



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>N14 and Department of Agriculture and Fisheries [2022] QICmr 50 (7 November 2022)</i></b>
<b>Application Number:</b>	<b>316538</b>
<b>Applicant:</b>	<b>N14</b>
<b>Respondent:</b>	<b>Department of Agriculture and Fisheries</b>
<b>Decision Date:</b>	<b>7 November 2022</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - application for third party written responses to the applicant's workplace complaint - accountability, transparency, fair treatment and administration of justice - personal information, privacy and ability to obtain information - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Department of Agriculture and Fisheries (**Department**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access two written responses<sup>2</sup> that another individual had provided to the Department regarding the applicant's workplace grievance.
2. The Department located the requested documents<sup>3</sup> and decided to refuse access to these documents on the ground disclosure would, on balance, be contrary to the public interest.<sup>4</sup>
3. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. During the external review, a small amount of information was disclosed to the applicant.<sup>6</sup> The applicant continues to seek access to the remaining refused information.

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<sup>1</sup> Access application dated 25 October 2021.

<sup>2</sup> Dated 19 September 2021 and 14 October 2021.

<sup>3</sup> Which comprised 24 pages.

<sup>4</sup> Decision dated 21 December 2021.

<sup>5</sup> External review application dated 17 January 2022.

<sup>6</sup> Comprising one part page and one full page. As confirmed to the applicant by email dated 26 September 2022, this disclosed information was the only information within the requested documents which was comprised solely of information about the applicant.

5. For the reasons set out below, I affirm the Department's decision that access may be refused to the information remaining in issue on the basis that its disclosure would, on balance, be contrary to the public interest.

## Background

6. On 2 September 2021, the applicant lodged a grievance with the Department against another Departmental officer (**Grievance**). The subject officer provided two written responses to the Grievance—these are the documents the applicant applied to access.
7. The Department notified the applicant of its decision about the Grievance on 19 October 2021. The applicant then sought internal review of that decision.<sup>7</sup> As the applicant was dissatisfied with the outcome of that internal review process, he confirmed to OIC that he has pursued further review of his Grievance with 'appropriate external agencies', including the Queensland Industrial Relations Commission.<sup>8</sup>
8. The significant procedural steps taken during the external review are set out in the Appendix.

## Reviewable decision and evidence considered

9. The decision under review is the Department's decision dated 21 December 2021.
10. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and the Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),<sup>9</sup> particularly the right to seek and receive information.<sup>10</sup> I consider a decision-maker will, when observing and applying the law in the IP Act and the *Right to Information Act 2009* (**RTI Act**), be 'respecting' and 'acting compatibly with' this right and others prescribed in the HR Act.<sup>11</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between the Victorian equivalent of Queensland's IP and RTI Acts and the HR Act:<sup>12</sup> '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>13</sup>

## Information and issue for determination

12. As noted in paragraph 4, a small amount of information was disclosed to the applicant during the review. The remaining information requested in the access application appears on 23 pages and comprises two email communications the subject officer provided to the Department, responding to the Grievance<sup>14</sup> (**Information in Issue**).
13. The issue for determination is whether access may be refused to the Information in Issue on the basis that its disclosure would, on balance, be contrary to the public interest.

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<sup>7</sup> The applicant confirmed in the external review application that he had also made a separate complaint to the Department about certain disclosures made during the Department's investigation of the Grievance, which he considers constitute official misconduct.

<sup>8</sup> Submissions dated 1 June 2022.

<sup>9</sup> Relevant provisions of which commenced on 1 January 2020.

<sup>10</sup> Section 21 of the HR Act. I have also given specific consideration to the right to recognition and equality before the law (section 15 of the HR Act), which the applicant submitted (in the external review application) was relevant.

<sup>11</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>12</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>13</sup> *XYZ* at [573]. OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (noting that Judicial Member McGill saw 'no reason to differ' from our position).

<sup>14</sup> The first email response provided by the subject officer includes 16 pages of supporting information, which are referenced in the body of the response.

14. On external review, the applicant raised concerns about the conduct of Departmental officers (some of which relate to the officer who is the subject of the Grievance), the Department's handling of his Grievance (both initially and on internal review) and the outcome of the Grievance processes (including that he considers inaccuracies and incorrect information formed the basis of the Grievance decisions). The IP Act does not give OIC jurisdiction to investigate complaints about an agency's conduct or processes, or the way an agency (or its officers) acted in separate complaint processes.<sup>15</sup> As noted above, the decision under review is the Department's 21 December 2021 decision refusing access to the documents requested in the access application—the Department's decisions about the Grievance are *not* under review in this matter.<sup>16</sup>
15. In the external review application, the applicant raised concerns about what he perceived as flaws in the decision under review and the bias of the Department's RTI decision-maker. This external review is a merits review, which is an administrative reconsideration of a case.<sup>17</sup> For this reason, I cannot consider or address these raised concerns in this decision.<sup>18</sup>
16. Finally, the applicant has also raised concerns about how this external review has been conducted.<sup>19</sup> Under the IP Act, the procedure to be taken on external review is, subject to the Act, at the discretion of the Information Commissioner.<sup>20</sup> In this matter, written preliminary views explaining the basis for the refusal of access were provided to the applicant on three occasions and the applicant was invited to provide submissions contesting the preliminary view.<sup>21</sup> While the applicant argued that these preliminary views were '*difficult to understand*'<sup>22</sup> and had been '*developed without any rigour, investigation, clarification or analysis*',<sup>23</sup> he provided a number of submissions contesting the refusal of access. Accordingly, the applicant has been appraised of the basis upon which information has been refused and has been afforded a number of opportunities to put forward submissions supporting his position. In these circumstances, I am satisfied that this external review has been conducted in accordance with the requirements of the IP Act<sup>24</sup> and the applicant has been afforded due process in this review.
17. I have taken account of the applicant's submissions to the extent that they are relevant to the issue for determination in this review.

## Relevant law

18. Under section 40 of the IP Act, an individual has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>25</sup> This access right is subject to limitations, including grounds for refusing access.<sup>26</sup>

<sup>15</sup> This was explained to the applicant on 18 May 2022.

<sup>16</sup> Schedule 5 to the IP Act identifies what a '*reviewable decision*' is under the IP Act.

<sup>17</sup> As such, the Information Commissioner (or delegate) has the power to decide any matter in relation to an application that could have been decided by the agency under the IP Act (as confirmed in section 118(1)(b) of the IP Act).

<sup>18</sup> I confirmed this to the applicant on 18 May 2022.

<sup>19</sup> For example, in his submissions dated 3 March 2022, the applicant contended that, in accordance with what he understood to be OIC's usual practice, he should have been afforded '*the courtesy of a phone call*' prior to OIC conveying a written preliminary view to him on the review issues, so as to afford him '*the opportunity for discussion and clarification of the outcome*'. I responded to this, and certain other procedural concerns the applicant raised, in subsequent correspondence with the applicant.

<sup>20</sup> Section 108(1)(a) of the IP Act. On external review, the Information Commissioner is not bound by the rules of evidence and may be informed on any matter in any way considered appropriate (section 108(1)(c) of the IP Act).

<sup>21</sup> As set out in the Appendix. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews (refer to section 103 of the IP Act).

<sup>22</sup> Submissions dated 3 March 2022, 1 June 2022, 22 September 2022 and 29 September 2022.

<sup>23</sup> Submissions dated 3 March 2022. The applicant made similar submissions on 1 June 2022 and 29 September 2022.

<sup>24</sup> Including those in section 108(1)(b) of the IP Act.

<sup>25</sup> '*Personal information*' is defined in section 12 of the IP Act 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*'.

<sup>26</sup> Section 67(1) of the IP Act provides that an agency may refuse access to a document in the same way and to the same extent it could refuse access to the document under section 47 of the RTI Act were the document to be the subject of an access

19. One ground for refusing access is where disclosure of information would, on balance be contrary to the public interest.<sup>27</sup> The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.<sup>28</sup>
20. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>29</sup>
  - 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 of the information in issue would, on balance, be contrary to the public interest.

## Findings

### *Irrelevant factors*

21. I have not taken any irrelevant factors into account in making this decision.

### *Factors favouring disclosure*

22. The RTI Act recognises that factors favouring disclosure will arise where information is an applicant's personal information<sup>30</sup> and where disclosing information could reasonably be expected to:
  - promote open discussion of public affairs and enhance the Government's accountability<sup>31</sup>
  - 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<sup>32</sup>
  - reveal the reason for a government decision and any background or contextual information that informed the decision<sup>33</sup>
  - allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of an agency or its officers<sup>34</sup>
  - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies<sup>35</sup>
  - reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant;<sup>36</sup> and
  - contribute to the administration of justice generally, including procedural fairness, or for a person.<sup>37</sup>

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application under the RTI Act. Section 47(2)(a) of the RTI Act states that it is Parliament's intention that the grounds on which access may be refused are to be interpreted narrowly.

<sup>27</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>28</sup> 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, 14-16.

<sup>29</sup> Section 49(3) of the RTI Act.

<sup>30</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>31</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>32</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>33</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>34</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>35</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>36</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>37</sup> Schedule 4, part 2, items 16 and 17 of the RTI Act.

23. The Information in Issue comprises two responses to the applicant's Grievance which the Department received from the officer who is the subject of the Grievance. It includes *some* information about the applicant, which comprises his personal information. This gives rise to a factor favouring disclosure to which I afford significant weight.<sup>38</sup> However, the very nature of the Information in Issue also means that it includes the personal information of other individuals, such as their opinions and recollections of events. I have carefully reviewed the Information in Issue and am satisfied that the way in which the applicant's personal information appears within it means that disclosing the applicant's information would also disclose the personal information of others. That is, as the applicant's personal information is intertwined with the personal information of other individuals, I do not consider that the Information in Issue can be redacted so as to only disclose the applicant's personal information.<sup>39</sup> This gives rise to the factors favouring nondisclosure discussed below.
24. The Department must be open and transparent about how it deals with workplace grievances. The applicant's submissions confirm he is aware of the process by which the Grievance was investigated by the Department. The applicant also received written notification of the investigation outcome (which included a summary of the responses received from the subject officer in respect of the Grievance, the reasons for the investigator's decision and the recommended actions).<sup>40</sup> I consider that the information which the applicant received via the Grievance process has substantially advanced the public interest factors relating to the Department's accountability and transparency.<sup>41</sup> While disclosing the Information in Issue would provide the applicant with a more complete picture of the information that was available to the investigator (and the internal reviewer), I do not consider that its disclosure would advance these accountability and transparency factors in any significant way. Accordingly, I have afforded these factors low weight.
25. The applicant submitted<sup>42</sup> that the factor concerning incorrect or unfairly subjective information<sup>43</sup> applies to favour disclosure. As noted above, the Information in Issue comprises responses to the Grievance that the Department received from the subject officer. While the applicant may disagree with the subject officer's responses, this does not, of itself, raise an expectation that disclosing the Information in Issue would reveal it to be incorrect, misleading or unfairly subjective. Information of this nature includes an individual's observations, opinions and versions of events which are shaped by factors such as the individual's memories of relevant events and subjective impressions. This inherent subjectivity also means that the information is not necessarily incorrect, misleading or unfairly subjective.<sup>44</sup> Having carefully reviewed the Information in Issue and the applicant's submissions, I do not consider this factor applies to favour disclosure.
26. The applicant also submitted that the factor favouring disclosure in schedule 4, part 2, item 5 of the RTI Act applies.<sup>45</sup> However, the applicant has not explained how disclosing this particular Information in Issue—being the subject officer's response to the

<sup>38</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>39</sup> In his submissions dated 3 March 2022, the applicant submitted that OIC's 'usual business' requires the personal information of another individual to be redacted from requested documents, to facilitate disclosure of the remaining information. Under section 90 of the IP Act, access to a document is to be given *only if it is practicable* to give access to a copy of the document from which the contrary to the public interest information has been deleted. Here, as explained at paragraph 23, the applicant's personal information appears inextricably intertwined with the personal information of others and it is not possible to delete the other individuals' information so as to only disclose the applicant's personal information. I confirmed this to the applicant on 18 May 2022 and 8 September 2022.

<sup>40</sup> The access application referred to, and quoted from, the Grievance outcome letter the applicant received on 19 October 2021. On external review, I requested a copy of that letter from the Department and I have reviewed its contents in reaching my decision.

<sup>41</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>42</sup> Submissions dated 3 March 2022.

<sup>43</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>44</sup> *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

<sup>45</sup> Submissions dated 3 March 2022. This factor arises where disclosure could reasonably be expected to allow or assist enquiry into agency or officer conduct deficiencies. Given the applicant's submissions, I have also considered the factor in schedule 4, part 2, item 6 of the RTI Act (which arises where disclosure could reasonably be expected to reveal or substantiate that an agency or officer has engaged in misconduct or negligent, improper or unlawful conduct).

Department about the Grievance—could reasonably be expected to allow or assist enquiry into agency or officer conduct deficiencies. I note that, based on information he already possesses, the applicant has identified what he considers to be official misconduct, unlawful conduct and inadequacies in the Department's grievance processes. The applicant also confirmed that his concerns about those matters were being considered in a formal complaint and other 'external' review processes. In these circumstances and taking the nature of the Information in Issue into account, I am not satisfied that there is anything within the Information in Issue which gives rise to an expectation that its disclosure would allow or assist enquiry into, or reveal or substantiate, agency or officer conduct deficiencies. Accordingly, to the extent these factors apply to favour disclosure, I afford them only low weight.<sup>46</sup>

27. In addition to the disclosure factor relating to the general administration of justice,<sup>47</sup> the public interest will favour disclosure of information where it could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies.<sup>48</sup> The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision.<sup>49</sup> Here, the applicant was the person who lodged the Grievance against another officer. Although the applicant has raised general fairness arguments<sup>50</sup> and considers that certain actions of the initial investigator were inappropriate, he has not enunciated how disclosure of this particular Information in Issue would contribute to his fair treatment or procedural fairness. As noted above, the applicant was provided with a summary of information that was obtained in respect of the Grievance, when notified of the investigation outcome. While the applicant submitted that there was '*no consultation or opportunity afforded to [him] to provide information to the investigator of the grievance from the outset*',<sup>51</sup> the written notification he received of the investigation outcome refers to three emails he sent to the investigator, providing greater detail about the Grievance and responding to '*clarifying questions*' the investigator had raised about the Grievance. On this basis, it appears that the applicant was afforded an opportunity to provide information to the investigator in the Department's initial Grievance investigation process.
28. The applicant also confirmed that the Department proceeded with his request for internal review of the Grievance and that an external person was appointed by the Department to undertake that internal review process.<sup>52</sup> While he has identified his dissatisfaction with that process and its outcome, the applicant also confirmed that he had '*some discussions with the external reviewer*' in relation to the Grievance.<sup>53</sup> Again, it appears that the applicant was afforded an opportunity to provide information to the internal review of his Grievance. Finally, the applicant has also confirmed that he is pursuing 'external' review of the management of the Grievance and his officer conduct concerns, including in separate proceedings before the Queensland Industrial Relations Commission.<sup>54</sup>
29. In all these circumstances, and given the nature of the Information in Issue, I am not satisfied that there is a reasonable expectation its disclosure would, in any meaningful way, further advance the applicant's fair treatment in his dealings with the Department and other agencies or contribute to the general administration of justice, including

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<sup>46</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>47</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>48</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>49</sup> The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

<sup>50</sup> In the access application the applicant stated: '*I request the same opportunity as afforded to the Respondent to be provided with his responses to my Grievance*'.

<sup>51</sup> Submissions dated 1 June 2022.

<sup>52</sup> Submissions dated 1 June 2022.

<sup>53</sup> Submissions dated 1 June 2022.

<sup>54</sup> Submissions dated 1 June 2022.

procedural fairness. On this basis, while these factors may apply,<sup>55</sup> I afford them only low weight.

30. In determining whether the factor relating to administration of justice for a person applies to favour disclosure,<sup>56</sup> I must consider whether:
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - the applicant has a reasonable basis for seeking to pursue the remedy; and
  - disclosing the information held by an agency would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.<sup>57</sup>
31. As noted above, the applicant has confirmed that he is pursuing further review processes associated with the Grievance and its handling by the Department, including proceedings before the Queensland Industrial Relations Commission.<sup>58</sup> That is, the applicant is already pursuing remedies based on the information he has. While the applicant submitted that disclosure of the Information in Issue would assist him to pursue, or evaluate *'the remedy'* available to him,<sup>59</sup> there is no evidence before me to indicate that disclosure of the Information in Issue is required to enable the applicant to pursue a remedy or evaluate whether a remedy is available or worth pursuing. Accordingly, I am satisfied that this disclosure factor does not apply.
32. The applicant also argues<sup>60</sup> that *'integrity requirements'* and certain disclosures made during the Department's investigation of the Grievance (which he considers were 'illegal' and constitute official misconduct), are additional considerations which significantly favour disclosure of the Information in Issue. While the list of public interest factors in schedule 4 of the RTI Act is not exhaustive, I have considered these submissions in the context of the public interest factors set out above. On that basis, I do not consider the applicant's submissions raise any additional factors which favour disclosure of the Information in Issue.
33. Having regard to the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.<sup>61</sup>

### **Factors favouring nondisclosure**

34. The RTI Act recognises that there is a public interest harm<sup>62</sup> in disclosing an individual's personal information to someone else and disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.<sup>63</sup> The concept of *'privacy'* is not defined

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<sup>55</sup> Schedule 4, part 2, items 10 and 16 of the RTI Act. The public interest factor in schedule 4, part 2, item 10 of the RTI Act does not require a decision-maker to ensure that an applicant is provided with sufficient information to enable the applicant to be *subjectively* satisfied that he or she received fair treatment (*F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [101]).

<sup>56</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>57</sup> *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

<sup>58</sup> I consider it is reasonable to expect that court processes relating to disclosure of documents may be available to the applicant in the already commenced proceedings. In this regard, I note that the access right in the IP Act is not meant to serve as an adjunct to, or replacement of, such court disclosure processes.

<sup>59</sup> Submissions dated 1 June 2022.

<sup>60</sup> External review application and submissions dated 3 March 2022.

<sup>61</sup> Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, I cannot see how disclosing the Information in Issue could, for example, contribute to debate on important issues or matters of serious interest or ensure oversight of expenditure of public funds (schedule 4, part 2, items 2 and 4 of the RTI Act); or reveal measures relating to public health and safety or contribute to the maintenance of peace and order or enforcement of the criminal law (schedule 4, part 2, items 14, 15 and 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

<sup>62</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>63</sup> Schedule 4, part 3, item 3 of the RTI Act.

in the IP Act or 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.<sup>64</sup>

35. The Information in Issue includes, by its nature, information of, and about, other individuals—for example, it contains another individual's observations, opinions and perspectives about matters that are the subject of the Grievance. On this basis, I am satisfied that the Information in Issue comprises the personal information of other individuals. This information appears in the context of a workplace investigation and is not wholly related to the routine day-to-day work activities of government officers. As I have noted above, to the extent the applicant's personal information appears within the Information in Issue, it is intertwined with the personal information of others. Given the sensitive nature of this information, I am satisfied that its disclosure would be a significant intrusion into the privacy of these other individuals and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to these factors which favour nondisclosure.
36. Although the applicant may be aware of some of the information within the Information in Issue (for example, as a result of his involvement in the Grievance investigation or the further review processes he is involved in), I do not consider this reduces the weight of these nondisclosure factors, particularly as there can be no restriction on the use, dissemination or republication of information disclosed under the IP Act.
37. Factors favouring nondisclosure also arise in cases where disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information<sup>65</sup> or its management function.<sup>66</sup> The RTI Act also recognises that a public interest harm will arise where disclosing information could have a substantial adverse effect on the management or assessment by an agency of the agency's staff<sup>67</sup> or the information consists of information of a confidential nature that was communicated in confidence, and disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.<sup>68</sup>
38. I consider that these factors apply to favour nondisclosure of the Information in Issue. The Department must be able to conduct workplace investigations discretely and ensure that disclosure of information does not unduly impact its ongoing employment relationship with its staff. Here, the subject officer provided the Department with his responses to the Grievance made about him.<sup>69</sup> In this context, I consider that disclosing the Information in Issue, under the IP Act and outside the Grievance processes, would have a significant and negative impact on the Department's ability to manage its staff in relation to the investigation of future workplace grievances. I acknowledge the concerns the applicant has raised about certain disclosures that occurred during the initial Grievance investigation. However, having carefully considered the Information in Issue, I also consider it is reasonable to expect that a subject officer, responding to grievance allegations made against them, would contemplate that the information they provided would be treated as confidential and would only be used for the purpose of the investigation (or in any subsequent review or disciplinary processes). Routinely disclosing information of this nature outside the grievance processes and under the IP Act could, in my view, be expected to make staff reluctant to fully participate in future investigations and prejudice the ability of the Department to obtain similar information in future investigations. This, in turn, could reasonably be expected to adversely impact the Department's ability to conduct workplace investigations and manage staff. For these reasons, I afford these factors significant weight.

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<sup>64</sup> 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.

<sup>65</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>66</sup> Schedule 4, part 3, item 19 of the RTI Act.

<sup>67</sup> Schedule 4, part 4, item 3(c) of the RTI Act.

<sup>68</sup> Schedule 4, part 4, item 8(1) of the RTI Act.

<sup>69</sup> In this regard, I note that the Public Service Commission Directive 11/20, titled '*Individual employee grievances*', requires grievances to be managed in accordance with the principles of natural justice.



### **Balancing the public interest**

39. I have taken into account the pro-disclosure bias in deciding access to documents under the IP Act.<sup>70</sup> I have afforded significant weight to the factor favouring disclosure of the applicant's personal information within the Information in Issue,<sup>71</sup> however, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. In addition, and for the reasons outlined above, I have identified additional factors favouring disclosure of the Information in Issue (including those relating to the Department's transparency and accountability, fair treatment and administration of justice).<sup>72</sup> However, in the circumstances of this matter and taking into account the nature of the Information in Issue, I afford these factors moderate to low weight.
40. On the other hand, I have afforded significant weight to the nondisclosure factors which relate to protecting the personal information and right to privacy of other individuals.<sup>73</sup> Additionally, I consider that nondisclosure factors relating to protecting the Department's ability to obtain confidential information and manage its staff deserve significant weight.<sup>74</sup>
41. On balance, I consider the factors favouring nondisclosure relating to the protection of other individuals' personal information and privacy and the ability of the Department to obtain confidential information and manage its staff, outweigh the considerations which favour disclosure.

### **DECISION**

42. For the reasons explained above, as a delegate of the Information Commissioner,<sup>75</sup> I affirm the Department's decision to refuse access to the Information in Issue<sup>76</sup> on the ground it would, on balance, be contrary to the public interest to disclose.

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**T Lake**  
**Acting Assistant Information Commissioner**

**Date: 7 November 2022**

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<sup>70</sup> Section 64 of the IP Act.

<sup>71</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>72</sup> Schedule 4, part 2, items 1, 3, 5, 6, 10, 11 and 16 of the RTI Act.

<sup>73</sup> Schedule 4, part 4, section 6 and schedule 4, part 3, items 3 and 6 of the RTI Act.

<sup>74</sup> Schedule 4, part 3, items 16 and 19 and schedule 4, part 4, sections 3(c) and 8(1) of the RTI Act.

<sup>75</sup> Under section 139 of the IP Act.

<sup>76</sup> Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

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

<b>Date</b>	<b>Event</b>
17 January 2022	OIC received the external review application.
10 February 2022	OIC notified the applicant and the Department that the external review application had been accepted and requested information from the Department.
11 February 2022	OIC received the requested information from the Department.
23 February 2022	OIC conveyed a preliminary view to the applicant.
3 March 2022	OIC received the applicant's submissions, contesting the preliminary view.
6 April 2022	OIC requested further information from the Department.
7 April 2022	OIC received the requested information from the Department.
11 April 2022	OIC requested further information from the Department and provided an update to the applicant.
17 May 2022	OIC received the further requested information from the Department.
18 May 2022	OIC conveyed a further preliminary view to the applicant.
1 June 2022	OIC received the applicant's further submissions contesting the preliminary view.
21 July 2022	OIC received further information from the Department.
8 September 2022	OIC conveyed a further preliminary view to the applicant and requested the Department release a small amount of information to the applicant.
13 September 2022	An OIC officer spoke with the applicant.
14 September 2022	OIC sent a further copy of its 8 September letter to the applicant, at the applicant's request.
22 September 2022	OIC received correspondence from the applicant's seeking clarification of certain matters.
26 September 2022	OIC responded to applicant's queries.
29 September 2022	OIC received the applicant's further submissions, contesting the preliminary view.