



## Decision and Reasons for Decision

---

|                     |  |
|---------------------|--|
| Citation:           | <i>Dubois and Rockhampton Regional Council</i> [2017] QICmr 49 (6 October 2017)  |
| Application Number: | 313079   |
| Applicant:          | Dubois   |
| Respondent:         | Rockhampton Regional Council   |
| Decision Date:      | 6 October 2017   |
| Catchwords:         | <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DELETION OF IRRELEVANT INFORMATION</b> - whether giving access to a document would disclose information the agency reasonably considers is not relevant to the access application - whether the document has any bearing on, or is pertinent to, the terms of the access application - section 73 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION</b> - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - section 47(3)(a) and schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION</b> - information relating to the feelings, opinions and experiences of a Council officer attending a site inspection - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS</b> - applicant submits agency has failed to locate all documents - whether the agency has taken all reasonable steps to locate documents relevant to the access application - whether access to further documents may be refused on the basis that they are nonexistent or unlocatable - sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</p> |

## REASONS FOR DECISION

### Summary

1. The applicant made an access application to Rockhampton Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**). The application was for information relating to the reclassification of his property and the development compliance issues surrounding this, including any complaints from the public associated with the use of his property which may have been attributed to the change in classification and compliance issues. The requested information covered a sixteen year timeframe.
2. Council initially located approximately 1367 pages in response to the application and decided to grant access to some of this information either in full or part. In relation to the remaining information, Council decided to exclude it as irrelevant or outside scope or refuse access on the grounds that it was subject to legal professional privilege or its 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 Council's decision. During the course of the external review, the applicant confirmed that he sought review of the decision to exclude irrelevant and outside scope information and refuse access to the other information. He also raised a number of sufficiency of search concerns.
4. For the reasons set out below, I affirm Council's decision to exclude irrelevant and outside scope information from consideration and refuse access to information as it is exempt or contrary to public interest to disclose. In addition, I find that access to any further information can be refused as it is nonexistent, unlocatable or does not fall within scope of the access application.

### Background

5. Significant procedural steps taken by OIC in conducting the external review are set out in the appendix to these reasons.

### Reviewable decision

6. The decision under review is Council's original decision dated 3 November 2016.

### Evidence considered

7. Evidence, submissions, legislation, and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).
8. The applicant provided written and oral submissions to OIC supporting his case.<sup>1</sup> While I have carefully reviewed all of those submissions, certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act. Accordingly, in reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination on external review.

---

<sup>1</sup> These submissions are contained in his external review application received 17 November 2016, emails to OIC on 8 December 2016, 11 September 2017 and 28 September 2017 and phone calls with OIC on 18 November 2016, 9 December 2016, 8 February 2017, 8 May 2017, 15 June 2017, 27 July 2017, 7 August 2017, 6 September 2017, 7 September 2017, 18 September 2017, 22 September 2017 and 25 September 2017.

## Issues for determination

9. The issues for determination are whether:<sup>2</sup>

- information may be excluded from consideration as it is irrelevant to or outside the scope of the access application; and
- access to information may be refused on the basis that:
  - it comprises exempt information as it is subject to legal professional privilege
  - its disclosure would, on balance, be contrary to the public interest; and
  - it is nonexistent, unlocatable or does not fall within scope of the access application.

## Information irrelevant to and outside scope of the access application

10. The irrelevant information appears on parts of 4 pages and 16 full pages<sup>3</sup> and can be described as information relating to other premises and pages which appear to be the underside of used note paper.
11. Section 73 of the RTI Act provides that an agency may give access to a document subject to the deletion of information it considers is not relevant to an application. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.
12. If a document does not contain *any* information that is relevant to the terms of the access application, it is outside the scope of the access application and that document will not be considered as part of the application under the RTI Act. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.<sup>4</sup>
13. I have carefully considered the terms of the access application and the content of the information in issue. I am satisfied that the information has no bearing on, and is not pertinent to, the terms of the access application. Accordingly, I find that Council was entitled to exclude this information from consideration under section 73 of the RTI Act as it is irrelevant to and outside the scope of the access application.

## Information subject to legal professional privilege

### Relevant law

14. The RTI Act confers a right of access to documents of an agency,<sup>5</sup> subject to limitations, including grounds for refusal of access.<sup>6</sup> An agency may refuse access to a document to the extent it comprises exempt information.<sup>7</sup> Schedule 3 of the RTI Act sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.<sup>8</sup>

---

<sup>2</sup> A number of issues were resolved informally on external review. The applicant was taken to have accepted OIC's preliminary view on a number of issues as he did not provide any submissions. The applicant also advised OIC that he did not seek access to certain information (phone calls with OIC on 8 February 2017 and 7 August 2017). In addition, Council located and agreed to release further information to the applicant on external review.

<sup>3</sup> Parts of pages 100, 147 and 268 of part 2, part of page 167 of part 3 and sixteen unnumbered full pages of part 3.

<sup>4</sup> *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>5</sup> Section 23(1)(a) of the RTI Act.

<sup>6</sup> Grounds for refusal of access are set out in section 47 of the RTI Act.

<sup>7</sup> Section 47(3)(a) of the RTI Act.

<sup>8</sup> Section 48(2) of the RTI Act.

15. Information will be exempt from disclosure if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>9</sup> Confidential communications between a lawyer and client will be privileged where the communications are for the dominant purpose<sup>10</sup> of seeking or giving legal advice or obtaining material for use in existing or anticipated legal proceedings. Legal professional privilege can apply to documents which record confidential legal advice or legal work even where those documents are not communicated to the client, for example, legal research memos and chronologies of fact.<sup>11</sup> The privilege also extends to copies of unprivileged documents made for the dominant purpose of obtaining legal advice<sup>12</sup> and to internal communications repeating legal advice, whether verbatim or in substance.<sup>13</sup>

## Findings

16. The information in issue comprises 128 part pages and 619 full pages<sup>14</sup> and can be generally described as:
- correspondence between Council employees and Council's external legal advisors
  - records of discussions between Council employees and Council's external legal advisors
  - correspondence and records of discussions between Council's external legal advisors, Council officers and witnesses for the purpose of obtaining evidence to be used in litigation; and
  - internal communications between Council officers discussing requests for advice and the substance of advice.
17. The applicant submits that the information in issue contains correspondence between Council officers about him and his financial position which is not exempt,<sup>15</sup> the legal proceedings are now finished<sup>16</sup> and some of the information in issue is publicly available through the court process.<sup>17</sup> I have described the information in issue in general terms above. However I am unable to deal with the applicant's submissions to the extent they speculate about the detailed content of this information.<sup>18</sup> The information in issue does not include information sent to the applicant or information which is publicly available.
18. The applicant also submits that Council has been using 'a dishonest strategy' and should not be allowed to 'hide behind legal professional privilege'.<sup>19</sup> There is no evidence before me to indicate that Council's decision to refuse access to information on the grounds of legal professional privilege has been inappropriate or dishonest, as the applicant submits.
19. I have carefully reviewed the information which falls within this category and I consider that:

<sup>9</sup> Sections 47(3)(a), 48 and schedule 3, section 7 of the RTI Act.

<sup>10</sup> The dominant purpose is 'the ruling, prevailing, or most influential purpose' and is to be determined objectively, having regard to the evidence, the nature of the document and the parties' submissions – *Commissioner of Taxation of the Commonwealth of Australia v Spotless Services Ltd* (1996) 186 CLR 404, 416.

<sup>11</sup> *AWB v Cole (No 5)* (2006) 155 FCR 30 at 46; *AWB Ltd v Cole* (2006) 152 FCR 382 at 415; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 563.

<sup>12</sup> *Australian Federal Police v Propend Finance Pty Ltd* (1997) 141 ALR 545.

<sup>13</sup> *Brambles Holdings v Trade Practices Commission (No. 3)* (1981) 58 FLR 452 at pp.458-459; *Komacha v Orange City Council* (Supreme Court of New South Wales, Rath J, 30 August 1979, unreported).

<sup>14</sup> This information appears on pages 16-19, 24, 31-54, 56-58, 60-61, 64-70, 77, 83-90, 94-99, 104-106, 109-138, 141-153, 155-158, 160, 162-173, 178-185, 187, 191-192, 194-199, 201-202 and 210-256 of part 2; pages 58-62 and 75-82 of part 3; and pages 1-463, 465-471, 473, 476-479, 481-531 and 534-556 of part 4.

<sup>15</sup> Phone call with OIC on 7 August 2017.

<sup>16</sup> Phone call with OIC on 6 September 2017.

<sup>17</sup> Phone call with OIC on 15 June 2017.

<sup>18</sup> Section 108(3) of the RTI Act expressly prevents me from disclosing information which is claimed to be exempt or contrary to public interest on external review.

<sup>19</sup> Phone call with OIC on 7 August 2017.

- the information was created for the dominant purpose of seeking or providing legal advice and/or was obtained for use in anticipated or existing legal proceedings
  - the solicitors who provided the advice are capable of providing legal advice of an independent character and are appropriately qualified; and
  - there is no evidence to indicate that Council has waived privilege or that the communications are not confidential.
20. I am satisfied that access to the information in issue can be refused under section 47(3)(a) of the RTI Act as it meets the requirements of legal professional privilege and is therefore, exempt under schedule 3, section 7 of the RTI Act.

### **Contrary to public interest information**

#### **Relevant law**

21. Access may be refused to a document where disclosing the information would, on balance, be contrary to the public interest.<sup>20</sup> The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of the public interest<sup>21</sup> and explains the steps that a decision-maker must take<sup>22</sup> in deciding the public interest as follows:
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure would, on balance, be contrary to the public interest.

#### **Findings**

22. The contrary to public interest information comprises parts of a two page file note relating to a site inspection which Council conducted at the applicant's property.<sup>23</sup> The information can be described as the feelings, opinions and experiences of a Council officer who attended the inspection.
23. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.
24. I am satisfied that this information comprises the personal information of the Council officer, even though it appears in an employment context.<sup>24</sup> Generally, information relating to the day-to-day work duties and responsibilities of a Council officer may be disclosed under the RTI Act, despite it falling within the definition of personal information. However, Council documents can also contain personal information of its officers which is not *routine* work information. I am satisfied that the relevant information in this case is personal information of this kind. Although the personal information appears in a workplace context, it comprises a description of the feelings, opinions and experiences of a Council officer who attended the inspection. I consider such information is not related wholly to the routine day-to-day work activities of the Council officer and is not their routine personal work information.

<sup>20</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>21</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, these lists of factors are not exhaustive; in other words, factors that are not listed may also be relevant in a particular case.

<sup>22</sup> Section 49(3) of the RTI Act.

<sup>23</sup> Parts of pages 98-99 of part 3.

<sup>24</sup> Personal information is defined in 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'.

25. I have considered whether disclosing this information could reasonably be expected to prejudice the protection of an individual's right to privacy<sup>25</sup> and cause a public interest harm through disclosure of another individual's personal information.<sup>26</sup> I am satisfied that this information is sensitive and personal in nature. I consider its disclosure under the RTI Act would be a significant intrusion into the privacy of the Council officer and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of these public interest factors favouring nondisclosure significant weight.
26. I do not consider that the public interest factors relating to Council transparency and accountability are relevant in the circumstances.<sup>27</sup> The information in issue is very limited and the remainder of the file note, which shows the actions taken by Council officers and the type of information recorded in relation to the inspection, has been disclosed to the applicant. Disclosing the information in issue would not assist the applicant to better understand how Council handled the issues relating to his property. Accordingly, I do not consider these factors apply.
27. I have considered whether there are any other public interest factors which favour disclosure of this information, other than the general public interest in furthering access to government-held information and the RTI Act's pro-disclosure bias.<sup>28</sup> I have been unable to identify any factors in the circumstances, and the applicant's submissions do not assist.
28. For the reasons explained above, I have identified two public interest factors favouring nondisclosure which carry significant weight and no relevant factors favouring disclosure which carry sufficient weight to justify disclosure. In the circumstances, I find that access to the information in issue can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

## **Nonexistent or unlocatable documents**

### ***Relevant law***

29. Access to a document may be refused if it is nonexistent or unlocatable.<sup>29</sup> A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.<sup>30</sup> A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.<sup>31</sup>
30. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:
- the administrative arrangements of government
  - the agency's structure
  - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
  - the agency's practices and procedures (including, but not limited to, its information management approaches); and

<sup>25</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>26</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>27</sup> Schedule 4, part 1, items 1 and 11 of the RTI Act.

<sup>28</sup> Section 44 of the RTI Act.

<sup>29</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

<sup>30</sup> Section 52(1)(a) of the RTI Act.

<sup>31</sup> Section 52(1)(b) of the RTI Act.

- other factors reasonably inferred from information supplied by the applicant, including the nature and age of the requested documents, and the nature of the government activity to which the request relates.<sup>32</sup>
31. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
32. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.<sup>33</sup> Such steps may include inquiries and searches of all relevant locations identified after consideration of the key factors listed above.
33. In determining whether a document is unlocatable, it is necessary to consider whether:
- there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and
  - the agency has taken all reasonable steps to find the document.<sup>34</sup>
34. In answering these questions, regard should be had to the circumstances of the case and the key factors set out above.<sup>35</sup>

### Findings

35. The applicant originally sought access to all documents relating to compliance issues at his property from 1 January 2000 to 31 August 2016. Council made efforts with the applicant to refine the scope of the application. The applicant agreed to amend the scope of the access application to include information about the reclassification of his property and the development compliance issues surrounding this, including any complaints from the public associated with the use of his property which may have been attributed to the change in classification and compliance issues. Although the applicant amended the scope of the application in this way, it is still extremely broad and covers a sixteen year timeframe. I note also that the applicant did not identify particular documents which he considered would be covered by the application. As the applicant had very extensive dealings with Council during this timeframe, including protracted court processes, it is reasonable to expect that the application would cover a very large volume of documents.<sup>36</sup>
36. The applicant has raised numerous sufficiency of search issues from the commencement of the external review in both oral and written submissions to OIC. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>37</sup> However, where the issue of missing documents is raised, the applicant

---

<sup>32</sup> *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

<sup>33</sup> As set out in *PDE* at [49]. See also section 137(2) of the IP Act.

<sup>34</sup> Section 52(1)(b) of the RTI Act.

<sup>35</sup> *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

<sup>36</sup> Section 41 of the RTI Act permits an agency to refuse to deal with an application if the work involved in dealing with the application would substantially and unreasonably divert the resources of the agency from their use in the performance of its functions. I consider that Council may have been able to enliven this provision in relation to the applicant's request. However, as Council did not rely on this provision, it is not relevant for me to consider it on external review.

<sup>37</sup> Section 87(1) of the RTI Act.

bears a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. A suspicion or mere assertion is not sufficient to satisfy this onus.

37. OIC formed the view that some of the applicant's submissions did not warrant further searches or enquiries with Council. This is because some of the documents did not fall within the relevant timeframe identified in the access application or, in some cases, the applicant was unable to identify the documents with any specificity to enable Council to address his submission or perform further searches.
38. OIC made enquiries with Council on several occasions during the external review in response to the remaining sufficiency of search issues. As a result of performing further searches on external review, Council located a number of additional documents, which it agreed to release to the applicant. Where required, Council responded to the applicant's specific submissions about the existence of particular documents and provided OIC with detailed information about how its records are stored and why particular search locations were chosen in relation to particular documents. In deciding the remaining sufficiency of search issues, I do not consider it necessary to deal separately with each of the numerous contentions raised by the applicant, nor Council's individual responses as to why particular documents are nonexistent or unlocatable.<sup>38</sup>
39. OIC asked Council to undertake further searches for information responding to the access application on three separate occasions.<sup>39</sup> Council has searched its Pathways records, Dataworks system, hardcopy files, Legacy system (which predates the Pathways system), O Drive (which is used for the storage of photographs and video footage) and hardcopy minute books kept at the Rockhampton Library History Centre. When conducting electronic searches, Council searched for records using the applicant's address and/or name as keywords. Council has also made enquiries with a range of Council officers including the Coordinator Building, Plumbing and Compliance and Development Compliance Officers.<sup>40</sup> The searches and enquiries which Council conducted both initially and on external review produced more than 1450 pages.
40. I am satisfied that Council's search and enquiry process has been targeted and comprehensive. It has also been reasonable in the circumstances considering the very broad scope of the application. It has made enquiries with the officers who had the most involvement with the compliance issues at the applicant's property and has searched in the obvious places where documents would be located. Where documents could not be located, Council has provided a reasonable explanation with reference to its record keeping practices.
41. Given the very broad nature of the application, and the age of some of the documents due to the extensive timeframe, it is reasonable to expect that Council will not locate every document which is technically covered by the access application. However, neither do I consider it is reasonable for them to do so, particularly where the applicant did not identify them at an early stage, and has been unable to specifically identify some of them on external review.<sup>41</sup> Under the RTI Act, the only question for me to determine is whether Council has taken *all reasonable steps* to locate the documents in the circumstances. I am satisfied that it has.

---

<sup>38</sup> There are approximately 13 sufficiency of search issues which remain in issue because the applicant did not accept OIC's preliminary view. These issues are dealt with in these reasons for decision, although I have not addressed each individual issue. OIC conveyed a preliminary view to the applicant on each individual issue and conveyed the substance of Council's submissions. The applicant was invited to provide submissions in response to the preliminary view.

<sup>39</sup> 14 June 2017, 17 July 2017 and 22 August 2017.

<sup>40</sup> Submissions to OIC on 1 August 2017 and 5 September 2017.

<sup>41</sup> The applicant submitted throughout the course of the external review that much of the information he received from Council was new to him and that he didn't know what to ask for until he received further information from Council. OIC notified the applicant that it was unable to assist him in identifying the documents to which he sought access as this was a matter for him. OIC also suggested he liaise with Council to discuss the terms of a fresh access application.



42. In addition to my findings above, I note that under the RTI Act, an access application must give sufficient information concerning the requested documents to enable a responsible officer of the agency to identify the documents.<sup>42</sup> There are sound practical reasons for requiring the documents sought in an RTI application to be clearly and unambiguously identified, including that the terms of an access application set the parameters for an agency's response and the direction of an agency's search efforts.<sup>43</sup> Accordingly, an applicant cannot unilaterally expand the terms of an application.<sup>44</sup> The applicant did not specifically identify the particular documents to which he now seeks access on external review, and Council could not have reasonably been expected to identify these documents without the applicant's assistance. Accordingly, I consider that some of the additional documents to which the applicant refers on external review fall outside the scope of the application and it is not necessary for Council to perform further searches for these documents.<sup>45</sup>
43. For the reasons addressed above, I find that access to any additional documents may be refused on the basis that they are nonexistent or unlocatable<sup>46</sup> or because they do not fall within the scope of the access application.

## DECISION

44. For the reasons set out above, I affirm Council's decision to:
- exclude irrelevant and outside scope information from consideration;<sup>47</sup> and
  - refuse access to information as it is exempt<sup>48</sup> or contrary to public interest to disclose.<sup>49</sup>
45. In addition, I find that access to any further information can be refused as it is nonexistent or unlocatable<sup>50</sup> or because it does not fall within the scope of the access application.
46. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

---

**Tara Mainwaring**  
**A/Assistant Information Commissioner**

**Date: 6 October 2017**

---

<sup>42</sup> Section 24(2)(b) of the RTI Act.

<sup>43</sup> *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8]; *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33].

<sup>44</sup> *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [15].

<sup>45</sup> In addition to these findings, I note that during the course of the external review, the Acting Right to Information Commissioner decided under section 95 of the RTI Act to not further deal with any additional sufficiency of search issues the applicant may wish to raise (i.e. any new issues raised after 14 September 2017). This aspect of the review is not addressed in these reasons for decision.

<sup>46</sup> Section 47(3)(e) of the RTI Act.

<sup>47</sup> Section 73 of the RTI Act.

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

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

<sup>50</sup> Section 47(3)(e) of the RTI Act.

## APPENDIX

### Significant procedural steps

| Date             | Event   |
|------------------|---|
| 17 November 2016 | OIC received the external review application.   |
| 18 November 2016 | OIC asked Council to provide various procedural documents relevant to the review. OIC spoke with the applicant about the review.  |
| 22 November 2016 | OIC received the requested documents from Council.  |
| 28 November 2016 | OIC notified the applicant and Council that the external review application had been accepted. OIC asked Council to provide a copy of the documents located in response to the access application. OIC asked the applicant to provide a submission specifically identifying the additional documents to which he sought access. |
| 8 December 2016  | OIC received the applicant's submissions.   |
| 9 December 2016  | OIC spoke with the applicant about the review.  |
| 12 December 2016 | OIC received the requested documents from Council.  |
| 11 January 2017  | OIC spoke with Council about the review.  |
| 13 January 2017  | OIC provided the applicant with an update on the progress of the review.  |
| 16 January 2017  | OIC received further documents from Council. OIC spoke with Council about the review.   |
| 20 January 2017  | OIC spoke with Council about the review.  |
| 23 January 2017  | OIC spoke with Council about the review.  |
| 24 January 2017  | OIC received further documents from Council.  |
| 8 February 2017  | OIC spoke with the applicant about the review. The applicant notified OIC that he did not seek access to certain information.   |
| 8 March 2017     | OIC spoke with Council about the review. OIC provided the applicant with an update on the progress of the review.   |
| 2 May 2017       | OIC provided the applicant and Council with an update on the progress of the review.  |
| 8 May 2017       | OIC spoke with the applicant about the review.  |
| 30 May 2017      | OIC spoke with Council about the review.  |
| 1 June 2017      | OIC spoke with Council about the review.  |
| 14 June 2017     | OIC conveyed a preliminary view to Council and invited it to provide submissions supporting its case. OIC also asked Council to provide submissions in relation to a number of sufficiency of search issues which the applicant had raised. OIC provided the applicant with an update on the progress of the review.            |
| 15 June 2017     | OIC spoke with the applicant about the review.  |
| 23 June 2017     | OIC spoke with Council about the review.  |
| 27 June 2017     | Council provided submissions in response to the preliminary view.   |
| 29 June 2017     | OIC spoke with Council about the review.  |

| Date              | Event  |
|-------------------|--|
| 3 July 2017       | OIC spoke with Council about the review. OIC received a number of additional documents from Council.   |
| 17 July 2017      | OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case. OIC also notified the applicant Council had agreed to release information to him. OIC asked Council to release the additional information to the applicant and to provide further submissions in relation to a number of sufficiency of search issues the applicant had raised.       |
| 19 July 2017      | OIC spoke with Council about the review.   |
| 20 July 2017      | OIC received Council's submissions.  |
| 27 July 2017      | OIC spoke with the applicant about the review. OIC granted the applicant an extension of time to respond to the preliminary view.  |
| 1 August 2017     | OIC notified the applicant that Council would release additional information to him as a related third party external review had been finalised. OIC received Council's submissions.   |
| 7 August 2017     | OIC spoke with the applicant about the review.   |
| 10 August 2017    | OIC spoke with Council about the review.   |
| 14 August 2017    | OIC requested further documents from Council.  |
| 15 August 2017    | OIC received the requested documents from Council.   |
| 22 August 2017    | OIC conveyed a preliminary view to Council and invited it to provide submissions supporting its case. OIC also asked Council to provide submissions in relation to a number of sufficiency of search issues which the applicant had raised.  |
| 28 August 2017    | OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case.   |
| 1 September 2017  | Council notified OIC that it had released additional information to the applicant.   |
| 6 September 2017  | OIC spoke with Council about the review. OIC received submissions from Council. OIC spoke with the applicant about the review.   |
| 7 September 2017  | OIC spoke with the applicant about the review.   |
| 11 September 2017 | OIC received the applicant's submissions.  |
| 14 September 2017 | OIC asked Council to release additional information to the applicant. OIC conveyed a preliminary view to the applicant and invited him to provide submissions supporting his case. OIC also notified the applicant that the Acting Right to Information Commissioner had decided under section 95 of the RTI Act to not consider any additional sufficiency of search issues he may wish to raise. |
| 18 September 2017 | OIC spoke with the applicant about the review.   |
| 22 September 2017 | OIC spoke with the applicant about the review.   |
| 25 September 2017 | OIC spoke with the applicant about the review.   |
| 26 September 2017 | Council notified OIC that it had released additional information to the applicant.   |
| 28 September 2017 | OIC received the applicant's submissions.  |