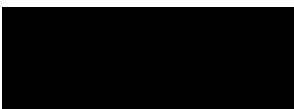


Decision and Reasons for Decision

Citation:	<i>Y28 and Queensland Building and Construction Commission [2026] QICmr 76 (14 May 2026)</i>
Application Number:	318839
Applicant:	Y28
Respondent:	Queensland Building and Construction Commission
Decision Date:	14 May 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - request for employment and disciplinary information of other individuals - neither confirm nor deny - prescribed information - contrary to public interest - section 55 of the <i>Right to Information Act 2009</i> (Qld)

DECISION

1. I affirm¹ the reviewable decision of Queensland Building and Construction Commission (**QBCC**) to neither confirm nor deny the existence of documents under section 55 of the *Right to Information Act 2009* (Qld) (**RTI Act**).
2. Nothing in this decision should be taken as confirming or denying the existence of documents requested by the applicant.
3. My reasons for the decision follow.



Joanne Kummrow
Information Commissioner

Date: 14 May 2026

¹ Under section 110(1)(a) of the RTI Act.

REASONS FOR DECISION

Background

4. The applicant applied² to QBCC under the RTI Act³ for access to the following:
 - (1) Regarding QBCC Officer [named person 1] employment status with the QBCC - all documents relating to current employment status, including any performance, conduct and/or disciplinary matter(s), and where relevant:
 - (a) If transferred or seconded outside the QBCC, the reasons for and contingent conditions;
 - (b) If completion of contract, the reasons for non-renewal and contingent conditions;
 - (c) If terminated, the reasons for and contingent conditions;
 - (d) Exit interview(s)/feedback with [named person 1].
 - (2) Regarding QBCC Officer [named person 2] employment status with the QBCC - all documents relating to current employment status, including any performance, conduct and/or disciplinary matter(s), and where relevant:
 - (a) If transferred or seconded outside the QBCC, the reasons for and contingent conditions;
 - (b) If completion of contract, the reasons for non-renewal and contingent conditions;
 - (c) If terminated, the reasons for and contingent conditions;
 - (d) Exit interview(s)/feedback with [named person 2].
5. QBCC decided⁴ under section 55 of the RTI Act to neither confirm nor deny the existence of the requested documents. The applicant applied to OIC for external review of QBCC's decision.⁵ On review, OIC conveyed a preliminary view to the applicant that section 55 of the RTI Act applied to his application.⁶ The applicant provided submissions to OIC contesting the application of section 55 of the RTI Act.⁷
6. In making this decision, I have had regard to information provided by the applicant and QBCC, relevant caselaw, and legislation. I have also taken into account the *Human Rights Act 2019* (Qld) (**HR Act**) particularly the right to seek and receive information.⁸ A decision-maker will be 'respecting' and 'acting compatibly with' this 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.

Relevant law

7. Section 55 of the RTI Act allows an agency to neither confirm nor deny the existence of requested information where any such information, if it did exist, would contain 'prescribed information'. 'Prescribed information' is defined¹⁰ to mean certain exempt information identified in schedule 3 of the RTI Act, and personal information the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
8. Section 55 of the RTI Act is intended to apply in situations where, due to the specific nature of the request, revealing that the agency does, or does not, hold documents in

² Access application dated 9 June 2025.

³ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. As the access application was made prior to 1 July 2025, references in this decision are to the RTI Act as in force prior to 1 July 2025 in accordance with the transitional provisions in Chapter 7, Part 9 of the RTI Act.

⁴ Decision dated 31 July 2025. This is the *reviewable decision* subject to external review.

⁵ External review application dated 15 August 2025.

⁶ OIC letter dated 22 January 2026.

⁷ Dated 6 March 2026.

⁸ Section 21(2) of the HR Act.

⁹ See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹⁰ In schedule 5 of the RTI Act.

response to an application, would reveal information to which an agency would usually be entitled to refuse access.

9. Determining the application of section 55 of the RTI Act essentially requires a decision maker to conduct a hypothetical public interest balancing exercise, making a judgment as to where the balance of the public interest would lie, were the requested information to exist. This involves a notional application of the public interest balancing test, as prescribed in section 49 of the RTI Act, including identifying public interest factors that would operate to favour disclosure and nondisclosure, assuming the existence of relevant information.¹¹
10. Section 55(4) of the RTI Act confirms that a decision under this provision is a decision refusing access under section 47 of the RTI Act.

Submissions

11. In the reviewable decision, QBCC outlined the reasons why it had decided that section 55 of the RTI Act applied, as follows:

The scope of your request concerns matters that would, if documents exist, involve sensitive employment-related information, including but not limited to:

- *Performance, conduct, or disciplinary issues;*
- *Employment conditions, contracts or termination details;*
- *Exit interviews or feedback, if any.*

This type of information would relate to identifiable individuals and their employment and would therefore constitute personal information. I am satisfied that confirming or denying the existence of such documents could reasonably be expected to disclose, or enable the inference of, sensitive personal or employment-related information about the individuals named. In the circumstances, I am also satisfied that:

- *You do not possess independent or publicly available evidence confirming the existence of any such documents;*
- *The requested information is not otherwise available in the public domain;*
- *Any confirmation or denial would reasonably be expected to reveal personal or employment related information about identified individuals;*
- *Such information would meet the definition of prescribed information under Schedule 4 of the RTI Act.*

12. The applicant made comprehensive submissions in response to OIC's preliminary view that section 55 of the RTI Act applied to his application.¹² I have not extracted the entirety of those submissions in these reasons, but note the following points raised by the applicant:

Relevant public interest factors favouring disclosure include: promoting open discussion of public affairs; enhancing accountability of a statutory regulator; revealing the reasons for government action; and revealing or preventing maladministration.

...

The public interest in the performance, conduct and/or disciplinary matter(s) of the officers, and transparency, accountability and integrity of government, is substantial. The right to

¹¹ *Nadel and Queensland Police Service* [2020] QICmr 19 (6 April 2020) at [15].

¹² Submissions dated 6 March 2026.

privacy of the officers cannot be elevated above their corrupt conduct and the corrupt conduct of the QBCC.

Any privacy interest in the mere fact that disciplinary documents exist is limited, particularly where the conduct occurred in a professional capacity within a public regulatory body.

Findings

13. Assuming the existence of the requested information, and having regard to the applicant's submissions, I have taken into account¹³ the following public interest factors favouring disclosure:
 - a. promote open discussion of public affairs and enhance QBCC's accountability¹⁴
 - b. reveal the reason for a government decision and background or contextual information that informed the decision¹⁵
 - c. allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official¹⁶; and
 - d. reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.¹⁷
14. The information requested about the named individuals, should any exist, is in relation to their employment, any disciplinary matters, and reasons why decisions were made in relation to their employment. Assuming the existence of such information, I accept that disclosure would reveal reasons for decisions made by QBCC in connection with the employment matters listed in the access application. In undertaking the hypothetical public interest balancing exercise, I afford this factor¹⁸ low weight. The nature of any such information, should it exist, would relate to decisions made in connection with the employment of specific named officers, as opposed to decisions associated with the performance of QBCC's regulatory functions that, in my view, would be deserving of higher weight.
15. The applicant submits that the requested information would reveal information about misconduct of the named individuals and/or QBCC. Assuming the existence of any such information, I accept that disclosure would enhance QBCC's accountability and transparency and allow inquiry into, or reveal, the alleged conduct. If such information existed, I would afford these public interest factors¹⁹ some weight given the importance of ensuring transparency and accountability in the conduct of a regulatory agency and how it manages misconduct. However, on the other hand, I consider that the public interest in disclosure of any such documents (assuming their existence) needs to be balanced with the right to privacy. Access to information under the RTI Act regarding an agency's handling of the conduct of specific named employees may be an unreasonable encroachment on the right to privacy of those employees, given the sensitive nature of workplace conduct documents and information.
16. Taking into account the specific wording of the access application, the naming of two individuals, and the particular type of employment information requested, I am satisfied that, if the information existed, it would comprise *personal information* to which the following public interest factors favouring nondisclosure would apply:

¹³ I have disregarded any irrelevant factors, including those listed in schedule 4, part 1 of the RTI Act.

¹⁴ Schedule 4, part 2, item 1 of the RTI Act.

¹⁵ Schedule 4, part 2, item 11 of the RTI Act.

¹⁶ Schedule 4, part 2, item 5 of the RTI Act.

¹⁷ Schedule 4, part 2, item 6 of the RTI Act.

¹⁸ Schedule 4, part 2, item 11 of the RTI Act.

¹⁹ Schedule 4, part 2, items 1, 5 and 6 of the RTI Act.

- prejudice the protection of other individuals' right to privacy;²⁰ and
 - cause a public interest harm by disclosing the personal information of other individuals.²¹
17. Generally, information about a public sector employee performing their day to day duties is considered to be routine work information to which the above factors do not apply (or which apply only to a limited degree due to the routine nature of the information). Assuming its existence, the requested information would not, however, be routine in nature. I am satisfied that a person's employment information forms part of their private sphere, and where such information is about a person's disciplinary history, performance, termination and/or secondment, it is inherently personal and sensitive to the individual concerned. If disclosed, it would cause a public interest harm and prejudice the individual's right to privacy. Given the particularly sensitive character of the requested employment information, I am satisfied that, if it existed, the relevant nondisclosure factors would apply to it and would carry significant weight.
 18. The applicant submits that he has information that connects the named individuals with QBCC employment at some point in time. While I acknowledge those submissions, I am satisfied that confirming or denying the existence of *any* information in response to the particular terms of the access application would reveal sensitive personal and private information about those individuals and their employment circumstances. I am not satisfied that the applicant has presented evidence that would serve to lessen the weight of the nondisclosure factors to any degree.
 19. For the reasons set out above, I am satisfied that, assuming the existence of the requested information, the public interest factors favouring nondisclosure would carry significant weight such that they would outweigh any factors favouring disclosure.
 20. On balance, disclosure would therefore be contrary to the public interest. As such, I find that the requested information, if it were to exist, would comprise *prescribed information* to which section 55 of the RTI Act applies.
 21. Paragraphs [4] to [20] above are the reasons for my decision at paragraph [1].

²⁰ Schedule 4, part 3, item 3 of the RTI Act.

²¹ Schedule 4, part 4, section 6 of the RTI Act.