



Decision and Reasons for Decision

Citation:	<i>S11 and Queensland Rail [2025] QICmr 5 (18 February 2025)</i>
Application Number:	317910
Applicant:	S11
Respondent:	Queensland Rail
Decision Date:	18 February 2025
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications with agency's internal and external legal advisers - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - waiver and improper purpose - whether access to information may be refused on the basis that it is exempt - sections 47(3)(a) and 48 and schedule 3, section 7 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - agency financial information - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant, on behalf of a nominated corporate entity (**Entity**), applied to Queensland Rail (**QR**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access documents related to:
 - himself
 - the Entity
 - a nominated property (**Property**)
 - a development approval for the Property (**Development Approval**)
 - works proposed for a specific level crossing (**level crossing works**); and
 - communications between QR and staff of specified government agencies.¹

¹ Although the access application was received by QR on 17 November 2023, it is dated 17 December 2023 (**access application**).

2. In consultation with QR between November 2023 and March 2024, the applicant agreed to substantially narrow the terms of the access application (**Narrowed Application**).
3. QR located 1,431 pages as relevant to the Narrowed Application, released 1,305 pages and decided² to refuse access, on various grounds, to 81 pages and parts of 45 pages.³
4. The applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review of QR's decision. During the review, the applicant confirmed that he only sought external review of QR's decision to refuse access, in full or part, to located information (**Information in Issue**).⁵
5. For the reasons set out below, I affirm the Department's decision and find that:
 - some of the Information in Issue comprises exempt information and access to it may be refused;⁶ and
 - access may be refused to the remaining Information in Issue on the basis that its disclosure would, on balance, be contrary to the public interest.⁷

Background

6. The Entity obtained the Development Approval. Certain level crossing works were required to be undertaken pursuant to the Development Approval.
7. A dispute arose concerning the costs associated with the level crossing works and the applicant sought compensation from QR for the claimed impact of the dispute. On external review, the applicant has also confirmed that he is dissatisfied with QR's actions in respect of the level crossing works (**level crossing upgrade project**).

Reviewable decision

8. The decision under review is QR's decision dated 12 March 2024.

Evidence considered

9. 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). Significant procedural steps taken by OIC in conducting this review are set out in the Appendix.
10. Generally, it is necessary that decision-makers have regard to the *Human Rights Act 2019* (Qld) (**HR Act**), as section 11(1) of the HR Act provides that all individuals in Queensland have human rights. As noted in paragraph 1 above, the access application in this matter was made by the applicant, who is an individual in Queensland, on behalf of the Entity. However, the applicant has a close, personal connection to the subject matter of the access application.⁸ Taking this connection and the circumstances of this matter into account, I have also had regard to the HR Act, particularly the right to seek

² Decision dated 12 March 2024.

³ QR also deleted irrelevant information from the located documents (pursuant to section 73 of the RTI Act).

⁴ External review application dated 25 March 2024 (**External Review Application**).

⁵ In the applicant's email dated 28 May 2024 he stated: '*I would like to limit the review to information that your office has been provided with, namely the information that has been refused in full or refused in part*' and '*I request the review be limited to the current material held by your office*'. As a result, the applicant's prior concerns about missing documents were no longer issues that required consideration.

⁶ Under sections 47(3)(a) and 48 of the RTI Act.

⁷ Under sections 47(3)(b) and 49 of the RTI Act.

⁸ I also note his relationship to the Entity, as director and shareholder.

and receive information.⁹ 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.¹⁰ 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 of Bell J on the interaction between equivalent Victorian legislation,¹¹ that '*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*'.¹²

Information in issue

11. The Information in Issue appears on 126 pages and falls into the following categories:

- (i) 81 full pages and parts of 9 pages¹³ (**Category A Information**); and
- (ii) portions of information redacted on 36 pages (**Category B Information**).

Issues for determination

12. The issues for determination are whether:

- the Category A Information comprises exempt information, on the basis that it is subject to legal professional privilege; and
- disclosure of the Category B Information would, on balance, be contrary to the public interest.

Preliminary matters

13. Before considering the issues for determination, it is necessary to firstly address several matters concerning the external review process which the applicant raised in his submissions.

14. External review under the RTI Act is a merits review process¹⁴ and the Information Commissioner is empowered on external review to decide any matter in relation to an access application that could, under the Act, have been decided by an agency.¹⁵ Accordingly, in this external review, I have considered *afresh* the applicant's entitlement under the RTI Act to access the Information in Issue, by independently examining that information and scrutinising the decision under review in order to decide whether to affirm, vary or set aside QR's decision.¹⁶

15. The applicant submitted that he considers QR's refusal of access to '*crucial*' information '*is in direct breach of the Right to Information Act 2009 (Qld) and may involve serious*

⁹ Section 21(2) of the HR Act.

¹⁰ XYZ v Victoria Police (General) [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹¹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹² XYZ at [573]. This approach, in the context of the *Information Privacy Act 2009* (Qld) (**IP Act**) and RTI Act, was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

¹³ The schedule to the decision under review lists these as appearing on pages 231, 287-288, 351, 357, 382, 510 and 532 in the document file titled RTI596-2022 and page 334 in the document file titled RTI596-2023.

¹⁴ That is, external review is an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision. In this regard, I note that in *Mokbel v Queensland Police Service* [2023] QCATA 158 at [12], Judicial Member DJ McGill SC observed that the legislative focus of the IP Act '*was on the protection of the right to access information by means of a merits review by an independent specialist Commissioner who was able to examine the relevant material and decide whether or not there was a right to access in accordance with the Act*'. I consider these observations are relevant here, given the similarity of the access and review rights under the RTI Act.

¹⁵ Section 105(1)(b) of the RTI Act. As a result, in making a decision, the Information Commissioner (or her delegate) may rely on RTI Act provisions which are different to those relied upon by the agency in the decision under review.

¹⁶ Section 110 of the RTI Act.

misconduct.¹⁷ The applicant also outlined why he holds concerns about a potential conflict of interest at QR in respect of the processing of his access application and the impartiality of the decision under review.¹⁸ In general, these raised concerns stem from the applicant's dissatisfaction with QR's actions concerning the level crossing upgrade project (and the perceived impact of those actions on the Development Approval) and the applicant's belief that a nominated QR officer had some involvement in (or influence over) the processing of the access application.¹⁹ The applicant also alleged that nominated individual/s have '*misled*' OIC.²⁰

16. With the exception of the disciplinary powers afforded to the Information Commissioner in section 113 of the RTI Act, OIC's external review jurisdiction does not extend to investigating the conduct of QR officers or the manner in which QR has processed a particular access application.²¹ In respect of the potential conflict of interest concerns raised by the applicant, I note that the individual nominated by the applicant was not the QR officer who made the decision under review and the applicant provided no evidence of the nominated individual's claimed involvement in, or influence over, the processing of the access application.²² Accordingly, apart from the applicant's assertions, there is nothing before me which indicates that the nominated individual had any involvement with the access application, the processing of the access application or the decision under review. Further, this individual has had no involvement in the external review process. For completeness, I note that there is nothing before me which indicates that the conduct of any QR officer who has been involved in processing the access application (or who has provided information to this external review process) has committed any breach of duty or misconduct in the administration of this RTI Act.²³
17. During the review, I conveyed preliminary views to the applicant that he was not entitled to access the Information in Issue under the RTI Act,²⁴ and I invited the applicant to provide submissions if he wished to contest those preliminary views. The applicant provided a number of submissions (together with supporting information) contesting the preliminary views. In doing so, the applicant also proposed that, if further information was to be provided to him, he would agree to '*not disclose it publicly (outside of*

¹⁷ Applicant's submission dated 20 August 2024. The applicant has raised similar misconduct concerns in his other submissions. For example, in his submission dated 16 September 2024, the applicant submitted that the withheld documents '*may reveal important insights into potential governance failures and financial misconduct*'.

¹⁸ Issues of this nature were raised in the External Review Application and the applicant's submissions dated 28 May 2024, 15 July 2024, 20 August 2024, 29 October 2024 and 8 January 2025.

¹⁹ For example, in his submission dated 28 May 2024, the applicant stated: *There is and has therefore been a conflict of interest should this individual have also been involved in the RTI 596 during any of the application or processing stages.* In his 20 August 2024 submission, the applicant stated: *... there is a concern that [a nominated individual]'s personal involvement in the dispute may have influenced the processing and outcome of RTI 596, potentially leading to biased or unfair decisions.*

²⁰ Applicant's submission dated 16 September 2024. In the applicant's submissions, he has also alleged that QR has misled government bodies, including OIC, in providing what the applicant considers to be false assertions in certain issued correspondence.

²¹ For completeness, I confirm that OIC's external review jurisdiction does not extend to providing any remedy to the applicant in respect of his specific concerns about the conduct of QR and its officers or what he considers to be contradictions in the content of certain QR communications. I also note that, during the review, the applicant confirmed that his misconduct and conflict of interest concerns had already been raised with other Queensland integrity bodies.

²² Instead, the applicant referenced the position held by the nominated individual during the processing of his access application.

²³ Additionally (and also for completeness), I confirm that the Right to Information Commissioner (as a delegate of the Information Commissioner) has considered the information before OIC in this external review and is satisfied that it does not contain sufficient evidence to give rise to grounds for invoking the disciplinary powers under section 113 of the RTI Act.

²⁴ As set out in the Appendix. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner (or her delegate) at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

government or for legal purposes) or to the media'.²⁵ In responding to this proposal,²⁶ I notified the applicant that the RTI Act conferred no power on the Information Commissioner to exact any undertaking, or to impose any condition, concerning the use to which a person granted access to a document under the RTI Act will put the document or information contained within it.

18. The applicant also proposed that, if the Information in Issue cannot be disclosed to him in response to his access application, OIC should provide it to a specified integrity body and nominated Ministers, as he could see no reason why they *'should not be eligible or permitted to receive the requested information disclosure'*.²⁷ Noting the disclosure restrictions imposed upon the Information Commissioner under section 107 of the RTI Act, I notified the applicant that OIC had no power under the RTI Act to do this on external review.²⁸
19. The applicant has more generally outlined his expectation that, in addition to determining his entitlement to access the Information in Issue, OIC should address his specific concerns about the actions of QR (and certain of its staff) in the level crossing upgrade project, the dispute referenced in paragraph 7 above and QR's communications. For example, the applicant identified what he perceives as misleading or inconsistent information which QR (or specified QR officer/s) provided to Ministers and other agencies about the level crossing upgrade project, and he has an expectation that OIC will make some determination in that regard. The applicant also submitted that there was a need for *'further investigation'*²⁹ into QR's handling of the level crossing upgrade project. While the applicant also contended that *'OIC has broad investigatory powers under the RTI Act'*,³⁰ this is incorrect. OIC's jurisdiction on external review does not extend to investigating whether QR has, or has not, provided inconsistent information as contended by the applicant. Nor do the Information Commissioner's external review powers extend to investigating the accuracy, or veracity, of document content. As I have noted above, the reviewable issues here only concern the applicant's entitlement under the RTI Act to access the Information in Issue and, as the decision-maker in this external review, I have considered and addressed the applicant's submissions to the extent they are relevant to those reviewable issues.
20. The applicant also asserted that QR were *'managing responses to continue to successfully influence the OIC to refuse disclosure of withheld material'*.³¹ While I have taken into account the submissions received from both review participants (to the extent they are relevant to the reviewable issues) in this merits review process, I reject the applicant's assertion that I have been *'successfully influenced'* to refuse disclosure.³²
21. Under the RTI Act, an applicant is required to pay the applicable processing and access charge for an application,³³ however, an applicant may request that an agency waive such a charge.³⁴ Here, the applicant did not make any application to QR for waiver of

²⁵ Applicant's submission dated 15 July 2024.

²⁶ Letter dated 20 August 2024. In this letter, I also notified the applicant that while agencies have a discretion to release information which they may consider to be exempt or contrary to the public interest information, the Information Commissioner has no such discretion on external review (as specifically confirmed in section 105(2) of the RTI Act as follows: *If it is established that a document is an exempt document or a contrary to public interest document, or contains exempt information or contrary to public interest information, the commissioner does not have power to direct that access to the document, or the document to the extent of the information, is to be given*).

²⁷ Applicant's submission dated 15 July 2024.

²⁸ Letter dated 20 August 2024.

²⁹ Applicant's submission dated 29 October 2024.

³⁰ Applicant's submission dated 3 February 2025.

³¹ Applicant submissions dated 8 January 2025.

³² I also reject the unfounded allegation in the applicant's 3 February 2025 submission that OIC has refused to conduct an independent assessment of the withheld materials.

³³ Section 60 of the RTI Act.

³⁴ Under section 66 of the RTI Act.

the processing and access charge and the relevant charges for the access application were paid. Although the applicant had confirmed that he only sought external review of QR's decision to refuse access to located information (as noted in paragraph 4 above), late in the external review process, he sought reimbursement of the paid processing and access charge, on the basis he held a nominated concession card.³⁵ While this request is not strictly a waiver application, I note that, in certain circumstances, section 66(2) of the RTI Act requires an agency to waive a processing and access charge in response to an applicant's waiver application—broadly, this is where an applicant, who is an individual, holds a concession card of the type identified in section 66(5) of the RTI Act³⁶ and for an applicant that is a non-profit organisation. As mentioned above, the access application was made by the applicant on behalf of the Entity. Therefore, while the applicant may himself meet the requirements for a waiver decision under section 66 of the RTI Act, the access application was, on its face, made for the Entity, which on the information before me is not a non-profit organisation. As a result, I consider the applicant is not entitled under the RTI Act to the claimed reimbursement of the paid processing and access charge.

22. Finally, the applicant requested copies of the submissions received from QR during the external review.³⁷ He also asserted that OIC had failed to invoke specific powers under the RTI Act.³⁸ The external review process is as determined by the Information Commissioner.³⁹ Noting the issues for determination and the circumstances of this matter, the Information Commissioner did not exercise the specific powers identified by the applicant. Under the determined external review process, the substance of a participant's submissions is conveyed to the other review participants—copies of received submissions are not ordinarily provided to other review participants.⁴⁰ In this review, the substance of QR's submissions was conveyed to the applicant and the applicant was afforded the opportunity to put forward his submissions.⁴¹ In these circumstances, I am satisfied that the applicant was able to properly respond to OIC about QR's submissions and has been afforded due process in this review.

23. I turn now to consideration of the substantive issues to be determined in this review.

Category A Information

24. In the decision under review, QR identified the Category A Information as comprising '*correspondence seeking legal advice and drafted legal documents based on the legal advice sought*'. I have carefully reviewed the Category A Information. Noting that the RTI Act prevents me from describing this information in any detail,⁴² I confirm that it broadly comprises:

³⁵ Applicant's submission dated 3 February 2025. In the External Review Application, the applicant had sought financial relief of costs in relation to '*this application or review*'. This was taken to mean the applicant sought financial relief of costs in the external review process only. Noting section 112 of the RTI Act provides that costs incurred by a participant on external review are payable by the participant, this request was addressed in a letter to the applicant dated 16 April 2024. Following that correspondence, the applicant did not raise any issue related to the processing and access charge until 3 February 2025.

³⁶ A further requirement is also specified in section 66(2)(a)(iii), namely, that the agency must consider the applicant is not making the application for some other person who is seeking to avoid payment of a charge.

³⁷ Applicant's submission dated 8 January 2025. The applicant repeated this request in his submission dated 3 February 2025.

³⁸ Applicant's submission dated 3 February 2025. While the applicant incorrectly identified the relevant RTI Act provisions, he asserted that OIC had failed to invoke the powers which appear in section 103 of the RTI Act (to issue a notice to QR to produce all relevant documents) and section 130(2) of the RTI Act (to assess whether QR had conducted an adequate search for requested records). In respect of these submissions, I have already confirmed that I have independently examined the Information in Issue and, as noted in paragraph 4 above, the applicant confirmed to OIC that he only sought external review of QR's decision to refuse access to the Information in Issue and did not seek review of the adequacy of QR's searches.

³⁹ Section 95(1)(a) of the RTI Act.

⁴⁰ OIC's processes were notified to the applicant, for example, in the attachments to OIC's letters dated 20 August 2024 and 29 August 2024.

⁴¹ This was confirmed to the applicant when I notified him, on 9 January 2025, that the requested copies of QR's submissions would not be provided.

⁴² Section 108(3) of the RTI Act.

- confidential communications between QR and its internal and external lawyers made for the dominant purpose of seeking or providing legal advice; and
 - internal confidential communications between QR's legal officers and other QR staff made for the dominant purpose of providing information to QR's internal and external lawyers in connection with requests for legal advice.
25. On external review, QR maintained that the Category A Information comprised exempt information.

Relevant law

26. Section 23 of the RTI Act confers upon an applicant a general right to access documents of an agency, however, this right is subject to limitations, including grounds for refusal of access.⁴³
27. Access may be refused to exempt information. Schedule 3 of the RTI Act identifies the types of information which Parliament has determined will comprise exempt information under the RTI Act.
28. Information will comprise exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.⁴⁴ Legal professional privilege protects confidential communications between a lawyer and their client, made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or, for use in legal proceedings either on foot or reasonably anticipated, at the time of the relevant communication.⁴⁵ The dominant purpose has been described as '*the ruling, prevailing or most influential purpose*',⁴⁶ and it is to be determined objectively.⁴⁷
29. The privilege:
- will extend to copies of unprivileged documents made for the dominant purpose of obtaining legal advice;⁴⁸ and
 - may protect communications between salaried employee legal advisers of a government department or statutory authority and their employer as the client (including communications through other employees of the same employer) provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character, notwithstanding the employment.⁴⁹
30. Qualifications and exceptions to legal professional privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to legal professional privilege, and therefore whether the information comprises exempt information under the RTI Act.

⁴³ Section 47 of the RTI Act.

⁴⁴ Schedule 3, section 7 of the RTI Act. This exemption reflects the requirements for establishing legal professional privilege at common law.

⁴⁵ *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552. These principles were more recently confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] HCA 26 at [23]-[25].

⁴⁶ *Federal Commissioner of Taxation v Spotless Services Ltd* (1996) 186 CLR 404 at page 416.

⁴⁷ In *AWB Limited v Honourable Terrance Rhoderic Hudson Cole (No 5)* (2006) 155 FCR 30, Justice Young observed that '*Dominant purpose is a question of fact that must be determined objectively*'.

⁴⁸ As confirmed by the High Court in *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 (*Propend*).

⁴⁹ *Waterford v Commonwealth* (1987) 163 CLR 54 at 95 per Mason and Wilson JJ.

Findings

Legal professional privilege

31. It is the applicant's position that QR has '*misapplied or misrepresented*'⁵⁰ the legal reasons for refusing access to the Category A Information.⁵¹
32. I have carefully reviewed the Category A Information. As there is no evidence before me which indicates that this particular information has been disclosed outside of the lawyer-client relationship, I am satisfied that it is confidential. I am also satisfied that the necessary professional relationship exists between QR (as the client) and its legal advisers, and that the communications within the Category A Information were created for the dominant purpose of seeking or providing legal advice.
33. Accordingly, I find that the elements of legal professional privilege are established in relation to the Category A Information.

Exceptions

34. At common law, a person who would otherwise be entitled to the benefit of legal professional privilege (in this case, QR) may waive the privilege.⁵² Privilege may be expressly waived by the deliberate and intentional disclosure of the privileged communication to persons outside the relationship of privilege.⁵³ It may also be impliedly waived where the conduct of the person entitled to the benefit of privilege is inconsistent with the maintenance of privilege.⁵⁴ However, once a factual basis for a claim of legal professional privilege has been established, the party asserting that privilege has been waived bears the onus of establishing such waiver.⁵⁵
35. The applicant contends that QR has inconsistently approached the use of the Category A Information '*across multiple forums*', because:
 - in correspondence with another Queensland integrity body '*QR did not invoke LPP over documents that it now claims are privileged in this RTI request*',⁵⁶ and
 - '*these same documents were discussed without invoking LPP in other official communications*'.⁵⁷
36. The applicant has not provided any evidence of these claimed disclosures or explained the circumstances in which these claimed disclosures occurred.⁵⁸

⁵⁰ Applicant's submission dated 20 August 2024.

⁵¹ In the applicant's submission dated 16 September 2024, he submitted: *I contend that QR's claim of privilege in this case may be overly broad and used as a shield to critical governance and safety issues from scrutiny.*

⁵² *Mann v Carnell* (1999) 201 CLR 1 (**Mann**) at [28].

⁵³ *Goldberg v Ng* (1994) 33 NSWLR 639 at page 670. However, merely communicating privileged legal advice internally within an agency will not, of itself, deprive the agency of the benefit of that privilege. See *Bulk Materials (Coal Handling) Services Pty Ltd v Coal & Allied Operations Pty Ltd* (1988) 13 NSWLR 689 at pages 691 and 696; *Thiess Contractors Pty Ltd v Terokell Pty Ltd* [1993] 2 Qd R 341; *South Australia v Peat Marwick Mitchell* (1995) 65 SASR 72 at pages 75-77; *Network Ten Ltd v Capital Television Holdings Ltd* (1995) 36 NSWLR 275 at pages 279-280; and *Southern Cross Airlines Holdings Ltd (In Liq.) v Arthur Andersen & Co.* (1998) 84 FCR 472 at page 480.

⁵⁴ *Osland v Secretary to the Department of Justice* [2008] HCA 37 at [45] and *Mann* at [28]. See also *Jones and Queensland Police Service* [2015] QICmr 15 (26 June 2015) at [36].

⁵⁵ *Sanrus Pty Ltd and Ors v Monto Coal Pty Ltd and Ors* [2019] QSC 144 at [28], citing *New South Wales v Belfair Pty Ltd* (2009) 180 FCR 543 at 556 [54].

⁵⁶ Applicant's submission dated 29 October 2024. I also note that, although the access application was lodged in November 2023, the applicant's 20 August 2024 submission asserted that QR had '*outlined reasons for withholding information requested under RTI596*' when communicating with a Queensland integrity body in December 2022.

⁵⁷ Applicant's submission dated 29 October 2024.

⁵⁸ In this regard, I confirm that I have carefully reviewed all of the applicant's submissions, together with all the supporting material which the applicant provided with his submissions.

37. As I have noted above, there is no evidence before me which indicates that any of the Category A Information has been disclosed outside of the lawyer-client relationship. Having carefully reviewed all the information before me, there is also no evidence which indicates that QR has acted in a way which is inconsistent with maintaining confidentiality in the Category A Information. Accordingly, I find that legal professional privilege in the Category A Information has not been expressly or impliedly waived by QR.
38. Legal professional privilege will not apply to legal communications made in the furtherance of fraud or a crime.⁵⁹ This exception operates to displace legal professional privilege where evidence exists that the relevant client has embarked on a deliberate course of action knowing that the proposed actions were contrary to law, and has made the relevant communications in furtherance of '*some illegal or improper purpose*'.⁶⁰ However, a person alleging legal professional privilege is lost for illegality must do more than make vague or generalised contentions of crimes or improper purpose.⁶¹
39. Here, the applicant submitted that legal professional privilege '*cannot be used to protect documents created in furtherance of an improper purpose, such as concealing safety risks or misleading public authorities*'.⁶² However, the applicant has provided no evidence which indicates that any of the Category A Information was created in furtherance of any illegal, improper or dishonest purpose. Having carefully considered the applicant's submissions (and supporting information) and the content of the Category A Information, I am not satisfied that the applicant's submissions raise any reasonable expectation that the communications within the Category A Information were made in furtherance of any illegal, improper or dishonest purpose. There is otherwise nothing before me which suggests that the improper purpose exception arises in this matter to displace legal professional privilege in the Category A Information.
40. I am therefore satisfied that none of the exceptions to legal professional privilege arise in respect of the Category A Information.

Conclusion

41. For the above reasons, I am satisfied that the Category A Information meets the requirements of legal professional privilege and that the exceptions do not apply. Accordingly, I find that access to the Category A Information may be refused, as it comprises exempt information.⁶³

Applicant's public interest submissions

42. The applicant submitted that, even if some of the Category A Information is protected by legal professional privilege, the RTI Act exemption must be balanced against the public interest. More specifically, the applicant submitted that:

*Documents, correspondence, advice and reports that are withheld from release on alleged legal grounds that have been paid for by the taxpayer using public monies.*⁶⁴

⁵⁹ *Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Limited & Ors* [2014] QSC 303 (**Fletcher**) at [51].

⁶⁰ *Propend* at 514. See also *Secher and James Cook University* (Unreported, Queensland Information Commissioner, 6 June 2012) at [20] and *Murphy and Treasury Department* (1998) 4 QAR 446 at [31]-[42].

⁶¹ *Propend* at 591. In *Fletcher* at [61], McMurdo J observed that a party alleging legal professional privilege does not apply is required to establish 'a *prima facie* case' that the relevant communications were for the purpose of facilitating the alleged misconduct.

⁶² Applicant's submission dated 16 September 2024. In his submission dated 20 August 2024, the applicant urged OIC to '*consider the possibility that QR is engaging in conduct aimed at concealing critical safety and governance issues under the guise of legal privilege*'.

⁶³ Under sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

⁶⁴ Applicant's submission dated 15 July 2024.

*Even where an exemption is claimed, the public interest must be weighed against non-disclosure, particularly in cases involving public safety, governance, and financial accountability.*⁶⁵

*Schedule 3, Section 7 limits the use of this exemption to circumstances where the privilege is both validly claimed and not overridden by public interest considerations.*⁶⁶

*QR is using LPP to avoid accountability for governance and safety failures, which are critical to the public interest*⁶⁷

43. The exemptions set out in schedule 3 of the RTI Act (including the exemption in schedule 3, section 7 considered above) do not require, or allow, consideration of public interest issues, as Parliament has determined that disclosure of these categories of information would be contrary to the public interest. Accordingly, if information falls within one of the categories of exempt information prescribed in schedule 3, a presumption exists that its disclosure would be contrary to the public interest, and no further consideration is permitted on external review.
44. Therefore, to the extent the applicant has raised public interest matters which he considers favour disclosure of the Category A Information, I cannot take them into account. As noted above, where information meets the requirements of an exemption (as is the case here), it is not necessary to also determine whether its disclosure would, on balance, be contrary to the public interest.
45. While the applicant referred to the decision in *Dawson-Wells v Office of the Information Commissioner & Anor*⁶⁸ (**Dawson-Wells**) in support of his position,⁶⁹ in that decision Judicial Member DJ McGill SC found that:

*The scheme of the legislation is clear enough. If and to the extent that a document comprises information which is exempt under s 48, the agency may refuse access to it under s 47(3)(a). In such a situation, it is unnecessary to consider the public interest balance test in s 49.*⁷⁰

Category B Information

46. In the decision under review, QR described the Category B Information in the following terms:

The information in issue contains detailed itemized specific rates and costs relating to project scoping, labour, project management, design and materials that are subject to any project that requires a scope of work estimate assessment to be undertaken. They are only intended to be used internally by Queensland Rail staff to assist with estimates purposes for all projects that require a scope of works. The detailed rates/costs are not shared externally, and the full scope of works document is considered as an internal 'in confidence' document by the relevant teams/areas who utilise it within Queensland Rail.

The documents contain information in relation to the scope of works process used by Queensland Rail internal staff as part any project that requires an estimate. Specifically, the

⁶⁵ Applicant's submission dated 16 September 2024.

⁶⁶ Applicant's submission dated 16 September 2024.

⁶⁷ Applicant's submission dated 29 October 2024.

⁶⁸ [2020] QCATA 60.

⁶⁹ In his submission dated 29 October 2024, the applicant stated that the Queensland Civil and Administrative Tribunal, in *Dawson-Wells*, had 'emphasised that LPP cannot be used to obstruct transparency and prevent legitimate public interest disclosures'. I note that this decision considered the exemption in schedule 3, section 10(4) of the RTI Act and not the exemption provision relating to legal professional privilege (ie schedule 3, section 7 of the RTI Act).

⁷⁰ *Ibid* at [10]. Judicial Member DJ McGill SC made similar findings at [17] as follows: *The wording of the Act is clear. If a document comprises information which meets the description of the information covered by an item in Schedule 3, the document is exempt and that is the end of the matter. That is made clear by the statement that the Parliament has made the determination that the public interest balance lies against disclosure.*

Category B information contains itemized rates and costs that are individualized and broken down into detailed items of the project scoping, labour, project management, design and materials for any project.

47. I have carefully considered the Category B Information. While the RTI Act also limits the level of detail I can provide about the Category B Information,⁷¹ I can confirm that it comprises internal QR's rates and costs.

Relevant law

48. Access may be refused where the disclosure of information would, on balance, be contrary to the public interest.⁷²
49. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens.⁷³ This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual.
50. In deciding whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:⁷⁴
- 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.
51. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my decision. I have also kept in mind the RTI Act's pro-disclosure bias⁷⁵ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.⁷⁶

Findings

Irrelevant factors

52. I have taken no irrelevant factors in account in making this decision.

Factors favouring disclosure

53. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability⁷⁷

⁷¹ Section 108 of the RTI Act.

⁷² Sections 47(3)(b) and 49 of the RTI Act.

⁷³ Refer to Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

⁷⁴ Section 49 of the RTI Act.

⁷⁵ Section 44 of the RTI Act.

⁷⁶ Section 47(2)(a) of the RTI Act.

⁷⁷ Schedule 4, part 2, item 1 of the RTI Act.

- contribute to positive and informed debate in important issues or matters of serious interest⁷⁸
- inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community⁷⁹
- ensure effective oversight of expenditure of public funds⁸⁰
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official⁸¹
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct⁸²
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies⁸³
- reveal the reason for a government decision and any background or contextual information that informed the decision⁸⁴
- reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant⁸⁵
- reveal environmental or health risks or measures relating to public health and safety⁸⁶
- contribute to the administration of justice generally, including procedural fairness;⁸⁷ and
- contribute to the administration of justice for a person.⁸⁸

54. The applicant submitted that *'the withheld documents may reveal important insights into potential governance failures and financial misconduct'*⁸⁹ and he considered this raised *'the public interest in ensuring transparency in QR's financial dealings, especially where there are allegations of misuse of public funds'*.⁹⁰ More generally, the applicant argued that, given his concerns about QR's actions and processes, disclosing the Category B Information will advance government accountability. I acknowledge that QR must be transparent and accountable in how it calculates the estimated costs of level crossing works that are associated with private development proposals (including any developer contributions sought in respect of such works). I also note that safety of public infrastructure is a matter of some community interest. In this matter, both the applicant and QR have confirmed that, under separate administrative processes, the applicant previously received estimates and costing information from QR for the level crossing works associated with the Development Approval.⁹¹ I consider the information disclosed by QR (including in response to the Narrowed Application), has to a large extent advanced the public interest factors relating to government accountability and transparency,⁹² by providing background information about, and enabling scrutiny of,

⁷⁸ Schedule 4, part 2, item 2 of the RTI Act.

⁷⁹ Schedule 4, part 2, item 3 of the RTI Act.

⁸⁰ Schedule 4, part 2, item 4 of the RTI Act.

⁸¹ Schedule 4, part 2, item 5 of the RTI Act.

⁸² Schedule 4, part 2, item 6 of the RTI Act.

⁸³ Schedule 4, part 2, item 10 of the RTI Act.

⁸⁴ Schedule 4, part 2, item 11 of the RTI Act.

⁸⁵ Schedule 4, part 2, item 12 of the RTI Act.

⁸⁶ Schedule 4, part 2, item 14 of the RTI Act.

⁸⁷ Schedule 4, part 2, item 16 of the RTI Act.

⁸⁸ Schedule 4, part 2, item 17 of the RTI Act.

⁸⁹ Applicant's submission dated 16 September 2024.

⁹⁰ Applicant's submission dated 16 September 2024, in which he referred to the public interest factor in schedule 4, part 2, item 1 of the RTI Act.

⁹¹ QR submission dated 27 August 2024. In the applicant's submission dated 15 July 2024, he described this previously received information as being *'comprehensive financial information'*. In his 20 August 2024 submission, the applicant also referred to information he had received from QR via separate processes.

⁹² Schedule 4, part 2, items 1, 2, 3, 4 and 11 of the RTI Act.

QR's processes and actions.⁹³ While disclosure of the Category B Information will provide the applicant with a more complete picture of QR's scope of work estimate process, given the limited and 'internal use' nature of this information, I do not consider its disclosure would further advance these accountability and transparency factors in any significant way. On this basis, I attribute only low weight to these public interest factors.

55. As mentioned above, the applicant has raised a number of concerns about QR's processes and actions concerning the level crossing upgrade project. The applicant also submitted that the Category B Information was withheld by QR to '*conceal information that may further substantiate claims of financial misconduct and attempted financial misconduct*'.⁹⁴ However, the applicant has not explained how he believes disclosure of these particular internal QR rates and costs could be expected to allow or assist enquiry into, reveal or substantiate, agency conduct deficiencies. After carefully reviewing the Category B Information and the applicant's submissions (including the supporting information provided with the applicant's submissions), I do not consider these public interest factors concerning agency conduct⁹⁵ apply to favour disclosure of the Category B Information.
56. In determining whether disclosure of the Category B Information could reasonably be expected to contribute to the administration of justice for the applicant, I must consider whether:⁹⁶
 - the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law⁹⁷
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
57. The applicant has identified the negative impacts he considers have arisen from QR's actions in the level crossing upgrade project (including impacts to the Development Approval) and confirmed that he has pursued, or is pursuing, a number of separate processes,⁹⁸ based upon the information he already possesses. Although the applicant generally submitted that disclosing the Information in Issue may assist the progression of those processes, he has not enunciated how the particular rates and costings that form the Category B Information are required to do this.⁹⁹ Nor has the applicant indicated that he requires the Category B Information to evaluate or pursue any further, specific remedy that may be available to him. Given this, I do not consider the public interest factor in schedule 4, part 2, item 17 of the RTI Act applies to favour disclosure.
58. The applicant considers disclosure of the Category B Information '*may contribute to procedural fairness in the ongoing dispute*' concerning the level crossing works.¹⁰⁰ He also argued that '*full transparency*' is necessary to ensure fair treatment and procedural fairness, particularly in the context of the serious QR process and conduct issues he has

⁹³ The disclosed information also included information about how QR dealt with the concerns the applicant had raised about QR's processes and actions.

⁹⁴ Applicant's submission dated 15 July 2024.

⁹⁵ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁹⁶ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16].

⁹⁷ In this regard, I note that in *Deemal-Hall v Office of the Director of Public Prosecutions & Ors* [2024] QCATA 131 at [12], Judicial Member DJ McGill SC found that the public interest factor in schedule 4, part 2, item 17 of the RTI Act refers to the ordinary processes for the administration of justice for a person.

⁹⁸ These include a number of compliant processes. To avoid identifying the applicant, I can provide no further detail about the separate processes which the applicant has to date pursued.

⁹⁹ In reaching this conclusion, I have noted the nature of these commenced separate processes and the particular issues that the applicant seeks addressed in those processes. Again, to avoid identifying the applicant, I can provide no further detail about the separate processes, or their nature, in this decision.

¹⁰⁰ Applicant's submission dated 16 September 2024.

raised.¹⁰¹ The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision.¹⁰² As noted above, the applicant has confirmed that he has pursued, or is pursuing, a number of separate processes associated with his concerns about QR's actions.¹⁰³ However, the applicant has not explained how he considers disclosure of this particular Category B Information could be expected to contribute to his fair treatment or procedural fairness. In these circumstances, and taking the limited, internal nature of the Category B Information into account, I am not satisfied that there is a reasonable expectation its disclosure would, in any meaningful way, advance the applicant's fair treatment or contribute to the general administration of justice, including procedural fairness. On this basis, while these public interest factors may apply,¹⁰⁴ I afford them only low weight due to the nature of the Category B Information.

59. The applicant's submissions raise concerns about inconsistencies in the financial information he has received about the level crossing works (including inconsistencies in how QR characterised that information).¹⁰⁵ However, he has not explained how he considers disclosing the Category B Information would reveal it to be incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. I have carefully considered all the applicant's submissions (and supporting material) and the Category B Information. Noting the particular nature of the Category B Information (that is, internal QR rates and costs), I am not satisfied that disclosure could be expected to reveal that this information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.¹⁰⁶ Accordingly, I do not consider this public interest factor applies to favour disclosure of the Category B Information.
60. The applicant submitted that the level crossing upgrade project relates to one of the '*top three most dangerous QR locations in Queensland*'¹⁰⁷ and he holds concerns that, if it is not properly assessed, there is a '*real risk to public safety that could easily result in loss of life*'.¹⁰⁸ Additionally, the applicant submitted that further evidence is required to allow the government and integrity bodies to '*determine an appropriate government and public safety response*'.¹⁰⁹ I acknowledge that serious safety issues can arise at level crossings and, in that respect, the subject matter of the Narrowed Application can be characterised as generally concerning '*measures relating to public health and safety*'. However, the applicant has not explained how he considers disclosure of this particular Category B Information could be expected to reveal such measures. After careful review of the applicant's submissions and noting the specific nature of the Category B Information, I am not satisfied that there is a reasonable expectation that disclosure of this particular information would reveal environmental or health risks or measures relating to public health and safety.¹¹⁰ On this basis, I do not consider this public interest factor applies to favour disclosure of the Category B Information.
61. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, and given the nature of the Category

¹⁰¹ Applicant's submission dated 16 September 2024, in which he referenced the public interest factor in schedule 4, part 2, item 10 of the RTI Act.

¹⁰² The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

¹⁰³ In this regard, some of the applicant's submissions include copies of correspondence issued by QR in those separate processes.

¹⁰⁴ Schedule 4, part 2, items 10 and 16 of the RTI Act.

¹⁰⁵ Refer, for example, to the applicant's submission dated 20 August 2024.

¹⁰⁶ Schedule 4, part 2, item 12 of the RTI Act.

¹⁰⁷ Applicant's submission dated 15 July 2024. A similar submission was made in the applicant on 16 September 2024.

¹⁰⁸ Applicant's submission dated 15 July 2024.

¹⁰⁹ Applicant's submission dated 15 July 2024.

¹¹⁰ Schedule 4, part 2, item 14 of the RTI Act.

B Information, I cannot identify any other public interest considerations favouring its disclosure.¹¹¹

Factors favouring nondisclosure

62. A public interest factor favouring nondisclosure will arise where disclosure of information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person (**Business Affairs Prejudice Factor**).¹¹² The RTI Act also recognises that a public interest harm will arise because:
- information concerns the business, professional, commercial or financial affairs of an agency or person and its disclosure would be expected to have an adverse effect on those affairs or prejudice the future supply of similar information to government (**Business Affairs Harm Factor**);¹¹³ and
 - disclosure would have a substantial adverse effect on financial or property interests of the State or an agency (**Financial Interest Harm Factor**).¹¹⁴
63. On external review, QR maintains that the factors identified in the preceding paragraphs apply to favour nondisclosure of the Category B Information.
64. The applicant contests that these factors apply.¹¹⁵ More specifically, the applicant submitted that:
- he has been provided with comprehensive financial information concerning the level crossing upgrade project, and there has been no adverse financial outcome for QR or the Queensland Government from that disclosure¹¹⁶
 - *'Despite the public release and widespread dissemination of this detailed cost information, there has been no measurable impact on the business affairs of QR. This undermines QR's current assertion that disclosing similar information in response to the RTI request would prejudice their business operations. The fact that QR has historically shared such information without suffering harm suggests that their current reasoning for withholding the information may not be valid or consistent with their past practices'*¹¹⁷
 - *'the RTI Act requires that any harm to business affairs be substantial and demonstrable, which QR has not convincingly argued'*¹¹⁸
 - as the level crossing works were to be delivered 'under QR's internal delivery model', he considers QR's claim of commercial sensitivity should not apply¹¹⁹

¹¹¹ None of the Category B Information comprises the applicant's personal information (schedule 4, part 2, item 7 of the RTI Act). I also cannot see how disclosing the Category B Information could, for example, contribute to the protection of the environment, maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 13, 15 and 18 of the RTI Act). In the event that further relevant factors exist which favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of the Category B Information.

¹¹² Schedule 4, part 3, item 15 of the RTI Act.

¹¹³ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹¹⁴ Schedule 4, part 4, section 10 of the RTI Act. While schedule 4, part 4, section 10(2) of the RTI Act confirms that this factor only applies for 8 years after the information was brought into existence, that provision is not relevant in this matter, given the age of the Category B Information.

¹¹⁵ External Review Application.

¹¹⁶ Applicant's submission dated 15 July 2024.

¹¹⁷ Applicant's submission dated 20 August 2024. The applicant further stated in this submission: *If QR has openly shared cost details in some instances without adverse consequences, it is questionable why similar information is not being withheld under the guise of protecting business interests.*

¹¹⁸ Applicant's submission dated 16 September 2024. Similarly, in his 29 October 2024 submission, the applicant stated: *QR must demonstrate how previous disclosures of financial information have caused harm to their commercial interests and how the current requested disclosures would result in further damage.*

¹¹⁹ Applicant's submission dated 29 October 2024.

- if certain items are commercially sensitive, he considers it reasonable that they be redacted, leaving subtotals of project phases to be disclosed¹²⁰
 - he considers QR reliance on these nondisclosure factors *'is simply intended to conceal information that may further substantiate claims of financial misconduct and attempted financial misconduct that represents a far greater risk to the Queensland public than financial information related to the installation of one traffic light'*.¹²¹
65. The Category B Information is, by its nature, QR's business and financial affairs information and it relates to QR's financial interests. I accept that, for the Financial Interest Harm Factor to apply, I must be satisfied there is a reasonable expectation that a substantial adverse effect on QR's financial or property interests would arise from disclosure of the Category B Information. However, contrary to the applicant's argument, the Business Affairs Harm Factor does not require an agency to provide evidence of a *'substantial and demonstrable'* public interest harm. As noted in paragraph 62 above, the RTI Act recognises a harm where there is a reasonable expectation that the listed disclosure impacts would arise. Accordingly, for the Business Affairs Prejudice Factor and the Business Affairs Harm Factor to apply, I must be satisfied that there is a reasonable expectation that prejudice to, or an adverse effect on, QR's business and financial affairs will arise from disclosure of the Category B Information.
66. Noting QR's onus under section 87(1) of the RTI Act, I sought¹²² further information from QR about:
- the difference, if any, between the financial information which had been disclosed to the applicant and Category B Information; and
 - the claimed impact disclosure of the Category B Information would have on QR's business and financial affairs.
67. Regarding the financial information which had previously been disclosed to the applicant, QR submitted¹²³ that its prior, administrative release to the applicant of estimate and costing information relating to the specific project contemplated by the Development Approval did not represent its usual practice.¹²⁴ QR also confirmed that, as this specific financial information had previously been disclosed to the applicant, it was again disclosed in response to the Narrowed Application. As the applicant has not provided evidence that similar financial information has been routinely disclosed by QR in respect of other projects or works, I accept QR's position that it does not usually disclose financial information of that nature.
68. In respect of the Category B Information, QR submitted¹²⁵ that:
- this information, unlike the financial information previously disclosed, is *'not specific to'* the level crossing works—instead, the Category B Information forms part of *'Queensland Rail's working documents to produce estimates for all relative projects'* and relevant QR project teams *'utilise these working documents to provide generalised estimated costs for projects'*
 - when estimated costs are issued by QR to relevant parties, they are not usually broken down to include *'specific individual detailed itemized units'*

¹²⁰ Applicant's submission dated 29 October 2024.

¹²¹ Applicant's submission dated 15 July 2024.

¹²² On 19 August 2024.

¹²³ QR's submission dated 27 August 2024.

¹²⁴ QR explained in the 27 August 2024 submission that this prior disclosure had been done to *'in good faith to try and assist with the project moving forward'*.

¹²⁵ QR's submission dated 27 August 2024.

- these itemised units are treated as commercial in confidence by QR, as their release would hold value to QR's other project suppliers, meaning that the release of the Category B Information *'could reasonably be expected to enable project suppliers to price their services to maximise return'* against QR's cost expectations; and
 - although the Category B Information comprise such 'itemized' units at a particular point in time, it is reasonable to expect that *'the public, including [QR's] project suppliers, could easily measure the average change overtime by utilizing the Consumer Price Index (CPI) to ascertain Queensland Rails unit costings now compared to previous years'* and, based upon that ability for suppliers to be able to calculate current costings, the claimed impacts were still expected to arise from disclosure of the Category B Information.
69. I have no reason to doubt QR's explanations about the difference between the financial information previously disclosed to the applicant and the Category B Information or that estimated costs issued by QR to relevant parties are not usually broken down to 'itemized units' (such as those in the Category B Information). As a result, I do not accept that the prior financial information disclosure to applicant is, as he contended, evidence that no prejudice or adverse impact would arise from disclosure of the Category B Information.
70. I also note that *'implementation total'* lines within the documents containing the Category B Information have been disclosed to the applicant.
71. QR's functions include the *'establishing, constructing, maintaining, operating and arranging for the provision of transport infrastructure, including rail transport infrastructure and other rail infrastructure'*.¹²⁶ In this context, I accept that individual, internal rates or costing units may be set by QR for use in producing project estimates. I also consider that this type of information would also be used by QR to inform its cost expectations for works (or work components) in other projects where it seeks to procure from its suppliers.¹²⁷ In these circumstances, I am satisfied that there is a reasonable expectation that disclosing the Category B Information, noting its nature and the manner in which it is used by QR, would cause prejudice and adverse effect to QR's business and financial affairs. On that basis, I am satisfied that the Business Affairs Prejudice Factor and the Business Affairs Harm Factor apply.
72. As to the weight to be afforded to these factors, I consider that the adverse effect and prejudice that would flow from disclosure of the Category B Information would be significant. In reaching this conclusion, I have taken into account QR's submissions that disclosure would enable suppliers to price their services to QR for maximum return, which could in turn increase the overall costs of project completion. I have also taken into account that the RTI Act does not impose any restriction on the use, dissemination or republication of information disclosed in response to an access application and the applicant has, as confirmed in his submissions, widely circulated the financial information which was previously disclosed to him. For these reasons, I am satisfied that the Business Affairs Prejudice Factor and the Business Affairs Harm Factor are deserving of significant weight.
73. In respect of the Financial Interest Harm Factor, agencies such as QR often procure specific goods or services from the commercial market. This is done for a range of reasons, including cost saving, efficiency and mitigation of risk. As I have noted above, I consider the disclosure of the Category B Information under the RTI Act (where there

¹²⁶ Section 9(1)(e) of the *Queensland Rail Transit Authority Act 2013* (Qld). In this regard I note that, under 63 of that Act, the name of the Queensland Rail Transit Authority was changed to 'Queensland Rail'.

¹²⁷ While the applicant submissions refer to the level crossing works being internally delivered, QR's submissions indicate this is not the case for all QR projects.

can be no restriction on its use, dissemination or publication) could reasonably be expected to influence the basis upon which commercial suppliers price their goods or services to QR for future projects. This would, in turn, adversely affect the ability of QR to cost effectively procure such goods and services. Noting the detailed nature of the internal costs and rates which comprise the Category B Information, I consider this adverse impact would be substantial. I am therefore satisfied that the Financial Interest Harm Factors also applies to favour nondisclosure of the Category B Information and I afford it substantial weight.

Balancing the public interest

74. For the reasons set out above, I consider the factors relating to government accountability and transparency are deserving of only low weight,¹²⁸ as the nature of the Category B Information is such that its disclosure could not reasonably be expected to advance these factors in any significant way. I have also afforded low weight to the factors relating to fair treatment and procedural fairness.¹²⁹
75. On the other hand, I am satisfied that the factors concerning the anticipated prejudice and adverse effect to QR's business and financial affairs are deserving of significant weight.¹³⁰ I have also afforded substantial weight to the nondisclosure factor concerning the adverse effect that disclosure would have on QR's financial affairs.¹³¹
76. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Category B Information would, on balance, be contrary to the public interest and access may be refused on this basis.¹³²

DECISION

77. For the reasons set out above, I affirm QR's decision and find that access may be refused to:
 - the Category A Information, on the ground it comprises exempt information;¹³³ and
 - the Category B Information, on the ground its disclosure would, on balance, be contrary to the public interest.¹³⁴
78. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.

T Lake
Principal Review Officer

Date: 18 February 2025

¹²⁸ Schedule 4, part 2, items 1, 2, 3, 4 and 11 of the RTI Act.

¹²⁹ Schedule 4, part 2, items 10 and 16 of the RTI Act.

¹³⁰ Schedule 4, part 3, item 15 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹³¹ Schedule 4, part 4, section 10 of the RTI Act.

¹³² Under section 47(3)(b) of the RTI Act.

¹³³ Sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

¹³⁴ Sections 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
25 March 2024	OIC received the applicant's external review application.
16 April 2024	OIC notified the applicant and QR that the application for external review had been accepted and requested information from QR.
17 April 2024	OIC received a submission from the applicant referencing the additional documents he had interest in accessing.
30 April 2024	OIC asked QR to address the applicant's submission about those additional documents.
15 May 2024	OIC received the requested information from QR, together with a response concerning the additional documents.
28 May 2024	OIC received the applicant's further submission and his request to narrow the external review to the information to which QR refused access.
3 June 2024	OIC wrote to the applicant to confirm the narrowed focus of the external review.
28 June 2024	OIC conveyed a preliminary view to the applicant and invited the applicant to provide a submission if he disagreed with that preliminary view.
15 July 2024	OIC received the applicant's submission.
19 August 2024	OIC requested further information from QR.
20 August 2024	OIC conveyed a further preliminary view to the applicant about the information to which QR refused access on the basis it comprised exempt information. The applicant was invited to provide a submission if he disagreed with that further preliminary view. OIC received the applicant's further submission (which was addressed to a number of recipients).
27 August 2024	OIC received the requested information from QR.
29 August 2024	OIC wrote to the applicant to reiterate the preliminary view about exempt information and to convey a further preliminary view to the applicant about the information to which QR refused access on the basis its disclosure would, on balance, be contrary to the public interest. The applicant was invited to provide a submission if he disagreed with the preliminary views.
16 September 2024	OIC received the applicant's further submission (which was addressed to a number of recipients).
19 September 2024	OIC wrote to the applicant to reiterate the preliminary views and asked the applicant to confirm whether he wished a formal decision to be issued to finalise the external review.
29 October 2024	OIC received the applicant's further submission (which was addressed to a number of recipients), which included a request for a formal decision to be issued.

Date	Event
16 November 2024	OIC received the applicant's request for an update as to the status of the external review.
18 November 2024	OIC wrote to the applicant to confirm that a formal decision would be issued to finalise the external review.
8 January 2025	OIC received the applicant's further submission and request for copies of QR's external review submissions.
9 January 2025	OIC wrote to the applicant to confirm that copies of QR's external review submissions would not be provided (noting that OIC had previously communicated the substance of those submissions to the applicant).
3 February 2025	OIC received the applicant's further submission.