



## Decision and Reasons for Decision

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Citation:	<b><i>S69 and Department of State Development, Infrastructure and Planning (Office of Industrial Relations) [2025] QICmr 53 (25 August 2025)</i></b>
Application Number:	<b>317461</b>
Applicant:	<b>S69</b>
Respondent:	<b>Department of State Development, Infrastructure and Planning (Office of Industrial Relations)</b>
Decision Date:	<b>25 August 2025</b>
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - INFORMATION GIVEN UNDER COMPULSION - ABROGATION OF PRIVILEGE AGAINST SELF-INCRIMINATION - records regarding investigation of a workplace incident that resulted in death - sections 47(3)(a) and 48 and schedule 3, section 10(3) of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - information provided by or about other individuals during investigation - 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 Office of Industrial Relations (**OIR**)<sup>2</sup> under the *Right to Information Act 2009* (Qld) (**RTI Act**)<sup>3</sup> for access to documents regarding an investigation into a workplace incident which resulted in the death of his child. The incident occurred during an activity undertaken as part of an educational program.
2. OIR identified that all the information sought related to an ongoing prosecution and decided<sup>4</sup> to refuse access on the basis that disclosure would, on balance, be contrary to the public interest. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of this decision.

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<sup>1</sup> Access application dated 2 February 2023.

<sup>2</sup> At the time, OIR formed part of the Department of Education, however, following machinery of government changes on 18 December 2023, OIR became part of the Department of State Development, Infrastructure and Planning and remains within the responsibility of that administrative unit as at the date of this decision.

<sup>3</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA**) came into force, effecting significant changes to the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**). References in this decision to the RTI Act and IP Act, however, are to the those Acts **as in force prior to 1 July 2025**. This is in accordance with Chapter 7 Part 9 of the RTI Act and Chapter 8, Part 3 of the IP Act, comprising transitional provisions requiring that access applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted.

<sup>4</sup> Decision notice dated 19 July 2023.

<sup>5</sup> On 31 July 2023.

3. During the external review, the prosecution was finalised and OIR agreed to disclose documents to the applicant, subject to the refusal of information OIR submitted<sup>6</sup> comprised exempt information given under compulsion or contrary to public interest information.<sup>7</sup>
4. OIC conveyed<sup>8</sup> preliminary views to the participants about the refused information, following which OIR agreed to disclose further information to the applicant.<sup>9</sup> The applicant provided submissions to OIC<sup>10</sup> in support of his position that access to the remaining refused information should be granted.
5. The information that remains the subject of OIR's disclosure objections includes:

Description <sup>11</sup>	Pages
<b>Compelled Information</b> <i>Information the OIR inspector compelled witnesses to provide during the investigation</i>	19, 23-26, 27, 70-71, 75, 76, 79, 938, 1139-1209, 1215-1286 and 1383-1464.
<b>Third-party Information</b> <i>Identifying information of third parties, such as names and contact details, and information they provided to the OIR inspector</i>	2-3, 8-9, 12-15, 19, 23-26, 28, 30-31, 33-34, 36, 38, 41-42, 45-46, 51-53, 57-58, 60, 63, 66-69, 76-77, 79-81, 84-92, 93-94, 99, 119-120, 125-131, 133, 135-137, 147-148, 154, 178, 183, 186-187, 203-213, 218, 220, 222, 224, 226, 243, 245, 398-401, 418, 420-422, 424, 433-434, 436, 439, 444, 447, 480-486, 490-493, 494-503, 506-514, 549, 552-558, 562-563, 566, 574, 576-577, 580-581, 645-650, 654-684, 937, 942-950, 1101-1106, 1113-1121, 1125-1138, 1210, 1214, 1287-1364, 1365-1382 and 1465-1467.

6. Based on the information available to me, and for the reasons set out below, I have decided to vary OIR's decision by finding that access to the:
  - Compelled Information may be refused under section 47(3)(a) and schedule 3, section 10(3) of the RTI Act on the basis that it comprises exempt information; and
  - Third-party Information may be refused under section 47(3)(b) of the RTI Act on the basis it comprises contrary to public interest information.
7. In making this decision, I have considered evidence, submissions, legislation and other material as set out in these reasons.<sup>12</sup> I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information,<sup>13</sup> and in doing so, have acted in accordance with section 58(1) of the HR Act.<sup>14</sup>

<sup>6</sup> Submission dated 13 November 2024.

<sup>7</sup> OIR disclosed the documents on 13 September 2024. Access to certain information was also deferred (**deferred information**) as third parties had objected to disclosure following consultation by OIR in accordance with section 37 of the RTI Act.

<sup>8</sup> Letters to OIR dated 4 March 2025 and 14 April 2025 and the applicant dated 17 April 2025.

<sup>9</sup> OIR confirmed the further information was disclosed by email dated 26 June 2025. This disclosure also included the deferred information as the third parties did not maintain their objections following OIC conveying preliminary views about access on 4 March 2025. Those third parties are therefore, not listed as respondents to this decision.

<sup>10</sup> Submissions dated 21 October 2024, 24 January 2025 and 9 May 2025.

<sup>11</sup> I am limited in the extent to which I can describe the specific nature of the remaining redacted information, due to the operation of section 108 of the RTI Act.

<sup>12</sup> Including footnotes.

<sup>13</sup> Section 21 of the HR Act.

<sup>14</sup> OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

## Exempt information

### Relevant law

8. A person has a right, under the RTI Act, to be given access to documents of an agency<sup>15</sup> subject to certain limitations, including grounds for refusing access.<sup>16</sup> It is Parliament's intention that the RTI Act is to be administered with a pro-disclosure bias<sup>17</sup> and that the grounds for refusing access are to be interpreted narrowly.<sup>18</sup>
9. Access may be refused to exempt information.<sup>19</sup> Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is always contrary to the public interest.<sup>20</sup> Schedule 3, section 10(3) provides that information will be exempt where it is given in the course of an investigation of a contravention or possible contravention of the law under compulsion under an Act that abrogated the privilege against self-incrimination.
10. The '*privilege against self-incrimination*' is a common law right which 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.<sup>21</sup> 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.
11. Under sections 155 and 171 of the *Work Health and Safety Act 2011 (WHS Act)*, inspectors have the power to obtain information or require the production of documents and answers to questions. Where these powers are used, section 172 of the WHS Act abrogates the privilege against self-incrimination as follows:

#### ***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.*

12. 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 by written notice unless the circumstances require the inspector to have immediate access.<sup>22</sup> 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:<sup>23</sup>
  - 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.<sup>24</sup>

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<sup>15</sup> Section 23 of the RTI Act.

<sup>16</sup> Section 47(3) of the RTI Act.

<sup>17</sup> Section 44 of the RTI Act.

<sup>18</sup> Section 47(2)(a) of the RTI Act.

<sup>19</sup> Section 47(3)(a) and 48 of the RTI Act.

<sup>20</sup> Section 48(2) of the RTI Act.

<sup>21</sup> *Griffin v Pantzer* [2004] FCAFC 113 at [37].

<sup>22</sup> Section 171(2) of the WHS Act.

<sup>23</sup> Section 173(1) of the WHS Act.

<sup>24</sup> Section 269 is concerned with the WHS Act not affecting legal professional privilege.

## Submissions

13. OIR submitted<sup>25</sup> that in this matter, the *'Inspectors relied on sections 155 and 171 of the [WHS Act] to compel information from individuals and entities'* and access to the Compelled Information *'has been refused on the basis that this information was given under compulsion in abrogation of the privilege against self-incrimination and it is therefore exempt under the RTI Act.'*
14. The applicant submits<sup>26</sup> that disclosure of the refused information, including the Compelled Information, would assist him with understanding the circumstances surrounding his child's death, provide him with information for use in legal proceedings he has commenced and assist with improving safety awareness and preventing similar incidents in the future.

## Findings

15. I have considered the Compelled Information. As set out at paragraph 5, it comprises information obtained from witnesses during the investigation. Some of the information was obtained during interviews. I am satisfied that the remaining Compelled Information was provided in response to a notice issued under section 155 of the WHS Act. Having considered the Compelled Information, I am further satisfied that the inspector relied on the WHS Act provisions to obtain the Compelled Information from witnesses and complied with the requirements as set out at paragraph 12 when doing so.
16. For these reasons, I find that the Compelled Information meets the requirements for exemption under schedule 3, section 10(3) of the RTI Act and access may be refused on that basis.<sup>27</sup>
17. The exemptions in schedule 3 to the RTI Act do not require nor allow consideration of public interest factors. This is because, as noted at paragraph 9, Parliament has already determined that disclosure of these categories of information would be contrary to the public interest. If information falls within one of the categories of exempt information prescribed in schedule 3, a conclusive presumption exists that its disclosure would be contrary to the public interest, and no further consideration of public interest factors is required.<sup>28</sup> As I have found that the Compelled Information comprises exempt information, I cannot take into account the public interest factors raised by the applicant's submissions at paragraph 14.

## Contrary to public interest information

### Relevant law

18. Access to information may be refused under the RTI Act where its disclosure would, on balance, be contrary to the public interest.<sup>29</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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>25</sup> Submission dated 13 November 2024. I also note OIR's submission dated 17 March 2025 which confirmed that some information obtained by the inspector *'was not obtained under a compulsive power, but through voluntary statements'* and therefore was not captured by the compulsion exemption under schedule 3, section 10(3) of the RTI Act. These pages do not form part of the Compelled Information and were disclosed to the applicant subject to the redaction of identifying information of third parties, which is considered as part of the Third-party Information as set out at paragraph 5.

<sup>26</sup> Submission to OIR dated 21 October 2024 and submissions to OIC dated 24 January 2025 and 9 May 2025.

<sup>27</sup> Under section 47(3)(a) of the RTI Act.

<sup>28</sup> *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17].

<sup>29</sup> Sections 47(3)(b) and 49 of the RTI Act.

19. The RTI Act explains the steps that the decision-maker must take in deciding the public interest<sup>30</sup> and identifies factors in schedule 4 that may be relevant to deciding the balance of the public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.

### ***Applicant's submissions***

20. In summary, the applicant submits:<sup>31</sup>

- he has commenced proceedings in another jurisdiction against the education program provider and access to the information will be indispensable for these proceedings
- he believes that the primary cause of death was the lack of safety management by the education program provider and its employees and holding them accountable is essential
- the education program provider and its employees have access to information that he does not
- he is not seeking to disclose the personal information of third parties or identify any particular individual, if there are privacy concerns, names can be anonymised
- rather, he is seeking access to assist with understanding the circumstances that led to his child's death, including statements provided by witnesses present at the time of the incident which set out what happened, what was heard or said and what actions were taken before and after the incident
- access to the information will assist with improving safety awareness and preventing similar tragedies in the future
- proceedings in Queensland against an employee of the education program provider and a service provider have concluded; and
- he is open to restrictions being placed on the further dissemination of the information.

### ***Findings***

#### **Irrelevant factors**

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

#### **Factors favouring disclosure**

22. I accept that OIR must be transparent and accountable in how it deals with investigations of fatal workplace incidents. I am satisfied that several pro-disclosure factors relevant to enhancing OIR's transparency<sup>32</sup> arise in this case, as discussed below.
23. The Third-party Information comprises evidence that was provided to the inspector and considered in reaching the recommendations detailed in the investigation report regarding the incident. I accept that disclosing this type of information would advance the relevant public interest factors to some degree as it would provide the applicant with further insight into the nature and extent of information that was before the inspector for the purpose of making decisions in connection with the investigation. However, I have also taken into account the information already disclosed to the applicant by OIR.<sup>33</sup> I am satisfied that disclosure of that information has served to discharge the relevant public interest factors by providing a moderate level of transparency to OIR's processes and generally outlining how OIR dealt with the investigation. For these reasons, I consider

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<sup>30</sup> Section 49(3) of the RTI Act.

<sup>31</sup> Submission to OIR dated 21 October 2024 and submissions to OIC dated 24 January 2025 and 9 May 2025.

<sup>32</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>33</sup> For example, the Investigation Report (including the majority of the evidence before OIR, analysis of the evidence and recommendations as to alleged offences under the WHS Act) and statements and other material provided by third parties who have consented to disclosure.

the weight to be afforded to these factors as they relate to the Third-party Information is moderate.

24. Given the applicant's submissions, I have considered whether disclosing the Third-party Information could reasonably be expected to contribute to the administration of justice for the applicant.<sup>34</sup> In some circumstances, information can be accessed under the RTI Act for litigation purposes,<sup>35</sup> but only if the weight of the administration of justice factor is sufficient to outweigh other relevant considerations, such as privacy and flow of information as discussed below. Where disclosure of the information '*would assist [the applicant] to pursue [a] remedy, or to evaluate whether a remedy is available, or worth pursuing*'<sup>36</sup> this will be relevant to take into account in affording weight to this public interest factor.
25. In the circumstances, I am satisfied that the applicant has suffered a loss, it is open to him to pursue legal proceedings, and having access to all the remaining information would inform preparation of his case, and enable him to put additional information before the relevant court. For these reasons, I am satisfied the administration of justice factor applies. In affording weight to this factor, it is relevant to note that the applicant has commenced proceedings (in another jurisdiction) against the education program provider and its involved employees. This indicates that the applicant is already in possession of information required to commence proceedings and in this regard, I also note the information which has already been disclosed to the applicant, including the Investigation Report.<sup>37</sup> In the circumstances, I consider this factor has already been discharged to some degree and I therefore, afford it moderate weight in favour of disclosure.
26. I acknowledge the importance of providing the applicant with access to his child's personal information<sup>38</sup> held by OIR.<sup>39</sup> This factor carries significant weight in favour of disclosure. However, the portions of the applicant's child's personal information are so closely intertwined with the personal information of other people that they cannot be disclosed without also disclosing the personal information of others, raising factors favouring nondisclosure which I consider below.<sup>40</sup>

### **Factors favouring nondisclosure**

27. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm.<sup>41</sup> Further, a factor favouring nondisclosure arises if disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>42</sup>
28. As noted above, the Third-party Information comprises the personal information of witnesses which was obtained during the investigation of the incident. It comprises those individuals' personal accounts of and emotional reactions to events relevant to the incident. Those individuals have not consented to the information being disclosed. I consider that disclosure of the Third-party Information could reasonably be expected to prejudice the protection of their right to maintain a level of privacy in relation to their involvement in the investigation and cause a public interest harm by disclosing their

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<sup>34</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>35</sup> A relevant public interest consideration was identified and analysed by the Information Commissioner in *Willsford and Brisbane City Council* (1996) 3 QAR 368 (*Willsford*) at [17].

<sup>36</sup> *Willsford* at [17(c)].

<sup>37</sup> Including the information already released to the applicant. See footnote 33.

<sup>38</sup> '*Personal information*' is '*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*' – see definition in schedule 5 of the RTI Act and section 12 of the IP Act.

<sup>39</sup> Schedule 4, part 2, item 9 of the RTI Act.

<sup>40</sup> Discussed below at paragraphs 27-28.

<sup>41</sup> Schedule 4, part 4, section 6(1) of the RTI Act.

<sup>42</sup> Schedule 4, part 3, item 3 of the RTI Act.

personal information in a sensitive context. On this basis, I afforded significant weight to these two nondisclosure factors.

29. A further factor favouring nondisclosure arises where disclosure could reasonably be expected to prejudice the flow of information to a regulatory agency.<sup>43</sup> I accept that disclosing information voluntarily provided by individuals in relation to the investigation under the RTI Act, where there can be no restriction on its use, dissemination or republication<sup>44</sup>, could reasonably be expected to erode confidence in the investigation process and prejudice the flow of information from individuals who would otherwise provide relevant information. I am satisfied that this, in turn, could reasonably be expected to adversely impact OIR's ability to effectively conduct investigations of workplace incidents. On this basis, I afford significant weight to this nondisclosure factor.

### **Balancing the public interest**

30. I have had regard to the RTI Act's pro-disclosure bias<sup>45</sup> and Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.<sup>46</sup>
31. In this case, I have afforded moderate weight to factors favouring disclosure concerning OIR's accountability and ensuring transparency in its operations and decision-making, and the administration of justice for the applicant. I have also afforded significant weight to the applicant's ability to access his child's personal information. On the other hand, I have afforded significant weight to the factors favouring nondisclosure regarding personal information and privacy of other individuals, and the flow of information to OIR in the context of an investigation. Ultimately, I have found that the nondisclosure factors carry determinative weight in relation to the Third-party Information.
32. On balance, I am satisfied that the factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Third-party Information would, on balance, be contrary to the public interest and access to it may be refused on that basis.<sup>47</sup>

### **DECISION**

33. I vary<sup>48</sup> OIR's decision and find that access may be refused to:
- the Compelled Information under section 47(3)(a) as it comprises exempt information under section 48 and schedule 3, section 10(3) of the RTI Act; and
  - the Third-party Information under section 47(3)(b) of the RTI Act as it comprises contrary to public interest information under section 49 of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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

**Date: 25 August 2025**

<sup>43</sup> Schedule 4, part 3, item 13 of the RTI Act. See *Setschnjak and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 25 May 2012) at [24] and *Suskova and Council of the City of Gold Coast* [2015] QICmr 31 (27 November 2015) at [27]-[28].

<sup>44</sup> See *FLK v Information Commissioner* [2021] QCATA 46 at [17].

<sup>45</sup> Section 44 of the RTI Act.

<sup>46</sup> Section 47(2)(a) of the RTI Act.

<sup>47</sup> Under section 47(3)(b) of the RTI Act.

<sup>48</sup> Under section 110(1)(b) of the RTI Act.