Office of the Information Commissioner
Queensland

Decision and Reasons for Decision

Citation:	***Lindeberg and Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts*** **[2023] QICmr 34 (30 June 2023)**
Application Number:	**316080**
Applicant:	**Lindeberg**
Respondent:	**Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts**
Decision Date:	**30 June 2023**
Catchwords:	**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - briefing documents and emails - related and supporting earlier documents - construction of terms and scope of access application under section 24 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - whether agency has taken all reasonable steps to locate documents - whether access to further documents may be refused on the basis that they do not exist or are unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - ONUS ON EXTERNAL REVIEW - whether agency has established that Information Commissioner should give decision adverse to applicant - section 87(1) of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - briefing document - whether information is Cabinet matter brought into existence before commencement of the *Right to Information Act 2009* (Qld) - section 47(3)(a) and schedule 3, section 1 of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - briefing documents - whether disclosure of information would infringe the privileges of Parliament - section 47(3)(a) and schedule 3, section 6(c)(i) of the *Right to Information Act 2009* (Qld)** **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - briefing documents - whether information is exempt due to legal**

professional privilege - section 47(3)(a) and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - briefing documents and emails - whether disclosure of information 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. On 1 January each year, Queensland Government Cabinet minutes from 30 years earlier are released as their restricted access period lapses.[1] Following the release of Cabinet minutes from 1990 on 1 January 2021, the applicant applied[2] to the then Department of Communities, Housing and Digital Economy (**Department**)[3] under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:

> *Briefing document (and its other related and supporting earlier documents) recently created by Queensland State Archives* [**QSA**]*, sometime in December 2020 or thereabout, in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions on 1 January 2021…*

2. The Department decided to release 26 pages and 6 part pages. The applicant applied[4] to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision on the basis that further documents should have been located. On review, the Department provided OIC with a further 472 pages that it had considered to be outside the terms of the application (**Additional Documents**).

3. For the reasons set out below, I vary the Department's decision and find that:

- a four page document titled '*Background briefing – 'The Heiner Affair"* (**Background Briefing**) and three emails are within the terms of the application
- access to parts of one sentence in the Background Briefing may be refused on the ground that disclosure of this information would, on balance, be contrary to the public interest
- otherwise no grounds for refusing access apply to the remaining information in the Background Briefing or the three emails, and therefore the applicant may be given access to this information
- the rest of the Additional Documents and documents raised in the applicant's submissions are outside the scope of the application; and
- further documents responsive to the application may be refused on the ground that they are non-existent.

[1] Sections 16, 18 and 62A of the *Public Records Act 2002* (Qld) (**PR Act**).
[2] On 11 February 2021.
[3] Following a machinery of government change on 18 May 2023, the agency currently responsible for this external review is the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts.
[4] On 19 May 2021.

Background

4. The Heiner Inquiry was set up in 1989 to inquire into complaints about the John Oxley Youth Centre at Wacol.[5] The applicant has long held concerns about the destruction, in 1990, of documents relating to the Heiner Inquiry's investigations – colloquially referred to as the Heiner Affair.[6]

5. The public release of Queensland Cabinet minutes on 1 January 2021 covered the year in which the events forming the basis of the Heiner Affair occurred, ie. 1990. The applicant's application seeks documents linked to this public release.

6. With each public release of Queensland Cabinet minutes, it has become practice that reports providing background and discussing selected highlights are published.[7] The *'Selected highlights of the 1990 Queensland Cabinet Minutes'*[8] provides the following summary about the Heiner Affair:

> *Following the Heiner Inquiry into management of the John Oxley Youth Centre at Wacol, Cabinet agreed to extend legal indemnity to the inquiry Chair, retired magistrate Noel Heiner, as his initial appointment as a 'contractor' did not afford him the statutory immunity of Crown employees (Decision 101). Family Services Minister, Anne Warner, recommended in her submission that most materials (some considered 'defamatory') gathered as evidence during inquiry investigations should be destroyed to protect Heiner and witnesses from legal challenge. Cabinet initially deferred this matter pending a memorandum outlining the Crown Solicitor's advice and further options regarding destruction of the materials, at that stage not considered 'public records'. A week later, Cabinet again deferred consideration of the Minister's memorandum until the Cabinet Secretary had liaised with the State Archivist for additional advice (Decision 118). In early March, with representations being made by solicitors for John Oxley Youth Centre staff seeking access to the documents in question, Cabinet agreed to the destruction of the materials having received advice from both the Crown Solicitor and the State Archivist that it was permissible to do so (Decision 162). The materials were subsequently destroyed under the guidance of the State Archivist in late March.*

7. One of the documents released to the applicant in response to his application includes the following summary:[9]

> - *In 1990, on advice from Crown Law, the State Archivist supervised the shredding of documents relating to the Heiner Inquiry into claims of bullying and rape at the John Oxley Youth Centre.*
> - *In the 1990 Cabinet Minutes, Submission 160 recommended that "the material gathered by Mr N. J. Heiner during his investigation be handed to the State Archivist for destruction…"*
> - *Mr Kevin Lindeberg* [the applicant]*, former union representative for the John Oxley Centre Manager, has led a long campaign that accuses the Goss Government of acting illegally and claims a government cover-up.*

8. The applicant alleges that the released documents do not accurately record the events of the Heiner Affair[10] and what he alleges to be an '*unprecedented systemic criminal*

[5] Commissioner T Carmody QC, *Queensland Child Protection Commission of Inquiry 3(e) Report* (June 2013), p 17.
[6] Carmody QC (n 5), p 21.
[7] See 'Cabinet Minutes', *Queensland Government Publications portal* (Web page) <https://www.publications.qld.gov.au/dataset/cabinet-minutes>.
[8] Dr Chris Salisbury, 'Selected highlights of the 1990 Queensland Cabinet Minutes', *Queensland Government Publications portal* (Web page) <https://www.publications.qld.gov.au/dataset/cabinet-minutes/resource/1e34964b-1c83-4400-83b8-f08f6a0d2ee9>. A version of this document – with the same content, but a handwritten number and date on the first page – was released to the applicant by the Department (at pages 5-19 of 32 of the released documents).
[9] *'Meeting brief – Subject: Meeting with* [historian] *regarding his research into the 1990 Cabinet Minutes'* dated 16 December 2020 at page 3 of 32 (with a handwritten number and date on the first page) and 31 of 32 (without that handwritten information).

cover-up'.[11] He seeks access to further briefing material concerning the Heiner Affair created in advance of the release of the 1990 Cabinet Minutes. He also seeks access to further internal files which he considers QSA must have created over the years since the destruction of documents in 1990.

Reviewable decision

9. The decision under review is the Department's decision dated 23 April 2021.

Evidence considered

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

11. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they are relevant to the issues for determination in this review.[12]

12. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.[13] I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP Act**).[14] I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between similar pieces of Victorian legislation:[15] '*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*.*'[16]

Allegation of bias

13. Throughout his submissions during this external review, the applicant has raised a number of matters outside OIC's jurisdiction. I have not addressed these matters, as I am limited to reviewing access and amendment decisions of an agency or Minister under the RTI Act or the IP Act.

14. In terms of one such matter, the applicant alleges that I will be biased if I do not address his concerns about the interpretation of section 129 of the *Criminal Code Act 1899* (Qld) by the Queensland Cabinet and former Crime and Justice Commission (**CJC**). These same concerns were addressed in an earlier decision involving this applicant. I repeat and rely on that decision's comments regarding these concerns:[17]

> *OIC's jurisdiction is set out in the RTI Act and does not extend to considering the former CJC's interpretation of the Criminal Code. In this matter, I am required to review the decision about access to documents made by the Department under the RTI Act and whether it should be affirmed, varied or set aside. I do not consider that limiting myself to a consideration of issues within OIC's jurisdiction would cause a fair-minded lay observer*

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[10] Submission dated 19 October 2022 at 14.
[11] Submission dated 30 May 2021 at 8.26.
[12] Including submissions dated 30 May 2021, 6 July 2021, 7 January 2022, 19 October 2022, 9 January 2023 and 15 June 2023.
[13] Section 21(2) of the HR Act.
[14] *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] *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[16] *XYZ* at [573].
[17] *Lindeberg and Department of Children, Youth Justice and Multicultural Affairs* [2022] QICmr 39 (15 August 2022) at [18]-[19] (footnotes omitted).

to reasonably apprehend that I am not bringing an impartial and unprejudiced mind to reaching a decision on this matter.

Issues for determination

15. Three issues arise for determination in this review:

    a) Are the Additional Documents or the documents raised in the applicant's submissions within the terms of the application?

    b) Has the Department conducted reasonable searches for any further documents responding to the terms of the application?

    c) For any documents within the terms of the application, do any grounds for refusal of access under the RTI Act apply?

Issue a) Are the Additional Documents or documents raised in the applicant's submissions within the terms of the application?

16. For the reasons set out below, the Background Briefing[18] and three emails are within the terms of the application; however the rest of the Additional Documents and the documents raised in the applicant's submissions are not.

Relevant law

17. An access application must give sufficient information concerning the documents sought to enable a responsible officer of the agency to locate the relevant documents.[19] There are sound practical reasons for the documents sought being clearly and unambiguously identified, as explained by the Information Commissioner in relation to similar considerations under RTI Act's predecessor, the *Freedom of Information Act 1992* (Qld) (**FOI Act**):[20]

> *The terms in which an FOI access application is framed set the parameters for an agency's response under Part 3 of the FOI Act, and in particular set the direction of the agency's search efforts to locate all documents of the agency which fall within the terms of the FOI access request. The search for relevant documents is frequently difficult, and has to be conducted under tight time constraints. Applicants should assist the process by describing with precision the document or documents to which they seek access. Indeed the FOI Act itself makes provision in this regard with s.25(2) not only requiring that an FOI access application must be in writing, but that it must provide such information concerning the document to which access is sought as is reasonably necessary to enable a responsible officer of the agency to identify the document.*

18. The Information Commissioner also outlined the following principles to be followed in interpreting an access application which is framed in imprecise or ambiguous terms:[21]

    - the question is not necessarily to be approached in the same manner as the interpretation of a statute or legal document

[18] Including the additional versions of the Background Briefing as set out in n 29.
[19] Section 24(2)(b) of the RTI Act.
[20] *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 (***Cannon***) at [8]; cited in *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) (***O80PCE***) at [33], *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [15] and *Ciric and Queensland Police Service* [2018] QICmr 30 (29 June 2018) at [20].
[21] *Cannon* at [10]; *Lonsdale and James Cook University* [2015] QICmr 34 at [10]; see also *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [16], *Fennelly and Redland City Council* (Unreported, Queensland Information Commissioner, 21 August 2012) at [21] and *O80PCE* at [35].

- seeking clarification of the intended meaning of an access application is a practice to be encouraged; and
- it can rarely be appropriate to apply legal construction techniques to the words of an access application in preference to consulting with the author of the words to clarify the author's intended meaning and agree upon more precise wording for the terms of the access application.

19. Although outlined in the context of the repealed FOI Act, these principles remain relevant and are consistent with the object[22] and pro-disclosure bias[23] of the RTI Act. If, having applied these principles, a document does not contain any information that is relevant to the terms of the access application, it is outside the scope of the access application and that document will not be considered as part of the application under the RTI Act.[24]

Findings

20. The entire wording of the applicant's application is:

> *Briefing document (and its other related and supporting earlier documents) recently created by Queensland State Archives, sometime in December 2020 or thereabout, in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions on 1 January 2021, namely:*
>
> *12 and 19 February 1990; and*
> *5 March 1990.*

21. The type of documents requested were described in the application as:

> *Internal memos, emails, and all related documentations*

22. While it is best practice to clarify any ambiguous terms with an applicant, if this does not occur, or the agency does not consider the terms to be ambiguous, then I do not have any power to undertake such clarification on external review. I am limited to the wording of the scope given in the access application as that is the basis of the agency's decision which is under review.

23. The Department has submitted[25] that, when interpreting the scope of the application, it followed *'a logical and literal "element" approach to ensure each document satisfied each element before being determined to be in scope'.* It identified the following as the 'elements' of the application:[26]

> - *briefing document*
> - *(<u>and</u> its other related and supporting earlier documents)*
> - *Recently created by* QSA *sometime in December 2020* [*or thereabout*]
> - *<u>In readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions</u> …'.*
>
> [Department's emphasis]

24. Given the particular wording of the applicant's application, I agree with the Department that consideration of the above elements assists with identifying the parameters of the application's scope, and whether particular documents fall within or outside that scope.

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[22] Section 3(1) of the RTI Act.
[23] Section 44(1) of the RTI Act.
[24] *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [12].
[25] Submission dated 6 December 2022.
[26] Submission dated 6 December 2022.

25. In short, the Department considers that no further documents fall within the terms of the application, whereas the applicant considers that the following should be released to him:

    i. an 'internal briefing document'

    ii. the 472 pages of Additional Documents not addressed in the Department's decision; and

    iii. documents on internal files the applicant alleges would have been created by QSA for the purpose of saving, noting and commenting on *'sources'* which investigated or discussed the Heiner Affair across multiple contexts over the years since the destruction of documents in 1990.

i. Is the Background Briefing within the terms of the application?

26. The applicant advised OIC that an officer of the Department told him about an 'internal briefing document' that was not referred to in the Department's decision. He submitted that the Department inappropriately read down the term 'briefing document' in his application to mean 'ministerial briefing document'.[27] In response, the Department submitted that *'*[i]*t … does not follow that just because any briefing notes included in the released documents are Ministerial briefing notes, that the Department has either narrowed its searches or its interpretation of the scope of the application'.*[28]

27. The Background Briefing is a four page document titled '*Background briefing – 'The Heiner Affair"*. It was located by the Department, but not considered in its decision, and appears among the Additional Documents.[29]

28. The Department advised OIC that it did not consider the Background Briefing in its decision because it considered that the Background Briefing was not prepared '*in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions*', and was therefore outside the scope of the application. In this regard, the Department stated that the Background Briefing was prepared for the use of the former State Archivist and the Director, Engagement and Access, QSA *'as historical context and was for information only'*[30] and *'for the internal use… as historical background… for educational purposes (information only)'*.[31] In support of this position, the Department set out the recollections of the Director, Access and Engagement, QSA and another senior executive,[32] both of whom had direct knowledge of the media release event for the 1990 Cabinet minutes, including direct involvement with preparing documents for that event.[33]

29. I am satisfied that the Background Briefing is a '*briefing document*' and '*created by* [QSA] *sometime in December 2020 or thereabout*', as it was requested by the Director, Access and Engagement, QSA[34] and came into QSA's possession around the relevant time.

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[27] Submission dated 30 May 2021 at 1.10.
[28] Submission dated 22 October 2021.
[29] At pages 7-10 of 84 (part one). This document has a handwritten number on the first of its four pages. Duplicates of the document, without a handwritten number on the first page, are at pages 14-17 and 43-46 of 84 (part one) and pages 97-100, 254-257, 259-262 and 263-266 of 420 (part two). The applicant confirmed he did not seek access to the duplicates in an email to OIC dated 29 June 2023.
[30] Submission dated 22 October 2021.
[31] Submission dated 6 December 2022.
[32] The Deputy Director General, Service Delivery and Operations, Queensland Government Customer and Digital Group.
[33] Submission dated 6 December 2022.
[34] Submission dated 6 December 2022.

30. In terms of the Department's submission that the Background Briefing was not prepared '*in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions*', I have taken the following into account:

- while the Background Briefing was not specifically part of the deliverables[35] agreed between the Department and the historian who was engaged to research and prepare information for the public release of the Cabinet minutes,[36] it was prepared by that historian;[37] and
- the Heiner Affair was noted in the summary of issues in a Ministerial briefing about the Minister's meeting with the historian before the media event.[38]

31. I have also noted certain information in the Additional Documents regarding the Minister's meeting with the historian and the media release event, and the extent and timing of any sharing of the Background Briefing beforehand.[39]

32. Further, I have noted the following circumstances, as outlined by the Department:[40]

- generally, the Background Briefing was *'not provided or briefed verbally to the Minister'*
- in relation to the Minister's meeting with the historian specifically, the Background Briefing *'was not mentioned at all nor … given to the Minister'*
- in relation to the media release event specifically, the Background Briefing was not created for or considered at this event, nor created for or included in the media kit,[41] and *'*[t]*he Heiner inquiry was not mentioned at the … event'*
- the historian was asked to write about the Heiner Affair *'as a back pocket, not for publication'*
- the reason this request was made was *'there was no-one in the Department who was around at the time who knew anything about the subject matter and … it would be good to have it for historical context'* and *'as there could be a potential follow up issue. The Minister may need to be across the matter, not for journalists' Media event, but it could be raised/asked about at any point of time after 1 January 2021 for example, raised later in Parliament'*
- to the extent the Background Briefing was shared, it was provided *'as background information'*, *'for information only'* and *'to give a "heads up" on what it was about, not for publication, only for internal purposes'*

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[35] Provided with Department's submission dated 12 May 2022.

[36] That is, the historian who prepared the *'Selected highlights of the 1990 Queensland Cabinet Minutes'* (noted at n 8 above) and the *'1990 Cabinet Minutes – Background Report'* at <https://www.publications.qld.gov.au/dataset/cabinet-minutes/resource/18bef39b-bcb6-4b6c-8dc8-024ff825d2bb> (which makes no mention of the Heiner Affair). Like the former, a version of this document – with the same content, but a handwritten number and date on the first page – was released to the applicant by the Department (at pages 20-24 of 32 of the released documents).

[37] In confirming the identity of the author in this decision, I have noted the Department's concern about doing so expressed in its submission dated 6 December 2022, but also note that the Department does not claim that the historian's name, and therefore his identity as the author, is contrary to the public interest information in the version of the Background Briefing redacted by the Department and provided to OIC on 22 December 2022.

[38] Page 3 of the 32 released pages.

[39] Given the Department's general position (that such information is outside scope, but grounds of refusal would apply if it were within scope), I have not described this information in this decision, so as to avoid any possible contravention of section 108(3) of the RTI Act. Details of such information will be set out in the letter to the Department (ie the party to whom particular finding is adverse) accompanying this decision.

[40] Submission dated 6 December 2022. These comments have been included in this decision noting procedural fairness, as mentioned in OIC's letter dated 21 October 2022 and the Department's submission, along with section 110(3) of the RTI Act's requirement that I provide reasons for this decision.

[41] Page 328 of 420 (part two). The three documents included in the Media Kit were provided with Department's submission dated 12 May 2022: the *'Selected highlights of the 1990 Queensland Cabinet Minutes'* (noted at n 8 above); the *'1990 Cabinet Minutes – Background Report'* (noted at n 36 above); and a media statement *'1991 a year of political change'* by the Minister at <https://statements.qld.gov.au/statements/94157>.

- this sharing occurred because *'once the Cabinet Minutes were released after 1 January 2021 (and historian provided information in the highlights paper on what may be a sensitive issue), there was no historical knowledge on the issue and it was provided as a "heads up", as issue that **could** be raised in Parliament'* and *'*[t]*here is a possible use of the information for a PPQ which may not have eventuated'*; and
- '[p]*otentially, the matter could have been raised at media event or could happen at any time after that'*.

33. It is my understanding that that Department relies on these circumstances in support of its conclusion that the Background Briefing was not created '*in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions*'. While I accept the circumstances, as outlined by the Department, I do not agree that these circumstances are sufficient to support the Department's conclusion.

34. The circumstances outlined by the Department indicate that certain types of *'usage'* of the Background Briefing did **not** occur (eg actual use by the Minister herself, in the sense of the Background Briefing being provided, 'briefed to' or mentioned to her in a meeting; and actual or intended use as part of a media kit or other publication). I accept this, but consider that *'readiness for anticipated usage'* may also relate to other circumstances.

35. Specifically, I consider that this phrase can reasonably be construed as encompassing anticipated use of the Background Briefing by departmental or ministerial staff to ensure understanding of questions from the media and inform the formulation of responses to those questions. To be clear, I consider that such use would involve using the Background Briefing as a source of information or point of reference, rather than text to be published in response to questions.

36. In reaching this position regarding media enquiries, I have noted that the terms of the application refer to use either *'**on or at** the public release'* [my emphasis]. Noting that interpreting the terms of an application cannot be equated with statutory interpretation and requires an approach that is not overly technical, I consider that the word 'at' refers to use during the media release event itself, while the word 'on' has a meaning similar to 'from' or 'upon', in that it includes use after the date of the media release event.

37. The material before me[42] indicates that questions from the media were anticipated as a possibility – both at the media release event itself; and afterwards (ie both *'on and at the public release'*). Certain information in the Additional Documents regarding these circumstances relative to the extent and timing of any sharing of the Background Briefing, as noted at paragraph 31, is also relevant in this regard. On the material before me, I am satisfied that the Background Briefing was prepared in readiness for use if anticipated media enquiries eventuated – and therefore '*in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions*'.

38. Accordingly, I find that the Background Briefing falls within the terms of the application.

39. In the alternative, if I am wrong in this regard, and the Department's position, as noted at paragraph 33 is correct, the relevant question is: what is the impact of the words '*(and its other related and supporting earlier documents)*' in the application?

[42] For example, some of the Department's comments at paragraph 32 above – namely, *'The Minister may need to be across the matter, not for journalists' Media event, but it could be raised/asked about at any point of time after 1 January 2021'* and '[p]*otentially, the matter could have been raised at media event or could happen at any time after that*'.

40. In my opinion, the syntactical placement of brackets around the element '*(and its other related and supporting earlier documents)*' and the specification of '*all related documentations*' in the 'type of documents' section of the applicant's application form have created some ambiguity as to the scope of the application. As the Department did not seek clarification with the applicant, as set out at paragraph 22, I am limited to the wording of the scope given in the application, as that is the basis of the agency's decision which is under review.

41. The Department has submitted that the Background Briefing cannot be considered to fall within the element '*(and its other related and supporting earlier documents)*' because the element '*in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions*' is a key element and applies to the bracketed section as much as it applies to *'briefing document'*.[43] The Department did not explain its reasoning behind this interpretation. On the face of it, I consider that the brackets around the element in question could also suggest an interpretation where the three other elements (*'briefing document'*, *'recently created by Queensland State Archives, sometime in December 2020 or thereabout'*, and *'in readiness for its anticipated usage on or at the public release of Queensland Cabinet submissions'*) are read together, but the element '*(and its other related and supporting earlier documents)*' is read only in light of the element preceding it – ie *'briefing document'*.

42. I consider that a key word to consider in this matter appears in both the element '*(and its other **related** and supporting earlier documents)*' [my emphasis] and the reference to '*all **related** documentations*' [my emphasis] in the 'type of documents' part of the applicant's application form. The Macquarie Dictionary defines '*related*' as '*associated; connected*'.[44] What is associated or connected to a briefing document is a matter of subjective interpretation. There will be some documents that have a close degree of association or connectedness with the briefing documents that were released and there will be those that are associated or connected only loosely.

43. In this regard, I note that the Background Briefing was prepared by the same historian who was engaged to research and prepare information for the public release of the Cabinet minutes, during the same time period. I have also noted the extent and timing of any sharing of the Background Briefing as mentioned at paragraph 31. I also note that the topic of the Background Briefing – the Heiner Affair – was mentioned in several of the released documents.[45] Given these particular circumstances, I consider that the degree of association or connectedness is sufficiently close to support an alternative conclusion that, as part of a reasonable interpretation of terms of the applicant's application, the Background Briefing falls within the element '*(and its other **related** and supporting earlier documents)*' [my emphasis], and therefore within the scope of the application.

44. I am fortified that my finding regarding the Background Briefing is generally consistent with the RTI Act's object and pro-disclosure bias. Although the Department does not agree with this conclusion, it has made submissions regarding grounds for refusing access under the RTI Act which is considers to be applicable to information in the Background Briefing. These are addressed at c) below.

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[43] Submission dated 6 December 2022.
[44] *Macquarie Dictionary* (online at 22 June 2023) 'related' (def 1).
[45] In *'Meeting brief – Subject: Meeting with* [historian] *regarding his research into the 1990 Cabinet Minutes'* at pages 3 of 32 (with a handwritten number and date on the first page) and 31 of 32 (without that handwritten information); in *'Selected highlights of the 1990 Queensland Cabinet Minutes'* at pages 10-11 of 32; and *'Dot Point Briefing Note – Minister Subject: Media release of the 1990 Queensland Cabinet Minutes'* at page 25 of 32.

ii. Are the rest of the Additional Documents within the terms of the application?

45. The applicant views the position that the Department's searches located the 504 pages in response to his application, yet the Department's decision addressed only 32 pages,[46] with suspicion:[47]

> *… due to the inexplicable sudden feature in* [the Department's] *decision concerning hundreds of missing documents (and assuming they still exist) and, by the nature of what we are dealing with, who knew what in meeting together and what agreements were reached, what you come to learn in this external review about their prospective alleged highly embarrassing and/or incriminating content may see you find, for the first time, hitherto secret documents relating to this one limb (of others in this interconnected affair) captured in this long-running documented systemic cover-up since February/March 1990, surrounding illegal activities at Queensland State Archives in the particular. …*
> *…*
> *This marked material discrepancy is highly concerning. I pose this question: Where and what are the missing documents and their contents?*

46. At OIC's request, the Department provided the entirety of the 504 pages located by the Department to OIC[48] along with submissions. The submissions include the Department's observation that:[49]

> *It is not uncommon for departmental officers, when conducting searches for documents possibly responsive to RTI applications, to take a prudent view of the scope of the application and the possible relevance of located documents. If in doubt about relevance they are encouraged to provide the documents in full for the decision maker's consideration.*
>
> *The Department encourages those conducting searches to take care so as not to inappropriately narrow search terms and thereby inadvertently exclude relevant documents from being located.*
>
> *It does not follow from the mere fact a large number of possibly relevant documents are located, yet the decision results in a far smaller number of documents being determined as relevant, that the decision maker has narrowed his or her interpretation of the scope of the application or excluded relevant documents from consideration.*

47. Following a careful examination of these 504 pages, OIC responded to the applicants concerns. In response, the applicant replied:[50]

> *I submit that stretches credulity and reasonableness to breaking point to contend that of the recovered 504 pages identified and located in the search process brought about by reason of my 28 January 2021 RTI application that 472 pages fell outside of scope because (as described in your preliminary view (p3) as contended by the Department), they were: (Quote)*
>
> > *"…duplicates of Released documents or incidental documents related to the media event to announce the release of the Cabinet documents (for example, documents about logistics of that event – time, venue, attendees etc)."*
>
> *It seems impossible to believe that within the above description that the pages would equate to a total of 472. I submit that the true figure would be reasonably and significantly*

[46] In which, as noted at paragraph 2 above, the Department decided to release 26 pages and 6 part pages.
[47] Submission dated 30 May 2021 at 1.16 and 2.8.
[48] As an 84 page pdf document (part one) and a 420 page pdf document (part two).
[49] Submission dated 22 October 2021.
[50] Submission dated 7 January 2022 at 40.

> *less than that which leaves a significant number of others to be properly accounted for.* ***This should be clarified in precise terms, and not left to speculation****.*
>
> [applicant's emphasis]

48. Of the 504 pages located by the Department, 32 of these pages were addressed in the Department's decision. Of the remaining 472 pages (ie the Additional Documents), four pages constitute the Background Briefing discussed above. A further 58 pages[51] comprise duplicates, or in a small number of instances near duplicates,[52] of these pages.

Three Emails

49. Of the remaining 410 pages of Additional Documents, three pages consist of three particular emails (**Three Emails**).[53] Two further pages comprise duplicates of one of the Three Emails.[54]

50. I have carefully considered the content of the Three Emails. I have also considered when they were sent, the senders and recipients, and their respective roles.[55] I have also noted the reference to '*emails*' in the 'type of documents' part of the applicant's application form. Taking the same approach to the element '*(and its other **related** and supporting earlier documents)*' [my emphasis] as that discussed above regarding the Background Briefing, I have concluded that the Three Emails are closely connected or associated with the Background Briefing. Further, whether the Background Briefing is taken to fall within the scope of the application as per my finding at paragraph 38 or the alternative conclusion at paragraph 43, I consider that a reasonable interpretation of application's scope requires inclusion of the Three Emails.

51. The close degree of association or connectedness of the Three Emails with the Background Briefing as a *'briefing document',* or even as another *'related document'*, is in my opinion sufficient to bring the Three Emails within the terms of the application's scope. I therefore make this finding.

52. The Department does not agree with this conclusion and maintains that these Three Emails do not fall within the terms of the application. In doing so, it relies on the same reasoning it considers applicable to the Background Briefing.[56] The extent of the Department's submissions regarding grounds for refusing access under the RTI are addressed at c) below.

Other Additional Documents

53. Once the five pages comprising the Three Emails are taken into account, 405 pages of Additional Documents remain. I am satisfied that these 405 pages of Additional Documents comprise incidental documents related to the media event to announce the release of the Cabinet documents – for example, documents about logistics of that event (time, venue, attendees etc), the Minister's speech at the event, and the associated media release - and duplicates thereof. For these, I consider that the

[51] Of the 58 pages, 34 pages duplicate documents addressed in the decision and 24 pages constitute six further copies of the Background Briefing, which the applicant does not wish to access – see footnote n 29 above.
[52] ie the same text but small differences in formatting.
[53] Pages 13 and 42 of 84 (part one) and 96 of 420 (part two).
[54] Pages 249 and 258 of 420 (part two). These pages comprise duplicates of the email at page 42 of 84 (part one), except that the email at page 42 of 84 (part one) has a handwritten number on it, whereas these duplicates do not. Given the applicant confirmed he did not seek access to the duplicates of the Background Briefing in an email to OIC dated 29 June 2023, I am proceeding on the basis that he also does not wish to pursue access to duplicates of this email.
[55] For the reasons noted at n 39 above, details of such information will be set out in the letter to the Department (ie the party to whom particular finding is adverse) accompanying this decision
[56] Submission dated 21 June 2023.

degree of association or connectedness is not sufficiently close to bring these pages within the parameters of the element '*(and its other **related** and supporting earlier documents)* [my emphasis]'. I therefore find that these pages do not fall within the terms of the applicant's application.

iii. Are internal QSA files regarding 'sources' with the terms of the application?

54. The applicant submits that, due to his conversations with a departmental officer prior to lodging his application, the departmental officer knew that his application *'encompassed **earlier** files dating back to 23 February 1990'* [applicant's emphasis].[57]

55. The applicant has submitted:[58]

> *The nature of this external application I believe obliges me to provide credible evidence to you regarding the first stage of what documents were available in discovery/disclosure/retrieval process for the designated departmental RTI official to comprehensively explore. The person, who appears to have been designated this important task, albeit at some stage, was [the departmental officer].*
>
> *Accordingly, this following list of entities, committees, inquiries, books, media coverage and related things* [***'sources'***]*, in their various ways at various times have mentioned in some way or been relevant to the role of Queensland State Archives … in this affair which I believe would have been (a) contemporaneously taken note of, (b) prospectively internally commented on (e.g. by reason of explanation, requested report etc), (c) and kept in its own designated internal file at Queensland State Archives.*
>
> *…*
>
> *The list of sources (not exhaustive or in chronological order) is:*
>
> - *Criminal Justice Commission and Crime and Misconduct Commission;*
> - *The three February/March 1990 Cabinet Submissions tabled in Parliament on 30 July 1998 by Queensland Premier the Hon Peter Beattie MP in confidence debate;*
> - *Ministerial Statements in Parliament and to the media, Questions Without Notice in Parliament;*
> - *Australian Society of Archivists inclusive of 8 October 1999 Statement to Parliamentary Criminal Justice Commissioner;*
> - *Records and Information Management Professionals Australasia;*
> - *Recordkeeping Journals;*
> - *2010 Thesis University of Manitoba – Department of History "Human Rights and Archives: Lessons from the Heiner Affair" by Mr Jonathan Nordland;*
> - *Archives & Manuscripts: No 1 May 2011 edition. Ripples across the pond: global implications of the Heiner affair – Professor Randall C Jimerson, Western Washington State University USA.*
> - *May 1991 Cooke Commission of Inquiry into The Activities of Particular Queensland Unions – An Investigation into the circumstances behind the sacking of Kevin Lindeberg from the Queensland Professional Officers Association*
> - *October 1996 Morris QC/Howard Report into Allegations by Mr John Reynolds and Mr Gordon Harris and Allegations by Kevin Lindeberg;*
> - *1997 Connolly/Ryan Judicial Review into the Effectiveness of the CJC;*
> - *1998/99 Forde Commission of Inquiry Into the Abuse of Children in Queensland Institutions;*
> - *13 September 1999 85-page Lindeberg Petition (Tabling No 2596 27 October 1999);*
> - *2012/13 Carmody Commission of Inquiry into its Term of Reference 3(e);*
> - *ABC-TV, including 2004 Australian Story "Three Little Words";*

[57] Submission dated 30 May 2021 at 2.9.
[58] Submission dated 30 May 2021 at 7.1, 7.2 and 7.4 (footnotes omitted).

- *February 1999 Channel 9's "Sunday" Program re: "Queensland's Secret Shame"; Reporter Mr Paul Ransley and March 1999 "Neglect and Cover-Ups" Reporter Mr Paul Ransley*
- *Office of Crown Law; (Tabled in Parliament and supplied to Queensland State Archives) Queensland Audit Office(i.e. Annual Report No 6 2004-05 Tabled in Parliament 5.4.2. John Oxley Youth Detention Centre – Referral by Mr Kevin Lindeberg pp 40-44);*
- *Queensland Education BCL Years 11 and 12 Text Book;*
- *international archives conventions;*
- *tertiary text books on archives-recordkeeping;*
- *debates and public interest statements in State and Federal Parliament;*
- *1993 Senate Select Committee on Public Interest Whistleblowing;*
- *1995 Senate Select Committee on Unresolved Whistleblower Cases;*
- *Senate Privileges Committees 63rd (1997) and 71st Report (1998);*
- *1999 Lindeberg Petition (85-pages See Points 175-189 re Queensland State Archives) tabled in the Queensland Parliament by the Member for Broadwater, Mr Alan Grice MP, on 27 October 1999 (Reference No. 4999T2596);*
- *2004 Senate Select Committee on the Lindeberg Grievance;*
- *2003/04 House of Representatives Standing Committee on Legal and Constitutional Affairs – Crime in the Community – victims, offenders and fear of crime;*
- *2006 House of Representatives Standing Committee on Legal and Constitutional Affairs – Harmonising of Legal Systems -(Submissions 30 and 30.1.)*
- *eminent senior counsel, retired judges and academics (e.g. See the 9 Volume Rofe QC Audit of the Heiner affair);*
- *September 2011 Play NSW Whitecross Media Video YouTube "The Heiner Affair: A Play"*
- *Whistleblower's Webpages;*
- *the mainstream and social media articles including the Queensland University School of Journalism newspaper.*

56. The applicant's submission went on to discuss some of these *'sources'* and mention others.[59] He also added to his list of *'sources'* in subsequent correspondence.[60]

57. The applicant's contention is that, due to the notoriety of the Heiner Affair and QSA's role in that affair, QSA would have kept files regarding the *'sources'*. Some examples of such contentions are:[61]

> *It is reasonable to suggest that a file keeping these … comments concerning the role of the State Archivist and public recordkeeping practices … would have been opened at some time at Queensland State Archives either by the State Archivist herself, or another official whose duty was to track any media or other important coverage directly relevant to the institution's history, image and public confidence in its function.*
> *…*
> *I believe that these adverse comments … would have likely been noticed and kept by … and afterwards by the Queensland State Archives itself out of concern for its own reputation as a body expected to conduct itself with utmost professionalism and integrity in order to (a) comply with the law, and (b) maintain public confidence in its vital statutory purpose. Hence, I believe that these records would have been highly probably accessible in any internal search and retrieval process for relevant files pertinent to my RTI application.*

58. It is my understanding that the applicant submits that:

[59] Submission dated 30 May 2021 at 7.18, 7.19, 7.27, 7.29, 7.38, 7.43, 10.2, 10.19 and 11.1.
[60] Submission dated 6 July 2021 at 2.
[61] Submission dated 30 May 2021 at 7.18 and 7.38.

- QSA would have created earlier internal files dating back to 23 February 1990 in which it saved, noted and commented on the above *'sources'* which examined or discussed the Heiner Affair across multiple contexts over the years
- his application encompasses these files; and
- these files should therefore be located and released to him.

59. Given these submissions, I must determine whether the internal QSA files regarding *'sources'* about the Heiner Affair dating back to 23 February 1990 raised by the applicant fall within the terms of the application.

60. Contemporaneous material supplied by the Department[62] indicates that communications between the departmental officer and applicant occurred prior to the Department's receipt of the applicant's application – however, this material provides only high level detail regarding the matters discussed.[63] Regardless, while I acknowledge the applicant's reference to conversations with a departmental officer, I am limited to the wording of the scope given in the application, as that is the basis of the agency's decision which is under review.

61. The terms of the applicant's application (set out in full at paragraphs 20-21) do not make any reference to earlier files dating back to 23 February 1990, regarding the Heiner Affair or otherwise. Indeed, the applicant's application does not mention the Heiner Affair at all. It consequently appears that the applicant's contention that his application encompasses internal QSA files regarding *'sources'* about the Heiner Affair dating back to 23 February 1990 hinges on the element '*(and its other related and supporting earlier documents)*' in the terms of his application.

62. I must observe that the applicant's submission in this regard is speculative in terms of presuming that the internal QSA files regarding *'sources'* dating back to 23 February 1990 raised by him were actually created, and contain what he considers they would contain. Further, while I have carefully considered the entirety of the 180 plus pages of submissions provided by the applicant during this external review, I remain unsure of the basis on which the applicant contends that the internal QSA files he speculates exist would qualify as '*other related and supporting earlier documents*'. It may be the case that the applicant considers the research the historian was commissioned to undertake regarding the 1990 Cabinet documents, and the many issues canvassed therein, extended to reading the internal QSA files the applicant speculates exist regarding one such issue, namely the Heiner Affair – and that the applicant therefore considers that internal QSA files constitute '*other related and supporting earlier documents*' relative to a *'briefing document'* prepared by the historian. If this is the case, presuming that the historian's research included the internal QSA files presumed to exist adds a further speculative dimension to the applicant's submission.

63. During the review, OIC informed the applicant that *'*[t]*he scope of your application is somewhat problematic because of the differing views of what may be taken to be* "related and supporting documents"*'*.[64] The applicant's response summarised his primary concerns regarding the Heiner Affair and was framed in terms of the public interest in releasing the internal QSA files envisaged by him.[65] It concluded:[66]

[62] Submission dated 23 July 2021.
[63] Specifically there is evidence of telephone calls between the parties on 5 and 11 February 2021 and an email on 11 February 2021 prior to the Department's receipt of the applicant's application later that day.
[64] Email dated 6 October 2022.
[65] Submission dated 19 October 2022 at 8 to 54.
[66] See above n 65 at 53 and 54.

> *… my reason in reciting the above and pointing to material in earlier submission/addenda is to argue, hopefully convincingly and to adequately satisfy the public interest test, that "the missing/withheld 472 (approx.) records" against what I made abundantly clear to Mr Weaver about "the scope" before in his search and then subsequently recovered during his search process cannot be sensibly classified as "problematic" and therefore beyond "the scope" of my 28 January 2001 RTI application.*
>
> *For example, while I can only speculate, it is not beyond reason, in these extraordinary circumstances, to suggest that those missing (i.e. withheld) records may likely relate to the aftermath of the State Archivist's 1990 involvement and trace the life of my protracted public and recorded quest for justice, and now form part of official files created either by the State Archivist… and prospectively by others who followed in and/or reported on compliantly in these demonstrably fatally flawed footsteps at Queensland State Archives.*

64. As is apparent from the above extract, the applicant anticipated that the 472 pages of Additional Documents constitute internal QSA files, as envisaged by him. As set out at i. and ii. above, this is not so. I have therefore considered the broader thrust of the applicant's response, in an attempt to identify any argument by the applicant as to why he considers that such internal QSA files would comprise '*(and its other related and supporting earlier documents)*' and fall within the terms of his application. However, I have been unable to identify the applicant's position in this regard.

65. I do not consider it clear, either from the wording of the element '*(and its other related and supporting earlier documents)*' or the application as a whole, that the terms of the application encompass internal QSA files as envisaged by the applicant. The terms of the application do not give sufficient information concerning these documents to enable the agency to identify them. In the circumstances, I do not accept that a reasonable interpretation of the applicant's application extends its scope beyond the quite discrete matter of the public release of 1990 Cabinet minutes to documents concerning the circumstances of the Heiner Affair more generally. It is not reasonable to interpret '*(and its other related and supporting earlier documents)*' as relating to the significant breadth of *'sources'*, notes and commentary that the applicant contends should have been created and retained by QSA across the years since 1990. I must therefore find that internal QSA files regarding *'sources'* about the Heiner Affair dating back to 23 February 1990 do not fall within the terms of the applicant's application.[67]

Issue b) Has the Department conducted reasonable searches for documents responding to the terms of the application?

66. Yes, the Department took all reasonable steps to locate the documents responding to the terms of the application and any further such documents may be refused on the basis they are nonexistent or unlocatable.

Relevant law

67. The RTI Act provides a right to be given access to documents of an agency,[68] however, this access right is subject to limitations, including the grounds on which access to information may be refused.[69]

68. The functions of the Information Commissioner on external review include investigating and reviewing whether an agency has taken reasonable steps to identify and locate

[67] This conclusion does not require me to, and I have not, considered nor reached any conclusion about whether such internal QSA files exist.
[68] Section 23(1)(a) of the RTI Act.
[69] The grounds on which an agency may refuse access are set out in section 47(3) of the RTI Act.

documents applied for by applicants.[70] Access to a document may be refused if the document is nonexistent or unlocatable.[71]

69. A document is *nonexistent* if there are reasonable grounds to be satisfied the document does not exist.[72] To be satisfied of this, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.[73]

- the administrative arrangements of government
- the agency's structure
- the agency's functions and responsibilities
- the agency's practices and procedures (including but not exclusive to its information management approach); and
- other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

70. If searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case as the search and inquiry process an agency will be required to undertake will depend on the particular circumstances.

71. A document is *unlocatable* if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.[74] Determining whether a document exists, but is unlocatable, requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the key factors.[75]

72. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.[76] However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.[77]

Findings

73. The applicant's submissions expressed concerns that certain documents had not been located – specifically, the *'internal briefing document'*, 472 pages of Additional Documents and internal QSA files regarding *'sources'* addressed at a) above. As already stated, I am satisfied that the documents raised by the applicant have been

[70] Section 130(2) of the RTI Act. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act '*does not contemplate that* [the Information Commissioner] *will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.
[71] Sections 47(3)l and 52 of the RTI Act.
[72] Section 52(1)(a) of the RTI Act.
[73] See *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (***Pryor***) at [19] which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [28]. These factors were more recently considered in *Van Veendendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [23] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17].
[74] Section 52(1)(b) of the RTI Act.
[75] Noted in paragraph 69 above. See *Pryor* at [21].
[76] Section 87(1) of the RTI Act.
[77] See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

located and considered; or fall outside the terms of the application and therefore are not relevant for me to consider when examining the reasonableness of the Department's searches for responsive documents.

74. My consideration of the adequacy of the Department's searches only extends to further documents falling within the terms of this application, ie. further briefing documents created for the public release of the 1990 Cabinet Minutes and documents related to and supporting these briefing documents.

75. The Department provided OIC with records of the searches it conducted. Signed certifications were provided by three staff in the Office of the Deputy Director-General and three staff within QSA which detailed more than six hours of searches. The searches were conducted within relevant email accounts (personal and shared mailboxes), H:drive, desktops of relevant staff, the file container for the 1990 Cabinet minutes release project, within Ark (QSA's recordkeeping system) and NEO (the Ministerial correspondence system) using search terms such as 'Cabinet', 'Heiner', 'Minutes', '1990 cabinet minutes' and 'Cabinet minutes'.

76. Having carefully considered these records, along with the documents located as a result of the Departments searches (ie the entirety of the 504 pages located by the Department), I am satisfied that staff members of the Department in relevant roles searched in all appropriate locations in which responsive documents could reasonably be expected to be stored, using suitable search terms and for an adequate length of time. Therefore:

- I am satisfied that all reasonable steps have been taken to locate documents within the scope of the application; and
- I find that access to any further responsive documents may be refused under section 47(3)(e) of the RTI Act on the ground that such documents are nonexistent or unlocatable in accordance with section 52(1) of the RTI Act.

Issue c) For any documents within the terms of the application, do any grounds for refusal of access under the RTI Act apply?

77. Parts of one sentence on the third page of the four page Background Briefing,[78] comprising personal information, may be refused. For the rest of the information in the Background Briefing and the Three Emails, the Department has not met its onus of establishing any grounds to refuse access to this information under the RTI Act for the reasons set out below.

Relevant law

78. In the conduct of an external review, the Information Commissioner has, in addition to any other power, power to:[79]

> *(a) review any decision that has been made by an agency or Minister in relation to the access application concerned; and*
>
> *(b) decide any matter in relation to the access application that could, under this Act, have been decided by an agency or Minister.*

[78] At page 9 of 84 (part one).
[79] Section 105 of the RTI Act.

79. 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.[80] The Act must be applied and interpreted to further this primary object,[81] and is to be administered with a pro-disclosure bias.[82]

80. 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,[83] including grounds on which access may be refused.[84] These grounds are to be interpreted narrowly.[85]

81. As mentioned at paragraph 72 above, on external review, the Department has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.[86]

Findings

Do any grounds for refusal of access under the RTI Act apply to the Background Briefing?

82. As set out at a)i. above, I have found that the Background Briefing[87] falls within the terms of the application. The information in the Background Briefing appears to be a matter of public knowledge due to various inquiries into the Heiner Affair and the publication of records, for example:

- legal advice about whether a public inquiry should be conducted into the Heiner Affair was requested by State Cabinet in 1996 – subsequently tabled in Parliament[88]
- various Cabinet minutes and submissions from 1990 referred to in the Background Briefing are no longer subject to the PR Act's 30 year restricted access period and were tabled in Parliament in any event[89]
- Crown Solicitor advices dated 18 January 1990, 19 January 1990, 23 January 1990 and 16 February 1990 in which the Crown Solicitor advised '… *the tape recordings of interviews conducted by Mr Heiner and associated material should be destroyed*…' – also tabled in Parliament[90]
- reports of four Senate Committee enquiries relating to the Heiner Affair in 1994, 1995, 1998 and 2004[91]

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[80] Section 3(1) of the RTI Act.
[81] Section 3(2) of the RTI Act.
[82] Section 44 of the RTI Act.
[83] Section 23(1) of the RTI Act.
[84] Section 47 of the RTI Act.
[85] Section 47(2)(a) of the RTI Act.
[86] Section 87(1) of the RTI Act.
[87] At pages 7-10 of 84 (part one).
[88] Anthony Morris QC and Edward Howard, *Report to the Honourable The Premier of Queensland and The Queensland Cabinet of an Investigation into Allegations by Mr Kevin Lindeberg and Allegations by Mr Gordon Harris and Mr John Reynolds* (8 October 1996) tabled in the Queensland Legislative Assembly by Hon. R. E. Borbidge on 10 October 1996, as recorded at pages 32–7 - 3230 of Hansard.
[89] Cabinet decision 101 dated 12 February 1990, Cabinet submission 100 dated 5 February 1990, Cabinet decision 118 dated 19 February 1990, Cabinet submission 117 dated 13 February 1990, Cabinet decision 162 dated 5 March 1990, Cabinet submission 160 dated 27 February 1990 tabled in the Queensland Legislative Assembly by the then Premier P. D. Beattie on 30 July 1998, as recorded at pages 1495-1496 of Hansard.
[90] Tabled in the Queensland Legislative Assembly by the Hon. D. M. Wells on 21 February 1995, as recorded at page 10917 of Hansard.
[91] Report on the Senate Select Committee on Public Interest Whistleblowing (August 1994), Report of the Senate Select Committee on Unresolved Whistleblower Cases (October 1995), Senate Committee of Privileges, 71st Report, *Further Possible False or Misleading Evidence before Select Committee on Unresolved Whistleblower Cases* (May 1998) and Report of the Senate Select Committee on the Lindeberg Grievance (November 2004).

- a 144 page separate report into the Heiner Affair published as part of the Queensland Child Protection Commission of Inquiry in 2013;[92] and
- the summary about the Heiner Affair in the *'Selected highlights of the 1990 Queensland Cabinet Minutes'* set out at paragraph 6.

83. On the basis of the extensive publicly available information, I conveyed a view to the Department that it appeared that there were no grounds for refusal under the RTI Act.[93] In response Department submitted:[94]

> *It is respectfully submitted that the issue on whether the Heiner Background Briefing (subject document) is responsive to the application is the decision subject to this review. If the OIC decides, contrary to our submission, that the Heiner background briefing is within scope, then the consideration of any grounds that would preclude the disclosure of the document is a matter for the OIC. The department did not decide the application on that basis, and therefore, the OIC is not reviewing our decision in any relevant respect.*
>
> *In other words, our position remains that the subject document does not fall within the scope of the application and the OIC, in determining it to be in scope and the extent of the application of any grounds that preclude disclosure of any part of the briefing, is acting as de novo decision maker…*

84. External review by the Information Commissioner[95] is merits review – that is, an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to determine what is the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the RTI Act.[96] After conducting an external review of a decision, the Information Commissioner must make a decision affirming, varying, or setting aside and making a decision in substitution for, the decision under review.[97]

85. While it is my role to reach a decision in this matter, I depend on evidence held by the Department as the entity in possession and control of the document and with means of ascertaining the sensitivity of its contents due to its administrative responsibilities. Consistent with this, the onus of establishing that a decision adverse to the applicant should be made rests with the Department, as does the more general requirement to comply with reasonable requests for assistance in relation to a review.[98]

86. The Department went on to provide the following brief submission regarding grounds of refusal that, in its view, could apply to the Background Briefing:[99]

> 1. *On the face of the* [Background Briefing]*, it cannot be ascertained if any of the information is in the public domain.*
>
> 2. *The* [Background Briefing] *includes references to a number of individuals, by name and by position, role or title. Even if the personal information of individuals is in the public domain, the information may not have been arranged in the same format and may have appeared in a different format and context.*
>
> *It is well established that the combination of information can be confidential even if the individual components are in the public domain. We respectfully suggest the OIC*

[92] Carmody QC (n 5).
[93] Letter dated 21 October 2022.
[94] Submission dated 22 December 2022.
[95] Or delegate.
[96] Section 105(1)(b) of the RTI Act.
[97] Section 110(1) of the RTI Act.
[98] Sections 87(1) and 96 of the RTI Act.
[99] Submission dated 22 December 2022.

> *decision maker consider whether it is necessary to consult with these individuals. We further note there are references to … and the decision maker may consider it appropriate to consult with … prior to any disclosure.*
>
> 3. *On its face, the* [Background Briefing] *contains information that may be subject to legal professional privilege that is not in the public domain. Notwithstanding that the applicant maintains he has copies of* ***Crown Law advice*** *and* ***Cabinet information*** *(in his submission to the OIC and on his webpage), the department is not able to confirm if that is accurate, if accurate how that occurred, and whether any advice in the possession of the applicant is the same as that to which the background briefing refers. The department submits* ***a prudent view would be to consider the advice to which the background briefing refers to be subject to legal professional privilege and to act in a manner consistent with maintaining that privilege****.*
>
> 4. *The department is not in a position and cannot verify if the applicant is in possession of the same* ***legal advice*** *or* ***cabinet decisions****. The applicant stating that he has a copy of the legal advice or cabinet decisions as indicated in the subject document cannot be assumed.*
>
> 5. ***We have marked up information in the*** **[Background Briefing]** ***which refer to the above observations****.*
>
> [my emphasis]

87. The following information was redacted from the 'marked up' version of the Background Briefing provided with this submission:

- the name of an agency
- the names of a small number of individuals connected with the Heiner Inquiry, the destruction of documents in 1990 or subsequent processes
- the routine work information of one such individual; and
- one sentence containing highly sensitive personal information regarding a particular individual.

88. In an earlier submission in relation to scope, the Department also submitted:[100]

> *Given the sensitive subject matter, the historical details contained in the* [Background Briefing] *could become useful in the future, particularly if raised later in Parliament. This is supported by a statement on page 96 of Part Two documents which refers to the development of a PPQ. Our inquiries indicate that no PPQ was created, however, it is our view that this should not detract from the fact that at the time of writing the email the* [Background Briefing] *was considered as being used for preparing a PPQ.*

89. I have taken the Department's submissions as raising the following grounds on which access to the Background Briefing may be refused under the RTI Act:

i. legal professional privilege

ii. Cabinet matter brought into existence before the commencement of the RTI Act

iii. Parliamentary privilege; and

iv. disclosure would on balance, be contrary to the public interest.

i. Legal professional privilege

[100] Submission dated 6 December 2022.

90. Access to exempt information may be refused under the RTI Act.[101] Relevantly, information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.[102] This exemption reflects the requirements for establishing legal professional privilege at common law.[103] That is, privilege protects confidential communications made in the course of a lawyer-client relationship for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.[104] This privilege is for the benefit of the client[105] and may be waived by intentionally disclosing a privileged communication[106] or where a party acts inconsistently with the maintenance of confidentiality which the privilege is intended to protect.[107] Disclosure of a privileged communication to a third party for a limited purpose in a specific context may not amount to overall waiver of privilege, ie, it may amount to a limited waiver which otherwise allows privilege to be maintained.[108]

91. The Department did not identify specific information of concern in the Background Briefing; accordingly I have compared all of the references to legal advice in the Background Briefing against the advices tabled in Parliament as set out at paragraph 82. All of the advices that have been referred to, except one, were published in full by tabling in Parliament by the party for whose benefit legal professional privilege would have originally existed. The decision to table the advices in Parliament evidences a clear intention to waive privilege and indicates that the advice is no longer confidential. The remaining reference to advice which was not tabled in Parliament has otherwise been disclosed to the media.[109] Such disclosure also indicates an intention to waive privilege, although I acknowledge that this may be a limited waiver. The information the Background Briefing discloses in relation to this advice is the same as the information in the public domain, therefore I am also satisfied that it does not retain the character of confidentiality that is essential to the maintenance of privilege. Accordingly, I consider that the Department has not met its onus of establishing that the Background Briefing, or any parts thereof, are subject to legal professional privilege, and I find that access may *not* be refused on the ground that the Background Briefing comprises or includes exempt information of this type.

ii. Cabinet matter

92. Information is also exempt information if it is:[110]

- brought into existence before 1 July 2009[111]
- mentioned in section 36(1) of the repealed FOI Act; and
- not officially published by decision of Cabinet.

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[101] Sections 47(3)(a) and 48 and schedule 3 of the RTI Act.
[102] Schedule 3, section 7 of the RTI Act.
[103] *Ozcare and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 13 May 2011) at [12].
[104] *Esso Australia Resources Ltd v Commission of Taxation* (1999) 201 CLR 49 (***Esso***) at [61]-[62] and [167]-[173]; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at [9].
[105] *Mann v Carnell* (1999) 201 CLR 1 (***Mann v Carnell***) at [28] per Gleeson CJ, Gaudron, Gummow and Callinan JJ; *Esso* at [1] per Gleeson CJ, Gaudron and Gummow JJ.
[106] *Goldberg v Ng* (1994) 33 NSWLR 639 (***Goldberg v Ng***) at 670 per Clarke JA; *Federal Commissioner of Taxation v Coombes* (1999) 92 FCR 240 at 255 per Sundberg, Merkel and Kenny JJ.
[107] *Goldberg v Ng* at 673 per Clarke JA; *Mann v Carnell* at [28] per Gleeson CJ, Gaudron, Gummow and Callinan JJ; *Osland v Secretary to the Department of Justice* (2008) 234 CLR 275 at [45] per Gleeson CJ, Gummow, Heydon and Kiefel JJ.
[108] *British Coal Corp v Dennis Rye Ltd (No 2)* [1988] 1 WLR 1113 at 1121-2; *Goldberg v Ng* (1995) 185 CLR 83 at 95-96; *Mann v Carnell* at [30]-[32]; *Network Ten Ltd v Capital Television Holdings Ltd* (1995) 36 NSWLR 275 at 283-6 per Giles J*; Australian Rugby Union Ltd v Hospitality Group Pty Ltd* (1999) 165 ALR 253 at 263 per Sackville J; *Cantor v Audi Australia Pty Ltd* [2016] FCA 1391 at [88], [123]-[125], [136]-[140].
[109] For the reasons noted at n 39 above, details of this publication will be set out in the letter to the Department (ie the party to whom particular finding is adverse) accompanying this decision.
[110] Sections 47(3)(a), 48 and schedule 3, section 1 of the RTI Act.
[111] Being the date on which the relevant provisions in the RTI Act commenced.

93. Section 36(1) of the repealed FOI Act relevantly refers to matter submitted to Cabinet and matter forming part of an official record of Cabinet.[112] The Department did not identify the specific information of concern in the Background Briefing, however I have compared all of the references to 'Cabinet' in the Background Briefing against the Cabinet submissions and decisions tabled in Parliament and administratively released by Queensland State Archives as set out at paragraph 82. These decisions and submissions were all brought into existence before 1 July 2009 and would be the type of matter to which section 36(1) of the FOI Act applied. However, all of the information referred to has now been officially published by decision of Cabinet. Therefore, I consider that the Department has not met its onus of establishing that the Background Briefing, or any parts thereof, comprise this type of Cabinet material, and find that access may *not* be refused on the ground that the Background Briefing comprises or includes exempt information of this type.

iii. Parliamentary privilege

94. Information is exempt information if public disclosure would infringe the privileges of Parliament.[113] For information to qualify as exempt information of this type, the information must be prepared for the purposes of, or incidental to, the transacting of business of the Parliament.[114]

95. Given the content of the Background Briefing, it is clear that it was not prepared for the purpose of assisting the Minister to answer possible parliamentary questions that might be asked in Parliament. Further, in the particular circumstances of this review, where I am satisfied that the Background Briefing was, at least in part, prepared in readiness for use if anticipated media enquiries eventuated,[115] and where the Department has advised that *'*[o]*ur inquiries indicate that no PPQ was created'*, I consider that the preparation of the Background Briefing was not incidental to the transacting of business of the Parliament. I therefore consider that the Department has not met its onus of establishing that the Background Briefing, or any parts thereof, are subject to parliamentary privilege, and find that access may *not* be refused on the ground that the Background Briefing comprises or includes exempt information of this type.

iv. Public interest balancing test

96. Access to information in a document may also be refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.[116] The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest, 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.[117]

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[112] Section 36(1)(a) and (d) of the FOI Act.
[113] Sections 47(3)(a), 48 and schedule 3, section 6(c)(i) of the RTI Act.
[114] *Moriarty and Department of* Health (Unreported, Queensland Information Commissioner, 15 September 2010) at [8]-[10] and *Waratah Coal Pty Ltd and Department of State Development Infrastructure and Planning* (Unreported, Queensland Information Commissioner, 10 December 2012) at [22]-[28].
[115] Paragraph 35 above.
[116] Section 47(3)(b) and 49 of the RTI Act.
[117] 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.

97. The 'marked-up' version of the Background Briefing (provided with the Department's submissions, as mentioned at paragraphs 86 and 87) indicates that the Department considers access to certain information should be refused. However, all of the information redacted by the Department appears to have otherwise been disclosed elsewhere as set out at paragraph 82.

98. I do not accept the Department's submission that the combination of personal information in the Background Briefing is confidential. The circumstances of the Heiner Affair and references to the involvement of the same key people have been examined and reiterated extensively as set out at paragraph 82. Similarly, the processes involving the agency whose name the Department has redacted are evident among such material. One would be hard-pressed to find a topic that has as many and as sizeable a back-catalogue of official reports and primary documents that are publicly available.

99. The level of information in the public domain renders it difficult to identify any concern or prejudice that could arise as a result of disclosure of the agency's name. Likewise, the level of information in the public domain significantly reduces the weight I would attribute to concerns about the disclosure of personal information and privacy.

100. I acknowledge that the existence of so much publicly available information reduces not only such factors favouring nondisclosure; it also reduces the weight to be attributed to the public interest in transparency and accountability.[118]

101. However, on balance, ***excluding some highly sensitive personal information in one sentence***, I am satisfied the Department has not established that access to the Background Briefing may be refused on the ground that its disclosure would be contrary to the public interest. In this regard, I have considered factors favouring nondisclosure which, on my reading of the Department's submissions, the Department could be construed as having possibly raised.[119] On the material before me, I consider that factors favouring disclosure related to accountability and transparency warrant relatively greater weight in light of the many concerns and inquiries related to the Heiner Affair over the years. This, combined with the RTI Act's pro-disclosure bias, supports a finding that, for this information, the factors favouring nondisclosure are outweighed by those supporting disclosure.

102. In these circumstances, I consider that the Department has not met its onus of establishing that I should give a decision adverse to the applicant regarding this information, and find that access to it may *not* be refused on the ground that its disclosure would, on balance, be contrary to the public interest.

103. This conclusion does not, however, apply to the ***highly sensitive personal information in one sentence***.[120] While the RTI Act prevents me from disclosing the content of this information,[121] I can confirm that this information comprises personal information of the most sensitive kind about a private individual who was a child at the relevant time.

104. In terms of this information, the concept of 'privacy' is, in my opinion, particularly pertinent. This concept is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal

[118] Schedule 4, part 2, items 1, 2. 3 and 11 of the RTI Act.
[119] Schedule 4, part 3, items 1, 2, 3 and 20 and part 4, sections 4 and 6(1) of the RTI Act. I have, as required, disregarded any irrelevant factors in schedule 4, part 1 of the RTI Act.
[120] On page 9 of 84 (part one).
[121] Section 108(3) of the RTI Act.

sphere' free from interference from others.[122] In response to my proposed refusal of this information, the applicant made an assumption regarding the identity of this individual, and contended that 'privacy' was not a relevant consideration, as the individual addressed in his submission was deceased.[123] On the material available to me, however, I am content to conclude that privacy considerations remain relevant.

105. I have carefully considered factors favouring disclosure and taken into account those factors which, on my reading of the applicant's submissions, he has raised.[124] Here, I note that such factors are significantly advanced by my conclusion regarding information that may not be refused (at paragraph 102), which relates to information including those parts of the sentence in question which detail government action/s. Moreover, I note there is nothing novel in the personal information that is not otherwise already a matter of public knowledge.[125] In these circumstances, I consider that the factors favouring disclosure do not warrant anything more than low weight.

106. I acknowledge that the extent to which the personal information is also already a matter of public knowledge impacts on privacy considerations as well. However, while the fact that personal information is in the public domain may serve to reduce the public interest in protecting the relevant person's associated right to privacy, it does not extinguish it.[126] Here – in circumstances involving particularly sensitive content about a person who was a child at the relevant time, which has entered the public domain but is not as extensively available as other information regarding the Heiner Affair – I consider that there remains a very significant public interest in not further prejudicing the privacy of the individual in question, and that this consideration outweighs the factors favouring disclosure. This is evident on the face of the highly personal information itself, if not established by the Department's submissions.

107. On this basis, I find that disclosure of the highly sensitive personal information in the sentence would, on balance, be contrary to the public interest, and access may be refused on this ground.

Do any grounds for refusal of access under the RTI Act apply to the Three Emails?

108. As set out at a)ii. above, I have found that the Three Emails[127] fall within the terms of the application.

109. The applicant has confirmed[128] that he does not wish to access the mobile telephone numbers and direct email addresses visible in the email signatures of two of the Three Emails.[129] Accordingly, these are no longer in issue.

110. I asked the Department to confirm whether it wished to make submissions regarding any grounds of refusal it considered applicable to the Three Emails.[130] In response, the Department reiterated its submissions as to why it considers the Background Briefing is

[122] 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 paragraph 1.56.
[123] Submission dated 15 June 2023.
[124] Schedule 4, part 3, items 1, 2, 3 and 20 and part 4, sections 4 and 6(1) of the RTI Act. I have, as required, disregarded any irrelevant factors in schedule 4, part 1 of the RTI Act.
[125] For the reasons noted at n 39 above, information I am aware of that is in the public domain will be set out in the letter to the Department (ie the party to whom this aspect of this particular finding is adverse) accompanying this decision.
[126] *Queensland Newspapers Pty Ltd and Department of Justice and Attorney-General* [2018] QICmr 52 (18 December 2018) at [31].
[127] Pages 13 and 42 of 84 (part one) and 96 of 420 (part two).
[128] By telephone on 12 June 2023 and submissions dated 15 June 2023.
[129] Pages 13 and 42 of 84 (part one).
[130] Email dated 9 June 2023.

outside the terms of the application (including quoting its comments set out at paragraph 83) and confirmed its position that these also applied to the Three Emails.[131] The Department's response did not address any grounds of refusal that, in its view, could possibly apply to the Three Emails.

111. I am unable to identify how the Three Emails, or any parts thereof, could reasonably be expected to comprise or contain exempt information – including the types of exempt information considered above with respect to the Background Briefing.

112. In absence of any input from the Department, I have considered whether access to the Three Emails, or parts thereof, may be refused on the ground that their disclosure would, on balance, be contrary to the public interest.[132] I have done so by considering the factors favouring disclosure and nondisclosure noted above with respect to the Background Briefing. On the material before me, noting the many concerns and inquiries related to the Heiner Affair over the years as well as the public interest in understanding departmental/ministerial preparations associated with the release of Cabinet material, I consider that the factors favouring disclosure deserve moderate to high weight. On the other hand, I give the factors favouring nondisclosure low to moderate weight, noting that the extent to which the information in question is routine work information and/or already in the public domain. These considerations, along with the RTI Act's pro-disclosure bias, support a finding that, for the Three Emails, pro-disclosure factors outweigh factors favouring nondisclosure.

113. In these circumstances, I consider that the Department has not met its onus of establishing that I should give a decision adverse to the applicant regarding the Three Emails, and find that access to the Three Emails may *not* be refused on the ground that their disclosure would, on balance, be contrary to the public interest.

DECISION

114. For the reasons set out above, as a delegate of the Information Commissioner under section 145 of the RTI Act, I vary the Department's decision and find that:

- the Background Briefing and Three Emails are within the terms of the application
- the rest of the Additional Documents and the documents raised in the applicant's submissions are outside the scope of the application
- the Department has conducted reasonable searches for documents responding to the terms of the access application and access to any further such documents may be refused on the ground they do not exist[133]
- parts of one sentence on the third page of the four page Background Briefing may be refused on the ground that access to this information would, on balance, be contrary to the public interest;[134] and
- for the remaining information in issue in the Background Briefing and the entirety of the Three Emails, no grounds for refusing access apply, and therefore the applicant may be given access to this information.

A Rickard
Assistant Information Commissioner

[131] Submission dated 21 June 2023.
[132] I have, as required, disregarded any irrelevant factors in schedule 4, part 1 of the RTI Act.
[133] Under section 47(3)(e) of the RTI Act.
[134] Under section 47(3)(b) of the RTI Act.

Date: 30 June 2023

APPENDIX

Significant procedural steps

Date	Event
19 May 2021	OIC received the application for external review. OIC requested and received initial documents from the Department.
30 May 2021	The applicant provided a submission to OIC.
9 June 2021	OIC advised the parties that the application for external review had been accepted and confirmed to applicant that OIC would not review the Department's refusal of access to six part pages. OIC requested information about the Department's searches.
23 June 2021	The Department requested an extension of time to provide the requested information.
24 June 2021	OIC granted the Department an extension of time.
6 July 2021	The applicant provided a submission to OIC.
21 July 2021	OIC followed up the Department on the outstanding requested information.
23 July 2021	The Department provided a copy of the 32 pages addressed in the Department's decision, a submission to OIC which included advice that 492 pages had been provided to its Right To Information unit for assessment, and search information.
22 September 2021	OIC requested from the Department a copy of 460 pages (ie the pages other than the 32 pages addressed in the Department's decision), a submission addressing why these pages were considered outside the scope of the application, and a response to the applicant's submission that an additional internal briefing document exists from the Department.
6 October 2021	The Department requested an extension of time to provide information. OIC granted the Department an extension of time.
22 October 2021	The Department provided a submission to OIC which included advice that 504 pages (not 492 pages) had been located and given to its RTI unit for assessment, and a copy of this 504 pages as an 84 page pdf document (part one) and a 420 page pdf document (part two).
26 November 2021	OIC conveyed a preliminary view to the applicant.
7 January 2022	The applicant provided a submission to OIC.
14 February 2022	OIC conveyed an informal resolution proposal to the Department and requested further information in the event the Department did not accept the proposal.
17 February 2022	OIC conveyed an informal resolution proposal to the applicant.

Date	Event
1 March 2022	The Department requested an extension of time to respond to the informal resolution proposal.
3 March 2022	OIC granted the Department an extension of time. The applicant requested an extension of time to respond to the informal resolution proposal.
9 March 2022 – 11 May 2022	The Department requested multiple extensions of time to respond to the informal resolution proposal, due to staffing changes.
12 May 2022	The Department provided a submission and further information to OIC, and advised OIC that it did not accept informal resolution proposal.
23 June 2022	OIC requested further information from the Department. OIC provided the applicant with an update.
12 July 2022	The Department provided further information to OIC.
27 July 2022	The Department provided further information to OIC.
6 October 2022	OIC conveyed an informal resolution proposal to the applicant.
19 October 2022	The applicant provided a submission to OIC.
21 October 2022	OIC consulted a third party. OIC conveyed a preliminary view to the Department.
3 November 2022 – 15 November 2022	The Department requested multiple extensions of time to respond to OIC's preliminary view. OIC granted an extension of time.
16 November 2022	The third party confirmed no objection to OIC's preliminary view and declined to participate in the review.
28 November 2022 – 5 December 2022	The Department requested further extensions of time to respond to OIC's preliminary view. OIC granted the Department an extension of time.
6 December 2022	The Department provided a submission to OIC.
15 December 2022	OIC confirmed to the Department that the Department could not reserve the right to make further submissions. OIC conveyed a preliminary view to the applicant.
22 December 2022	The Department provided a submission to OIC.
9 January 2023	The applicant provided a submission to OIC.
9 June 2023	OIC conveyed brief preliminary views to the Department and applicant.
12 June 2023	An OIC officer spoke with the applicant by telephone regarding OIC's brief preliminary view.
15 June 2023	The applicant provided a submission to OIC.
21 June 2023	The Department provided a submission to OIC.
30 June 2023	OIC asked the applicant to exclude duplicates of the Background Briefing and the applicant agreed.