevant factors favouring disclosure and nondisclosure; and
  - (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

### Findings

15. The Applicant generally submitted that the Information in Issue was not '*genuinely of a kind which is within the scope of the preamble to the Act*' as it comprises information of a private nature, concerning a single business operation.<sup>14</sup> As set out above, the RTI Act provides a general right of access to information in the possession or under the control of Queensland government agencies.<sup>15</sup> While the legislation excludes certain documents and entities from the application of the RTI Act<sup>16</sup>, I am satisfied that the Information in Issue is not subject to any of these exclusions. Accordingly, I find that the Information in Issue is in the possession of the Department and is therefore, subject to the RTI Act access scheme.

<sup>5</sup> Under section 87(2) of the RTI Act, the participant in an external review who opposes a **disclosure decision** (defined in section 87(3)(a) of the RTI Act) has the onus of establishing that a decision not to disclose the information is justified or that the Information Commissioner should give a decision adverse to the access applicant.

<sup>6</sup> Under sections 47(3)(b) and 49 of the RTI Act. The Applicant did not submit that access should be refused on the basis that the information is exempt under schedule 3 of the RTI Act and therefore, I have not considered that ground for refusal in these reasons for decision.

<sup>7</sup> Submissions dated 9 February and 9 July 2012. I have also considered the Applicant's submissions dated 7 October 2011 and 28 November 2011 made to the Department in response to the consultation process and in the internal review application.

<sup>8</sup> Section 23(1) of the RTI Act.

<sup>9</sup> Section 44(1) of the RTI Act. This is referred to as the *pro-disclosure bias* in deciding access to documents.

<sup>10</sup> The grounds for refusal of access are listed in section 47(3) of the RTI Act. Section 47(2) of the RTI Act provides that these grounds are to be interpreted narrowly.

<sup>11</sup> Section 47(3)(b) and 49 of the RTI Act. 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. 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.

<sup>12</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant in a particular case.

<sup>13</sup> Section 49(3) of the RTI Act.

<sup>14</sup> Submissions to the Department dated 7 October 2011 and to OIC dated 9 February 2012 and 9 July 2012. .

<sup>15</sup> Section 23 of the RTI Act. See also sections 12 and 14 of the RTI Act.

<sup>16</sup> See sections 11 and 17 and schedules 1 and 2 of the RTI Act.

**(i) Irrelevant factors**

16. The Applicant has submitted that releasing the information may cause '*confusion in the community*' and that it may be misinterpreted.<sup>17</sup> The Applicant has also raised concerns about the way the access applicant may use the Information in Issue if released.<sup>18</sup>
17. The RTI Act recognises the below factors as irrelevant in deciding the public interest:
- disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document;<sup>19</sup> and
  - disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.<sup>20</sup>
18. I acknowledge that once information is released under the RTI Act, there is no limit on the use to which the information may be put.<sup>21</sup> However, I am satisfied that any misinterpretation of information, or conduct by the access applicant which may flow from disclosure are not relevant factors to consider in deciding where the balance of the public interest lies in this case.
19. For the above reasons, I have not taken the Applicant's submissions at paragraph 16 into account. I do not consider any other irrelevant factors arise in this case.

**(ii) Factors favouring disclosure**

20. The RTI Act recognises that the public interest will favour disclosure of information where disclosure *could reasonably be expected to*:<sup>22</sup>
- promote open discussion of public affairs and enhance the government's accountability;<sup>23</sup>
  - contribute to positive and informed debate on important issues or matters of serious interest;<sup>24</sup> and
  - reveal environmental or health risks or measures relating to public health and safety.<sup>25</sup>
21. OLGR is responsible for regulating Queensland's liquor industry and its development, within a socially responsible framework, and in a way that is compatible with minimising harm caused by alcohol abuse.<sup>26</sup> As part of its regulatory role, OLGR records liquor-related incidents as reported by QPS officers, whether or not breach action against the licensee/venue has been taken, to enable OLGR to identify any trends at licensed premises that may require proactive negotiations with the licensee and to reduce the likelihood of significant incidents in the future.<sup>27</sup> OLGR performs this part of its functions with the cooperation of QPS officers, through LEAPS program.

<sup>17</sup> Applicant's submissions to the Department dated 7 October 2011.

<sup>18</sup> Applicant's submissions to OIC dated 9 July 2012.

<sup>19</sup> Schedule 4, part 1, item 2 of the RTI Act.

<sup>20</sup> Schedule 4, part 1, item 3 of the RTI Act.

<sup>21</sup> I also note that the Department has the discretion to place information released under the RTI Act on its disclosure log – see section 78 of the RTI Act.

<sup>22</sup> The phrase '*could reasonably be expected to*' requires that the expectation is reasonably based and not irrational, absurd or ridiculous (*Attorney-General v Cockcroft* (1986) 64 ALR 97 at [106]) nor merely a possibility (*Murphy and Treasury Department* (1995) 2 QAR 744). Whether the expected consequence is reasonable requires an objective examination of the relevant evidence (*Murphy* at [45-47]). 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, as in this case, a public good (*Sheridan and South Burnett Regional Council & Others* (Unreported, Queensland Information Commissioner, 9 April 2009)). Importantly, the expectation must arise as a result of disclosure, rather than from other circumstances (*Murphy* at [54]).

<sup>23</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>24</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>25</sup> Schedule 4, part 2, item 14 of the RTI Act.

<sup>26</sup> <http://www.olgr.qld.gov.au/aboutUs/index.shtml>.

<sup>27</sup> <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf>

22. The Information Commissioner has previously recognised that it is essential for the public to have confidence in the way a regulatory agency performs its functions.<sup>28</sup> Given the nature of the Information in Issue, as described at paragraph 9 above, I consider that disclosure would allow the community to scrutinise QPS' response to liquor-related incidents and the way such incidents are communicated to OLGR, for the purpose of it performing its regulatory activities relating to liquor and licensed venues. For these reasons, I am satisfied that disclosure would enhance government accountability and promote open discussion of public affairs.
23. The occurrence of liquor-related incidents at licensed premises is a matter of serious interest and the impact this issue has on the community is well-recognised.<sup>29</sup> I consider that disclosure of the Information in Issue would allow members of the public to scrutinise the nature and frequency of liquor-related incidents reported by QPS in relation to the Applicant's venue and the actions taken by QPS at the time of the incident. I am satisfied that this would reveal measures relating to public safety and would contribute to positive and informed debate on matters of serious interest to the community.
24. The Applicant contends that the accountability of government could not be advanced through disclosure of information which is *'incorrect or unsubstantiated'* as there is *'no public interest in being incorrectly informed, or in the propagation of misleading or false information'*.<sup>30</sup> I acknowledge that the offences referred to in the Information in Issue were alleged at the time they were recorded and that there is no reference to the outcomes of any related criminal and/or civil proceedings. However, the descriptions of the incidents were formulated by QPS officers who were present at the scene and there is no evidence to suggest that information was incorrectly recorded. Accordingly, I find that the weight of the factors listed at paragraph 20 is not reduced to any extent by the Applicant's above submission.
25. For the reasons set out above, I afford the public interest factors identified at paragraph 20 significant weight in favour of disclosure.

**(iii) Factors favouring nondisclosure**

26. The Applicant raised the following public interest factors in favour of nondisclosure of the Information in Issue:
- (a) disclosure could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities<sup>31</sup>
  - (b) disclosure 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>32</sup>
  - (c) disclosure could reasonably be expected to prejudice security, law enforcement or public safety<sup>33</sup>
  - (d) disclosure could reasonably be expected to impede the administration of justice for a person<sup>34</sup>

<sup>28</sup> See *Kenmatt Projects Pty Ltd and Building Services Authority* (Unreported, Queensland Information Commissioner, 27 September 1999) at [47] and *Seven Network (Operations) Limited and Redland City Council; A third party* (Unreported, Queensland Information Commissioner, 30 June 2011) at [25].

<sup>29</sup> See, for example, Law, Justice and Safety Committee, 'Inquiry into Alcohol-Related Violence – Final Report (Report No. 74)', March 2010 at <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2010/5310T1903.pdf>; Queensland Government, 'Queensland Government Response to Law, Justice and Safety Committee's final report into alcohol-related violence', 27 August 2010 at <http://www.parliament.qld.gov.au/documents/Committees/LJSC/2009/alcohol-related-violence/responseReport74.pdf>; Ministerial Council on Drug Strategy, 'National Alcohol Strategy 2006-2009 – Towards Safer Drinking Cultures', May 2006 at [http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/\\$File/nas-06-09.pdf](http://www.alcohol.gov.au/internet/alcohol/publishing.nsf/Content/B83AD1F91AA632ADCA25718E0081F1C3/$File/nas-06-09.pdf).

<sup>30</sup> Page 4 of Applicant's submission to OIC dated 9 July 2012.

<sup>31</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>32</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>33</sup> Schedule 4, part 3, item 7 of the RTI Act.

<sup>34</sup> Schedule 4, part 3, item 9 of the RTI Act.

- (e) disclosure could reasonably be expected to prejudice a deliberative process of government;<sup>35</sup> and
- (f) disclosure is prohibited by an Act.<sup>36</sup>
27. The Applicant considers that its business reputation may be seriously prejudiced through disclosure as the Information in Issue is not in a *'probative form'* and if read in isolation, could lead people to assume that the venue has not complied with liquor laws.<sup>37</sup> Given that the Information in Issue refers generally to the behaviour of venue patrons and their level of intoxication, any suspected criminal offences and any violence involved, I consider that it is reasonable to expect that the Applicant's business affairs could suffer some level of prejudice in terms of damage to the venue's reputation. I therefore find that the public interest factor at (a) above applies in this case. However, I afford this factor only moderate weight as I consider it is widely known that liquor-related incidents occur in many licensed venues.
28. The Applicant raises concerns about the unsubstantiated nature of the incidents. It considers that any information indicating non-compliance with laws would be likely to have a negative impact on the way regulatory authorities deal with the Applicant and its staff.<sup>38</sup> In particular, the Applicant contends that compliance officers may be more likely to attend its venue at an overzealous and disproportionate level. For the public interest factor at (b) above to apply, the Applicant must establish that disclosure could reasonably be expected to prejudice the fair treatment of individuals<sup>39</sup> *and* that the information is about unsubstantiated allegations of unlawful conduct. I acknowledge that the Information in Issue refers to alleged offences which had not, at the time of recording, been tested in court. However, as the Information in Issue has already been provided to the regulatory body, OLGR, I do not consider it reasonable to expect that disclosure would lead to prejudicial treatment of the Applicant's staff members by OLGR officers. Accordingly, I am not satisfied that the Applicant has established a sufficient connection between any prejudice to its staff members and the unsubstantiated allegations for this factor to apply.
29. The Applicant submits that disclosing the Information in Issue may lead people to think that the venue has poor safety measures and in turn, this may compromise the security and safety of the venue as people who wish to take advantage of the situation may attend the venue with mischievous intentions.<sup>40</sup> As the Information in Issue does not detail the security arrangements at the venue, I do not consider that disclosure could reasonably be expected to lead to the security or public safety risk submitted by the Applicant. Therefore, I find that the public interest factor at (c) above does not apply.
30. The Applicant submits that the *'alleged incidents'* referred to in the Information in Issue are the subject of proposed disciplinary action being undertaken by OLGR and raises concerns that releasing the information may prejudice the disciplinary action process.<sup>41</sup> The Applicant has not however, provided any direct evidence to show that particular incidents referred to in the Information in Issue are the subject of current disciplinary proceedings. In the absence of any specific evidence in this regard, I do not consider it is reasonable to expect that disclosure could impede the administration of justice for the Applicant or prejudice a deliberative process of government. Accordingly, I find that the public interest factors at (d) and (e) above do not apply.
31. The Applicant submits that section 48 of the *Liquor Act 1992 (Qld)* (**Liquor Act**) prohibits disclosure of the Information in Issue. That section provides:

<sup>35</sup> Schedule 4, part 3, item 20 of the RTI Act.

<sup>36</sup> Schedule 4, part 3, item 22 of the RTI Act.

<sup>37</sup> Page 2 of the Applicant's submissions dated 7 October 2011.

<sup>38</sup> Page 2 of the Applicant's submissions dated 7 October 2011.

<sup>39</sup> As the Applicant is a corporation, it cannot be considered an individual for the purpose of this factor – see section 36 of the *Acts Interpretation Act 1954 (Qld)*. However, I accept that the factor may apply in relation to staff members of the venue.

<sup>40</sup> Page 3 of the Applicant's submissions dated 7 October 2011.

<sup>41</sup> Page 4 of the Applicant's submissions dated 9 July 2012.

**48 Preservation of confidentiality**

- (1) *Subject to subsection (2), a person who is engaged, or has been engaged, in giving effect to this Act must not make a record of, or directly or indirectly disclose, information about the affairs of another person gathered in the course of administration of this Act.*

*Maximum penalty—35 penalty units.*

- (2) *Subsection (1) does not apply to—*
- (a) *disclosing information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or*
  - (b) *disclosing information in the register; or*
  - (c) *disclosing information about the status of an application required to be advertised under section 118(1); or*
  - (d) *disclosing information about the status of an application to the tribunal for a review and the names of the parties to the review; or*
  - (e) *doing anything for the purposes of this Act.*

32. I am satisfied that the Information in Issue was gathered for the purposes of the Liquor Act<sup>42</sup> and therefore, the prohibition on disclosure does not apply due to the operation of section 48(2)(e) of the Liquor Act.<sup>43</sup> Accordingly, I find that the public interest factor at (f) above does not apply.

**(iv) Balancing the public interest**

33. Enhancing the accountability of regulatory and law enforcement agencies which deal with liquor-related incidents in relation to licensed premises is a factor carrying significant weight in favour of disclosure of the Information in Issue. Given that the occurrence of such incidents raises issues of public safety, I am also satisfied that disclosure of the Information in Issue would lead to open discussion of public affairs and positive and informed debate on matters of serious interest. Weighing against these factors is the prejudice to the Applicant's business affairs which may result from disclosure of the Information in Issue, however, I am satisfied that this carries only moderate weight in this case in view of the general level of public awareness of liquor-related incidents in licensed premises.
34. On balance, I am satisfied that the public interest favours disclosure in this case and therefore, find that disclosure of the Information in Issue would not be contrary to the public interest.

**DECISION**

35. For the reasons set out above, I affirm the Department's decision to grant access to the Information in Issue on the basis that disclosure would not, on balance, be contrary to the public interest.
36. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**K Shepherd**  
**Assistant Information Commissioner**

**Date: 29 October 2012**

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<sup>42</sup> These are set out in section 3 of the *Liquor Act* and relevantly include: *to regulate the liquor industry, and areas in the vicinity of licensed premises, in a way compatible with (i) minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence; and (ii) minimising adverse effects on the health or safety of members of the public; and (iii) minimising adverse effects on the amenity of the community.*

<sup>43</sup> I also note that section 6 of the RTI Act overrides the provisions of other Acts prohibiting the disclosure of information.

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

| <b>Date</b>                    | <b>Event</b>  |
|--------------------------------|---|
| 8 August 2011                  | The Department received the access application.   |
| 27 September 2011              | The Department consulted with the Applicant under section 37 of the RTI Act about disclosure of the information relating to its venue and invited the Applicant to identify any objections to disclosure.   |
| 10 October 2011                | The Applicant notified the Department that it objected to disclosure of the relevant information and provided submissions supporting its case.  |
| 31 October 2011                | The Department issued its initial decision to the Applicant, deciding to disclose information relating to the Applicant's venue.  |
| 28 November 2011               | The Applicant applied to the Department for internal review.  |
| 21 December 2011               | The Department affirmed its initial decision.   |
| 5 January 2012                 | OIC received the external review application.   |
| 27 January 2012                | The Department provided OIC with copies of documents required for the review, including the Information in Issue.   |
| 9 February 2012                | OIC received further submissions from the Applicant.  |
| 30 April 2012 -<br>22 May 2012 | OIC sought clarification from the Department in relation to the Information in Issue.   |
| 18 June 2012                   | OIC provided the Applicant with an update on the status of the external review.   |
| 22 June 2012                   | OIC issued a written preliminary view to the Applicant that there was no basis for the Information Commissioner to set aside the Department's decision to grant access to the Information in Issue. OIC invited the Applicant to provide submissions supporting its case if it did not accept the preliminary view. |
| 9 July 2012                    | The Applicant advised OIC it did not accept the preliminary view and lodged submissions in support of its case.   |
| 31 July 2012                   | OIC telephoned OLGR to obtain information about the LEAPS program as it relates to OLGR's role in regulating licensed venues.   |
| 27 August 2012                 | OIC provided the Applicant with an update on the status of the external review.   |
| 21 September 2012              | OIC provided the Department with an update on the status of the external review and asked the Department to convey the status of the review to the access applicant.  |
| 28 September 2012              | OIC provided the Applicant with a further update on the status of the external review.  |