



## Decision and Reasons for Decision

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<b>Citation:</b>	<b><i>Mickelberg MP and Sunshine Coast Hospital and Health Service [2022] QICmr 48 (4 November 2022)</i></b>
<b>Application Number:</b>	<b>316237</b>
<b>Applicant:</b>	<b>Mr Brent Mickelberg MP</b>
<b>Respondent:</b>	<b>Sunshine Coast Hospital and Health Service</b>
<b>Decision Date:</b>	<b>4 November 2022</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - agency management and governance information - whether disclosure 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)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Sunshine Coast Hospital and Health Service (**Service**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to various board documents concerning ‘*the culture or workplace environment of senior employees of the Sunshine Coast Hospital and Health Service for the period of 1 July 2019 to 31 July 2020.*’
2. The Service located several sets of board meeting minutes, to which it decided<sup>2</sup> to grant the applicant partial access, subject to redaction of irrelevant information<sup>3</sup> and information disclosure of which would, on balance, be contrary to the public interest.<sup>4</sup>
3. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Service’s decision. The applicant’s issue with the Service’s decision was its interpretation of his access application, ie, that it had proceeded on an overly narrow understanding of the scope of the application, thus failing to identify and locate all relevant documents to which he had requested access.
4. This initial issue was resolved in the applicant’s favour, leading to the identification by the Service of additional relevant information. It is this additional information, and the question of the applicant’s entitlement to access same under the RTI Act, that has comprised the focus of OIC’s external review. Some of this information was released to the applicant. Other information comprised, in my preliminary view, irrelevant

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<sup>1</sup> Application dated 15 April 2021.

<sup>2</sup> Decision dated 14 July 2021.

<sup>3</sup> Section 73 of the RTI Act.

<sup>4</sup> Section 47(3)(b) of the RTI Act.

<sup>5</sup> External review application dated 2 August 2021.

information, or information the disclosure of which would, on balance, be contrary to the public interest. The applicant did not contest this preliminary view, thus eliminating the need to further consider this information.

5. What remains to be addressed is a relatively limited amount of information. As explained below, the Service does not seek to argue that access to this information may be refused; disclosure is, however, objected to by two third parties. Having carefully considered all relevant material – including those parties' objections, and the information itself – I have decided that no grounds exist to refuse access to that information. The applicant is therefore entitled to access same.

## Background

6. This review had something of a complex procedural history, explanation of which helps to contextualise my findings on substantive access issues as set out below.
7. As noted, on applying for external review, the applicant's case was that the Service had misinterpreted his access application. OIC accepted this submission, taking the view that the Service's decision construed the scope of the access application in too narrow a fashion. OIC conveyed this view to the Service and requested that it collate any additional information that might fall within the terms of the access application as properly, in our view, construed.<sup>6</sup> This resulted in the Service identifying and locating a considerable amount of additional information, access to much of which the Service submitted may be refused, arguing that its disclosure would, on balance, be contrary to the public interest.<sup>7</sup>
8. Having carefully assessed this additional information, OIC formed the view<sup>8</sup> that while a considerable amount was irrelevant to the applicant's RTI access request, substantial parts were relevant, and, further, that the applicant was entitled to access those parts. We did, however, form the preliminary view that access to certain documents may be refused, on the grounds their disclosure would, on balance, be contrary to the public interest.
9. The Service agreed to release to the applicant some of the additional information canvassed in the preceding paragraph.<sup>9</sup> OIC requested the Service release this information, and, at the same time,<sup>10</sup> explained to the applicant our preliminary view that access to various pages may be refused.
10. The Service, however, not only released information which we considered the applicant was entitled to access, but also disclosed one page of the several we had explained comprised information to which access may be refused under the RTI Act.<sup>11</sup> This fact was not made known to me until several months later.<sup>12</sup>
11. In the meantime, the applicant replied<sup>13</sup> to our 25 January 2021 preliminary view, contesting that view and putting submissions in support of his case for access. Taking those submissions under consideration, I then initiated consultation with certain Service personnel. That consultation process<sup>14</sup> led me to revisit OIC's initial preliminary view –

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<sup>6</sup> OIC letter to Service dated 24 August 2021.

<sup>7</sup> Service submissions dated 14 September 2021.

<sup>8</sup> Conveyed to the Service by letter dated 16 November 2021.

<sup>9</sup> Service letter dated 10 January 2022.

<sup>10</sup> OIC letters to the Service and applicant dated 25 January 2022.

<sup>11</sup> In OIC letters to the Service and applicant dated 25 January 2022.

<sup>12</sup> Service email to OIC dated 27 April 2022.

<sup>13</sup> Applicant submissions dated 18 February 2022.

<sup>14</sup> Documented in correspondence between OIC and relevant personnel dated 16, 22 and 25 March 2022, and 13 April 2022.

- to reach a further preliminary view<sup>15</sup> that disclosure of some information would not, on balance, be contrary to the public interest. It remained, however, my preliminary view that access to other information might be refused (principally, the page noted in paragraph 10 which, as explained, OIC was not at this time<sup>16</sup> aware had been released).
12. The Service ultimately accepted the revised preliminary view noted in the preceding paragraph.<sup>17</sup> On the understanding any necessary third party consultation was complete, I asked<sup>18</sup> the Service to arrange release of this further information to the applicant. The applicant was advised<sup>19</sup> to anticipate such release, the occurrence of which I anticipated may well resolve outstanding issues and allow for informal resolution of the review.
  13. Shortly prior to the deadline for release,<sup>20</sup> however, the Service advised OIC that it had notified three additional third parties of the impending disclosure, all of whom had expressed concern at the prospect of that disclosure. Given this, the Service advised that it was no longer in a position to agree to disclosure of relevant pages.
  14. The Service further advised that it had located more documents relevant to the access application.<sup>21</sup>
  15. I wrote to the applicant,<sup>22</sup> advising of the above developments. A comprehensive consultation process with each of the three third parties was undertaken, seeking their submissions as to why information should not be disclosed, and giving them the benefit of detailed preliminary views<sup>23</sup> explaining why I did not consider that release of some of that information would, on balance, be contrary to the public interest.
  16. One of the three third parties did not ultimately press any objections to disclosure of the information remaining in issue.<sup>24</sup> Two did,<sup>25</sup> although neither took up my invitation to apply to participate in the review.<sup>26</sup>
  17. Following conclusion of this further consultation process, I then wrote again to the applicant.<sup>27</sup> This correspondence relevantly explained the nature of the additional information belatedly located by the Service. It went on to explain that while I remained of the preliminary view that he was entitled to access both the information that had been poised for release in May, and a degree of the additional information subsequently located by the Service, access to other information may be refused, on public interest and relevance grounds.
  18. The applicant did not contest my final preliminary view, and in accordance with the terms of the letter explaining that view, relevant information<sup>28</sup> no longer remains in issue.<sup>29</sup> That information does therefore not need to be addressed in these reasons.

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<sup>15</sup> Conveyed to the Service by email dated 21 April 2022.

<sup>16</sup> *Ie*, 21 April 2022.

<sup>17</sup> Email from the Service to OIC dated 5 May 2022.

<sup>18</sup> By letter dated 6 May 2022.

<sup>19</sup> Also by letter from OIC dated 6 May 2022.

<sup>20</sup> Initially via telephone call on 12 May 2022; confirmed via email dated 13 May 2022.

<sup>21</sup> Email from the Service dated 26 May 2022, attaching copies of relevant documents.

<sup>22</sup> Emails to the applicant dated 13 May and 15 June 2022.

<sup>23</sup> Dated 24 and 29 June 2022.

<sup>24</sup> See my email to this third party dated 21 July 2022.

<sup>25</sup> Putting forward submissions in support of those objections by way of correspondence dated 12 May, 23 May, 24 May, 1 July and 27 July 2022.

<sup>26</sup> As entitled to do under section 89(2) of the RTI Act.

<sup>27</sup> By letter dated 12 August 2022.

<sup>28</sup> *Ie*, information access to which may, for the reasons explained in my 12 August 2022 letter to the applicant, be refused, or deleted as irrelevant.

<sup>29</sup> As I confirmed to the applicant by email dated 21 September 2022.

19. As noted in paragraph 16, two third parties – while not having applied to participate in the review – have nevertheless maintained objections to disclosure of the balance of the information in issue. It is therefore appropriate that I state reasons explaining my view that the applicant is entitled to access this information.
20. Significant procedural steps are otherwise as detailed in the Appendix to this decision.

### Reviewable decision

21. The decision under review is the Service's decision dated 14 July 2021.

### Evidence considered

22. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
23. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>30</sup> I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,<sup>31</sup> and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'<sup>32</sup>

### Information in issue

24. The information in issue comprises parts of 14 pages of information, as follows:
  - parts of 11 pages of **Correspondence**; and
  - parts of a three-page **Letter** from the Service to Queensland Health.<sup>33</sup>

### Issue for determination

25. The issue for determination in this review is whether disclosure of the information in issue would, on balance, be contrary to the public interest.

### Relevant law

26. The RTI Act's primary object is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.<sup>34</sup> The Act must be applied and interpreted to further this primary object,<sup>35</sup> and is to be administered with a pro-disclosure bias.<sup>36</sup>

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<sup>30</sup> As embodied in section 21 of the HR Act.

<sup>31</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>32</sup> *XYZ* at [573]. *XYZ* at [573]. OIC's approach to the HR Act set out in this paragraph has recently been considered and endorsed by QCA, Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

<sup>33</sup> Copies of relevant pages, marked up so as to depict information the applicant has not pressed to access and which is therefore not in issue (see paragraphs 4, 17, and 18) will accompany the copy of these reasons forwarded to the Service.

<sup>34</sup> Section 3(1) of the RTI Act.

<sup>35</sup> Section 3(2) of the RTI Act.

<sup>36</sup> Section 44 of the RTI Act.

27. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,<sup>37</sup> including grounds on which access may be refused.<sup>38</sup> One of these grounds – which are to be interpreted narrowly<sup>39</sup> – permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.<sup>40</sup>
28. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest,<sup>41</sup> are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
- 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.
29. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have had regard to these,<sup>42</sup> and the entirety of the applicant's and objecting third parties' submissions, in reaching my decision.
30. As for onus, this formally rests with the Service: section 87 of the RTI Act. As noted above, however, the Service accepted my preliminary view that no grounds existed to refuse access to most of the information in issue, and has made no case that access to the information in issue as contained in documents located subsequent to that preliminary view should be refused. A practical onus thus falls to the objecting third parties to establish grounds for refusing access.

## Findings

31. I fielded extensive submissions from the two objecting third parties, in support of their objections to disclosure of this information.<sup>43</sup> As noted, however, neither has elected to apply to formally participate in the review. Given this, and in the interests of respecting privacy concerns expressed by each third party to me during the review, I do not propose nor consider it necessary to traverse those objections in detail in these reasons. It is sufficient to note that I have, as each third party should be aware from my correspondence with them during the review, given their objections and supporting submissions very close deliberation, and carefully weighed competing public interest considerations.

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<sup>37</sup> Section 23(1) of the RTI Act.

<sup>38</sup> Section 47 of the RTI Act.

<sup>39</sup> Section 47(2)(a) of the RTI Act.

<sup>40</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>41</sup> The 'public interest' '...is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well-being of its members. The interest is therefore the interest of the public as distinct from the interests of an individual or individuals': *Director of Public Prosecutions v Smith* (1991) 1 VR 63. The concept 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

<sup>42</sup> Taking care to disregard irrelevant factors.

<sup>43</sup> See footnote 25.

### Factors favouring nondisclosure

32. In general terms, the third parties submit that disclosure of the information in issue could reasonably be expected to:<sup>44</sup>
- cause a public interest harm, through disclosure of their personal information,<sup>45</sup>
  - prejudice protection of their right to privacy;<sup>46</sup> and
  - prejudice each third party's fair treatment, by disseminating unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.<sup>47</sup>
33. Informing to some considerable degree the third parties' objections was the February 2022 release by the Service of the document noted in paragraph 10.<sup>48</sup> While I acknowledge the obviously sincere concerns of the third parties relating to this disclosure, I am, as I explained to each of them, legally obliged to assess the consequences that might reasonably be expected to follow disclosure of the information in issue, ie whether disclosure of that latter information would, on balance, be contrary to the public interest.
34. I am not persuaded that this would be the case. My reasons for this conclusion were explained at length in my letters to each third party dated 24 and 29 June 2022. In these letters, I accepted that relevance of the personal information public interest harm factor<sup>49</sup> in balancing the public interest, but expressed my reservation that either the privacy<sup>50</sup> or unsubstantiated allegations<sup>51</sup> nondisclosure factors were enlivened, so as to favour nondisclosure.<sup>52</sup>
35. My doubt as to the application of the former stems from the fact that the information in issue concerns occupation by each third party of public roles, discharging public functions, and that as such it seems to me questionable that the information concerns matters within their 'personal spheres'<sup>53</sup> as is necessary to enliven this factor – that it concerned public vocational, rather than private, personal concerns.

<sup>44</sup> The phrase 'could reasonably be expected' requires a decision-maker to distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* [1994] QICmr 1, a decision of the Information Commissioner analysing the equivalent exemption in the repealed Freedom of Information Act 1992 (Qld), at [154]-[160]. Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*': See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at [190].

<sup>45</sup> Schedule 4, part 4, section 6 of the RTI Act. Personal information is '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*': section 12 of the *Information Privacy Act 2009* (Qld) (IP Act), schedule 5 of the RTI Act.

<sup>46</sup> A factor favouring nondisclosure of information: schedule 4, part 3, item 3 of the RTI Act.

<sup>47</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>48</sup> Contrary to the preliminary view expressed in OIC letters to the Service and applicant dated 25 January 2022. There was some concern that this disclosure was intentional, whereas the Service stated it was in error.

<sup>49</sup> Ie, schedule 4, part 4, section 6 of the RTI Act.

<sup>50</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>51</sup> Schedule 4, part 3, item 6 of the RTI Act.

<sup>52</sup> Other factors were cited by each of the third parties in their initial 12 May, 23 May and 24 May 2022 objections to disclosure – schedule 4, part 3, items 1, 8 and 19 of the RTI Act. I explained why none of these three factors had application in this case in my letters to each third party dated 24 and 29 June 2022, and my understanding of their submissions in reply is that neither seeks to maintain their initial reliance on these factors. For the sake of completeness, I adopt relevant reasoning expressed in my letters as final for the purposes of this decision: the factors listed in the opening sentence of this footnote have no application in this case, and do not arise to be considered in balancing the public interest. I should also note that one of the third parties raised concern as to reputational impacts of disclosure on the Service and senior officials (see submissions dated 24 May 2022, reiterated in further submissions dated 1 July 2022). This is not, of itself, a matter weighing against disclosure in the public interest, and indeed seems to me to comprise a matter I am expressly proscribed from considering in balancing the public interest: schedule 4, part 1, item 1 of the RTI Act.

<sup>53</sup> The concept of 'privacy' is not defined in the IP Act or RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others – see 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 11 August 2008, at paragraph 1.56.

36. As for the unsubstantiated allegations nondisclosure factor, while some of the information might be characterised as allegation, generally speaking the conduct alleged<sup>54</sup> does not strike me as sufficiently serious so as to amount to 'misconduct or unlawful, negligent or improper conduct'; as this factor requires.
37. Nevertheless, as I advised each of the third parties, I accept that my analysis of the privacy and unsubstantiated allegations nondisclosure factors, as summarised in the preceding two paragraphs, may be incorrect. Given this, and acknowledging the considered submissions of each third party received in reply to those letters, maintaining cases for nondisclosure premised on these factors, I am prepared to proceed on the basis that each applies in this case. That is, that these two nondisclosure factors are enlivened, favouring nondisclosure, and, together with the personal information harm factor, thus fall to be assessed in balancing the public interest.
38. The weight that these three factors should be afforded, however, is in my view relatively modest – a weight commensurate with the nature of the information in issue, and the context in which it was created.
39. The information in issue is concerned with workplace issues<sup>55</sup> between senior personnel discharging service delivery, governance and management functions on behalf of a public agency. Further, much of the information is framed in the main in temperate and professional – albeit, at times pointed and robust – terms.<sup>56</sup> To the extent it might be said to touch on either third party's private or personal spheres or concerns, it does so in a relatively peripheral sense.
40. Insofar as it comprises the third parties' personal information, it does not seem to be especially sensitive (unlike, for example, health information, or information as to political or religious beliefs). Here, too, the context in which the information was created and to which it relates – public office and discharge of public duties – is to my mind relevant in assessing weight. As OIC has noted in an analogous context:
- [A] degree of public scrutiny...is something that must reasonably be expected to 'come with the territory' of State employment, and those serving in government roles should anticipate they will cede a degree of personal privacy in exchange for receipt of public monies.<sup>57</sup>*
41. Insofar as the information in issue concerns unsubstantiated allegations, those allegations, though occasionally stridently worded, generally appear relatively moderate, going to matters of workplace culture and interpersonal tension, rather than matters of illegality or impropriety. Further, many do not seem to be directed to or against any specific individual. In this context, it is worth noting, too, that a deal of the information in issue seems to coherently counter said allegations, and, indeed, to my mind reflects favourably on the third parties.
42. For these reasons I would, as noted, afford relevant nondisclosure considerations<sup>58</sup> reasonably modest weight.

### **Factors favouring disclosure**

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<sup>54</sup> Which I have touched on further below, for the purposes of assessing weight.

<sup>55</sup> Rather than personal or private matters, such as domestic concerns.

<sup>56</sup> A view which I have formed having due regard to the submissions of the third parties, including those received in reply to my 24 and 29 June 2022 letters, and which submissions I acknowledge express views as to the characterisation of this information that differ to mine.

<sup>57</sup> *Deputy Premier and Minister for State Development, Infrastructure and Planning and The Premier; Mulherin, MP (Third Party)* [2014] QICmr 41 (23 October 2014) at [46].

<sup>58</sup> That is, schedule 4, part 3, items 3 and 6, and schedule 4, part 4, section 6 of the RTI Act.

43. Telling in favour of disclosure of the information in issue is the general public interest in promoting access to government-held information.<sup>59</sup> Disclosure of this information could also reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability for the governance and management of public health services<sup>60</sup>
  - contribute to positive and informed debate on important issues or matters of serious interest, ie the management and functioning of the public health system<sup>61</sup>
  - by disclosing documents revealing exchanges between staff and the Service board, inform the community of public health system, and thus government, operations;<sup>62</sup> and
  - reveal background or contextual information informing Service board decisions.<sup>63</sup>
44. These are significant public interests, deserving of relatively substantial weight. In this context, it is important to bear in mind that the information in issue discloses not only staff concerns, but the fact that these concerns appear to have been taken under consideration by Service governance, and were the subject of measured deliberation and reply.
45. Disclosure of all of this information would, therefore, not only allow for public scrutiny and contemplation of 'cultural' issues that may have affected the Service, but help to demonstrate that those issues do appear to have been considered by the Service.
46. This would, in my view, serve to enhance the transparency of Service operations, and foster confidence in its ability to deliver public health services.

### ***Balancing the public interest***

47. Balancing competing interests against one another, my view is that factors and considerations favouring disclosure in this case outweigh those moderately-weighted factors favouring nondisclosure identified and discussed above. In saying this, I do not wish to appear dismissive of the third parties' submissions or concerns as raised with me during the review.
48. Ultimately, however, I am not persuaded that disclosure of the information in issue – much of it framed relatively moderately and without direct reference to any specific individual, and canvassing matters many of which are not uncommon in contemporary workplaces – would have the adverse public interest outcomes apprehended by the third parties, to a degree sufficient to justify nondisclosure under an Act that Parliament has mandated must be administered with a pro-disclosure bias.

### ***Conclusion***

49. For the above reasons, I find that disclosure of the information in issue would not, on balance, be contrary to the public interest. With no other grounds for refusing access having been raised for my consideration, nor appearing on the face of the information itself or any other material before me, the applicant is therefore entitled to access the information in issue.
50. Finally, for completeness, I also note that the Letter contains a passage which at face value points to the existence of further documents potentially responsive to the access

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<sup>59</sup> Implicit in the object to the RTI Act.

<sup>60</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>61</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>62</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>63</sup> Schedule 4, part 2, item 11 of the RTI Act.



application.<sup>64</sup> OIC explored this issue with the Service on our own initiative<sup>65</sup> during the review:<sup>66</sup> it advised us<sup>67</sup> that no such documents exist, material/information to which the passage refers having been conveyed orally, and not in documentary form. I have no reason to gainsay this advice, and thus accept it as accurate. To the extent it may be necessary to do so, I thus find that access to such information may be refused, on the basis it is nonexistent.<sup>68</sup>

## DECISION

51. None of the information in issue addressed in these reasons was dealt with in the decision under review, all of it having only been brought into issue on external review. Accordingly, I consider it appropriate to vary the decision under review, by finding that disclosure of the information in issue would not, on balance, be contrary to the public interest.
52. I further find that no missing documents issues arise, in terms as stated in paragraph 50.
53. I have made this decision under section 110 of the RTI Act, as a delegate of the Information Commissioner under section 145 of the RTI Act.

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**A Rickard**  
**Acting Right to Information Commissioner**

**Date: 4 November 2022**

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<sup>64</sup> Section 108 of the RTI Act precludes me from further describing or detailing this passage in these reasons.

<sup>65</sup> Noting that OIC's powers on external review include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by an applicant: section 130 of the RTI Act.

<sup>66</sup> OIC email to the Service dated 25 May 2022.

<sup>67</sup> By email dated 26 May 2022.

<sup>68</sup> Sections 47(3)(e) and 52 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
2 August 2021	OIC received the external review application.
3 August 2021	OIC requested the preliminary documents from Service.
10 August 2021	OIC received the preliminary documents from Service.
24 August 2021	OIC advised the applicant and Service that the external review application had been accepted. OIC requested information in issue from Service.
14 September 2021	Service provided submissions and information requested by OIC.
16 November 2021	OIC provided an update to the applicant. OIC conveyed a preliminary view to Service.
13 December 2021	Service requested an extension of time to respond to OIC's preliminary view.
15 December 2021	OIC granted Service an extension of time.
7 January 2022	Service requested a further extension of time.
10 January 2022	Service provided submissions in response to OIC's preliminary view.
25 January 2022	OIC requested that Service disclose particular documents to the applicant. OIC conveyed a preliminary view to the applicant.
2 February 2022	Service requested an extension of time to disclose the documents to the applicant. OIC granted the extension of time. OIC advised the applicant of the extension of time.
18 February 2022	Applicant provided submissions contesting OIC's preliminary view.
23 February 2022	OIC conveyed a second preliminary view to Service.
1 March 2022	OIC provided the applicant with an update.
8 March 2022	Service provided submissions in response to OIC's preliminary view.
16 March 2022	OIC issued correspondence to Service reiterating OIC's preliminary view. OIC issued consultation correspondence to a third party.
25 March 2022	Service provided further submissions in response to OIC's preliminary view.
1 April 2022	OIC requested Service confirm if agreeable to release of certain information.
7 April 2022	Service advised OIC it was prepared to release further information; OIC requested the Service arrange release.
13 April 2022	Third party recipient of OIC's 16 March 2022 consultation correspondence advised no objections to disclosure.

Date	Event
21 April 2022	OIC requested Service confirm if agreeable to release of documents to applicant, given position of third party.
27 April 2022	Service advised it was not agreeable to disclosure of the remaining documents and provided submissions. OIC conveyed a preliminary view to Service in response.
5 May 2022	Service agreed with OIC's preliminary view to release the remaining documents, with redactions.
6 May 2022	OIC advised the applicant that Service was willing to release the remaining documents with redactions.
12 May 2022	OIC received verbal advice from Service that it had changed its position on releasing the documents and requested further information from Service.
13 May 2022	OIC received correspondence from Service that it had changed its position on releasing the documents. OIC requested Service conduct consultations with three additional third parties. OIC provided the applicant with an update.
23 May 2022	Service advised OIC that a third party objected to disclosure of the remaining documents.
24 May 2022	OIC received submissions from the third party.
25 May 2022	Service advised OIC that two other third parties objected to disclosure of the remaining documents.
14 June 2022	The applicant requested an update.
15 June 2022	OIC provided the applicant with an update.
24 June 2022	OIC conveyed a preliminary view to two of the additional third parties objecting to disclosure.
29 June 2022	OIC conveyed a preliminary view to third of the additional third parties objecting to disclosure.
1 July 2022	OIC received submissions from a third party in response to OIC's preliminary view conveyed on 24 June 2022.
21 July 2022	OIC wrote to a third party advising that, as they had not responded by the due date, OIC would proceed on basis that third party did not object to OIC's preliminary view conveyed on 24 June 2022 and did not wish to participate in the review.
27 July 2022	OIC received submissions from a third party in response to OIC's preliminary view conveyed on 29 June 2022.
12 August 2022	OIC conveyed a preliminary view to the applicant. OIC conveyed a further preliminary view to one of the additional third parties.
25 August 2022	The applicant requested an extension of time to respond to OIC's preliminary view. OIC granted the extension of time.

<b>Date</b>	<b>Event</b>
2 September 2022	The applicant requested a further extension of time to respond to OIC's preliminary view. OIC granted the extension of time.
21 September 2022	No further submissions having been received by OIC from the applicant, OIC advised the applicant the review would proceed to formal decision.
6 October 2022	OIC advised Service that the matter would proceed to formal decision.