



Decision and Reasons for Decision

Citation:	<i>Independent Extrusions Pty Limited and Department of Education; V20 (Third Party) [2020] QICmr 32 (12 June 2020)</i>
Application Number:	314705
Applicant:	Independent Extrusions Pty Limited ACN 099 482 961
Respondent:	Department of Education
Third Party:	V20
Decision Date:	12 June 2020
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - documents regarding an injury at a workplace - whether information was 'given under compulsion' for schedule 3, section 10(3) of the <i>Right to Information Act 2009</i> (Qld) - whether access 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 - documents regarding an injury at a workplace - prejudice investigation, confidential source, fair trial or impartial adjudication or lawful method or procedure - whether information is exempt under schedule 3, sections 10(a), (b), (e) or (f) - whether access 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 - documents regarding an injury at a workplace - whether documents would be privileged from production in legal proceedings - whether information is exempt under schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld) - whether access 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 - documents regarding an injury at a workplace - accountability and transparency - measures relating to public health and safety - personal information and privacy - prejudice to business affairs and flow of information - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. In September 2018, an individual¹ was injured in a workplace accident. On 26 February 2019, she applied (through her solicitors) to the Office of Industrial Relations (**OIR**)² under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to the 'entire file' concerning the accident.
2. OIR conducted searches of its records, particularly within Workplace Health and Safety Queensland (**WHSQ**).³ OIR consulted the access applicant's employer, Independent Extrusions Pty Limited (**INEX**), about disclosure of the information it located.⁴ INEX broadly objected to disclosure of all of the documents located, primarily relying on certain 'law enforcement or public safety' exemptions under schedule 3, section 10 of the RTI Act.
3. OIR decided to grant access to most of the information, contrary to INEX's objections.⁵ INEX then applied to the Information Commissioner for external review of OIR's disclosure decision.⁶
4. For the reasons below, I affirm OIR's decision to disclose the information in issue under the RTI Act, contrary to INEX's objections.

Background

5. Significant procedural steps relating to the application and review are set out in the Appendix.
6. In reaching this decision, I have also had regard to the *Human Rights Act 2019* (Qld),⁷ particularly the access applicant's right to seek and receive information.⁸ I consider a decision-maker will be 'respecting and acting compatibly with' that right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Reviewable decision

7. The decision under review is OIR's decision of 5 June 2019.

¹ The third party in this external review, referred to above as V20.

² OIR is part of the Department of Education. Therefore, the Department of Education has been named as the respondent agency in this review as it is the agency currently responsible for the information in issue. See Administrative Arrangements Order (No. 1) 2020. However, in these reasons, I have referred to OIR as it is the entity which has participated in the conduct of the review.

³ WHSQ is the part of OIR that enforces work health and safety laws, investigates workplace fatalities, serious injuries, prosecutes breaches of legislation and educates employees and employers on their legal obligations.

⁴ As part of this consultation, a copy of the located information was provided to INEX, with the exception of the access applicant's witness statement.

⁵ On 5 June 2019 OIR decided to grant access to 141 pages and 77 photographs. It also decided to refuse access to certain personal information and five video files, and to delete certain irrelevant information, but these refusals are not in issue in this review.

⁶ On 2 July 2019.

⁷ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

⁸ Section 21 of the HR Act. Noting that this external review arises out of INEX's objections to disclosure of information. However, I still consider the access applicant's human right to be a relevant consideration.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

Evidence considered

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

Information in issue

9. During the review, the access applicant agreed¹⁰ not to pursue access to INEX staff names, statements or contact details. The information remaining in issue is comprised of 140 pages¹¹ (with INEX staff names and contact details removed) and 77 photographs.
10. The photographs show INEX's machinery, equipment and safety signs, as well as the injury to the access applicant. The remaining 140 pages are comprised of WHSQ's file in relation to the accident, and include:
 - information from WHSQ's internal databases, specifically 'employer history' information¹²
 - an improvement notice issued to INEX following the accident¹³
 - the access applicant's own statement concerning the accident¹⁴
 - information provided to WHSQ by INEX, including a Hazard Incident Report Form, its Packing Safe Work Procedure, an instruction manual for relevant equipment, its Plant and Equipment Procedure, a completed Risk Assessment Form and the Supervisor's Pre-Start Checklist for the day of the accident¹⁵
 - the relevant pages of WHSQ inspectors' notebooks;¹⁶ and
 - internal WHSQ emails and emails between WHSQ and INEX following the accident (and attached photographs of machinery).¹⁷

Preliminary issue

11. INEX submits:¹⁸

[OIC's] *discussion* [in its preliminary view to INEX] *concerning the exemptions are prefaced by an observation that the Act operates with a "pro-disclosure bias" meaning that an individual's right to access "government information" ought to be granted unless a statutory ground for refusal applies" or such disclosure would, on balance, be contrary the public interest.*

Before dealing with the issues, and as a preliminary point, we note that the information for which access is sought is not "government information". The documents are private and confidential, many of them "privileged" which were properly in the ownership and custody of the company. They are not in any sense "government documents" and they are not documents belonging to WHS. They come to be in the possession of WHS as a result of its exercise of statutory powers compelling the delivery up of certain documents. WHS has not control over those documents beyond the purpose for which they were obtained.

12. INEX appears to contend that the RTI Act – and therefore the pro-disclosure bias – does not apply to the information in issue, because it is not 'government information'. I do not

¹⁰ Email from access applicant's solicitors dated 10 January 2020. In its decision OIR also decided to refuse access to certain personal information and five video files, but these refusals are not in issue in this review.

¹¹ One whole page (page 17) is comprised of a staff member's statement, and accordingly, is not in issue in the review.

¹² Pages 1-8.

¹³ Pages 9-11.

¹⁴ Pages 12-16.

¹⁵ Pages 18-41.

¹⁶ Pages 42-81.

¹⁷ Pages 82-141.

¹⁸ INEX submission dated 31 January 2020.

accept this contention. As a starting point, much of the information in issue is comprised of WHSQ's own documents about the accident, including printouts from its internal databases, investigators' emails and notes. However, even where the information was obtained by WHSQ from INEX for the purpose of the investigation (for example, INEX's forms, procedures and manuals), the RTI Act creates a legally enforceable right for any person to access 'documents of an agency'.¹⁹ Section 12 of the RTI Act relevantly defines 'document of an agency' as follows:

In this Act, document, of an agency, means a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency...

13. It is well established²⁰ that the term 'possession' as used in section 12 requires that relevant documents be in the physical possession of an agency. Further, section 12 does not require an analysis of the means by which the documents came into an agency's possession. The fact that documents originated with a company or a private individual does not preclude them from the operation of the RTI Act once they are in the possession of a Queensland government agency.
14. Accordingly, I am satisfied that the documents in this matter are 'documents of an agency' and the access applicant, subject to any applicable limitations in the RTI Act, has a right to be given access to them.

Issues for determination

15. OIR decided to release the information in issue contrary to the views of INEX. If a decision under external review is a 'disclosure decision'²¹ the participant who opposes the decision has the onus of establishing that a decision not to disclose the document or information is justified, or that the Information Commissioner should give a decision adverse to the party who wishes to be given access to the document.²² Accordingly, in this review, INEX 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.
16. INEX has raised the following grounds for refusal of access:²³
 - schedule 3, section 10(3) of the RTI Act (**Compulsion Exemption**)
 - schedule 3, section 10(1)(a), (b), (e) and (f) of the RTI Act (**Other Law Enforcement Exemptions**)
 - schedule 3, section 7 of the RTI Act (**LPP Exemption**); and
 - public interest considerations.

Compulsion Exemption

17. Under the RTI Act, information is exempt if:²⁴

¹⁹ Section 23 of the RTI Act.

²⁰ See *Kalinga Woolloowin Residents Association Inc and Department of Employment, Economic Development and Innovation; City North Infrastructure Pty Ltd (Third party)* (Unreported, Queensland Information Commissioner, 19 December 2011) at [11]-[24].

²¹ Under section 87(3), disclosure decision relevantly includes a decision to disclose information contrary to the views of a relevant third party obtained under section 37.

²² Section 87(2) of the RTI Act.

²³ In its objection to OIR dated 21 May 2019 and its external review application to OIC dated 2 July 2019.

²⁴ Schedule 3, section 10(3) of the RTI Act.

- it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law); and
 - the information was given under compulsion under an Act that abrogated the 'privilege against self-incrimination'.
18. The 'privilege against self-incrimination' is a common law right which, simply put, provides that a person is not bound to answer any question or produce any document if the answer or the document would expose, or would have a tendency to expose, the person to conviction for a crime.²⁵
19. There are some occasions where Parliament considers that it is necessary to override the common law privilege against self-incrimination, and compel a person to answer questions or produce documents. On those occasions, Parliament may include specific powers in legislation to abrogate the privilege.
20. In this matter, both OIR and INEX agree that the information in issue was given by INEX (through its employees) in the course of WHSQ's investigation of INEX's possible contravention of workplace health and safety law. However, OIR submits that the information was provided voluntarily, whereas INEX contends that it was given under a compulsion under the *Work Health and Safety Act 2011* (Qld) (**WHS Act**), and that this legislation abrogates the privilege against self-incrimination.
21. Turning to the legislative framework, I accept that under section 171 of the WHS Act, inspectors have powers to enter a workplace and to require production of documents and answers to questions.²⁶ I also accept that where this power is used, section 172 of the WHS Act abrogates the privilege against self-incrimination:

172 Abrogation of privilege against self-incrimination

A person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

22. However, this does not resolve the factual question of whether, in this case, the information was given by INEX under a compulsion. On this issue, a WHSQ inspector responsible for the investigation has submitted:²⁷

...OIR's position is that information was given to the relevant inspectors by INEX voluntarily, and the inspectors did not rely on statutory powers of compulsion under section 171(1)(b) of the Work Health and Safety Act 2011 (Qld) (or any other power to require documents/information under this Act).

If compulsion for the documents was required, this would have been noted in my Inspector note book and the request for documents issued accordingly.

23. The WHS Act does not preclude this approach. Section 173 outlines the steps required for an inspector to rely on the powers of compulsion, and in subsection (3) states that 'nothing in this section prevents an inspector from obtaining and using evidence given to the inspector voluntarily by any person'.
24. If inspectors rely on their powers of compulsion, there are a number of requirements that must be followed. For example, the requirement to produce documents must be made

²⁵ *Griffin v Pantzer* [2004] FCAFC 113 at [37].

²⁶ Section 171(1) of the WHS Act.

²⁷ OIR's submissions dated 3 October 2019.

by written notice unless the circumstances require the inspector to have immediate access.²⁸ Further, before an inspector can require a person to answer a question or provide information or a document under part 9 of the WHS Act, an inspector must:²⁹

- identify himself or herself to the person as an inspector (by producing the inspector's identity card or in some other way);
- warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
- warn the person about the effect of section 172 (concerning the abrogation of privilege against self-incrimination) and also advise the person about the effect of section 269 of the WHS Act.³⁰

25. I have considered WHSQ's file, including the inspectors' notebooks and communications between WHSQ and INEX, and there is no evidence before me that the inspectors relied on their powers under section 171(1) of WHS Act. Although the notebooks are a detailed contemporaneous account of events, they do not – for example – detail any warnings given as set above, or indicate that any written notice under this section was issued to INEX.
26. In this external review, INEX initially submitted that the documents were obtained by compulsion under section 118 of the WHS Act, a provision that relates to entry by union officials.³¹ INEX subsequently³² altered its submission to contend that the documents came into possession of WHSQ using the '*significant powers afforded them under the [WSH Act] and in particular, section 171*'. INEX further submitted that the information was '*plainly handed over as part of a process and under compulsion of law, knowing that proceedings and penalties awaited if they refused*'.
27. INEX has not provided any evidence, beyond this assertion, to support its submission. While I accept that it may have *felt* compelled to cooperate with WHSQ, and felt that this was pragmatic given the legislative regime, that is not the relevant question here. I am not satisfied, on the evidence before me, that WHSQ inspectors exercised their powers under section 171(1) of the WHS Act (or any other section of the WHS Act) to compel INEX (or its employees) to answer questions or produce information or documents.
28. Accordingly, I find that INEX has not discharged its onus of establishing that the information in issue (or parts thereof) was given to WHSQ '*under a compulsion*' that abrogates the privilege against self-incrimination. Rather, I find that the information was provided voluntarily. Accordingly, I am satisfied that the exemption under schedule 3, section 10(3) does not apply.

Other Law Enforcement Exemptions

29. INEX submits³³ that the information in issue is exempt because its disclosure could reasonably be expected to:³⁴

²⁸ Section 171(2) of the WHS Act.

²⁹ Section 173(1) of the WHS Act.

³⁰ Section 269 is concerned with the WHS Act not affecting legal professional privilege.

³¹ INEX's external review application.

³² INEX submission dated 31 January 2020.

³³ INEX submission to OIR dated 21 May 2019 and submission to OIC dated 2 July 2019.

³⁴ When assessing whether an outcome could reasonably be expected, I must distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154]-[160]. Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*': See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at 190.

- prejudice³⁵ the investigation of a contravention or possible contravention of the law (including revenue law) in a particular case³⁶
- enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained³⁷
- prejudice a person's fair trial or the impartial adjudication of a case;³⁸ and
- prejudice the effectiveness of a lawful method for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law (including revenue law).³⁹

(together the **Law Enforcement Exemptions**)

30. In this case, the WHSQ investigation is finished, the matter has been determined as '*not for prosecution*', and it has been resolved with no further action.⁴⁰ Even in the event that an investigation was re-opened, it is unclear to me how disclosure of the information in issue in the review could '*reasonably be expected*' to result in any prejudice to WHSQ investigation, prejudice INEX's fair trial or the impartial adjudication of any case,⁴¹ or prejudice any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention. Further, I have no evidence before me of any 'confidential source' relevant to this investigation.
31. INEX contends that this reading of the Law Enforcement Exemptions is an '*unreasonably narrow view*'. In support of this, INEX points to the preliminary issue (which is dealt with at paragraphs 11 to 14 above) and notes that the information '*may be used against the company in further proceedings which may be brought by the applicant*'. INEX notes that '*whilst there is no prejudice to WHS, the prejudice to the company is clear and obvious*'.⁴²
32. I have considered these submissions but I am not satisfied that a potential prejudice to INEX, or a general concern that the documents may be used against it in litigation, is sufficient to give rise to the Law Enforcement Exemptions.⁴³ While the access applicant may seek to bring civil proceedings against INEX, there is no evidence before me that disclosure of the information could *reasonably* be expected to prejudice the impartial adjudication of such a case.
33. Accordingly, having considered the facts set out at paragraph 30 above, INEX's submissions and the information in issue, I am not satisfied that the Law Enforcement Exemptions apply.

LPP Exemption

34. Information is exempt information under schedule 3, section 7 of the RTI Act if it satisfies the common law test for attracting legal professional privilege (**LPP**). INEX has submitted that this exemption may be relevant but has not provided further submissions on this point.

³⁵ '*Prejudice*' is not defined in the RTI Act but has previously been interpreted by the Information Commissioner to mean a detrimental effect on a party or placing a party at a disadvantage: *Daw and Queensland Rail* (Unreported, Information Commissioner, 24 November 2010).

³⁶ Schedule 3, section 10(1)(a) of the RTI Act.

³⁷ Schedule 3, section 10(1)(b) of the RTI Act.

³⁸ Schedule 3, section 10(1)(e) of the RTI Act.

³⁹ Schedule 3, section 10(1)(f) of the RTI Act.

⁴⁰ OIR decision dated 5 June 2019.

⁴¹ Either a civil trial, a prosecution, or a proceeding in the Queensland Industrial Relations Commission.

⁴² INEX submission dated 31 January 2020.

⁴³ Although, prejudice to its business, professional, commercial or financial affairs is a factor to be considered in relation to the balance of the public interest, and is considered at paragraph 55 below.

35. At common law, LPP attaches to *confidential communications between a client and their lawyer*, made for the dominant purpose of giving or obtaining legal advice or the provision of legal services.⁴⁴ LPP has also been expanded to a limited range of third party communications (with the lawyer, and in some circumstances, with the client), where the dominant purpose test is satisfied.⁴⁵
36. The nature of the information in issue in this case is that it is not comprised of confidential communications between INEX and its lawyers (or the limited range of third parties who may also be covered by the privilege) for the dominant purpose of giving or obtaining legal advice or the provision of legal services. Rather, these documents were created or obtained by WHSQ during its investigation. Accordingly, I am satisfied that the LPP Exemption does not apply.

Public interest considerations

Relevant law

37. Under the RTI Act, access to documents may also be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.⁴⁶ 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.⁴⁷
38. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁴⁸
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Irrelevant factors

39. INEX submits⁴⁹ that:

...the request for disclosure was made by a firm of solicitors acting on behalf of an employee who is said to have been injured as a result of an accident which was being investigated at the time the documents were obtained

INEX says there is no public interest in that regard, and that the interest of the Plaintiff's solicitors in seeking information is a matter limited only to the interest of their client, the employee.

⁴⁴ *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at [9].

⁴⁵ *Trade Practices Commission v Sterling* (1979) 36 FLR 244 at pages 245-6; *Pratt Holdings Pty Ltd and Another v Commissioner of Taxation* [2004] FCAFC 122.

⁴⁶ Section 47(3)(b) of the RTI Act.

⁴⁷ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

⁴⁸ Section 49(3) of the RTI Act.

⁴⁹ In its application for external review dated 2 July 2019.

40. To the extent that this submission concerns the motivations of the access applicant, the Information Commissioner has previously explained:⁵⁰

An access applicant's motives for seeking access to information are irrelevant to a consideration as to whether access should be granted to requested information. Speculation as to the identity of a particular access applicant, the access applicant's reasons for lodging an application, and any intended use of the information are not generally matters to be taken into account in assessing the balance of the public interest.

41. Accordingly, the motivations of the access applicant (or her solicitors) are not relevant, and I have not taken them into account. No other irrelevant factors arise in relation to the information and I have not taken any into account.

Factors favouring disclosure

Accountability and transparency of WHSQ

42. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability⁵¹
- inform the community of the government's operations including, in particular, the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;⁵² and
- reveal the reason for a government decision and any background or contextual information that informed the decision.⁵³

43. There is a clear public interest in people being able to discuss and understand the way in which WHSQ undertakes its responsibilities under the WHS Act.⁵⁴ As set out at paragraph 10 above, the information in issue is from WHSQ's file concerning the accident. The information provides insight into WHSQ's operations and how inspectors carried out their role, which includes:⁵⁵

- assisting in the resolution of work health and safety issues at workplaces
- requiring compliance with the WHS Act through the issuing of notices; and
- investigating contraventions of the WHS Act and assisting in the prosecution of offences.

I am satisfied that disclosure would serve the public interest by providing the community with a comprehensive understanding of the procedures adopted and actions taken by the regulatory authority in dealing with issues relating workplace safety (both generally

⁵⁰ *Helping Hands Network Pty Ltd and Department of Education, Training and Employment* (Unreported, Queensland Information Commissioner, 30 October 2012) at [66], citing *State of Queensland v Albietz* [1995] 1 Qd R 215 at 219 where de Jersey J observed that 'the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant'. See also the Victorian Supreme Court decision in *Victoria Police v Marke* [2008] VSCA 218, in which Weinberg JA noted at paragraph 66 '[the FOI Act] does not, in the normal course, contemplate that the motives of the person seeking access to a document should be scrutinised and characterised as either worthy or unworthy. These are value judgements, which are likely to be highly subjective, and have no place in a scheme that is designed to ensure the proper accountability of government.' I consider these observations apply equally to the RTI Act.

⁵¹ Schedule 4, part 2, item 1 of the RTI Act.

⁵² Schedule 4, part 2, item 3 of the RTI Act.

⁵³ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁴ *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (unreported, Queensland Information Commissioner, 14 February 2012) at [48]; *Australian Workers' Union and Queensland Treasury; Ardent Leisure Limited (Third Party)* [2016] QICmr 28 (28 July 2016) at [44].

⁵⁵ Section 160 of the WHS Act.

and in relation to this accident). I am also satisfied that it would disclose the reasons for certain decisions made by WHSQ inspectors in the matter. In terms of the weight to be attributed to these factors, having considered the nature of the information and the level of insight it provides into the important issue of workplace safety, I afford these factors significant weight.

Reveal measures related to public health and safety

44. A further factor favouring disclosure arises where disclosure could reasonably be expected to reveal measures relating to public health and safety.⁵⁶
45. In this case, the information is comprised of WHSQ's file concerning an accident. More specifically, it contains the detail of, and material gathered during, an investigation carried out under the WHS Act. One of the objects of this legislation is '*protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant*'. Accordingly, I am satisfied that disclosure of the information could reasonably be expected to reveal the measures taken under this legislation by investigators relating to public health and safety.
46. In terms of the weight to be attributed to this factor, I am satisfied that workplace health and safety is an important issue, particularly when the injury/risk of injury is serious. In this case, the access applicant's fingers were trapped in machinery and she sustained a serious injury. In these circumstances, I afford this factor significant weight.

Access applicant's personal information

47. Some of the information is the access applicant's personal information, including her identifying details, a description of her accident, correspondence with her and her statement to investigators. To the extent that the information is her personal information, this gives rise to a public interest factor favouring disclosure.⁵⁷ Whilst I acknowledge that the access applicant will be generally aware of some of the information, particularly the information that she gave to investigators, I do not consider that this knowledge reduces the weight of this factor to a significant extent. The information relates to a serious accident involving her, and accordingly, to the extent the information contains her personal information, I am satisfied that this factor carries significant weight.

Administration of justice

48. In support of its contention that the information should not be released, INEX has submitted that the information may be used against it in further proceedings. INEX submits:⁵⁸

This is not a request born of curiosity on the part of the applicant about the process of WHS or the mechanism of an investigation. It is an application to obtain documents which, it is believed, are relevant when considering whether or not proceedings might be brought against the company for damages following a workplace incident, which could not otherwise be obtained from the company.

49. Whilst I understand that litigation is not a desired outcome for INEX, rather than supporting the contention that the information should not be released, this submission gives rise to a factor *favouring* disclosure. This factor will arise if disclosure could

⁵⁶ Schedule 4, part 2, item 14 of the RTI Act.

⁵⁷ Schedule 4, part 2, item 7 of the RTI Act.

⁵⁸ Submissions dated 31 January 2020.

reasonably be expected to contribute to the administration of justice generally, or for a person.⁵⁹

50. In *Willsford and Brisbane City Council*⁶⁰ the Information Commissioner discussed the public interest in the administration of justice in the context of allowing a person with an actionable wrong to pursue a remedy. The Information Commissioner found that this factor arises if an access applicant demonstrates:
- they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information in issue would assist the applicant to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.
51. In this case, the access applicant was injured in her workplace, and I am satisfied that a remedy for this is, or may be, available under the law. I am also satisfied that she has a reasonable basis for seeking to pursue the remedy. I am satisfied that the information may, by providing further information about the accident, assist her in determining whether the remedy is available or worth pursuing. In terms of the weight to be attributed to the factor, the circumstances of this case can be contrasted with cases where the applicant's ability to pursue a remedy is wholly dependent on disclosure of the information, such as where the identity of an individual is required in order to pursue or assess a claim.⁶¹ Accordingly, in the circumstances, I afford this factor moderate weight.

Factors favouring nondisclosure

Personal information and privacy

52. The RTI Act recognises that disclosure would cause a public interest harm if it would disclose personal information of a person, whether living or dead.⁶² The term '*personal information*' is defined as follows in the RTI Act:⁶³

information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

53. A separate factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁶⁴ The concept of 'privacy' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁶⁵
54. As noted at paragraph 9 above, the access applicant agreed not to pursue access to INEX staff names, statements or contact details, and this information is not in issue in

⁵⁹ Schedule 4, part 2, items 16 and 17 of the RTI Act.

⁶⁰ (1996) 3 QAR 368 (*Willsford*).

⁶¹ For example, in *EF9TO8 and Department of Transport and Main Roads* [2016] QICmr 19 (3 June 2016) the applicant required the registered garaging address of a vehicle to pursue a lawful remedy. In *Willsford*, the applicant sought information that would identify the owner of a dog, in order to take steps to assess whether she was in a position to recover for property damage.

⁶² Schedule 4, part 4, item 6(1) of the RTI Act. In *Kelson v Queensland Police Service & Anor* [2019] QCATA 67, Daubney J, President of the Queensland Civil and Administrative Tribunal explained that the Information Commissioner is '*not required to reason how the disclosure of the personal information could amount to a public interest harm; that harm is caused by the very disclosure of the information itself*' at [94].

⁶³ See schedule 5 of the RTI Act which refers to section 12 of the *Information Privacy Act 2009* (Qld).

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

⁶⁵ Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

the review. In relation to the balance of the information in issue, I acknowledge that the access applicant may reasonably ascertain the identities of certain INEX staff due to her knowledge of the company or the circumstances of the accident. Further, the information contains some limited personal information of WHSQ staff. Accordingly, I accept that the factors concerning personal information and privacy apply. However, in terms of the weight to be applied to these factors, I consider it is minimal. The nature of the information is limited, it was provided in a business setting, the access applicant is aware of individuals' role in the events that occurred, and in the case of WHSQ staff, it is comprised of the routine personal work information of public servants.

Business affairs

55. A factor favouring disclosure arises where disclosure of the information in issue could reasonably be expected to prejudice an entity's business, professional, commercial or financial affairs⁶⁶ or disclose information concerning an entity's business, professional, commercial or financial affairs in circumstances where disclosure could reasonably be expected to have an adverse effect on those affairs.⁶⁷

56. INEX's submissions in this review relate primarily to these factors. INEX submits:⁶⁸

In a nutshell, the company's objection to this application is that its documents which were required to be produced for one purpose to WHS are now being made available by WHS for another unrelated purpose, without the consent of the company in circumstances that will disadvantage and/or prejudice it. We believe that far from there being a pro-disclosure bias operating here, great caution should be exercised about releasing private documents in such circumstances.

57. I acknowledge that the information in issue in this review relates directly to INEX's operations, and an accident that occurred within its business. However, as previously held by the Right to Information Commissioner, under the RTI Act, the mere fact that information relates to commercial issues of entities does not, of itself, lead to an automatic presumption that disclosure under the RTI Act would be contrary to the public interest.⁶⁹ When commercial information of entities comes into the possession or control of an agency, this information is subject to the RTI Act. The necessary approach is 'to balance the interests of commercial undertakings which have supplied material to government agencies and the interests of members of the public in gaining access to that information'.⁷⁰

58. In this case, having considered the information, and INEX's submissions, I accept that disclosure of the information may assist the access applicant and her solicitors in pursuing the company for damages, and that this could reasonably be expected to prejudice or adversely affect its business, professional, commercial or financial affairs. I also accept that disclosure of information concerning a workplace injury may result in some reputational damage to its business. However, in this case, I also note that much of the information is known to the access applicant. For example, she is aware of her own injury, the nature of the accident, the layout of the machinery and the individuals involved. Certain photographs in issue show her own finger, or set out her own version of events, or describe events that involved her. Accordingly, although there is a

⁶⁶ Schedule 4, part 3, item 2 of the RTI Act.

⁶⁷ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

⁶⁸ Submissions dated 31 January 2020.

⁶⁹ These comments were made in relation to a Queensland government-owned company, but remain relevant here: *Kalinga Woolloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd (Third Party); Department of Treasury (Fourth Party)* (Unreported, Queensland Information Commissioner, 9 May 2012) at [79].

⁷⁰ *Cannon and Australian Quality Egg Farms Ltd* (1994)1 QAR 491 at [32].

reasonable expectation of prejudice/harm, the weight of this is reduced to some extent. Accordingly, I afford these factors moderate weight.

Prejudice flow of information

59. The RTI Act recognises that the public interest will favour nondisclosure if disclosure could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.⁷¹ A business affairs harm factor will also apply where disclosure could reasonably be expected to prejudice future supply of like information to government.⁷²
60. As I have found at paragraph 28 above, INEX provided information to WHSQ voluntarily, and WHSQ did not rely on its powers of compulsion to obtain the information. I accept that disclosure of the information may discourage entities from providing this free and voluntary flow of information to investigators in the future, if the consequence of this is that the information may be accessed under the RTI Act. In terms of the weight to be attributed to these nondisclosure factors, it is relevant that investigators may rely on their powers of compulsion where necessary, and so the flow of information is unlikely to be impacted to any significant extent.⁷³ However, the voluntary free flow of information is important, and explicitly recognised under the WHS Act.⁷⁴ Accordingly, I afford these factors moderate weight.

Impede the administration of justice

61. As noted above in relation to the '*administration of justice*' factor, and the Law Enforcement Exemptions, INEX has raised concerns about the access applicant using the documents in civil proceedings against it. In particular, INEX has submitted that:⁷⁵

As between the applicant and the company, the applicant has no right to inspect, far less demand delivery of copies, any of the information which is the subject of this application, unless during the course of proceedings, appropriate requests and orders are made in accordance with the uniform Court rules.

62. Essentially, this submission amounts to a concern that the access applicant is circumventing court processes. This raises for consideration the factor favouring nondisclosure that applies when disclosure of the information could reasonably be expected to impede the administration of justice.⁷⁶ While I have considered INEX's submissions, I do not consider that obtaining information prior to, or outside the court process alone is sufficient to give rise to the factor. There is no evidence before me that there is any reasonable expectation of the administration of justice being impeded by disclosure.

Balancing the factors

63. I have taken into account the pro-disclosure bias which is to be applied when deciding access to documents.⁷⁷ In this case, I also consider there are a number of very strong public interest considerations in favour of disclosure. Of key significance are the factors concerning WHSQ's accountability and ensuring transparency in its operations and

⁷¹ Schedule 4, part 3, item 13 of the RTI Act.

⁷² Schedule 4, part 4, section 7(1)(c) of the RTI Act.

⁷³ As noted in *Australian Workers' Union and Queensland Treasury; Ardent Leisure Limited (Third Party)* [2016] QICmr 28 (28 July 2016) at [58].

⁷⁴ Section 173(3) of the WHS Act.

⁷⁵ Submissions dated 31 January 2020.

⁷⁶ Schedule 4, part 3, item 9 of the RTI Act.

⁷⁷ Section 44 of the RTI Act.

decision-making, and the factors concerning revealing measures relating to public health and safety. These factors weigh heavily in favour of disclosure. I have also afforded weight to the factors concerning the access applicant's ability to access her own personal information and the administration of justice.

64. There are also a number of nondisclosure factors that apply with regard to the reasonable likelihood of prejudice/adverse effect to INEX's business, professional, commercial or financial affairs, and the flow of information between workplaces and WHSQ. There is also some, albeit minimal, weight to be attributed to the factors concerning personal information and privacy.
65. On balance, I find that the factors favouring disclosure outweigh the factors favouring nondisclosure in this case. Accordingly, I find that disclosure of the information in issue would not, on balance, be contrary in the public interest.

DECISION

66. On the basis of the above, I affirm OIR's decision to grant access to the information in issue. I find that the information is not exempt and nor would its disclosure, on balance, be contrary to the public interest.
67. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

12 June 2020

APPENDIX

Significant procedural steps

Date	Event
2 July 2019	OIC received INEX's application for external review.
5 July 2019	OIC requested procedural documents from OIR.
5 July 2019	OIC received procedural documents from OIR.
9 July 2019	OIC requested further procedural documents from OIR.
10 July 2019	OIC received further procedural documents from OIR.
22 July 2019	OIC notified INEX and the Department that the external review application had been accepted. OIC requested additional information from OIR.
31 July 2019	OIC received information from OIR.
3 September 2019	OIC requested further information from OIR.
4 September 2019	OIC received further information from OIR.
2 October 2019	OIC requested further information and submissions from OIR concerning the factual background to the matter.
3 October 2019	OIC received submissions from OIR.
11 December 2019	OIC conveyed a preliminary view to INEX and requested a submission in response.
20 December 2019	OIC conveyed its view to the access applicant, with an update on the matter, and requested that her solicitor advise whether she sought access to individual INEX staff names, contact details and statements in the documents.
10 January 2020	The access applicant's solicitor advised OIC that she did not wish to pursue access to INEX staff names, statements and/or contact details.
31 January 2020	OIC received a submission from INEX.
6 March 2020	OIC advised INEX that the matter would proceed to a formal decision.