



Decision and Reasons for Decision

Citation:	<i>X29 and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development [2026] QICmr 19 (11 February 2026)</i>
Application Number:	318394
Applicant:	X29
Respondent:	Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development
Decision Date:	11 February 2026
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXECUTIVE COUNCIL - request for information about transfer of land - communications between local council and state government - whether documents would disclose considerations of Executive Council - whether information is exempt under schedule 3, section 3 of the <i>Right to Information Act 2009</i> (Qld) - whether access to information may be refused under section 47(3)(a) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - information published by local council regarding transfer of land process - whether other access available to located documents under section 53 of the <i>Right to Information Act 2009</i> (Qld) - whether access to information may be refused under section 47(3)(f) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant originally applied¹ to the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)² for access to all documents relating to the proposed transfer of part of Toobeah Reserve under the *Aboriginal Land Act 1991* (Qld) (**ALA**).

¹ Access application dated 16 September 2024.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act. As the access application was made before this change, the RTI Act as in force prior to 1 July 2025 remains applicable in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act. Accordingly, references to the RTI Act in this decision are to the RTI Act as in force prior to 1 July 2025.

2. Following negotiations with the Department, the applicant agreed³ to narrow the terms of his request as follows:

The letter dated 19th March 2024 to [A/Deputy Director-General - Department of Resources] and the response to Resources' letter (Ref CTS 03438/24, paragraph 2 - "Councils letter to your department on this matter in October 2021") and any documents referring to the revocation of Council's Trusteeship of the Toobeah Reserve Site.

Time period: 1 January 2016 to 16 September 2024

3. On 23 December 2024⁴ the Department decided to grant access to 13 pages⁵ and refuse access to contrary to public interest information⁶ under section 47(3)(b) of the RTI Act.⁷
4. The applicant applied to OIC for external review of the Department's refusal of access decision on 23 December 2024 on the basis he was '*... unhappy with this decision. We have only been given publicly available documents.*'
5. On external review, following searches requested by OIC, the Department located a further 29 pages (**Additional Documents**). The Department initially indicated to OIC that some of the Additional Documents may be subject to the Executive Council exemption⁸ - subsequently confirming this was its position and further submitting that other documents fell outside the scope of the request.⁹
6. The Department maintains that the Additional Documents are integral to the statutory decision-making process that culminated in Executive Council consideration on the basis that they were created for briefing and decision-making purposes directly related to matters proposed for Executive Council approval.¹⁰ The applicant provided submissions to OIC outlining the reasons why he considers the Executive Council exemption does not apply to any of the Additional Documents.¹¹
7. In making this decision, I have taken into account evidence, submissions, legislation and other material set out in these reasons (including footnotes). I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information and in doing so, have acted in accordance with section 58(1) of the HR Act.
8. For the reasons set out below, I have decided to vary the Department's decision by finding that:
- a. access to certain Additional Documents¹² may be refused under section 47(3)(a) of the RTI Act on the basis they comprise exempt information under schedule 3, section 3(1)(e) of the RTI Act because disclosure would involve the disclosure of Executive Council considerations;
 - b. access to certain Additional Documents¹³ may be refused under section 47(3)(f) of the RTI Act as they are publicly available pursuant to section 53(a) of the RTI Act; and

³ Email dated 20 November 2024.

⁴ Following third party consultation and several extensions of time to the processing period.

⁵ Full access to 7 pages and partial access to 6 pages.

⁶ In the 6 pages to which partial access was granted.

⁷ This is the 'reviewable decision' for the purpose of this review.

⁸ Email to OIC dated 8 April 2025.

⁹ Emails to OIC dated 23 July 2025 and 5 September 2025. The Department submitted in the alternative, that the documents it considered to be out of scope, would be subject to section 47(3)(f) of the RTI Act as other access to those documents is available.

¹⁰ Submission to OIC dated 19 December 2025.

¹¹ Submission dated 17 November 2025.

¹² Pages 4 and 24-29.

¹³ Pages 3 and 5-11.

- c. one Additional Document¹⁴ is not exempt or otherwise available, and access to it may therefore, be granted.

Background

9. Goondiwindi Regional Council (**Council**) was appointed trustee of the Toobeah Reserve¹⁵ in October 1906 to manage and maintain the land on behalf of the Queensland Government. In June 2024, the Minister for the then Queensland Department of Resources advised Council that the State had revoked Council's Trusteeship of the land. In September 2024, following an Expression of Interest for the site to be transferred as Aboriginal freehold under the ALA, the Minister decided, under the ALA, to transfer the Toobeah Reserve site to the traditional custodians, the Bigambul People.

Information in issue

10. During the review, OIC identified that some of the Additional Documents had already been released to the access applicant pursuant to the reviewable decision¹⁶ Those pages were therefore, excluded from further consideration in this review and are not considered in these reasons for decision.¹⁷
11. The Department also refused access to signatures and direct mobile telephone numbers in some of the originally released documents.¹⁸ However, the applicant did not make any submissions about access that those parts of the released documents and therefore, the external review proceeded on the basis that the applicant was not seeking access to that information and, therefore, it is not dealt within these reasons for decision.
12. In view of the above, the Additional Documents which remain the subject of this decision are:
 - a. communications between the Department and Council¹⁹ which pre-date the Minister's decision to transfer the land under the ALA (**Communications**)²⁰; and
 - b. records of Council meetings dated 26 February 2020 and 24 January 2024 (**Council Meeting Records**).²¹
13. My findings with respect to the Communications and Council Meeting Records are set out below.

Communications

Relevant law

14. The RTI Act gives people the right to access documents in the possession or under the control of Queensland government agencies. This right of access is subject to some limitations including grounds for refusing access.²²

¹⁴ Page 12.

¹⁵ Lot 1 SP304980.

¹⁶ Pages 1-2 and 13-23.

¹⁷ On the basis they comprised duplicates of what was already in the applicant's possession.

¹⁸ On pages 2, 7, 10, 11 and 13. Access to such information is routinely refused under the RTI Act due to personal information and privacy considerations.

¹⁹ Pages 4, 12 and 24-29.

²⁰ I am limited in the extent to which I can describe the specific content of those documents as they are claimed to be exempt information. See section 108 of the RTI Act.

²¹ Pages 3 and 5-11.

²² Set out in section 47(3) of the RTI Act.

15. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises 'exempt information'. Exempt information is information that Parliament has considered would, on balance, *always* be contrary to the public interest to release.
16. Schedule 3 of the RTI Act lists the types of information that are exempt information. Schedule 3, section 3(1) of the RTI Act (**Executive Council Exemption**) states:

3 Executive Council information

(1) *Information is exempt information if—*

- (a) *it has been submitted to Executive Council; or*
- (b) *it was brought into existence for submission to Executive Council and is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or*
- (c) *it was brought into existence for briefing, or the use of, the Governor, a Minister or a chief executive in relation to information—*
 - (i) *submitted to Executive Council; or*
 - (ii) *that is proposed, or has at any time been proposed, to be submitted to Executive Council by a Minister; or*
- (d) *it is, or forms part of, an official record of Executive Council; or*
- (e) *its disclosure would involve the disclosure of any consideration of Executive Council or could otherwise prejudice the confidentiality of Executive Council considerations or operations; or*
- (f) *it is a draft of matter mentioned in any of paragraphs (a) to (e); or*
- (g) *it is a copy of or extract from, or part of a copy of or extract from, information mentioned in any of paragraphs (a) to (f).*

17. 'Consideration' is defined as including discussion, deliberation, noting (with or without discussion) or decision; and consideration for any purpose, including, for example, for information or to make a decision.²³

18. There is an exception to the exemption when information has been officially published by decision of the Governor in Council.²⁴

Submissions

19. The applicant submitted²⁵ that the '*The documents in issue do not meet the Schedule 3, s 1(e) test*' for the following reasons:

(a) *The documents existed prior to any Executive Council process*

The documents were not created for Executive Council consideration. They include:

²³ Schedule 3, section 3(3) of the RTI Act.

²⁴ Schedule 3, section 3(2) of the RTI Act. I have no information available to me to indicate the Additional Documents which are the subject of the Department's Executive Council exemption claim have been officially published.

²⁵ Submission dated 17 November 2025.

correspondence between Council and the Department, documents concerning revocation of trusteeship, and materials created as part of administrative land evaluation processes.

These documents existed independently of any EC submission. They cannot retrospectively acquire EC confidentiality merely because the Department chose to rely on them later.

(b) The documents do not reveal Executive Council deliberations

Nothing in the withheld material (as described) contains:

*EC agenda papers;
draft minutes;
recommendations to EC;
draft or final submissions from the Minister; or
internal EC briefing notes.*

At most, the documents were inputs to the Department's own internal process.

This does not meet the statutory threshold.

(c) The Department's "incorporation" argument is not supported by the RTI Act

The Department argues that because it internally "incorporated" external documents into its Ministerial/EC briefing process, they became part of EC considerations.

There is no legal basis for this interpretation.

The exemption applies only to documents that in themselves reveal EC consideration—not documents that:

*happened to be attached,
were summarised,
were reviewed by departmental staff, or
were merely present in a departmental file that later formed part of a submission.*

If the exemption worked as broadly as the Department claims, a government agency could prevent the public accessing any document at all simply by attaching it to an EC submission. That is not the purpose or operation of the provision.

(d) The OIC's own reasoning confirms the Department's exemption under s 3(1)(c) does not apply

OIC correctly found that the documents were not brought into existence solely for briefing EC.

It follows logically that the documents:

*have an existence and purpose separate from EC deliberations,
and therefore must be assessed individually under s 1(e) by reference to their own content.*

The fact the Department later used them in briefing processes does not convert them into exempt information.

4. The public interest weighs strongly in favour of release

Even if there is residual doubt (and I do not accept that there is), the RTI Act requires that exemptions be interpreted narrowly due to:

*the significant public interest in transparency over land transfers,
the impact on the Toobeah community,
the importance of understanding how the Department exercised statutory power, and*

the fact that many of the withheld documents originate from local government correspondence which is publicly accessible in other contexts.

The public interest cannot be met if ordinary administrative correspondence and land-evaluation documents become permanently secret because they were later attached to an EC briefing pack.

20. The Department submitted,²⁶ as follows, in support of its position, that the documents qualified for exemption:

The documents in question form part of the statutory decision making process that culminates in submissions to Executive Council through the Governor in Council (GiC) process.

The documents relate to mandatory consultation requirements that the Chief Executive must consider when undertaking land evaluation, which forms a prerequisite decision for recommendations to the Minister. This land evaluation process is not a standalone administrative function but rather forms an essential component of the Minister's recommendation to direct the department to issue title and appoint a grantee. The Minister's decision on this matter is directly related to, and feeds into, the subsequent GiC consideration.

The department submits that while some documents originated from external sources (such as council correspondence), they were incorporated into and became part of the briefing materials and decision making processes that support submissions to Executive Council. The exemption in Schedule 3(1)(c) extends to information 'brought into existence' for briefing purposes, which the Department interprets to include documents that become integral to the Executive Council submission process, regardless of their original source.

The information contained in these documents are mandatory prerequisites that inform the briefing materials provided to decision makers in relation to matters proposed for Executive Council consideration. For these reasons, the department maintains that the relevant documents are exempt information under Schedule 3(1)(c) of the RTI Act.

21. In response to a request for further information,²⁷ the Department provided additional submissions²⁸ to support its position that the Executive Council exemption applies:

Mandatory Consultation Requirements

Land Act

A most appropriate tenure evaluation is conducted in accordance with s16 Land Act 1994 (Qld). This includes consulting with registered interest holders such as the local government (Goondiwindi Regional Council (Council)) and agency business units responsible for the stock route (the then Department of Resources Stock Route Management Unit).

The Council is tasked with the good rule and local government of the Goondiwindi Region along with the planning and delivery of development infrastructure for the region including by way of a Local Government Infrastructure Plan (LGIP). Toobeah is outside the priority infrastructure area under the Council's LGIP such that it is not an area intended to be serviced with development infrastructure networks, used for residential purposes, and forming part of the area intended to accommodate 10-15 years of growth for residential purposes. As such, there was/is no present plan to expand any development infrastructure for Toobeah.

Notwithstanding, the Council did seek an area for future expansion and preservation of access for continued critical infrastructure in response to community feedback.

²⁶ Submission dated 5 September 2025.

²⁷ Issued by OIC on 26 November 2025.

²⁸ Submission dated 19 December 2025.

The Toobeah Reserve was a reserve for camping (refer Gazettal and the Land Act 1897 (Qld) ss19 and 190). It was also the subject of a native title determination by the Federal Court of Australia in 2016.

Like all applications made that generate a s16 evaluation, broad community feedback is not sought, which is consistent with legal precedent on who is an interest holder (Australian Conservation Incorporated v Commonwealth (1980) 146 CLR 493, [530-531]).

Aboriginal Land Act

The Aboriginal Land Act provides for Expressions of Interest to be made in particular land (Section 33) and must consult with Aboriginal people particularly concerned with the land (as defined by the Aboriginal Land Act).

The Aboriginal Land Act specifies procedures and legislative steps for

- Declaring land transferrable land (ss 34, 35 and 38)*
- Directing the chief executive to issue title and appointing a particular grantee (ss 39 and 40).*

This includes the publishing of a notice in the newspaper calling for written representations on the intended appointment of the grantee (s 41).

The Minister's consideration is supported by a Consultation report, consistent with the requirements of the Aboriginal Land Act.

Prerequisite Decision for Minister's Recommendation

The role of the documents provided in File A are part of the section 16 Land Act consultation requirements.

The decision making steps are legislated and are satisfied through briefing notes to the Minister.

This includes –

- The decision to make the land transferrable land*
- The decision to direct the issue of title and appointment of a grantee.*

Additionally, and consistent with the legislation, any specific matters tied with the land that needs to be addressed (such as encroachments or interests) are investigated and managed, surveying of the land including facilitating requests made during the course of consultation (in this instance, an easement, future township etc) is finalised, with survey being registered.

Section 16 of the Land Act is a precondition to the exercise of the Minister's statutory power to approve the Expression of Interest by declaring the reserve to be transferrable land.

Minister's Decision Feeding into Governor in Council Consideration

Sections 38 and 43 of the Aboriginal Land Act link the Minister's decision to subsequent Governor in Council consideration. The Minister's approval of the briefing notes authorised the creation of the Cycle Deed briefing note and supporting materials for Executive Council.

Decision-Making Processes Supporting Submissions to Executive Council

The briefing notes to the then Minister are included in this submission.

The approval of these briefing notes authorise the creation of the Cycle Deed briefing note and process which includes a request to Governor in Council to approve the Deed. This process was (and is) undertaken by a separate team in the then Department of Resources.

By way of process explanation –

The documents are endorsed by the Executive Director, Land Policy and Support and then sent to the Cabinet and Ministerial Services team by way of Cycle Deed Briefing note and is inclusive of all supporting documents located within the Lands Electronic Land and Vegetation Administration System and the Ministerial and Executive Correspondence System.

...

Matters Proposed for Executive Council Consideration

The matters considered by Executive Council included approval of the Deed to transfer land under the Aboriginal Land Act.

Findings

22. The Communications pre-date the Minister's decision to transfer the land under the ALA and in making my decision in this matter, I have considered the Department's submission that the documents:

... relate to mandatory consultation requirements that the Chief Executive must consider when undertaking land evaluation, which forms a prerequisite decision for recommendations to the Minister. This land evaluation process is not a standalone administrative function but rather forms an essential component of the Minister's recommendation to direct the department to issue title and appoint a grantee.

23. I have also considered the Department's position that the Communications were *brought into existence* for briefing the Governor or Minister and while I accept the Communications formed part of the briefing process, I do not consider they were brought into existence purely for that purpose. Therefore, I am unable to find that schedule 3, section 3(1)(c) of the RTI Act applies to the Communications.

24. In undertaking an external review, the Information Commissioner conducts merits review²⁹ and is required to 'step into the shoes' of the agency, and make the correct and preferable decision.³⁰ I have therefore, proceeded to consider whether another subsection of the Executive Council Exemption may apply, specifically whether disclosure of the Communications would reveal *considerations* of Executive Council³¹ in connection with decisions made under the ALA and the *Land Act 1994* (Qld) (**Land Act**).

25. The ALA in conjunction with Land Act sets out a process for the Minister to follow in connection with decisions to transfer land.³² It is not in contention that this was the process that was followed prior to the decision to transfer the Toobeah Reserve in September 2024 to the Bigambul People. The Communications confirm that preceding that decision, the Minister undertook consultation by corresponding with Council on various matters, in accordance with the legislation. While I am limited in the extent to which I can describe the content of the Communications,³³ on the information available to me, I am satisfied that those Communications:

²⁹ The Court of Appeal noted in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 at [12] that section 118 of the *Information Privacy Act 2009* (Qld) (IP Act) 'provides for the relevant form of review to be merits review'. Similarly, in *Mokbel v Queensland Police Service* [2023] QCATA 158 at [12] and *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2], Judicial Member DJ McGill SC confirmed that external review under the IP Act is a merits review process. While these decisions concerned access applications made under the IP Act, they concern equivalent provisions to the external review process under the RTI Act.

³⁰ Section 105(1)(b) of the RTI Act. As a result of this provision, the Information Commissioner (or their delegate) may rely on RTI Act provisions which are different to those relied upon by the agency in the decision under review.

³¹ Schedule 3, section 3(1)(e) of the RTI Act.

³² Sections 38 and 43 of the ALA and sections 14 and 16 of the Land Act.

³³ Section 108 of the RTI Act.

- represent prerequisite steps in the legislative decision-making process under the ALA and Land Act
 - have a sufficient nexus with the Minister's decision to transfer the land, direct the issue of title and appoint a grantee; and
 - formed part of the briefing material that was ultimately put to Executive Council in connection with its consideration of the approval of the Deed to transfer land under the ALA.
26. The applicant sought to raise public interest considerations in relation to transparency and accountability in terms of how the Government exercises statutory power in relation to land transfer decisions. While I acknowledge the significance of the land transfer matter to the applicant and local community, I am precluded from taking public interest factors into account where an exemption applies to information. This is because Parliament has already determined that the categories of exempt information in schedule 3 of the RTI Act would be contrary to the public interest to disclose.³⁴
27. Notwithstanding my findings in paragraph 25 above, I do not consider page 12 of the Additional Documents meets the requirements of the Executive Council exemption. That page is in the nature of a brief covering email sent by Council to the Department attaching pages which were previously released by the Department (pages 13-23). I am unable to identify a sufficient nexus between the content of that document and considerations of Executive Council in order for the exemption to apply.
28. For the reasons outlined above, I am satisfied that if the Communications were disclosed, it would involve disclosure of Executive Council considerations and therefore, the exemption in schedule 3, section 1(e) of the RTI Act applies to the Communications.³⁵

Council Meeting Records

29. Under section 47(3)(f) of the RTI Act, access to information may be refused because other access to it is available in accordance with section 53 of the RTI Act.
30. The Department made submissions as to the application of this provision in the alternative to claiming documents fell outside scope.³⁶ During the review, I advised the Department that I was of the view that the located documents should be considered within scope due to their connection with the Toobeah Reserve trusteeship, revocation and transfer, as it was clearly the intent of the applicant to capture documents relating to those matters.³⁷ I do not consider it is necessary for me to make any further express findings on scope in the circumstances of this case.³⁸
31. I have therefore, considered whether sections 47(3)(f) and 53 of the RTI Act apply to the Council Meeting Records. Council maintains a comprehensive set of documents on its website in relation to the Toobeah Native Title and ALA Transfer.³⁹ I am satisfied that unfettered public access is available to the Council Meeting Records on Council's website as follows:
- Minutes of Ordinary Council Meeting dated 26 February 2020: [Council Minutes](#)
 - Report for Ordinary Meeting of 24 January 2024: [Council Report](#)

³⁴ Section 48(2) of the RTI Act.

³⁵ Excluding page 12 for the reasons outlined in the preceding paragraph.

³⁶ Submission dated 5 September 2025.

³⁷ Letter to the Department dated 26 November 2025.

³⁸ Noting that the applicant has not contested the issue of scope, and the Department has made submissions in the alternative.

³⁹ [Toobeah Native Title and Aboriginal Land Transfer Information | Goondiwindi Regional Council](#)

32. Accordingly, I find access to the Council Meeting Records may be refused under section 47(3)(f) and 53(a) of the RTI Act as other access to those documents is available.
33. For completeness, and while the Department did not specifically seek to raise this ground of refusal, I have considered whether page 12 of the Additional Documents is otherwise available through the Council website. However, having reviewed the published information on Council's website, I have been unable to locate that particular document. Accordingly, I am satisfied access to it is not otherwise available. My finding on page 12 of the Additional Documents is therefore that access may be granted. In making that finding, I have turned my mind to whether there is any non-routine personal work information of Council officers within the document to which access would otherwise be refused.⁴⁰ I am satisfied that any such information is not contained in the document and therefore, full access to it may be granted.

DECISION

34. For the reasons set out above, I vary the reviewable decision⁴¹ and find that:
- a. access to Communications⁴² may be refused under section 47(3)(a) of the RTI Act on the basis they comprise exempt information under schedule 3, section 3(1)(e) of the RTI Act because disclosure would involve the disclosure of Executive Council considerations;
 - b. access to Council Meeting Records⁴³ may be refused under section 47(3)(f) and 53 of the RTI Act as they are publicly available on the Council website; and
 - c. one Additional Document⁴⁴ does not comprise exempt information, nor is access to it otherwise available, and therefore, access to it may be granted.
35. I have made this decision as a delegate of the Information Commissioner.⁴⁵



Katie Shepherd
Assistant Information Commissioner

Date: 11 February 2026

⁴⁰ Under section 47(3)(b) of the RTI Act.

⁴¹ Under section 110(1)(b) of the RTI Act.

⁴² Pages 4 and 24-29 of the Additional Documents.

⁴³ Pages 3 and 5-11 of the Additional Documents.

⁴⁴ Page 12 of the Additional Documents.

⁴⁵ Section 145 of the RTI Act.