



Decision and Reasons for Decision

Citation:	<i>Australian Broadcasting Corporation and Department of Education (Office of Industrial Relations); A Stone Cutting Business (Third Party) [2021] QICmr 14 (23 March 2021)</i>
Application Number:	314786
Applicant:	Australian Broadcasting Corporation
Respondent:	Department of Education (Office of Industrial Relations)
Third Party:	A Stonecutting Business
Decision Date:	23 March 2021
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST</p> <p>INFORMATION - documents relating to audit, regulation and investigation of stonecutting businesses and silica dust exposure - accountability of regulatory agency in investigating health and safety issues - personal information and privacy - prejudice to business affairs, flow of information, ongoing prosecution and investigative processes - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - organisational search results - whether documents are commercially available - whether access may be refused under sections 47(3)(f) and 53(d) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to the Office of Industrial Relations (**OIR**)¹ under the *Right to Information Act 2009* (Qld) (**RTI Act**) seeking access to information about stonecutting businesses in a particular location, including correspondence between the businesses and Workplace Health and Safety Queensland (**WHSQ**) regarding respirable silica dust exposure to workers, complaints regarding cutting engineered stone, investigation documents and any related workplace audit/scientific documents.²

¹ OIR joined the Department of Education in December 2017 (refer to <<https://www.oir.qld.gov.au/about-us>>). While the Department of Education is the respondent agency to this review, I refer to OIR throughout as that is the organisational unit which handled the application and review.

² Application dated 13 November 2018. For the date range 1 January 2017 to 13 November 2018.

2. OIR identified 1924 responsive pages and consulted with seven third parties about disclosure of certain information.³ OIR decided to disclose 402 pages comprising information concerning certain WHSQ's stone benchtop campaign audits and associated notices issued by WHSQ but decided to refuse access to 1227 pages and parts of 295 pages.⁴ The applicant then applied⁵ to the Office of the Information Commissioner (OIC) for external review of OIR's decision to refuse access to information.⁶
3. During the review, OIC consulted the Third Party about disclosure of certain information regarding their stonecutting business.⁷ The Third Party objected to disclosure and provided submissions in support of their case, particularly relying on prejudice to their commercial/business affairs and an ongoing prosecution commenced by the Office of the Work Health and Safety Prosecutor (OWHSP).
4. As part of OIC's informal resolution process, OIR released some further information to the applicant about WHSQ's stone benchtop campaign audits, and the applicant elected not to pursue certain categories of information.⁸ However, the applicant maintains that access should be granted to the remaining information due to the strong public interest in enhancing the accountability and transparency of the regulatory framework associated with respirable silica dust exposure audits and investigations. OIR also maintains its position that disclosure of the remaining information would, on balance, be contrary to the public interest.⁹
5. For the reasons set out below, and having considered all the submissions made by the parties, I vary OIR's decision and find that access may be refused to the remaining information, on the grounds that disclosure would, on balance, be contrary to the public interest and because other access is available.¹⁰

Background

6. In 2017, WHSQ¹¹ conducted compliance audits at certain workplaces in Queensland to assess health risks from respirable crystalline silica in the stone benchtop industry. To address identified risks, a safety warning was issued in 2018 for workers and employers in Queensland's engineered stone benchtop manufacturing industry¹² and a Code of Practice for managing respirable silica dust exposure in the industry commenced in October 2019.¹³
7. The decision under review is OIR's decision dated 16 August 2019.

³ Under section 37 of the RTI Act. Six of those third parties raised objections to disclosure which OIR did not accept and made decisions adverse to those third parties.

⁴ On 16 August 2019.

⁵ On 22 August 2019. In the external review application, the applicant confirmed it did not seek access to certain categories of the refused information (being the names, signatures, contact details and images of private individuals and the signatures and mobile telephone numbers of OIR employees).

⁶ None of the six objecting third parties applied for review and therefore, any documents to which access was deferred were released to the applicant by OIR and are not in issue in this review.

⁷ Under section 37 of the RTI Act. OIR did not complete its consultation with that party. As this third party did not wish to participate in the external review, their identity is not disclosed in this decision.

⁸ As confirmed in OIC's letters to the applicant dated 24 January 2020 and 19 November 2020 and OIC's email to the applicant dated 16 February 2021, the applicant excluded personal information of private individuals (such as names, signatures/initials, contact details, images and other identifying information); signatures/initials and mobile telephone numbers of OIR staff; communications with legal advisers; and information deleted as irrelevant from disclosed documents.

⁹ OIR withdrew its reliance on the ground of refusal for exempt information in schedule 3, section 10 of the RTI Act.

¹⁰ Sections 47(3)(b), 47(3)(f), 49 and 53 of the RTI Act.

¹¹ A business unit of OIR with responsibility for improving work health and safety in Queensland. Refer to <<https://www.oir.qld.gov.au/worksafe/workplace-health-and-safety>>.

¹² Refer to <<https://statements.qld.gov.au/statements/88396>>.

¹³ Refer to <<https://statements.qld.gov.au/statements/88396>>.

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).¹⁴
9. Significant procedural steps in the review are set out in the Appendix.

Issues for determination

10. The remaining refused information appears on 911 pages¹⁵ (**Information in Issue**). As the information is claimed to be contrary to the public interest to disclose, the RTI Act limits my ability to describe it,¹⁶ however, I can confirm that it includes:
 - personal information of private sector employees, including medical information and health monitoring reports (**Personal Information**)¹⁷
 - information obtained by OIR relating to the processes/systems of a private sector businesses (**Business Information**)¹⁸
 - information provided to or obtained by OIR in its investigation of notified safety incidents (**Investigation Information**)¹⁹
 - information generally associated with WHSQ audits of stone benchtop fabrication businesses and occupational hygiene surveys (**Audit and Survey Information**);²⁰ and
 - Australian Securities and Investments Commission organisational search results (**ASIC Information**).²¹
11. The issues for determination²² are whether access may be refused to the:
 - Personal Information, Business Information, Investigation Information and Audit and Survey Information on the basis that disclosure would, on balance, be contrary to the public interest;²³ and
 - ASIC Information in the ground that other access is available.²⁴

Delays

12. The access application was made in November 2018 and OIR issued the reviewable decision in August 2019.²⁵ The applicant raised concerns with OIC about the time taken by OIR to process the access application. Under the RTI Act, OIC has jurisdiction to review decisions made by government agencies about access to information. The legislation does not give OIC jurisdiction to investigate complaints about an agency's

¹⁴ The application was made on behalf of a corporation and as such, it may not appear necessary to consider the application of the *Human Rights Act 2019* (Qld) (**HR Act**) which only affords human rights to individuals in Queensland. However, Kingham J in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33 at [90] indicated that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and to not act or make a decision that is not compatible with human rights. To the extent that it is necessary to observe relevant rights under section 58(1) of the HR Act, I am satisfied that I have done so (*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].)

¹⁵ Being 820 pages in File A and 91 pages in Files B, F, G and H. File A relates exclusively to the Third Party Stonecutting Business which is currently the subject of the OWHSP prosecution.

¹⁶ Section 108 of the RTI Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

¹⁷ In Files A, B and H.

¹⁸ In Files A, F and G.

¹⁹ In File A.

²⁰ In File A.

²¹ 13 pages within File A.

²² OIR accepted that certain Information in Issue did not comprise exempt information and relied instead on public interest grounds.

²³ Sections 47(3)(b) and 49 of the RTI Act.

²⁴ Sections 47(3)(f) and 53 of the RTI Act.

²⁵ The processing period for an application is usually 25 business days, but this can be extended for various reasons, e.g. agreement with an applicant, consultation with third parties, and negotiations about charges.

conduct or processes, or the way it has handled a particular application. Therefore, I cannot consider the applicant's concerns in this regard.

13. The applicant also raised concerns about OIR's delays in providing information and responses to OIC during the review process. In particular, the applicant is concerned that OIR failed to notify OIC of a key piece of evidence, namely, that a prosecution against the Third Party had commenced in early 2020.
14. The RTI Act provides that the procedure to be taken on external review is, subject to the RTI Act, at the discretion of the Information Commissioner.²⁶ I accept that the time taken to complete this review has not met the applicant's expectations. I also must acknowledge that there were significant delays in OIC receiving requested information from OIR and that OIR failed to provide OIC with key evidence relevant to the review in a timely way. Some of those delays can be attributed to the deployment of OIR's business continuity plan during 2020, in response to COVID-19, the altered agency working environment and internal resourcing issues at OIR. OIC was mindful of these circumstances when issuing requests to OIR and afforded OIR multiple extensions of time to respond to OIC. However, as demonstrated in the Appendix, there were significant periods of time when OIC could not progress the review due to outstanding responses from OIR, which consequently impeded the expeditious conduct of the review.

Relevant law

15. Section 23 of the RTI Act gives a right to access documents of an agency, however, this right of access is subject to limitations, including the grounds on which access to information may be refused.²⁷
16. One ground of refusal is where disclosing information would, on balance, be contrary to the public interest.²⁸ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁹
 - 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.
17. Schedule 4 (parts 2 to 4) of the RTI Act contains non-exhaustive lists of factors that may be relevant to determining where the balance of the public interest lies in a particular case.

Submissions

18. The applicant submits that disclosure of the Information in Issue will provide openness and transparency in relation to silicosis and regulation of the stonecutting industry. In particular, the applicant submits that:

²⁶ Section 95(1)(a) of the RTI Act.

²⁷ The grounds on which an agency may refuse access are set out in section 47(3) of the RTI Act.

²⁸ Section 47(3)(b) of the RTI Act. The phrase '*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 merely private or personal interests, although 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.

²⁹ Section 49(3) of the RTI Act.

There can be few higher public interest factors favouring release that [sic] a government's failure to protect citizens from illness and death in the workplace.

The failure to release these documents has the opposite impact – it protects the workplace and the government departments from public scrutiny. We submit that this has not been adequately considered and weighed in the decision.

The cost to these families [of people with silicosis] is immense with the workers unable to continue in their employment, some unable to work in other professions and unable to provide financially for their families. It also has a dramatic impact on their quality of life.

The cost of treating these workers in the years to come will be a significant burden on the taxpayer, particularly for workers who undergo lung transplantation or develop terminal illness.³⁰

Quite simply, the public is footing the bill for the regulatory failure by QLD authorities to protect stonemasons and that of employers to meet their legal requirements to maintain a safe workplace.³¹

19. OIR has relied on nondisclosure factors concerning the protection of personal and private business information as the basis for its position that disclosure would, on balance, be contrary to the public interest.³²
20. The Third Party submitted that disclosure of Information in Issue which relates to their stonecutting business could potentially prejudice their business affairs and their ability to receive a fair and impartial hearing in the prosecution proceedings which have been commenced against it by OWHSP.³³

Findings

21. As set out below, I have considered the relevant public interest factors favouring disclosure, the RTI Act's pro-disclosure bias and Parliament's intention that grounds for refusing access are to be interpreted narrowly.³⁴ I have also taken into account relevant nondisclosure factors, including public interest harm factors where relevant. I have had no regard to any irrelevant factors in making my decision.

Disclosure factors

22. Respirable silica dust exposure and silicosis are matters of serious public interest.³⁵ It is reasonable to expect that OIR and WHSQ are accountable and transparent in relation to:
 - identifying and managing workplace risks which have the potential to expose workers to a risk of silicosis³⁶
 - the measures which the government has put in place to address those workplace risks³⁷; and
 - how WHSQ performs its regulatory functions for improving work health and safety in Queensland, and reducing workplace risks.³⁸
23. The information which OIR has already disclosed includes information about how WHSQ's audit process identified and monitored worker health risks; certain outcomes

³⁰ External review application. The applicant made similar submissions on 6 February 2020 and 26 November 2020.

³¹ Submissions dated 26 November 2020. Additionally, the applicant submitted on 6 February 2020 that: 'Releasing this documentation will also help inform important legal and governmental work that is underway to protect workers into the future.'

³² Submissions dated 7 September 2020.

³³ Submissions dated 4 January 2021.

³⁴ Sections 44 and 47(2) of the RTI Act.

³⁵ Schedule 4, part 2, item 2 of the RTI Act.

³⁶ Schedule 4, part 2, item 1 of the RTI Act.

³⁷ Schedule 4, part 2, item 14 of the RTI Act.

³⁸ Schedule 4, part 2, item 3 and 11 of the RTI Act.

from that audit process; and some of the health and safety measures that were taken by WHSQ. I consider disclosure of this information has served to enhance OIR's accountability and transparency and enable scrutiny of OIR's performance of its regulatory functions, to a significant degree.

24. As set out at paragraph 10 above, the information which is subject to the public interest balancing test, includes:
- Personal Information about private sector employees, including health monitoring reports and medical information
 - Business Information obtained by OIR relating to the processes/systems of private sector entities
 - Investigation Information provided to or obtained by OIR in its investigation of notified safety incidents; and
 - Audit and Survey Information associated with WHSQ audits of stone benchtop fabrication businesses and occupational hygiene surveys.
25. Given the particular nature of the Personal and Business Information, ie. it is about private sector employees and the operations of private sector businesses, I do not consider its disclosure would further advance the government accountability and transparency factors at paragraph 22 in any significant way. I afford low weight to those factors as they apply to that information. However, I consider disclosure of the Investigation Information would reveal actions taken by WHSQ in performing its regulatory functions, including the manner in which WHSQ investigates notified safety incidents. Also, I am satisfied that disclosure of the Audit and Survey Information would to some extent, further advance OIR's accountability and transparency, by providing the applicant with a more complete picture of the conducted audit processes and resulting outcomes. I afford those factors moderate weight in relation to those categories of information.
26. A public interest factor favouring disclosure will also arise where disclosing information could reasonably be expected to ensure oversight of expenditure of public funds.³⁹ To some degree, the Information in Issue demonstrates the way that OIR performs its taxpayer funded functions. However, to the extent disclosure would allow oversight of public fund expenditure, I do not consider the Personal or Business Information would achieve this purpose. The Investigation and Audit and Survey Information however, demonstrates actions of OIR and therefore, I afford some weight to this factor in relation to those categories.
27. The public interest will favour disclosure where it could reasonably be expected to allow or assist inquiry into, or reveal or substantiate, deficiencies in the conduct of an agency or its officers.⁴⁰ The applicant asserts that these factors apply because the Government has failed in its obligation to ensure Queensland workplaces are safe and that this failure has potentially resulted in workers contracting a fatal disease.⁴¹ I accept that there is information in the public domain concerning the nationwide focus on silicosis risks to workers in the stone benchtop industry. Given that the Personal and Business Information concern private sector employees and the operations of private sector business, I do not consider these factors apply in relation to that information. However, I afford some weight to the factor in schedule 4, part 2, item 5 in relation to the Investigation Information and Audit and Survey Information given that it would reveal

³⁹ Schedule 4, part 2, item 4 of the RTI Act.

⁴⁰ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁴¹ External review application. The applicant's submissions dated 26 November 2020 raise similar arguments.

how WHSQ has conducted investigations and audits of stonecutting businesses, and allow *'inquiry'* into *'possible deficiencies'* in agency conduct.⁴²

28. The applicant also submits that disclosure will contribute to innovation and research.⁴³ I accept that there is a public interest in conducting further research into silica dust exposure and also in relation to methods of innovation that could be made in the stonecutting industry to minimise the risks to workers. I have had regard to the particular nature of the Information in Issue, and whether it could reasonably be expected to contribute to innovation and research and I afford low weight to this factor.
29. I have had regard to all other factors in schedule 4, part 2 of the RTI Act and I am unable to identify any other factors favouring disclosure of the Information in Issue.⁴⁴

Nondisclosure factors

30. The Personal Information largely comprises sensitive personal information⁴⁵ of private individuals, including health reports and medical information OIR obtained from various individuals as part of its investigation of notified safety incidents.
31. A factor favouring nondisclosure will arise if disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁶ The concept of *'privacy'* is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their *'personal sphere free from interference by others'*.⁴⁷ The RTI Act also recognises that disclosing personal information of a person could reasonably be expected to cause a public interest harm.⁴⁸ I am satisfied that these factors apply to the Personal Information.
32. The applicant does not seek to access the names of private individuals. However, I consider that the identities of some of the individuals could be ascertained using information which is already in the public domain. The applicant has expressed a particular interest in accessing health monitoring reports of workers on a de-identified basis, as the applicant believes they will reveal *'the extent of suffering and disease caused by unsafe use of artificial stone products which is at the core of the public interest in the silicosis outbreak'* and this will directly inform the public about these health issues.⁴⁹ The applicant argues that it is possible to de-identify this information and provide adequate protection for the identity of people and their privacy.⁵⁰

⁴² A lower threshold is required to establish this factor as compared with schedule 4, part 2, item 6 of the RTI Act which requires a reasonable expectation of *revealing or substantiating* agency misconduct/improper conduct. I find item 6 cannot be established in relation to any Information in Issue.

⁴³ Schedule 4, part 2, item 19 of the RTI Act.

⁴⁴ 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 weight I have afforded to the public interest factors that favour nondisclosure.

⁴⁵ *'Personal information'* is defined in section 12 of the *Information Privacy Act 2009* (Qld) 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'*.

⁴⁶ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁷ 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 [1.56]. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

⁴⁸ Schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁹ External review applicant and submissions dated 26 November 2020.

⁵⁰ Submissions dated 6 February 2020. In submissions dated 26 November 2020, the applicant submitted that, if the Information in Issue was disclosed, they would take care to protect the identity of these individuals and that *'de-identified medical histories of people with particular conditions is used regularly as a technique to inform public debate and improve care to patients by medical journals where significant hurdles in relation to personal information and privacy concerns are overcome for the public good'*.

33. Taking into account the content and form of the information that has been released to the applicant and the availability and relevance of statistical information about silicosis,⁵¹ I do not consider that it is possible to de-identify any health information within the Personal Information in a manner which would adequately protect the identities and privacy of the individuals involved. I find that the intrusion into the privacy of these individuals and public interest harm that would result from disclosure of the Personal Information would be significant, taking into account the highly sensitive nature of this information and the context in which it appears. On this basis, I afford significant weight to the factors at paragraph 31 favouring nondisclosure of the Personal Information.
34. If disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies, a public interest factor favouring nondisclosure arises.⁵² It is generally recognised that there is a strong public interest in protecting the free flow of information to law enforcement and regulatory agencies.⁵³
35. The applicant submits that OIR has significant enforcement options available to it where a business refuses to co-operate and provide information. I acknowledge that OIR has a range of powers available to it to compel the provision of information.⁵⁴ However, regulatory agencies such as OIR also rely on information being provided by the public to be alerted to, and to pursue, potential safety issues. I consider the efficient and effective use of public resources is facilitated by regulatory agencies being able to seek and obtain information, including from members of the community (whether they are complainants, witnesses, informers or the subjects of complaint), with as much cooperation as possible.⁵⁵ On this basis, I am satisfied that disclosing the Personal and Business Information would tend to discourage individuals and entities from coming forward with relevant information and cooperating with OIR. This, in turn, could reasonably be expected to negatively impact OIR's ability to obtain information in discharging its regulatory functions and accordingly, I afford this nondisclosure factor significant weight.
36. The public interest will favour nondisclosure of information where disclosure could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities⁵⁶
 - prejudice business affairs of an agency or person;⁵⁷ and
 - cause a public interest harm because it would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.⁵⁸

⁵¹ Reflecting on the considerations set out in *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) at [21]—namely, how available the additional information is; how difficult it is to obtain; how many steps are required to identify the individual; how certain the identification will be; whether it will identify one specific individual or a group of people; and whether the individual receiving the information can use it to identify the individual.

⁵² Schedule 4, part 3, item 13 of the RTI Act.

⁵³ See for example: *Marshall and Department of the Police* (Unreported, Queensland Information Commissioner, 25 February 2011) (*Marshall*); *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), and *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016).

⁵⁴ For example, OIR has wide ranging powers under section 155 of the *Work Health and Safety Act 2011* to obtain information in relation to a possible contravention of the Act or which would assist OIR to monitor or enforce compliance with the Act. Section 155(6) of that Act states that a person must not, without reasonable excuse, refuse or fail to comply with formal written notices issued by OIR for that purpose.

⁵⁵ *Marshall* at [29].

⁵⁶ Schedule 4, part 3, item 2 of the RTI Act.

⁵⁷ Schedule 4, part 3, item 15 of the RTI Act.

⁵⁸ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

37. The Business and Investigation Information was obtained by WHSQ in performing its regulatory functions and concerns the business and commercial affairs of certain entities, primarily the Third Party stonecutting business. The applicant submits that this information should be released if it pertains to an organisation's compliance with its legal obligation to provide a safe working environment for its employees.⁵⁹
38. The RTI Act precludes me from confirming whether or not the Business and Investigation Information is of the character submitted by the applicant,⁶⁰ however, I consider its disclosure could reasonably be expected to prejudice or adversely affect the business and commercial affairs of the entities about which it relates and, given the nature of this information and the context in which it appears, I afford moderate weight to these factors favouring nondisclosure.⁶¹
39. The applicant also submits that '*any attempted secrecy fails to recognise what is already in the public arena*'.⁶² Although there is information in the public domain about work practice concerns and the prevalence of silicosis in the stone benchtop industry, I am satisfied that this, of itself, does not justify disclosure of the Business or Investigation Information under the RTI Act, where there can be no restriction on its use, dissemination or republication.
40. The Investigation Information also includes certain information about OIR's investigative procedures and methods, which does not appear to be publicly known. In the particular circumstances of this case, I consider that revealing these investigative procedures and methods could reasonably be expected to enable individuals/entities to use that information to modify their activities so as to avoid detection, thereby compromising the ongoing effectiveness of OIR procedures and methods, and detrimentally affecting OIR's ability to effectively discharge its functions.⁶³ Additionally, the OWHSP has commenced proceedings against one of the stonecutting businesses. In circumstances where those proceedings have not yet been finalised, I am satisfied that disclosure of the Investigation Information could result in prejudice to the impartial adjudication of the commenced proceedings and could reasonably be expected to impede the administration of justice.⁶⁴ I find that these factors carry significant weight against disclosure.
41. The Third Party has raised concerns about the accuracy of certain information within the Audit and Survey Information.⁶⁵ To the extent this information may be relevant to the ongoing OWHSP prosecution, the Third Party may seek to raise those concerns within the context of the legal proceedings. However, the ability of the Third Party to do this effectively may be prejudiced by disclosure of the Audit and Survey Information under the RTI Act, as there is no control over its use or dissemination once disclosed. As the OWHSP proceedings have not yet been finalised, I am satisfied that disclosure of the Audit and Survey Information could impede the administration of justice.⁶⁶ I find that this is a significant factor weighing against disclosure of the Audit and Survey Information.

Balancing the public interest

42. Respirable silica dust exposure and silicosis are matters of serious interest and OIR and WHSQ must be accountable and transparent in how they conduct regulatory activities in

⁵⁹ Submissions dated 26 November 2020.

⁶⁰ Section 108(3) of the RTI Act.

⁶¹ Schedule 4, part 3, items 2 and 15 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

⁶² External review application.

⁶³ Schedule 4 of the RTI Act does not comprise an exhaustive list of public interest factors. I consider this is an additional factor relevant in this particular case.

⁶⁴ Schedule 4, part 3, item 8 of the RTI Act.

⁶⁵ I do not consider these concerns give rise to the factor in schedule 4, part 2, item 12 of the RTI Act.

⁶⁶ Schedule 4, part 3, item 8 of the RTI Act.

relation to the stonecutting industry. I have found that disclosure of the Investigation and Audit and Survey Information would moderately advance the relevant disclosure factors, and to some extent, allow inquiry into possible agency deficiencies and oversight of public funds expenditure. The public interest also favours disclosure of the Personal and Business Information, but to a lesser degree, given it concerns private sector employees and private sector businesses, rather than government operations.

43. On the other hand, I am satisfied that the public interest factors favouring nondisclosure deserve moderate to significant weight, in terms of protecting the privacy and personal information of individuals (particularly medical and health information), limiting prejudice to the flow of information to OIR and WHSQ and their investigative methods, preventing prejudice to the commercial and business affairs of entities and ensuring the administration of justice is not impeded in terms of the ongoing prosecution against the Third Party. On balance, I consider the weight of these nondisclosure factors is determinative to support a finding of nondisclosure.
44. For these reasons, I find that access may be refused to the Personal, Business, Investigation and Audit and Safety Information on the ground that disclosure would, on balance, be contrary to the public interest.⁶⁷

Other access available

45. Access may be refused to a document that is commercially available.⁶⁸
46. The ASIC Information (ie. organisational search results) can be accessed through the Australian Securities and Investments Commission website, upon payment of the required fee. I find that the ASIC Information is therefore, commercially available under section 53(d) of the RTI Act and access to it may be refused on that basis.⁶⁹

DECISION

47. For the reasons set out above, I vary OIR's decision and find that access to the Information in Issue may be refused on the basis that disclosure would, on balance, be contrary to the public interest and because other access is available.⁷⁰
48. 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: 23 March 2021

⁶⁷ Sections 47(3)(b) and 49 of the RTI Act.

⁶⁸ Section 47(3)(f) and section 53(d) of the RTI Act.

⁶⁹ Section 47(3)(f) of the RTI Act.

⁷⁰ Sections 47(3)(b) and (f) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
22 August 2019	OIC received the external review application.
4 September 2019	OIC notified the applicant and OIR that the external review application was accepted and requested information from OIR.
19 and 20 September 2019	OIC received the requested information from OIR.
11 October 2019	The applicant confirmed, in a conversation with OIC, that access was not sought to certain additional types of refused information.
28 November 2019	OIC provided an update to the applicant.
28 January 2020	OIC conveyed a preliminary view to OIR and requested further information. OIR requested an extension of time to respond to OIC. OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions if they did not accept the preliminary view.
6 February 2020	OIC received the applicant's submissions.
20 February 2020	OIR requested a further extension of time to respond to OIC.
10 and 12 March 2020	OIC contacted OIR regarding its overdue response.
12 March 2020	OIC received certain requested information from OIR and its estimated timeline for provision of the outstanding response to OIC.
13 March 2020	OIC provided an update to the applicant.
20 March 2020	OIC contacted OIR regarding its overdue response.
27 April 2020	OIC requested a further extension of time to respond to OIC.
30 April 2020	OIC requested, and received, further details from OIR about the basis for the further requested extension.
1 May 2020	OIC provided an update to the applicant.
18 June 2020, 15 and 18 July 2020, 26 and 27 August 2020	OIC contacted OIR regarding its overdue response.
27 August 2020	OIC provided an update to the applicant.
28 August 2020 and 2 September 2020	OIC contacted OIR regarding its overdue response.
3 September 2020	OIC requested provision of OIR's outstanding response by no later than 7 September 2020.
7 September 2020	OIC received OIR's submissions responding to the preliminary view conveyed in January 2020.
10 and 11 September 2020	OIC provided an update to the applicant.
14 September 2020	OIR released further information it had agreed to disclose to the applicant.

Date	Event
19 November 2020	OIC conveyed a further preliminary view to the applicant and invited the applicant to provide submissions if they did not accept the preliminary view. OIC conveyed a further preliminary view to OIR about additional information identified for disclosure and invited OIR to provide final submissions if it objected to disclosure of that information. In consulting a third party, OIC conveyed a preliminary view and asked the third party to notify OIC if they wished to participate in the review.
26 November 2020	OIC received the applicant's further submissions.
27 November 2020	OIC asked OIR to provide submissions addressing matters raised in the applicant's submissions.
6 December 2020	OIR confirmed its acceptance of OIC's further preliminary view but did not provide submissions addressing matters raised in the applicant's submissions.
11 December 2020	OIC received the third party's disclosure objection. OIC provided an update to the applicant.
16 December 2020	OIC invited the third party to provide submissions supporting its disclosure objection.
4 January 2021	OIC received the third party's submissions.
5 January 2021	OIC requested further information from OIR.
12 January 2021	OIC received information from OIR.
2 February 2021	OIC requested further information from the third party.
9 February 2021	OIC received the requested information from the third party.
11 February 2021	In a conversation with the third party's legal representative, OIC conveyed a revised preliminary view about the documents which the third party was consulted about.
16 February 2021	OIC conveyed a revised preliminary view to the applicant and invited the applicant to provide submissions if they did not accept the preliminary view. OIC received the applicant's request for further information.
22 February 2021	The applicant informed OIC of information they had received from OIR.
23 February 2021	The applicant confirmed that they required a formal decision to be issued to finalise the review.
5 March 2021	The third party confirmed it did not wish to participate in the external review.