



Decision and Reasons for Decision

Citation: *6ZJ3HG and Department of Environment and Heritage Protection; OY76VY (Third Party) [2016] QICmr 8 (24 February 2016)*

Application Numbers: 312394 and 312531

Applicant: 6ZJ3HG

Respondent: Department of Environment and Heritage Protection

Third Party: OY76VY

Decision Date: 24 February 2016

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - agency consulted applicant as relevant third party under section 37 of the *Right to Information Act 2009* (Qld) - applicant objected to disclosure - whether applicant has established that a decision not to disclose is justified - section 87(2) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - applicant contends certain information is not within scope of access applications - whether applicant can raise scope as an objection to release of information - section 37 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - information relating to a meeting held about Toogoom beach erosion - whether the information comprises exempt information - whether disclosure could reasonably be expected to endanger a person's life or physical safety, result in a person being subjected to a serious act of harassment or intimidation or prejudice a person's fair trial or the impartial adjudication of a case - section 47(3)(a) and schedule 3, sections 10(1)(c), 10(1)(d) and 10(1)(e) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to a meeting held about Toogoom beach erosion - whether disclosure would,

on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. By application dated 2 December 2014 (**First Application**), the access applicant (the **third party** in this external review) applied to the Department of Environment and Heritage Protection (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for information relating to:
 - a meeting held by the then Minister for Environment and Heritage Protection on 22 May 2013 to discuss Toogoom beach erosion (**Toogoom meeting**), whether created prior to, during or after the Toogoom meeting; and
 - any subsequent meetings held to discuss Toogoom beach erosion and/or erosion control structures on Toogoom beach.
2. The Department located 103 pages of information responsive to the First Application. The Department consulted with an individual (the **applicant** in this external review) under section 37 of the RTI Act in respect of the Department's proposed release of information in 93 pages, seeking the applicant's views as to possible disclosure of that information to the third party.¹
3. The applicant objected to the Department's proposed disclosure of particular information in the 93 pages and also advised that he objected to the disclosure of any information responsive to the First Application. The Department accepted some of the applicant's objections and decided² to release the 93 pages to the third party, subject to the deletion of personal information³ appearing in 53 pages.
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision issued to the applicant regarding the First Application (**First External Review**). In the course of the review, the third party was joined as a participant in the review.⁴
5. The third party lodged a further access application with the Department on 18 March 2015 (**Second Application**) seeking access to the documents held by the Department that were responsive to two earlier access applications made by the third party to the then Minister for Environment and Heritage Protection for information relating to the Toogoom meeting (**Earlier Applications**).⁵
6. The Department located 21 pages of information responsive to the Second Application. The Department again consulted with the applicant under section 37 of the RTI Act in respect of the proposed release of information in those pages, seeking the applicant's views as to possible disclosure of that information to the third party.

¹ The Department did not consult with the applicant regarding the release of the information in the remaining 10 located pages. While the applicant made submissions to OIC regarding these 10 pages, they are not the subject of the Department's decision to the applicant regarding the First Application and OIC has no jurisdiction to consider them on external review.

² By decision to the applicant dated 27 February 2015.

³ Comprising health information, signatures and mobile telephone numbers of government employees and the names, residential addresses, personal email addresses, and telephone numbers of some other individuals.

⁴ Under section 89(3) of the RTI Act.

⁵ The information sought in the Earlier Applications was the subject of external reviews 312162 and 312194. These external reviews were finalised on the basis that, with the change of government and consequent change of ministers following Queensland's 2015 State General Election, the documents sought ceased to be documents of a Minister for the purpose of the RTI Act.

7. The applicant objected to disclosure of most of the information in the 21 pages; however, the Department decided⁶ to release the 21 pages to the third party, subject to the deletion of personal information⁷ appearing in 12 pages.
8. The applicant applied to the OIC for external review of the Department's decision issued to the applicant regarding the Second Application (**Second External Review**).⁸
9. For the reasons set out below, I affirm the Department's decisions and find that there is no basis under the RTI Act to refuse access to the Information in Issue.

Background

10. Significant procedural steps relating to the two external reviews are set out in the Appendix.

Reviewable decision

11. The decisions under review are the Department's decisions dated 27 February 2015 and 24 July 2015.

Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

13. The **Information in Issue** comprises:
 - for the First External Review—information appearing on 93 pages;⁹ and
 - in the Second External Review—information appearing on 21 pages.
14. The applicant objects to disclosure of the entirety of the information on the pages in question.
15. During the external review:
 - the third party advised OIC that access to the names, residential addresses, email addresses and telephone numbers of private citizens was not sought;¹⁰ and
 - the Department and the third party confirmed they accepted OIC's view that access could be refused to a small amount of additional information,¹¹ as it comprised the applicant's personal information.¹²
16. Accordingly, the Information in Issue can generally be described as information, apart from the excluded personal information identified in paragraph 15 above, relating to the

⁶ By decision to the applicant dated 24 July 2015.

⁷ Comprising similar types of information to that set out in footnote 3 above.

⁸ The applicant requested that OIC undertake the review in conjunction with the review of the Department's decision regarding the First Application.

⁹ Being pages 1-30 of the 30 pages in File A and pages 3-11, 17-53 and 57-73 of the 73 pages in File B.

¹⁰ By telephone on 11 June 2015 and 12 October 2015.

¹¹ Being pages 4, 6 and 7 in File A in the First External Review and parts of pages 7, 8, 11, 20 and 21 in the Second External Review.

¹² The Department and the third party confirmed this by telephone on 20 January 2016 and 15 February 2016, respectively. As this issue was resolved during the review process, it is not addressed in these reasons for decision.

Toogoom meeting, including some information submitted to the then Minister by a private citizen wanting to bring to the Minister's attention to possible options to protect the foreshore at Toogoom from further erosion.

Onus

17. In its decisions regarding the two applications, the Department determined that the Information in Issue should be disclosed to the third party. As the decisions under review are disclosure decisions,¹³ the applicant bears the onus of establishing that a decision not to disclose the Information in Issue is justified or that the Information Commissioner should give a decision adverse to the third party (as the access applicant).¹⁴

Issue for determination

18. Under the RTI Act, a person has a right to be given access to documents of an agency.¹⁵ An agency should decide to give access to information unless giving access would, on balance, be contrary to the public interest.¹⁶ There are some limitations on the right of access, including grounds for refusal of access.¹⁷
19. The applicant provided OIC with a number of submissions regarding grounds for refusal of access to the Information in Issue.¹⁸ I have carefully considered those submissions, including the content of various websites and publications provided by the applicant. In summary, the applicant submits the Information in Issue should not be disclosed because:
- parts of the Information in Issue are not relevant to the scope of the First and Second Applications
 - the Information in Issue comprises exempt information, on the basis that its disclosure could reasonably be expected to:
 - result in a person being subjected to a serious act of harassment or intimidation
 - endanger a person's life or physical safety; and/or
 - prejudice the impartial adjudication of a case; and/or
 - disclosing the Information in Issue would, on balance, be contrary to the public interest.
20. In order to determine whether the applicant has discharged the onus of establishing that the Information in Issue should not be disclosed, I will address each of these submissions in turn.
21. The applicant's submissions also address the applicant's dissatisfaction with the consultation process undertaken in respect of the First and Second Applications and the applicant's belief that the Information in Issue is false and misleading.¹⁹ To the

¹³ 'Disclosure decision' is defined in section 87(3) of the RTI Act as 'a decision to disclose a document or information contrary to the views of a relevant third party obtained under section 37' of the RTI Act.

¹⁴ Section 87(2) of the RTI Act.

¹⁵ Section 23 of the RTI Act.

¹⁶ Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.

¹⁷ Set out in section 47(3) of the RTI Act.

¹⁸ As set out in the Appendix. The applicant made a number of submissions to OIC objecting to the release of the applicant's name in the Information in Issue but as the names of private citizens are not in issue (as noted at paragraph 15 above), these submissions are not addressed in this decision.

¹⁹ OIC does not have jurisdiction to make any determination about the accuracy of the Information in Issue.

extent the applicant's submissions are relevant to the issues for determination, I have addressed them below.

Information irrelevant to scope

22. The Department consulted the applicant about the likely release of the Information in Issue to the third party under section 37 of the RTI Act. This provision permits a consulted party to object to the release of information under the RTI Act. However, the grounds for objection which a consulted party may raise under this provision are limited.
23. Section 37 of the RTI Act provides that an agency may give access to a document that contains information the disclosure of which may reasonably be expected to be of concern to a government, agency or person only if the agency has taken the steps that are reasonably practicable to obtain the views of the relevant third party about whether:
 - the document is a document to which the RTI Act does not apply; or
 - the information is exempt information or contrary to the public interest information.
24. In summary, the applicant submits that some of the Information in Issue is not relevant to the scope of the First and Second Applications. The applicant's submissions about relevance to scope were made with reference to pages 4, 6 and 7 in the First External Review and pages 19-21 in the Second External Review.²⁰ After this submission was made, the Department and third party accepted that some of the information raised by the applicant—namely, pages 4, 6 and 7 in the First External Review and parts of pages 20-21 in the Second External Review—may be refused.²¹ It remains necessary to consider the applicant's submissions about relevance to scope regarding the remaining information in question—that is, page 19 and parts of pages 20-21 in the Second External Review.
25. I have carefully considered the application of section 37 of the RTI Act and I am satisfied that this provision does not permit the applicant to object to the disclosure of the Information in Issue on the grounds that information is outside the scope of, or irrelevant to, the access applications. Given the wording of section 37 of the RTI Act, I consider that an objection under that section must be limited to whether the document is a document to which the RTI Act does not apply or whether the relevant information is exempt information or contrary to the public interest information.
26. In any event, I have carefully considered page 19 and parts of pages 20-21 in the Second External Review in light of the terms of the applicant's applications. I am satisfied that this information formed part of the information collated for the Toogoom meeting, located as responsive to the Earlier Applications, and therefore responds to the terms of the Second Application.

Exempt information

27. The RTI Act permits an agency to refuse access to documents to the extent that they comprise exempt information.²² Relevantly in these reviews, information will be exempt if its disclosure could reasonably be expected to:

²⁰ In submissions to OIC dated 17 March 2015 and submissions in response to Department's third party consultation dated 24 May 2015 respectively.

²¹ See paragraph 15 above.

²² Sections 47(3)(a) and 48 of the RTI Act.

- result in a person being subjected to a serious act of harassment or intimidation²³
- endanger a person's life or physical safety;²⁴ or
- prejudice the impartial adjudication of a case.²⁵

Serious act of harassment or intimidation

28. In relation to the serious harassment and intimidation exemption, Thomas J of the Queensland Civil and Administrative Tribunal observed as follows in the matter of *Watson v Office of the Information Commissioner Queensland & Ors*:²⁶

For the exemption to apply, it must be reasonably expected that a person would be subject to a serious act [of] harassment or intimidation as a result of the disclosure of the information, rather than independently or from any other circumstance.

29. Accordingly, for this exemption to apply, I must be satisfied that:

- there is a reasonable expectation of harassment and intimidation arising as a result of disclosure,²⁷ rather than from other circumstances;²⁸ and
- the expected harassment or intimidation is serious in nature.

30. The term '*could reasonably be expected to*' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,²⁹ nor merely a possibility.³⁰ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.³¹ It is not necessary for a decision-maker '*to be satisfied upon a balance of probabilities*' that disclosing the document will produce the anticipated prejudice, or, in this case, serious harassment or intimidation.³²

31. Factors that might be relevant in considering whether an event could reasonably be expected to occur include, but are not limited to:³³

- past conduct or a pattern of previous conduct
- nature of the information in issue
- nature of the relationship between the parties and/or relevant third parties; and
- relevant contextual and/or cultural factors.

32. The RTI Act does not define harassment or intimidation. Therefore, the terms are given their ordinary meanings.³⁴ In this regard, the Information Commissioner has previously accepted³⁵ the following definitions:

²³ Schedule 3, section 10(1)(d) of the RTI Act.

²⁴ Schedule 3, section 10(1)(c) of the RTI Act.

²⁵ Schedule 3, section 10(1)(e) of the RTI Act.

²⁶ [2015] QCATA 095 (*Watson*) at [19].

²⁷ As noted in *Watson* and also as discussed by OIC in *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*) at [191]. The decision in *Sheridan* concerned section 42(1)(ca) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as this provision. Therefore, the Information Commissioner's findings in *Sheridan* are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

²⁸ *Murphy and Treasury Department* (1995) 2 QAR 744 (*Murphy*) at [54] and *Seven Network (Operations) Limited and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at [19].

²⁹ *Attorney-General v Cockcroft* (1986) 64 ALR 97 (*Cockcroft*) at 106.

³⁰ *Murphy* at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

³¹ *Murphy* at [45]-[47].

³² *Cockcroft* at 106, cited in *Sheridan* at [192].

³³ *Sheridan* at [193] and *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) (*Richards*) at [19].

³⁴ *Sheridan* at [188].

³⁵ *Richards* at [13] and *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13] applying the *Macquarie Dictionary Online* (Fourth Edition) definitions referred to in *Sheridan* at [194]-[195].

- 'harass' includes 'to trouble by repeated attacks, ... to disturb persistently; torment'; and
- 'intimidate' includes 'to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear'.³⁶

33. Also, the exemption is not invoked if the expected harassment or intimidation does not meet the serious threshold. The exemption's reference to a '**serious act of harassment or intimidation**' indicates that it was Parliament's intention, when passing this provision, that some degree of low level harassment or intimidation would be tolerated before the exemption could be invoked.³⁷

Analysis

34. The applicant's submissions raise **Past Conduct** directed at the applicant which can generally be described as:

- physical presence by a number of individuals in front of the applicant's residence and, in some instances, the taking of photographs or video recordings by those individuals
- certain individuals raising the prospect of legal proceedings against the applicant
- persons disseminating, in the community, negative views regarding the applicant's alleged actions in relation to the erosion control structure built at Toogoom (**Rock Wall**)
- commentary in the comments section of an online local newspaper; and
- commentary and/or making documents available by hyperlinks on websites published by certain individuals.

35. In summary, the applicant submits that the Past Conduct amounts to harassment and intimidation (including verbal abuse and defamation) and disclosure of the Information in Issue will result in the reoccurrence of the Past Conduct including, with respect to the last mentioned type of Past Conduct, publication of the Information in Issue.

36. On consideration of the submissions and evidence provided by the applicant,³⁸ I accept that there is a pre-existing acrimonious relationship between certain other individuals and the applicant arising as a consequence of differing views regarding the Rock Wall.

37. The applicant submits³⁹ there is a '*long pattern of previous and continuing conduct of harassment and intimidation*' and '*[t]he intimidation and harassment ... continues on a regular basis.*' In these circumstances, even if I were to accept the entirety of the applicant's submissions regarding the occurrence of Past Conduct, I consider that there is insufficient evidence to be satisfied that all of the types of Past Conduct listed above could reasonably be expected to reoccur **as a result of** disclosing the Information in Issue. On the information before me, I am unable to identify a correlation or nexus between disclosure of the Information in Issue and the reoccurrence of the first four of the five types of Past Conduct listed at paragraph 34 above.⁴⁰

³⁶ *Sheridan* at [194]-[195].

³⁷ *Sheridan* at [187].

³⁸ Including photographs and pages from websites.

³⁹ Submission dated 17 March 2015.

⁴⁰ On external review, the third party raised a matter which was relevant to the consideration of whether a certain type of the Past Conduct could reasonably be expected to reoccur. Due to its nature, section 108(3) of the RTI Act prevents me from disclosing the raised matter in this decision. However, in considering whether this type of Past Conduct could reasonably be expected to reoccur, I have taken into account the matter raised by the third party and the applicant's response to it.

38. In other words, on the evidence provided, I consider that such Past Conduct may, in all likelihood, occur or reoccur regardless of whether or not the Information in Issue is disclosed.⁴¹ There is insufficient evidence before me to conclude that disclosing the Information in Issue, rather than the nature of the pre-existing relationship between relevant parties, could reasonably be expected to cause a reoccurrence of these types of Past Conduct.
39. However, in relation to Past Conduct involving making documents available by hyperlinks on websites published by certain individuals, having examined pages from websites identified by the applicant, I accept that this has previously occurred. Further, I am satisfied that, if the Information in Issue is disclosed, it could reasonably be expected to prompt a reoccurrence of this Past Conduct.
40. The applicant submits⁴² that the Past Conduct far exceeds the description of what constitutes a serious act of harassment and intimidation in *Richards*.⁴³ In that case, the conduct complained of involved direct telephone contact with Council staff and elected representatives outside of work hours and implicit and explicit threats of violence against and those individuals and their families. By contrast, the Past Conduct does not involve direct contact with or threats of violence against the applicant or the applicant's family.
41. The issue of information being discussed or made available on websites was considered in OIC's decisions in *Mathews*⁴⁴ and *Bowmaker*⁴⁵. In *Mathews*, the Information Commissioner found that:⁴⁶

The posting of offensive commentary on the internet might not, by itself, be enough to reach the threshold of a 'serious act of harassment or intimidation'. But the malicious nature of the applicant's website including its stated purpose, together with the impact that it has had on the individuals it targets, bring me to the conclusion that this website meets the threshold.

42. By contrast, in *Bowmaker*, the Assistant Information Commissioner acknowledged that whilst the applicant would, in all likelihood, publish the information in issue if it was disclosed, and in doing so, cause some distress to the third party, this conduct would not amount to a serious act of harassment or intimidation of the nature discussed in *Mathews*.⁴⁷
43. In this case, I am unable to conclude that the conduct involving the publication of documents on certain websites meets the threshold of **serious** harassment or intimidation. The applicant submits that the Past Conduct experienced by the applicant and the applicant's family has been extremely detrimental to their health and lives.⁴⁸ I acknowledge the significance of these submissions for the applicant and the applicant's family, and recognise that the Past Conduct raised by the applicant has felt very serious for them. However, on an objective assessment of the pattern of Past Conduct involving the publication of documents on websites identified by the applicant, and

⁴¹ See *Watson* at [22].

⁴² Submissions dated 17 March 2015.

⁴³ At [13].

⁴⁴ *Mathews and University of Queensland* (Unreported, Queensland Information Commissioner, 21 September 2012) (*Mathews*).

⁴⁵ *Bowmaker Realty and Department of Justice and Attorney-General; Andrews* [2015] QICmr 19 (*Bowmaker*).

⁴⁶ *Mathews* at [37].

⁴⁷ *Bowmaker* at [31].

⁴⁸ The applicant's submissions provide specific details in this regard. Due to the nature of these submissions, section 108(3) of the RTI Act prevents me from providing further detail about them in this decision.

taking into account the nature of the information published on these websites,⁴⁹ I am satisfied that this conduct is not sufficiently weighty, critical or concerning to meet the legal threshold to amount to serious harassment or intimidation for the purpose of the exemption.

44. Accordingly, based on the information before me, and for the reasons set out above, I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(d) of the RTI Act.

Endanger a person's life or physical safety

45. The Information Commissioner has previously confirmed that the endangering life or safety exemption requires:⁵⁰

...an evaluation of the expected consequences of disclosure in terms of endangering (i.e. putting in danger) a person's life or physical safety, rather than in terms of the actual occurrence of physical harm...

46. The question of whether disclosure of information could reasonably be expected to endanger a person's life or physical safety is to be objectively judged, in light of all relevant evidence.⁵¹ A source of danger to individuals must be in contemplation and there must be evidence of a risk that disclosure of the Information in Issue could reasonably be expected to endanger the life or physical safety of individuals.⁵²

Analysis

47. In summary, the applicant submits that disclosure of the Information in Issue will result in reoccurrence of the Past Conduct, and that such reoccurrence will cause further ill-health to the applicant and the applicant's family, thereby endangering their lives and physical safety.
48. The applicant's submissions identify very serious health issues currently facing the applicant and the applicant's family. The applicant considers that the Past Conduct has been extremely detrimental to their health and lives.⁵³ Further, the applicant submits the Past Conduct has made the applicant's family 'fearful and overawed' and created an elevated level of stress for the applicant's family, causing sleep deprivation and psychological ill-health, and contributing to other health issues. The applicant also states that the external review process and the proposed release of the Information in Issue have caused additional stress to the applicant and the applicant's family.
49. As for the harassment and intimidation exemption discussed above, for the Information in Issue to be exempt under this exemption, the expectation of endangerment must arise as a result of the disclosure, rather than from other circumstances.⁵⁴ In other words, there must be a direct connection between disclosure of the Information in Issue and a reasonable risk of the endangerment to a person's life or physical safety.

⁴⁹ Most of which does not include the applicant's name.

⁵⁰ See *Murphy* at [52] where the Information Commissioner referred to *Department of Agriculture and Rural Affairs v Binnie* [1989] VR 836 at 844, with approval. See also *IJG and Department of Health* (Unreported, Queensland Information Commissioner, 25 August 2010) at [19].

⁵¹ *Deputy Premier and Minister for State Development, Infrastructure and Planning and the Premier; Mulherin, MP (Third Party)* [2014] QICmr 41 (*Mulherin*) at [18].

⁵² *Mulherin* at [19] citing *Murphy* at [47].

⁵³ As noted at footnote 47 above, the applicant's submissions provide specific details in this regard, but section 108(3) of the RTI Act prevents me from providing further detail about them in this decision.

⁵⁴ See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31] citing *Murphy* at [54].

50. In terms of whether the Past Conduct could reasonably be expected to reoccur **as a result** of disclosing the Information in Issue, I repeat and rely on my observations at paragraphs 37 to 39 above.
51. In any case, on an objective assessment of the various types of Past Conduct, I am unable to conclude that any of them could endanger a person's life or physical safety. While I acknowledge the seriousness of the health issues facing the applicant's family and accept that the Past Conduct has felt very serious for the applicant and the applicant's family, I am satisfied that there is insufficient evidence before me to provide support for an objective finding that such conduct could endanger the life or physical safety of the applicant, the applicant's family or any other person.
52. Therefore, based on the information before me, and for the reasons set out above, I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(c) of the RTI Act.

Prejudice impartial adjudication of a case

53. In summary, the applicant submits⁵⁵ that the Information in Issue contains false, misleading and biased information, and its disclosure could jeopardise possible legal proceedings that may involve the applicant. Given these submissions, it is necessary to consider whether disclosure of the Information in Issue could reasonably be expected to prejudice the impartial adjudication of a case.⁵⁶
54. The Information Commissioner has previously observed that the phrase '*impartial adjudication of a case*' is broad enough to refer to any kind of case involving a dispute between parties which is to be formally adjudicated by an impartial decision-maker.⁵⁷
55. It is my understanding that the applicant considers that the Information in Issue contains false, misleading and biased information, and that this could be used against the applicant in legal proceedings. However, the applicant has not identified any case to be adjudicated, either currently on foot or reasonably anticipated, which the applicant considers could be impacted by disclosing the Information in Issue. In these circumstances, I am unable to identify the nature and extent of any prejudice to any such proceedings.
56. Further, even if there were proceedings requiring formal adjudication currently on foot or reasonably anticipated, I do not consider it reasonable to expect that a judicial officer or other impartial decision-maker in a legal proceeding would be swayed in their views by the disclosure of Information in Issue. If that information was relevant to the adjudication of a case or legal proceedings involving the applicant, I consider the applicant's concerns regarding the accuracy of the information would necessarily be raised and examined in the interests of a fair hearing of the issues.
57. Given these considerations, I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(e) of the RTI Act.

⁵⁵ Submission dated 17 March 2015.

⁵⁶ Schedule 3, section 10(1)(e) of the RTI Act.

⁵⁷ *Uksi and Redcliffe City Council; Cook (Third Party)* (1995) 2 QAR 629, at [34]-[35]. This decision related to the equivalent provision in section 42(1)(d) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(e) of the RTI Act is drafted in substantially the same terms as this provision. Therefore, the Information Commissioner's findings in *Uksi* are relevant in interpreting schedule 3, section 10(1)(e) of the RTI Act. See also *Campbell and North Burnett Regional Council; Melior Resources Incorporated (Third Party)* [2016] QICmr 4 at [25].

Contrary to public interest information

58. An agency may refuse access to information if its disclosure would, on balance, be contrary to the public interest.⁵⁸ In assessing the balance of the public interest, the RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁵⁹ and explains the steps that a decision-maker must take⁶⁰ in deciding the public interest as follows:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Analysis

Irrelevant factors

59. The applicant has raised concerns:

- about how the third party may construe parts of the Information in Issue
- about how the third party will assume the applicant was aware of certain information appearing in the Information in Issue, which was never relayed to the applicant; and
- that the Information in Issue will be used to attack the applicant's character.

60. The RTI Act specifically precludes a decision maker from taking into account any 'mischievous conduct by the applicant'⁶¹ in deciding the public interest. Further, the RTI Act also prevents me from taking into account the likelihood of the applicant misinterpreting or misunderstanding the information.⁶² I have not taken into account these, or any other, irrelevant factors.

Accountability and transparency

61. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability⁶³
- contribute to positive and informed debate on important issues or matters of serious interest⁶⁴
- 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;⁶⁵ and

⁵⁸ Sections 47(3)(b) and 49 of the RTI Act. 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.

⁵⁹ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive; in other words, factors that are not listed may also be relevant.

⁶⁰ Section 49(3) of the RTI Act.

⁶¹ Schedule 4, part 1, item 3 of the RTI Act.

⁶² Schedule 4, part 1, item 2 of the RTI Act.

⁶³ Schedule 4, part 2, item 1 of the RTI Act.

⁶⁴ Schedule 4, part 2, item 2 of the RTI Act.

⁶⁵ Schedule 4, part 2, item 3 of the RTI Act.

- reveal the reason for a government decision and any background or contextual information that informed the decision.⁶⁶

62. The applicant submits:

*Only malicious and negative ill-informed debate would be possible, there are no important issues or matters of serious interest.*⁶⁷

*There is no "public interest" to be served by releasing this information. The only local Toogoom people showing any interest are [the access applicants] and less than five of their associates who are politically motivated. The remainder of the community have no interest whatsoever in the events that led up to the saving of 18 properties.*⁶⁸

63. In this case, the issue the community brought before government was the threat of sea water inundating homes. This is an important issue and one which was of serious interest to the community, as evidenced by differing community views recorded in the local media and on the various websites referenced in the applicant's submissions. The government agencies charged with the responsibility of deciding the course of action to be taken to address an issue of such importance should be accountable to the public regarding the decisions they make and the scope of their considerations in reaching their decisions—including any options they have considered or which have been put to them.
64. I consider that disclosure of the Information in Issue would facilitate public scrutiny of the decisions made by the Department in performing its regulatory duties relating to the Rock Wall. For this reason, I am satisfied that disclosure of the Information in Issue would enhance the accountability and transparency of the Department and Minister's Office, so that the community is assured that the decision reached was not the result of any undue influence and was fair, taking into account all relevant factors and options.
65. The measures taken by government agencies to comply with their decision making obligations is a matter of serious interest to the community. Therefore, I find that the public interest in enhancing accountability, informing the community of the decision making processes of government, revealing the reason for the government decisions made and contributing to positive and informed debate on important issues, carry significant weight in favour of disclosure of the Information in Issue.

Personal information and privacy

66. In summary, the applicant submits that certain information in the Information in Issue comprises the applicant's personal information⁶⁹ and that disclosing that personal information could reasonably be expected to prejudice the protection of the applicant's right to privacy⁷⁰ and cause a public interest harm by disclosing the applicant's personal information.⁷¹
67. As noted in paragraphs 15 and 16 above, the Information in Issue does not contain the names, residential addresses, email addresses or telephone numbers of private

⁶⁶ Schedule 4, part 2, item 11 of the RTI Act.

⁶⁷ Submission dated 17 March 2015.

⁶⁸ Submission dated 1 December 2015.

⁶⁹ Section 12 of the IP Act defines personal information 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'.

⁷⁰ Under schedule 4, part 3, item 3 of the RTI Act.

⁷¹ Under schedule 4, part 4, item 6 of the RTI Act.

citizens or other personal information about the applicant that the Department and third party accepted could be refused.

68. For this reason, I consider that the applicant's identity is not apparent from the Information in Issue. Further, I am satisfied that the applicant's identity would not be reasonably ascertainable to the vast majority of individuals in the community, should they happen to view the Information in Issue.⁷² However, I accept the applicant's identity may be reasonably ascertainable to a very small number of individuals, including the third party, whose strong interest in and detailed knowledge of issues surrounding Rock Wall at Toogoom may enable them to identify that certain information in the Information in Issue related to applicant. In such circumstances, I find that the two public interest factors arise for consideration, but should be afforded limited weight.

Harassment and intimidation

69. As noted at paragraphs 34 to 44 above, I do not accept the applicant's submission that disclosure of the Information in Issue will result in serious harassment and intimidation. However, given that the public interest factors listed in the RTI Act is not exhaustive, I consider that the applicant's submissions regarding harassment and intimidation also raise a public interest factor favouring nondisclosure requiring consideration in the context of the public interest test—that is, that whether disclosure could reasonably be expected to result in a person being subjected to lower level (that is, less than serious) harassment and intimidation.
70. In terms of whether the various types of Past Conduct that the applicant considers comprise harassment and intimidation could reasonably be expected to reoccur as a result of disclosing the Information in Issue, I repeat and rely on my observations at paragraphs 37 to 39 above. Accordingly, I am only able to discern a correlation or nexus between disclosure of the Information in Issue and the reoccurrence of one of the types of Past Conduct—namely, the Past Conduct involving making documents available by hyperlinks on websites published by certain individuals.
71. From examination of pages from websites identified by the applicant, I am satisfied that such Past Conduct has previously occurred. Further, on an objective assessment of this type of Past Conduct, I consider that it may reasonably be construed as disparaging and at times unpleasant, irksome and annoying, and fall within the range of low level harassment or intimidation. Consequently, I find that a public interest factor favouring nondisclosure of the Information in Issue arises on the basis that disclosure could reasonably be expected to result in such harassment or intimidation. I consider that limited weight should be afforded this factor, given the less than serious nature of the conduct, and given that the applicant's identity is not apparent in the Information in Issue, nor reasonably ascertainable to the community generally.

Negative impact on life or physical safety

72. As noted at paragraphs 47 to 52 above, I do not accept the applicant's submission that disclosure of the Information in Issue will endanger a person's life or physical safety. However, given that the public interest factors listed in the RTI Act is not exhaustive, I consider that the applicant's submissions regarding impact on life and safety also raise a public interest factor favouring nondisclosure requiring consideration in the context of the public interest test—that is, whether disclosure could reasonably be expected to negatively impact on a person's life or physical safety.

⁷² In this regard, I note that much of the information published on the websites does not overtly identify the applicant.

73. Again, as noted in paragraphs 37 to 39 above, I am only able to discern a correlation or nexus between disclosure of the Information in Issue and the Past Conduct involving making documents available by hyperlinks on websites published by certain individuals.
74. On an objective assessment of this type of Past Conduct, I consider that its reoccurrence is likely to have some negative impact the lives and health of the applicant and the applicant's family. However, given that the applicant's identity is not apparent in the Information in Issue, nor reasonably ascertainable to most of the community, I consider that limited weight should be afforded this factor.

Impede administration of justice

75. As noted at paragraph 53 above, the applicant submits that disclosing the Information in Issue to the third party will prejudice the applicant's position in potential legal proceedings.⁷³ Given these submissions, I have considered whether disclosing the Information in Issue could reasonably be expected to impede the administration of justice generally, including procedural fairness, or for a person.⁷⁴
76. I have carefully considered the nature of the Information in Issue and the context in which it appears. It relates to a meeting, that occurred in the past, regarding the erosion issue at Toogoom. I am unable to identify how disclosure of that information would impede or prejudice any future legal proceedings that may involve the applicant.
77. The applicant has not identified any reasonably anticipated or even merely possible proceedings which could be impacted by disclosing the Information in Issue. Further, even if proceedings involving consideration of the Information in Issue do eventuate, it is reasonable to expect that the applicant's concerns regarding the accuracy of this information would arise and be addressed in such proceedings.
78. For this reason, I am not persuaded by the applicant's submission and I do not consider that these nondisclosure factors apply to the Information in Issue.

Balancing the public interest

79. I am satisfied that the significant weight of the pro-disclosure factors outweighs the limited weight of the nondisclosure factors related to privacy and personal information, lower level harassment or intimidation and negative impact on life or physical safety.
80. Based on the information before me, and for the reasons set out above, I am not satisfied that disclosing the Information in Issue would, on balance, be contrary to the public interest.

Conclusion

81. For the reasons outlined above, I am satisfied that:

- section 37 of the RTI Act does not permit the applicant to object to disclosure of the Information in Issue on the grounds that information falls outside the scope of the First and Second Applications;⁷⁵ and

⁷³ Whether commenced by or against the applicant.

⁷⁴ Schedule 4, part 3, items 8 and 9 of the RTI Act.

⁷⁵ In any event, in this case, I am satisfied that the Information in Issue is relevant to the terms of the First and Second Applications.

- the applicant has not discharged the onus, imposed by section 87(2) of the RTI Act, of establishing that the Information in Issue comprises:
 - exempt information; or
 - contrary to the public interest information.

82. Accordingly, I am not satisfied that access to the Information in Issue can be refused under the RTI Act.

DECISION

83. I affirm the Department's decisions and find that there is no basis under the RTI Act to refuse access to the Information in Issue.

84. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

A Rickard
Acting Assistant Information Commissioner

Date: 24 February 2016

APPENDIX

Significant procedural steps

Date	Event
2 December 2014	The Department received the First Application.
2 February 2015	The Department consulted the applicant about proposed disclosure of information to the third party (as access applicant).
9 February 2015	The Department received the applicant's objections to the proposed disclosure.
12 February 2015	The Department issued its decision to the third party regarding the First Application.
27 February 2015	The Department issued its decision to the applicant regarding the First Application.
3 March 2015	OIC received the First External Review. OIC notified the Department that the First External Review had been received and requested relevant procedural documents by 10 March 2015.
5 March 2015	OIC received the requested documents from the Department.
6 March 2015	OIC received additional documents from the Department.
11 March 2015	OIC notified the applicant and the Department that it had accepted the First External Review. OIC requested the Department provide a copy of the documents in issue by 20 March 2015.
12 March 2015	OIC received the requested documents from the Department.
17 March 2015	OIC received the submissions from the applicant regarding the First External Review. OIC received and accepted the third party's application to participate in the First External Review.
18 March 2015	The Department received the Second Application.
15 May 2015	The Department consulted the applicant about proposed disclosure of information to the third party.
24 May 2015	The Department received the applicant's objections to the proposed disclosure.
11 June 2015	The third party advised OIC that access to the names of private citizens was not sought in the two applications.
2 July 2015	The third party confirmed to OIC that access to the names of government officers was sought in the two applications.
20 July 2015	The Department issued its decision to the third party regarding the Second Application.
24 July 2015	The Department issued its decision to the applicant regarding the Second Application. OIC received the Second External Review.
27 July 2015	OIC notified the Department that the Second External Review had been received and requested relevant procedural documents by 3 August 2015.
3 August 2015	OIC received the requested documents from the Department.
4 August 2015	OIC notified the applicant and the Department that it had accepted the Second External Review. OIC requested the Department provide a copy of the documents in issue by 19 August 2015.
5 August 2015	OIC received submissions from the applicant regarding the Second External Review.

14 August 2015	OIC received the requested documents from the Department.
16 August 2015	OIC received the applicant's further submissions in the Second External Review.
9 September 2015	OIC received and accepted the third party's application to participate in the Second External Review.
12 October 2015	The third party advised OIC that access to the residential and email addresses and telephone numbers, as well as names, of private citizens was not sought in the applications.
23 November 2015	OIC conveyed a preliminary view to the applicant in respect of the two external reviews and requested submissions by 7 December 2015.
1 December 2015	OIC received the submissions from the applicant in respect of the two external reviews.
8 December 2015	OIC confirmed its preliminary view to the applicant in respect of the two external reviews and requested submissions by 4 January 2016.
19 December 2015	OIC received the applicant's further submissions in respect of the two external reviews.
20 January 2016	OIC conveyed a preliminary view regarding certain information ⁷⁶ to the Department and the Department advised that it accepted the preliminary view.
12 February 2016	OIC conveyed a preliminary view regarding certain information ⁷⁷ to the third party.
15 February 2016	The third party advised OIC that the third party accepted the preliminary view.

⁷⁶ Pages 4, 6 and 7 in File A in the First External Review and parts of pages 7, 8, 11, 20 and 21 in the Second External Review.

⁷⁷ As set out at footnote 76 above.