



Decision and Reasons for Decision

Citation: *E92 and Crime and Corruption Commission [2024] QICmr 73 (19 December 2024)*

Application Number: 317179

Applicant: E92

Respondent: Crime and Corruption Commission

Decision Date: 19 December 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - IRRELEVANT INFORMATION - information outside the terms of the application - whether information may be deleted on the basis that it is irrelevant - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO THE EXISTENCE OF PARTICULAR DOCUMENTS - NEITHER CONFIRM NOR DENY - applicant seeks access to information regarding a named individual's alleged conduct - whether the request seeks access to prescribed information - whether to neither confirm nor deny the existence of documents - section 55 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - whether documents would be privileged from production in a legal proceeding on the ground of legal professional privilege - whether information is exempt under sections 47(3)(a) and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT - request for documents concerning complaints made by or on behalf of applicant - whether documents were obtained, used or prepared for an investigation by the prescribed crime body in the performance of the prescribed functions of the prescribed crime body - whether information is exempt under section 47(3)(a) and schedule 3, section 10(4) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION -

REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - personal information of other individuals, including non-routine personal work information of government employees - safeguarding personal information and the right to privacy of other individuals - whether disclosure would, on balance, be contrary to the public interest - section 47(3)(b) of the *Right to Information Act 2009* (Qld)

DECISION

1. I have determined to vary the Crime and Corruption Commission's internal review decision finding that:
 - (a) information outside the terms of the application may be deleted as irrelevant¹
 - (b) the existence of documents responding to Item 3(a) in the application are neither confirmed nor denied as this item seeks access to prescribed information²
 - (c) access to certain information may be refused as it is subject to legal professional privilege³
 - (d) access to information responding to Item 1 of the application may be refused as it is subject to the prescribed crime body exemption, to which the exception does not apply;⁴ and
 - (e) access to certain information may be refused on the basis, on balance, disclosure would be contrary to the public interest.⁵

REASONS FOR DECISION

Background

2. The Crime and Corruption Commission (**CCC**) commenced processing the applicant's access application (**Application**) under the RTI Act.⁶
3. During processing, the CCC identified that the agreed scope would substantially and unreasonably divert its resources and invited the applicant to narrow the scope of the Application.⁷
4. While the applicant provided a detailed response,⁸ and despite further correspondence between the CCC and the applicant,⁹ the CCC refused the Application on the ground its scope did not comply with the RTI Act.¹⁰

¹ Section 73 of the *Right to Information Act 2009* (Qld) (RTI Act).

² Section 55 of the RTI Act.

³ Section 47(3)(a) and schedule 3, section 7 of the RTI Act.

⁴ Section 47(3)(a) and schedule 3, section 10(4) of the RTI Act.

⁵ Section 47(3)(b) of the RTI Act.

⁶ The agreed scope was compliant on 15 September 2022 and the CCC commenced processing the Application on 16 September 2022.

⁷ On 2 November 2022, under section 41 and 42 of the RTI Act. The applicant did not refuse the CCC's request for an extension of time to process the Application.

⁸ On 16 May 2022.

⁹ On 25 and 30 May 2022.

¹⁰ On 3 June 2022.

5. On external review, following negotiations facilitated by OIC, the applicant and CCC agreed to a compliant scope, and the CCC commenced processing the revised Application which is the subject of this external review.¹¹

6. The agreed revised scope of the Application is as follows:¹²

[1] Concerning complaints by or on behalf of [the applicant], any and all documents and information held / archived / deleted under CCC case file numbers [redacted]

[3] Concerning [Named Individual], with reference to the Brisbane Times article dated [redacted] and the letter from [CCC officer] dated 12/7/21, any and all records held/archived/deleted by the CCC establishing:

[a] Assessment, investigation and outcome of a referral of alleged threats made by [Named Individual] in court received by the CCC (then CMC) and Director of Public Prosecutions on or around June 2008¹³

[b] "Detailed integrity vetting" of [Named Individual] prior to being seconded to the CCC;

[c] [Named Individual's] disciplinary history, if any;

[d][i] Any and all documents associated with the position description, advertisement, application and suitability / selection / appointment / hiring / secondment / transfer of [Named Individual] to the CCC (including but not limited to [Named Individual] CV, referee checks / reports, interview reports, merit based selection process documents etc); and

[d][ii] Records related to [Named Individual] on the CCC's Learning Platform on topics related to reviewing, assessing, and making decisions on allegations of corrupt conduct, and Public Interest Disclosures.¹⁴

7. In its decision,¹⁵ the CCC determined to:

- (a) disclose certain documents in full
- (b) neither confirm nor deny the existence of certain requested documents¹⁶
- (c) refuse access to documents on the ground they comprised exempt information¹⁷ or, on balance, disclosure would be contrary to the public interest¹⁸
- (d) delete information that was irrelevant to the scope of the Application¹⁹
- (e) refuse access to a document to which the RTI Act does not apply;²⁰ and
- (f) refuse access to a document previously considered by the CCC.²¹

¹¹ The agreed scope was compliant on 15 September 2022 and the CCC commenced processing the access application on 16 September 2022. That external review (OIC reference 316817) resolved on this basis.

¹² On 15 November 2022. In response to the CCC's notice that dealing with the scope of the Application would significantly and unreasonably divert its resources, the applicant omitted scope item 2 and agreed to an extension of the processing time.

¹³ Nothing in these reasons should be taken as confirmation or denial of the existence of documents responding to this item.

¹⁴ Throughout these reasons, I have referred to the numbered items of the Application as 'Item 1, Item 3(a), Item 3(b)' etc.

¹⁵ Decision dated 19 December 2022.

¹⁶ Section 55 of the RTI Act.

¹⁷ Section 47(3)(a) and schedule 3, section 7 of the RTI Act; and section 47(3)(a) and schedule 3, section 10(4) of the RTI Act.

¹⁸ Section 47(3)(b) of the RTI Act.

¹⁹ Section 73 of the RTI Act.

²⁰ Section 11 and schedule 1, section 1(b) of the RTI Act.

²¹ The CCC's decision letter indicated this was a duplicate document within the located documents.

8. The applicant sought internal review of the CCC's decision.²² The CCC affirmed its original decision,²³ but exercised discretion to give the applicant access to certain documents originally identified as exempt.²⁴
9. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the CCC's internal review decision.²⁵
10. OIC issued a preliminary view to the applicant regarding the remaining information and documents to which the CCC deleted or refused access.²⁶ The applicant agreed not to pursue access to some of the identified information, but otherwise disagreed with OIC's preliminary view.²⁷
11. Accordingly, I have made a decision under section 110 of the RTI Act following an external review of the CCC's internal review decision issued on 9 February 2023.

Evidence considered

12. The procedural steps taken in the external review are set out in the Appendix.
13. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in my reasons for decision (including in footnotes and Appendix).
14. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**) particularly the right to seek and receive information.²⁸ 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).²⁹ 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 equivalent pieces of Victorian legislation:³⁰ '*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.*'³¹

Information in issue

15. There are 1675 pages subject to my review.³² The categories of information are:

Categories of information	Number of pages
Information that does not respond to the terms of the Application at paragraph 6 (Category A Information) ³³	5 pages

²² On 18 January 2023.

²³ On 9 February 2023.

²⁴ Section 48(3) of the RTI Act.

²⁵ On 9 March 2023. The reviewable decision is the CCC's internal review decision issued on 9 February 2023.

²⁶ On 5 March 2024 and on 7 June 2024.

²⁷ Submissions received on 10 April 2024 and 31 July 2024.

²⁸ Section 21 of the HR Act.

²⁹ *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]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting at [23], that he saw 'no reason to differ' from our position.

³⁰ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

³¹ *XYZ* at [573].

³² Of the 1872 pages located by the CCC, 158 pages were disclosed to the applicant at internal review, 26 pages are subject to the *Telecommunications (Interception and Access) Act 1979* (Cth), and the applicant did not press their request regarding access to 13 pages of information about a relative of the Named Individual.

Communications involving CCC lawyers (Category B Information) ³⁴	331 pages
Information about complaints made to the CCC and assessments/investigations of complaints (Category C Information) ³⁵	1147 pages
Information relating to employment/secondment vetting process of the Named Individual (Category D Information) ³⁶	192 pages

Issues for determination

16. The issues for determination as part of this external review are whether:

- (a) the Category A Information is irrelevant to the terms of the Application and is deleted on that basis³⁷
- (b) the existence of documents responding to Item 3(a) should be neither confirmed nor denied³⁸
- (c) the Category B Information comprises exempt information that would be privileged from production in a legal proceeding on the ground of legal professional privilege (**LPP**)³⁹
- (d) the Category C Information comprises exempt information subject to the prescribed crime body exemption (**Prescribed Crime Body Exemption**)⁴⁰ and whether the exception to the exemption applies;⁴¹ and
- (e) the Category D Information may be refused on the ground disclosure would, on balance, be contrary to the public interest.⁴²

Preliminary matters

17. Before considering the above issues for determination, I will address the applicant's submission⁴³ that I should formally invite the CCC Chairperson to exercise their discretion and disclose information the CCC has determined is exempt or its disclosure would be contrary to the public interest.⁴⁴ For the reasons set out below, I have elected not to do so.
18. As set out above, the CCC has exercised discretion and disclosed documents to the applicant despite their exempt status.⁴⁵ During the external review, the CCC also

³³ Document 205 (pages 1719-1722) and part of document 191 (page 1574).

³⁴ Documents 73, 80, 120, 121, 123, 132, 133, 137, 138, 141, 143, 146, 167, 168, 172, 176, 181, 182, 183, 189, 214, 215, 216, 219, 220, and 221.

³⁵ Documents 4, 11, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 32, 41, 42, 43, 44, 45, 46, 47, 48, 49, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 68, 69, 70, 72, 74, 78, 79, 81, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 114, 116, 117, 118, 119, 126, 129, 136, 140, 142, 144, 149, 150, 151, 152, 153, 157, 162, 163, 164, 165, 166, 170, 173, 175, 178, 180, 184, 187, 188, 190, and 213.

³⁶ Documents (part or full) 192, 195, 197, 198, 201, 202, 203, 205, 206, 207, 208, 209, 210, 211, 948, 949 and 950.

³⁷ Section 73 of the RTI Act.

³⁸ Section 55 of the RTI Act.

³⁹ Section 47(3)(a) and schedule 3, section 7 of the RTI Act.

⁴⁰ Section 47(3)(a) and schedule 3, section 10(4) of the RTI Act.

⁴¹ Section 47(3)(a) and schedule 3, section 10(6) of the RTI Act.

⁴² Sections 47(3)(b) and 49 of the RTI Act.

⁴³ In the applicant's submissions received on 10 April 2024.

⁴⁴ Paragraph 2 of the applicant's submissions received on 10 April 2024.

⁴⁵ Internal review decision issued on 9 February 2023 which stated '[w]hilst I agree with the original decision-maker's analysis that the documents are exempt pursuant to those provisions, I have decided to release [an additional four documents] to you on a discretionary basis under section 48(3) of the RTI Act.'

agreed to disclose further information⁴⁶ identified in the course of OIC exploring opportunities for resolution of the applicant's external review.⁴⁷

19. While the procedure to be followed on external review is at the discretion of the Information Commissioner,⁴⁸ I am mindful of the requirement under the RTI Act to ensure nondisclosure of particular information.⁴⁹ I also observe that, while an agency has discretion to release exempt information, the legislation does not give the Information Commissioner a corresponding discretion. Accordingly, I have made findings on the remaining grounds for refusal as set out below.

Scope of application⁵⁰

Relevant law

20. Section 73 of the RTI Act permits an agency to delete information from a document when it is not relevant to the terms of an access application. In deciding whether to apply this section, it is relevant to consider whether the information in question has any bearing upon, or is pertinent to, the terms of the access application.⁵¹

Findings

21. The CCC deleted Category A Information on the basis it was irrelevant or did not relate to the scope of the Application. This information can be described as:
 - (a) a complaint referred to the CCC which is unrelated to the subject matter of the Application and was received on the same day as the applicant's complaint and forwarded for acknowledgement in the same email from a CCC administrative assistant⁵²
 - (b) the Named Individual's declared conflicts of interest and annual review of disclosure of interests, which were not created as part of their security vetting or the secondment process, and were created later in the course of their duties;⁵³ and
 - (c) information related to the Named Individual on the CCC's learning platform on topics unrelated to reviewing, assessing, and making decisions on allegations of corrupt conduct, and Public Interest Disclosures.⁵⁴
22. OIC assessed the Category A Information and provided the applicant with a preliminary view explaining why this information is irrelevant to the terms of the Application.⁵⁵ The applicant accepted OIC's preliminary view in part⁵⁶ and provided the following submissions⁵⁷ disagreeing with part of the preliminary view:

⁴⁶ On 11 June 2024.

⁴⁷ Section 90(1) of the RTI Act.

⁴⁸ Section 95 of the RTI Act.

⁴⁹ Section 108 of the RTI Act.

⁵⁰ See paragraph 6 above.

⁵¹ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52]. This decision was made in the context of the equivalent of section 73 of the RTI Act, section 27(3) of the repealed *Freedom of Information Act 1992* (Qld). See *Kiepe and The University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [11], and *2CDLO3 and Department of Education and Training* [2016] QICmr 20 (10 June 2016) at [54].

⁵² Document 184, pages 1554-1565.

⁵³ Document 205, pages 1719-1722.

⁵⁴ Part of document 191, page 1574.

⁵⁵ On 5 March 2024.

⁵⁶ Regarding document (a) described in paragraph 21.

⁵⁷ Applicant submissions received on 10 April 2024.

[regarding document (b) at paragraph 21 above]

- a. *I disagree with the Preliminary View and request disclosure of this information.*
- b. *This information is related to [Named Individual's] employment with the CCC, which is contingent upon factors that are not simply limited to a snapshot in time. With reference to 2(d)[i] of the Request, [Named Individual's] suitability, selection and appointment to the CCC is an ongoing process that incorporates the information contemplated by Document 205, pages 1719-1722, noting that the Request provided examples of documents sought, including but not limited to. Had [Named Individual] provided any information in his declared conflicts of interest (and annual review of disclosure of interests) that revoked his suitability to work at the CCC, his appointment would be terminated.*
- c. *Accordingly, this information is not irrelevant or out of scope, and should be disclosed.*

[regarding document (c) at paragraph 21 above]

- a. *I disagree with the Preliminary View and request disclosure of this information, to the extent the information concerns [the Named Individual] consistent with Part [3] of the RTI Request.*

23. Determination of whether information is irrelevant to the terms of an access application is a question of fact, which is determined by giving the words used to describe the scope of an access application their ordinary meaning and assessing the information claimed to be irrelevant. I am satisfied documents (b) and (c) in paragraph 21 do not relate to Items 1 and 3(a)-(d) at paragraph 6 above.
24. The Application's scope with respect to the Named Individual, seeks documents relating to a matter reported in the media; documents relating to the secondment, transfer or recruitment of the Named Individual to the CCC including prior security vetting processes; any disciplinary history; and certain training undertaken by the Named Individual on the CCC's learning platform. However, the Category A Information was provided by the Named Individual in the course of their duties at the CCC after their secondment. Therefore, I am not satisfied this information relates to any of the categories in paragraph 6 above. I also note some information that responds to document (c) in paragraph 21 above, was disclosed to the applicant during the external review.⁵⁸
25. For the above reasons, I am satisfied Category A Information is irrelevant to the terms of the Application and may be deleted on that basis.⁵⁹

Neither confirm nor deny

Relevant law

26. Section 55 of the RTI Act allows an agency or Minister to neither confirm nor deny the existence of a document if the decision-maker is satisfied the document would, if it existed, contain 'prescribed information'.
27. *Prescribed information* is defined in schedule 5 of the RTI Act to include:
 - (a) exempt information mentioned in schedule 3, section 10 of the RTI Act; and
 - (b) personal information,⁶⁰ the disclosure of which would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

⁵⁸ Part of document 191, by email from the CCC on 11 June 2024.

⁵⁹ Section 73 of the RTI Act.

⁶⁰ Schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld) defines personal information as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether

28. Section 55 of the RTI Act will apply where, due to the way an access application is framed, acknowledging the existence or non-existence of the requested information is liable to cause the very kind of detriment that the prescribed information provisions are intended to avoid.⁶¹

Findings

29. Nothing in this decision should be taken to either confirm or deny the existence of the requested documents.
30. As noted above, section 55 of the RTI Act is enlivened if an access application is framed in a particular way only. I have considered Item (3)(a), which is extracted below:

[3] Concerning [Named Individual], with reference to the Brisbane Times article dated [redacted] and the letter from [CCC officer] dated 12/7/21, any and all records held/archived/deleted by the CCC establishing:

[a] Assessment, investigation and outcome of a referral of alleged threats made by [Named Individual] in court received by the CCC (then CMC) and Director of Public Prosecutions on or around June 2008

31. In response to OIC's preliminary view,⁶² the applicant provided submissions,⁶³ which are summarised below:
- (a) the CCC's corruption function is void in circumstances where, in the applicant's opinion, the CCC has failed to perform its corruption functions adequately or appropriately
 - (b) OIC should refer the issue of whether the CCC's corruption functions in these circumstances are void to the Queensland Civil and Administrative Tribunal (**QCAT**) under section 118 of the RTI Act⁶⁴
 - (c) the considerations relied upon by OIC, as set out in the preliminary view, do not apply
 - (d) the requested documents and surrounding circumstances are 'exceptional' and override provisions in the RTI Act, and it was 'simply wrong' for the Information Commissioner to decide that the surrounding circumstances do 'not attract exceptional circumstances nor does it overcome the weight favouring non-disclosure of [the Named Individual's] personal information'
 - (e) the 'exception to the exemption is in fact enlivened, and the existence of the information must first be confirmed, and then disclosed'
 - (f) the overarching interest is the public interest and 'any investigation, or personal information about [the Named Individual], must be viewed through the lens of the

recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

⁶¹ Tolone and Department of Police (Unreported, Queensland Information Commissioner, 9 October 2009) at [25]. See also T19 and Queensland Police Service [2023] QICmr 2 (30 January 2023).

⁶² On 5 March 2024.

⁶³ Received on 10 April 2024.

⁶⁴ Submitting that '[i]t is open and reasonable to expect that any analysis, and the question of whether a viable corruption function applies or not, should be referred to the Tribunal to decide under s118 of the RTI Act. If the Tribunal decides, based on the evidence provided, that the CCC's corruption function is void, then the relevant exemption does not apply.'

public interest, which is elevated above the interests of the CCC and [the Named Individual]’; and

- (g) in the event I intend on deciding the CCC’s corruption is not void and the relevant exemption in schedule 3, section 10(4) of the RTI Act applies, I should make a referral under section 118 of the RTI Act to QCAT to decide the issue.⁶⁵

Is the requested information prescribed information subject to schedule 3, section 10(4) of the RTI Act?

32. Yes, for the reasons below.
33. Information will be subject to the Prescribed Crime Body Exemption if each of the following factors apply:⁶⁶
- (a) the information was obtained, used or prepared for an investigation
 - (b) the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; and
 - (c) the exception to the exemption does not apply.
34. The ambit of the Prescribed Crime Body Exemption is well-settled.⁶⁷ Relevantly, the Information Commissioner has previously held that the CCC’s misconduct function is triggered by its receipt and consideration of a complaint, notification and/or relevant material, and not determined retrospectively by the outcome of an assessment or investigation⁶⁸ either by the CCC or other agency;⁶⁹ and ‘dealing with’ or ‘assessing’ a complaint, notification or other material falls within the broad meaning of ‘investigation’ by the CCC or other agency.⁷⁰
35. The exception to the Prescribed Crime Body Exemption has been found to apply to information *‘about’* the subject officer in the investigation, as distinguished from a complainant.⁷¹
36. However, the fact on which this issue turns is how the applicant frames their request for access. The requested information at Item 3(a) seeks *‘any and all records held/archived/deleted by the CCC establishing...[a] Assessment, investigation and outcome of a referral of alleged threats made by [Named Individual] in court received by the CCC (then CMC) and Director of Public Prosecutions.’* This request is clearly and unambiguously expressed to request access to information obtained, used or prepared for an investigation, including an assessment of the material; the request seeks access to an investigation by the-then Crime and Misconduct Commission (**CMC**)⁷² or other agency, being the Director of Public Prosecutions (**DPP**); the investigation performed by the CMC or DPP would be performing the functions of the

⁶⁵ Concurrent with the issuance of this decision, I have written separately to the applicant in relation to their request to have matters referred to QCAT under section 118 of the RTI Act.

⁶⁶ Schedule 3, section 10(4) of the RTI Act.

⁶⁷ *Springborg, MP and Crime and Misconduct Commission; RZ (Third Party), BX (Fourth Party), Director-General of the Department of Justice and Attorney-General (Fifth Party)* (2006) 7 QAR 77 (**Springborg**) at [44]. *Springborg* analysed provisions in the repealed *Freedom of Information Act 1992* (Qld) which are the material equivalents of those contained in the *Crime and Corruption Act 2001* (Qld).

⁶⁸ *Springborg* at [44].

⁶⁹ Schedule 3, section 10(4) of the RTI Act.

⁷⁰ *Springborg* at [55]-[59].

⁷¹ *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 31 January 2011) (**G8KPL2**) at [25]-[33]; *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014) at [18]-[22], and *W52 and Crime and Corruption Commission* [2021] QICmr 57 (28 October 2021) at [44]-[48].

⁷² <<https://www.ccc.qld.gov.au/about-us/our-history/crime-and-corruption-commission>>, accessed 16 December 2024.

CMC including the corruption and/or crime function; and the exception to the exemption does not apply, as the applicant is not the subject officer of the alleged investigation.⁷³

37. Consequently, I am satisfied:

- (a) the Application is framed clearly and requests access to prescribed information which, should any exist, would be subject to the Prescribed Crime Body Exemption
- (b) if the documents exist, they would be subject to the Prescribed Crime Body Exemption; and
- (c) the exception to the Prescribed Crime Body Exemption does not apply.

38. With respect to the applicant's other submissions, I am unable to consider public interest considerations when determining whether information, should any exist, is exempt information. This is because Parliament has expressly determined that the disclosure of the exempt information outlined in schedule 3 of the RTI Act would, on balance, be contrary to the public interest.⁷⁴

39. I am satisfied that Item 3(a) seeks access to prescribed information that, should any exist, would be subject to the Prescribed Crime Body Exemption and to which the exception would not apply. Accordingly, I find the existence of information sought at Item 3(a), should any exist is neither confirmed nor denied, in accordance with section 55 of the RTI Act.

Legal professional privilege

Relevant law

40. A person's right under the RTI Act to be given access to documents of an agency⁷⁵ is subject to provisions that provide for an agency to refuse access to a document in certain circumstances.⁷⁶ Schedule 3 of the RTI Act specifies the types of information Parliament has determined are exempt because disclosure would, on balance, be contrary to the public interest.⁷⁷ Relevantly, information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (LPP).⁷⁸ This exemption reflects the requirements for establishing LPP at common law.⁷⁹

41. Establishing whether LPP applies to information at common law requires the information must comprise a communication:

- (a) made in the course of a lawyer-client relationship

⁷³ Schedule 3, section 10(6) of the RTI Act.

⁷⁴ Section 48(2) of the RTI Act.

⁷⁵ Section 23 of the RTI Act.

⁷⁶ Section 47 of the RTI Act.

⁷⁷ Ibid.

⁷⁸ Schedule 3, section 7 of the RTI Act.

⁷⁹ The doctrine of legal professional privilege is both a rule of evidence and a common law right. The High Court in *Daniels Corporation International Pty Ltd v Australian and Consumer Commissioner* (2002) 213 CLR 543 (**Daniels**) at 552 relevantly noted 'It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings' (footnotes omitted). See also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (**Esso**).

- (b) that was and remains confidential; and
 - (c) that was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.⁸⁰
42. When each of these requirements is met, LPP is established.⁸¹ Relevantly, LPP has been held to extend to copies of unprivileged documents attached to requests for, and the provision of, legal advice.⁸² Also, to establish the improper purpose exception, a communication must be made in pursuit of an illegal or improper purpose.¹⁶ In summarising the relevant case law⁸³ the Assistant Information Commissioner in *Secher and James Cook University*⁸⁴ explained:

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 that illegal or improper purpose.

... In establishing improper purpose, the standard of proof is high. The High Court has observed that it "is a serious thing to override legal professional privilege where it would otherwise be applicable" and as a result "vague or generalised contentions of crimes or improper purposes will not suffice."

Applicant's submissions

43. In the applicant's submissions contesting OIC's preliminary view, they maintain the elements of LPP have not been established or are otherwise subject to an exception.⁸⁵
44. Firstly, with regard to the dominant purpose test, which the applicant considers is not established in the circumstances, they submit:⁸⁶
- (a) the CCC Decision Maker incorrectly applied the LPP Exemption to two documents,⁸⁷ and it is therefore open and reasonable to conclude that the LPP Exemption may have been incorrectly applied to other documents subject to external review
 - (b) the applicant disagrees with OIC's preliminary view that no qualifications or exceptions to LPP apply to the documents
 - (c) the dominant purpose test has not been established with respect to the LPP claimed by the CCC, as the client, and cites *Robertson v Singtel Optus Pty Ltd* [2023] FCA 1392 (**Robertson**) in support of their submission
 - (d) *'the Information Commissioner demonstrates a fundamentally flawed approach to LPP and more particularly the dominant purpose test'*; and

⁸⁰ *Esso and Daniels*.

⁸¹ However, qualifications and exceptions to privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore is exempt under the RTI Act.

⁸² *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 (**Propend**) at 509.

⁸³ *Propend* at 591-592 and *Murphy and Treasury Department* (1998) 4 QAR 446 at [31]-[42].

⁸⁴ (Unreported, Queensland Information Commissioner, 6 June 2012) at [20]-[21].

⁸⁵ Received on 10 April 2024.

⁸⁶ Paragraphs 96-105 of submissions received on 10 April 2024.

⁸⁷ The CCC determined that the two documents met all requirements of establishing LPP at common law but disclosed these documents in full to the applicant in exercise of its discretion under section 48(3) of the RTI Act.

- (e) the decision in *Robertson* demonstrates that if the communication was not brought into existence for the dominant purpose of obtaining legal advice ‘*then the [communication] will never attract LPP*’.
45. Then, with respect to the waiver of LPP in these circumstances, the applicant submits the improper purpose exception applies and states:⁸⁸
- a. *Without suspicion or mere assertion, I have competently and coherently demonstrated, with documentary evidence, that the CCC has failed to have regard to the performance of its own corruption functions in a way that is appropriate, and the CCC has failed its overriding responsibility to promote public confidence in the way corruption within a unit of public administration is dealt with. Therefore the corruption functions of the CCC are void.*
 - b. *As the Information Commissioner is aware, even where the tests for LPP are satisfied, documents may not be privileged, either because privilege has been waived or because the improper purpose exception applies.*
 - c. *Legal advice, whether unsatisfactory or stellar, ordinarily attracts LPP.*
 - d. *However, the CCC is exceptional, because by its very nature the CCC deals with corruption by performing its corruption functions, and has an overriding responsibility to promote public confidence in the way corruption is dealt with. If the CCC does not perform its corruption functions in a way that is appropriate or promotes public confidence in the way corruption is dealt with, then the result is corrupt conduct is permitted to occur, and permitted to continue to occur.*
 - e. *In such circumstances, even unsatisfactory legal advice is not merely unsatisfactory: it is exceptional, or for an improper purpose, because it is contrary to the public interest and results in corruption.*
 - f. *As the Information Commissioner is aware, where a communication was made as part of an illegal or improper purpose, or a purpose contrary to the public interest, it cannot be privileged. It is irrelevant whether the lawyer knew about the improper purpose. This is known as the improper purpose exception. The improper purpose exception requires the communication to be made for the purpose of achieving an illegal or improper purpose.*
 - g. *On the basis that the corruption functions of the CCC are void, any document or communication created for the dominant purpose of advice privilege or litigation privilege, that otherwise caused or led the CCC to take the course it has taken and irrelevant whether the lawyer knew about the improper purpose, must be exceptional or for an improper purpose: because it results in corruption, or achieved an illegal or improper purpose..*
 - h. *The exception to the LPP exemption is enlivened, and the requested information should be disclosed.*

[sic, footnotes omitted]

Findings

46. The Category B Information comprises emails and briefing notes, some of which include attachments or active links to documents related to the legal advice requested or provided.
47. The emails and briefing notes are from two CCC Lawyers, a CCC Senior Lawyer and two CCC Principal Lawyers, to CCC senior staff — including the CCC Chairperson, the CCC Chief Executive Officer, the CCC Executive Director of Integrity Services, the Senior Executive Officer (Corruption), and the Director (Assessments) — providing and requesting legal advice on a range of issues related to the CCC’s functions. It also includes discussion of draft responses as part of that legal advice, and draft responses sent to CCC Lawyers for review. It also includes emails between a CCC Lawyer and a

⁸⁸ Paragraph 106 of the applicant’s submissions received on 10 April 2024.

CCC Principal Lawyer discussing draft responses and recommending outcomes or action.

48. The applicant is correct that, in order to establish LPP, the communication must have been created or otherwise brought into existence for the dominant purpose of obtaining or providing legal advice.⁸⁹ Whether a purpose is the dominant purpose is a question of fact.⁹⁰
49. In assessing the dominant purpose I have considered the content of the communications themselves as the best evidence to assess what was in the minds of the lawyers at the time of creating the communication containing the legal advice, and the client — the CCC — when requesting the legal advice.⁹¹
50. In the documents — primarily email communications, and two briefing notes — the lawyers describe their advice and briefings provided to the CCC senior employees (as representatives of the client) in terms that acknowledge clear requests made for legal advice, and the provision of attached documents and briefings as part of the provision of their advice.
51. Given the above, I am satisfied that the dominant purpose for the creation of the communications at the time of their creation by the two CCC Lawyers, CCC Senior Lawyer and two CCC Principal Lawyers, was to provide legal advice and legal assistance to their client, being the CCC.
52. The dominant purpose in the mind of the client when creating the communication may also require determination. Again, I have considered the documents themselves, noting the communications were created in 2019, 2021, and 2022. The communications evidence clear requests made for legal advice and assistance by the CCC Chairperson, the CCC Chief Executive Officer, the CCC Executive Director of Integrity Services, the Senior Executive Officer (Corruption), and the Director (Assessments).
53. Again, given the above, I am satisfied the dominant purpose for the creation of the communications at the time of their creation by the various senior CCC employees was to request legal advice and legal assistance from the CCC Lawyers.
54. Given I am satisfied the dominant purpose test is established on the evidence, I must also determine whether the other two requirements of establishing LPP at common law outlined at paragraph 41 above, are satisfied.
55. With respect to the lawyer-client relationship, I am satisfied that the Lawyers, Senior Lawyer, and Principal Lawyers were all registered legal practitioners⁹² and employed in this capacity to provide legal advice and assistance to CCC staff.⁹³ The communications show that legal advice and legal assistance provided by the CCC Lawyers, Senior Lawyer, and Principal Lawyers was provided in their capacity as professional legal advisors.

⁸⁹ *National Employers' Mutual General Insurance Association Ltd v Waind* (1979) 141 CLR 648 at 654 (per Mason J); *Propend* at 508-509 (per Brennan CJ), 543-544 (per Gaudron J), 552-553 (per McHugh J), and 569 (per Gummow J); and *Esso* at 65-66 (per Gleeson CJ, Gaudron and Gummow JJ). See also *Barnes v Commissioner of Taxation* [2007] FCAFC 88 (**Barnes**) at [5].

⁹⁰ *Australian Crime Commission v Stewart* [2012] FCA 29 at [76], *Federal Commissioner of Taxation v Pratt Holdings Pty Ltd* [2005] FCA 1247 at [30].

⁹¹ *Barnes* at [5] and [21].

⁹² Therefore suitably qualified and competent.

⁹³ Noting the job title included of Lawyer, Senior Lawyer, or Principal Lawyer in the email signatures of the lawyers in question.

56. I am also satisfied on the material before me, that the communications were created and intended to be kept confidential, with the CCC maintaining its claim of LPP over the communications. Accordingly I am satisfied the requirements for LPP at common law are met and apply to the communications.
57. Turning to the applicant's submissions at paragraph 45 that the improper purpose exception applies to displace the privileged communications, the onus is on the applicant to adduce admissible evidence that on its face provides some factual foundation for the allegation.⁹⁴ LPP is not displaced by a mere allegation of an illegal or improper purpose.⁹⁵
58. To establish improper purpose, two elements must be satisfied:⁹⁶
 - (a) the client embarked on a deliberate course of action knowing that the proposed actions were contrary to law; and
 - (b) the client made the relevant communications in furtherance of that illegal or improper purpose.
59. Based on my understanding of the applicant's submissions at paragraph 45, they appear to submit:
 - (a) the CCC's corruption functions are void because of how it has performed that function, according to the applicant's assessment
 - (b) the CCC is exceptional because of its functions
 - (c) unsatisfactory legal advice is '*exceptional, or for an improper purpose, because it is contrary to the public interest and results in corruption*'; and
 - (d) consequently the legal advice or legal assistance has caused or led the CCC to take a course wherein the applicant considers its corruption functions are void, which establishes the improper purpose because it results in corruption, or achieves an illegal or improper purpose.
60. The applicant appears to submit that the improper purpose is that the legal advice or legal assistance has resulted in corruption, either in other agencies and/or in the CCC itself. However improper purpose is not determined by the *result* of a client following the legal advice or legal assistance they receive – it is determined by establishing the *intention* of the client at the time they knowingly embarked on a deliberate course of action that was illegal or improper, and by establishing that they created the communication at the time to further that illegal or improper conduct.⁹⁷
61. There is no evidence in any of the material before me to suggest any substance to the applicant's submissions. Further, in case I have misunderstood the applicant's submissions, there is no evidence in any of the material before me that any of the senior CCC employees embarked on a deliberate course of action that they knew was contrary to the law, or that they created the communications seeking legal advice and legal assistance to further an illegal or improper purpose. Rather, the material before me reflects careful and serious consideration of the legislation administered by the

⁹⁴ *Propend* at 545, 553, 556, 559, 579, 587; *AWB Pty Ltd v Cole (No 5)* (2006) 155 FCR 30 (**AWB No 5**) at [89].

⁹⁵ *Propend* at 559, 579, 587.

⁹⁶ *Propend* at 546-547; *AWB No 5* at [89] '[i]t must also be established, on the same prima facie basis, that the communication which is the subject of the claim for privilege was made in furtherance of, or as a step preparatory to, the commission of the fraud or wrongdoing' per Young J.

⁹⁷ *Propend* at 514, 563-564; *AWB No 5* at [87]-[89].

CCC, and requests for legal advice and assistance on a range of matters related to the CCC's functions.

62. For the reasons outlined above, I am satisfied the Category B Information may be characterised as communications with internal lawyers that were made in the course of a lawyer-client relationship. I consider these communications were, and remain, confidential and were made for the dominant purpose of seeking or providing legal advice. I consider that the lawyers who provided the advice are suitably qualified and of a sufficiently independent character. I am satisfied that the exceptions to privilege do not apply, including the improper purpose exception.
63. Accordingly I find that the Category B Information comprises communications subject to LPP and is exempt information to which access may be refused.⁹⁸

Prescribed Crime Body Exemption

Relevant law

64. As outlined above, in my findings regarding the prescribed information sought by the applicant, the Prescribed Crime Body Exemption will apply to information where:⁹⁹
 - (a) the information was *obtained, used or prepared* for an investigation
 - (b) the investigation was conducted by a prescribed crime body, or another agency, in the performance of the prescribed functions of the prescribed crime body; **and**
 - (c) the exception to the exemption does not apply.

Applicant's submissions

65. During the review, the applicant made detailed submissions regarding their right of access¹⁰⁰ to the information sought at Item 1¹⁰¹ of the Application, which are summarised below:¹⁰²
 - (a) the applicant made a complaint to the Queensland Ombudsman (**QO**) about Queensland Building and Construction Commission (**QBCC**) officers.
 - (b) the applicant also made a complaint to the CCC about QBCC officers. The CCC wrote to the applicant on 24 October 2016 explaining:
 - i. in relation to the first allegation, the alleged conduct would not amount to corrupt conduct and no action would be taken; and
 - ii. in relation to the second allegation, the alleged conduct would, if proved, amount to corrupt conduct but it '*would be an unjustifiable use of resources for the CCC to take any further action at this time*' as the QO was currently investigating those same concerns (noting that if the QO investigation identified any evidence of suspected corrupt conduct, it had an obligation to report it to CCC).

⁹⁸ Section 47(3)(a) and schedule 3, section 7 of the RTI Act.

⁹⁹ Schedule 3, section 10(4) of the RTI Act.

¹⁰⁰ Section 23 of the RTI Act.

¹⁰¹ See paragraph 6 above.

¹⁰² External review application received 9 March 2023, and submissions received on 10 April 2024.

- (c) the CCC then received a complaint from the QO about an employee of QBCC. The CCC assessed this alleged conduct as capable of amounting to corrupt conduct and referred the matter to QBCC to deal with.
- (d) in the course of its enquiries, QBCC requested a copy of the referral, which the CCC provided.

66. Based on the above, the applicant submits:¹⁰³

- (a) the CCC breached confidentiality and Information Privacy Principles by providing QBCC with a copy of the referral
- (b) the communication between the CCC and QBCC is '*superfluous to the CCC's corruption function*'
- (c) the CCC, in providing QBCC with a copy of the referral, is duplicating the CCC's work and indicates that a '*parallel investigation*' was carried out by Employee C of the QBCC; and
- (d) this '*parallel investigation*' breaches section 59 of the *Crime and Corruption Act 2001* (Qld) (**CC Act**) and this duplicate copy, and any subsequent investigations, do not attract the CCC exemption.

67. The applicant also requested OIC refer their concerns to QCAT under section 118 of the RTI Act before any decision or preliminary view is reached in this external review.¹⁰⁴ In their submissions¹⁰⁵ the applicant raises concerns that OIC had misunderstood their submissions about this issue previously, and that our summary of the applicant's concerns suggested that we had not understood the distinction made regarding the CCC referrals to particular QBCC officers rather than the agency itself. Although I have summarised this background and the applicant's submissions at a high level, I have read and considered their submissions and the distinctions made.

Findings

Did the CCC '*obtain, use or prepare*' the Category C Information for an investigation?

68. Yes, for the reasons outlined below.

69. The terms 'obtained', 'used', or 'prepared' are not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) and should be given their ordinary meaning.¹⁰⁶ The term 'investigation' as used in this provision has been defined expansively and includes the mere examination or consideration of information (paraphrasing the definition of 'investigate' contained in schedule 2 to the CC Act).¹⁰⁷

¹⁰³ External review application received on 9 March 2023.

¹⁰⁴ I have written directly to the applicant regarding section 118 of the RTI Act.

¹⁰⁵ Particularly paragraphs 63-65 of the applicant's submissions received on 10 April 2024.

¹⁰⁶ The *Macquarie Dictionary* (7th Ed, 2017) defines 'obtain' as 'to come into possession of; get or acquire; procure; as by effort or request' (def 1); defines 'use/used/using' as 'to employ for some purpose; put into service; turn to account; to avail oneself of; apply to one's own purposes' (def 1 and 2); and defines 'prepare/prepared/preparing' as 'to make ready, or put in due condition, for something; to manufacture, compound or compose' (def 1 and 3).

¹⁰⁷ *Springborg* at [55]-[59] referring to the *Crime and Misconduct Act 2001* (Qld) as the CCC was previously called.

70. At Item 1 of the Application, the applicant requested all information in connection with specific CCC reference numbers, including complaints made by the applicant. While I am limited in the extent to which I can describe the documents located by the CCC,¹⁰⁸ by requesting all documents about specific CCC case files, the applicant has effectively ensured that the located documents will comprise material considered or created by the CCC in the course of assessing complaints and allegations.
71. In accordance with the Information Commissioner's view in *Springborg*, and having carefully considered the Category C Information, I am satisfied the information was obtained, used or prepared by the CCC in the course of investigating the various referrals, complaints, and allegations made by the applicant.

Were relevant investigations conducted by a prescribed crime body, or another agency, in performing the prescribed functions of the prescribed crime body?

72. Yes.
73. The CCC is a 'prescribed crime body' for the purposes of the RTI Act.¹⁰⁹ Dealing with corrupt conduct is an aspect of the CCC's 'corruption function',¹¹⁰ and the 'corruption function' is one of the CCC's 'prescribed functions'.¹¹¹ I am satisfied, in obtaining, using or preparing the Category C Information, the CCC was performing its prescribed functions.
74. I have considered the applicant's submissions alleging a '*parallel investigation*', noncompliance with section 59 of the CC Act and subsequent investigations should not be captured by the exemption. However, for the reasons that follow, I am not persuaded by their submissions.
75. The CCC is legislatively required to assess complaints and referrals it receives.¹¹² It is not unreasonable to expect the CCC may receive information from various sources about the same or similar alleged conduct. However, it does not, in my mind, follow that once the CCC has assessed, investigated or dealt with a matter, that it is prevented from later performing its prescribed functions should a similar complaint be received from another source. Rather, I accept the CCC will be performing its prescribed functions in relation to each individual complaint/referral it receives regarding allegations of corrupt conduct. To my mind, this is one of the reasons that the duty to notify the CCC of alleged corrupt conduct is '*paramount*' and *must* be complied with¹¹³ – the CCC alone is across the details of a matter and depends on the public and government employees to make complaints or provide information known to them to ensure the most effective and correct action is taken, if required.

Does the exception to the CCC exemption apply?

76. No.
77. The exception to the CCC exemption only applies where the investigation is finalised **and** the information is about the applicant. Whether information concerns an applicant is a question of fact to be determined by the decision-maker. '*About*' is a non-technical

¹⁰⁸ Section 108 of the RTI Act.

¹⁰⁹ Schedule 3, section 10(9) of the RTI Act.

¹¹⁰ Section 33 of the CC Act, and the definition of that term and the term 'corruption' in schedule 2 of the CC Act.

¹¹¹ Schedule 3, section 10(9) of the RTI Act.

¹¹² Sections 35 and 46, 47 and 48 of the CC Act.

¹¹³ Sections 37, 38 and 39 of the CC Act. See also section 32CA(2) of the *Acts Interpretation Act 1954* (Qld) regarding the requirement imposed by the word 'must' in a provision.

word not defined by the RTI Act and should be given its ordinary meaning.¹¹⁴ The Information Commissioner has previously decided the information will be 'about' an applicant where they are the *subject* of the relevant investigation.¹¹⁵ In this case, even if the CCC's investigations have been finalised, the Category C Information is not 'about' the applicant as they were not the subject of the investigations.

78. For these reasons, I consider the requirements of schedule 3, section 10(4) of the RTI Act are satisfied, the exception in schedule 3, section 10(6) does not apply, and access may be refused to the Category C Information.

Contrary to public interest information

Relevant law

79. A person's right under the RTI Act to be given access to documents of an agency¹¹⁶ is subject to provisions that provide for an agency to refuse access to a document in certain circumstances,¹¹⁷ including where disclosure would, on balance, be contrary to the public interest.¹¹⁸
80. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:
- (a) identify factors irrelevant to the public interest and disregard them
 - (b) identify factors in favour of disclosure of information
 - (c) identify factors in favour of nondisclosure of information; and
 - (d) decide whether, on balance, disclosure of the information would be contrary to the public interest.¹¹⁹
81. 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.

Applicant's submissions

82. The CCC refused access to information about the Named Individual, including information obtained as part of the Named Individual's secondment and vetting process. OIC conveyed a view to the applicant that this Category D Information was, on balance, contrary to the public interest to disclose under the RTI Act.¹²⁰

¹¹⁴ *Darlington v Office Of The Information Commissioner & Queensland Police Service* [2015] QCATA 167 at [52] per His Honour Carmody J. The *Macquarie Dictionary* (7th ed, 2017) defines 'about' as 'of; concerning; in regard to ... connected with' (def 1 and 2).

¹¹⁵ *G8KPL2* at [32]. This decision was affirmed on appeal: *Minogue v Office of the Information Commissioner Queensland and Anor* [2012] QCATA 191. See also *Darlington and Queensland Police Service* [2014] QICmr 14 (11 April 2014). An appeal against this decision was also dismissed: *Darlington v Office of the Information Commissioner & Queensland Police Service* [2015] QCATA 167.

¹¹⁶ Section 23 of the RTI Act.

¹¹⁷ Section 47 of the RTI Act.

¹¹⁸ Sections 47(3)(b) and 49 of the RTI Act. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

¹¹⁹ Section 49(3) of the RTI Act.

¹²⁰ On 5 March 2024.

83. In response to OIC's preliminary view, the applicant agreed not to pursue access to certain categories of information.¹²¹ With respect to the balance of the information the applicant submits in part:
- (a) they disagree that some information was prohibited from consideration by the *Telecommunications (Interception and Access) Act 1979* (Cth) (**TIA Act**) and requested OIC:
 - i. confirm that it had sighted the specific information in issue and considered it in the context in which it appears
 - ii. advise the applicant of the specific provision in the TIA Act which is claimed to prohibit disclosure of the relevant information; and
 - iii. provide the applicant with a further opportunity to respond.¹²²
 - (b) they consider that any analysis of the information would require assessment as to whether the CCC's secondment and vetting process, and steps taken to ensure the suitability of the Named Individual's appointment, was appropriate; and that it was open and reasonable that this assessment should be referred to QCAT under section 118 of the RTI Act
 - (c) disclosure of information about the Named Individual's disciplinary history, if any, and the way in which the CCC managed any disclosure by the Named Individual about their disciplinary history, is in the public interest; and
 - (d) they consider the public interest overrides the interests of the CCC and the Named Individual.
84. The applicant also *'insist[ed] in the strongest possible terms'* that if OIC did not accept their submissions *'that that decision ought to be made by the Tribunal and a referral should be made under s118 of the RTI Act to decide the issue.'*¹²³

Findings

Irrelevant factors

85. Some of the Category D Information was approved or created by senior persons within the CCC. This is an irrelevant factor to deciding the public interest.¹²⁴ I have disregarded this irrelevant factor in examining the Category D Information.

¹²¹ Submissions received on 10 April 2024. In their submissions the applicant confirmed they do not seek access to the *'the personal information of CCC administrative staff or a direct staff email address'* or *'the "purely personal information" of the Named Individual relating to his family, private assets and personal associations, for example.'*

¹²² I have written separately to the applicant about the information subject to the TIA Act and, as such, that aspect of the applicant's submissions is no longer in issue in this review. See footnote 32 above.

¹²³ As noted earlier in this decision, I have written to the applicant directly about this submission.

¹²⁴ Schedule 4, part 1, item 4 of the RTI Act.

Factors favouring disclosure

86. The Category D Information, to which the CCC refused access on this basis, relates to Items (3)(b), (c) and (d)(i) of the Application, being the '*detailed integrity vetting*', any disciplinary history and recruitment documents related to the Named Individual's secondment to the CCC.¹²⁵ I have taken the applicant's submissions as raising the following public interest factors favouring disclosure of the Category D Information:
- (a) disclosure could reasonably be expected to contribute to the transparency and accountability of the CCC's secondment and vetting process¹²⁶
 - (b) disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest¹²⁷
 - (c) disclosure of the information could reasonably be expected to inform the community of the CCC's operations¹²⁸
 - (d) disclosure of the information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official¹²⁹
 - (e) disclosure of the information could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct;¹³⁰ and
 - (f) disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.¹³¹
87. I am satisfied that disclosing Category D Information could reasonably be expected¹³² to contribute to the transparency and accountability of the CCC's secondment and vetting processes by revealing the steps taken to ensure the suitability of a relevant person for appointment.¹³³ Disclosing the information could also reasonably be expected to inform the community of the CCC's operations and practices to determine the suitability of its employees.¹³⁴ The public interest favours transparency in these circumstances, as it promotes integrity and confidence in merit-based appointment processes.¹³⁵ I consider these factors carry moderate weight in the circumstances.
88. I also consider that disclosure of the Category D Information could reasonably be expected to contribute to informing the community on matters of serious public interest.¹³⁶ The CCC performs essential work in investigating corruption that affects the public sector, including monitoring and providing oversight of police misconduct

¹²⁵ Noting the scope at paragraph 6 above.

¹²⁶ Schedule 4, part 2, item 1 of the RTI Act.

¹²⁷ Schedule 4, part 2, item 2 of the RTI Act.

¹²⁸ Schedule 4, part 2, item 3 of the RTI Act.

¹²⁹ Schedule 4, part 2, item 5 of the RTI Act.

¹³⁰ Schedule 4, part 2, item 6 of the RTI Act.

¹³¹ Schedule 4, part 2, item 11 of the RTI Act.

¹³² The words 'could reasonably be expected' to be given their ordinary meaning and the relevant expectation must be reasonably based and not irrational, absurd or ridiculous: see *Attorney-General's Department v Cockcroft* (1986) 64 ALR 97, per Bowen CJ and Beaumont J at 106. Previous decisions of the Information Commissioner have established that a mere possibility is not sufficient to show that a particular consequence could reasonably be expected: see *Murphy and Treasury Department* (1995) 2 QAR 744 at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

¹³³ Schedule 4, part 2, items 1 and 11 of the RTI Act.

¹³⁴ Schedule 4, part 2, item 3 of the RTI Act.

¹³⁵ *Mewburn and Department of Natural Resources and Mines* [2016] QICmr 31 (19 August 2016) at [41].

¹³⁶ Schedule 4, part 2, item 2 of the RTI Act.

matters, building capability in the public sector in preventing, detecting, and investigating corruption, and continuously improving the integrity of the public sector. The way in which the CCC performs its functions is a matter of public interest to the Queensland community. However, the extent to which the public interest may reasonably be advanced by disclosing the Category D Information is limited as the information involves the recruitment and vetting information concerning the Named Individual only. As such, I do not consider disclosure of this specific information demonstrates the operation and effectiveness of the CCC's processes so as to significantly advance the public interest. Accordingly, I afford moderate weight to this factor.

89. The applicant expressed serious concerns about the suitability of the Named Individual's employment with the CCC and about the CCC in performing its corruption function. Given this, I have considered whether disclosure of the Category D Information could reasonably be expected to reveal any possible deficiencies in the conduct or administration of an agency or official, and/or reveal or substantiate any misconduct or negligent, improper or unlawful conduct.¹³⁷ The first of these factors has a low threshold to satisfy.¹³⁸ Although I have not identified any deficiencies in the material before me, I consider the disclosure of the Category D Information would afford the applicant an opportunity for *inquiry* into any *possible* deficiencies in the conduct or administration of an agency or official. I afford low weight to this factor.
90. Further, while I acknowledge the applicant's concerns, the question is whether disclosure of the relevant information could reasonably be expected to *reveal or substantiate* the conduct alleged. In my view, the Category D Information, on its face, demonstrates that the CCC followed a thorough vetting process as part of its recruitment process for the Named Individual. Nor is their material before me to establish a reasonable expectation, if the relevant information were to be disclosed, that it would reveal or substantiate that an agency or official engaged in misconduct or negligent, improper or unlawful conduct. Accordingly, I find this factor does not apply.
91. There is a strong public interest in disclosing information that reveals the context and background for a government decision, to assist members of the public to understand the information and reasons informing a decision. I accept disclosure of this information would be reasonably likely to promote trust and confidence in the CCC and its decision-making in employment matters. Based on the Category D Information, I consider its disclosure would reveal the background or contextual information that informed the CCC's decision to employ the Named Individual on a secondment.¹³⁹ Therefore, I afford moderate weight to this factor.
92. I have not identified any other public interest factors that favour disclosure of the Category D Information.¹⁴⁰

Factors favouring nondisclosure

93. In the circumstances of this review, I have considered the following relevant public interest factors favouring nondisclosure of the Category D Information:

¹³⁷ Schedule 4, part 2, items 5 and 6 of the RTI Act.

¹³⁸ *L80 and Queensland Police Service* [2023] QICmr 28 (19 June 2023) at [32].

¹³⁹ Schedule 4, part 2, item 11 of the RTI Act.

¹⁴⁰ For example, the information is not the applicant's personal information (schedule 4, part 2, item 7 of the RTI Act) and disclosure could not reasonably be expected to contribute to the administration of justice generally (schedule 4, part 2, item 16 of the RTI Act) or contribute to the protection of the environment (schedule 4, part 2, item 13 of the RTI Act).

- (a) disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy¹⁴¹
 - (b) disclosure of the information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead;¹⁴²
 - (c) disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct;¹⁴³ and
 - (d) disclosure of the information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.¹⁴⁴
94. A factor favouring nondisclosure arises if disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy.¹⁴⁵ The concept of 'privacy' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere free from interference by others'.¹⁴⁶ The RTI Act also recognises that disclosing an individual's personal information could reasonably be expected to cause a public interest harm.¹⁴⁷ I am satisfied these factors apply to the Category D Information.
95. Information that is solely and wholly related to usual work responsibilities is considered *routine* personal work information.¹⁴⁸ Although it is still the personal information of a public sector employee, and disclosure could reasonably be expected to cause a public interest harm and prejudice the right to privacy of the public sector employee, the weight is considered limited and disclosure of such information will generally not be contrary to the public interest.
96. The circumstances of this matter, and in which the Category D Information was obtained, are not routine and comprise sensitive personal information of the Named Individual. I am satisfied a public interest harm would arise through disclosure of the Category D Information and prejudice the Named Individual's right to privacy. Accordingly, I afford significant weight to these two factors.¹⁴⁹
97. I also consider disclosure of parts of the Category D Information could reasonably be expected to prejudice the fair treatment of the Named Individual.¹⁵⁰ Members of the public are entitled to make complaints about public sector employees, and to a proper and fair evaluation and investigation of a complaint. Public sector employees are also entitled to a fair investigation process, and appropriate protection of their reputation. For example, where allegations made are unsubstantiated following inquiries or an investigation. I am satisfied disclosure of the Category D Information in these circumstances could reasonably be expected to adversely affect the reputation of the

¹⁴¹ Schedule 4, part 3, item 3 of the RTI Act.

¹⁴² Schedule 4, part 4, section 6 of the RTI Act.

¹⁴³ Schedule 4, part 3, item 6 of the RTI Act.

¹⁴⁴ Schedule 4, part 3, item 19 of the RTI Act.

¹⁴⁵ Schedule 4, part 3, item 3 of the RTI Act.

¹⁴⁶ Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice', Australian Law Reform Commission Report No. 108, released 12 August 2008, at [1.56]. Cited in *Balzary and*

Redland City Council; Tidbold (Third Party) [2017] QICmr 41 (1 September 2017) at [28].

¹⁴⁷ Schedule 4, part 4, section 6 of the RTI Act. See also *Kelson v Queensland Police Service* [2019] QCATA 67 at [90]-[94], per His Honour Daubney J.

¹⁴⁸ *Hardy and Department of Health* (Unreported, Queensland Information Commissioner, 27 June 2011) at [26].

¹⁴⁹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹⁵⁰ Schedule 4, part 3, item 6 of the RTI Act.

Named Individual, which in turn could subject them to unfair treatment.¹⁵¹ Accordingly, I have given substantial weight to this factor.¹⁵²

98. Finally, I have considered whether disclosure of the Category D Information could reasonably be expected to prejudice the management function of an agency, or the conduct of industrial relations matters by an agency.¹⁵³ As a former Information Commissioner noted:¹⁵⁴

there is a very strong public interest in protecting the free flow of information concerning the conduct and competency of public servants, even where this may result in an agency investigating false allegations. This is because [government agency] relies on information from public servants and/or members of the public in order to become aware of, and if necessary resolve, any issues concerning the conduct and competency of public servants.

99. I am satisfied disclosure of the Category D Information could reasonably be expected to detrimentally impact upon the carrying out of workplace investigations.¹⁵⁵ This would compromise the effectiveness of future similar workplace investigations, thereby prejudicing the management function of an agency or the conduct of industrial relations matters by an agency. Accordingly, I have given substantial weight to this factor.

Balancing the public interest

100. Favouring disclosure of the Category D Information, I afford moderate weight to the public interest factors promoting accountability and transparency, informing public debate on matters of serious interest and the community's ability to scrutinise the CCC's operations, and revealing the reasons for its decision to employ the Named Individual.¹⁵⁶ However, I give low weight to the public interest in disclosure being able to facilitate inquiries being made into possible deficiencies of conduct or administration of an agency or official.¹⁵⁷
101. Against this and favouring nondisclosure of the Category D Information, I afford significant weight to the respective factors protecting the personal information and right to privacy of the Named Individual;¹⁵⁸ and substantial weight to the public interest in minimising prejudice to individuals who are the subject of unsubstantiated allegations, and in protecting the management function of an agency in terms of how it handles complaints about public servants.¹⁵⁹
102. On balance, I find that the nondisclosure factors outweigh the disclosure factors and are determinative. Accordingly, I have determined to refuse access to the Category D Information as its disclosure would, on balance, be contrary to the public interest.¹⁶⁰

DECISION

103. I have determined to vary the CCC's internal review decision¹⁶¹ and find that:

¹⁵¹ *F60XCX and Queensland Ombudsman* [2014] QICmr 28 (13 June 2014) at [34]-[46].

¹⁵² Schedule 4, part 3, item 6 of the RTI Act.

¹⁵³ Schedule 4, part 3, item 19 of the RTI Act.

¹⁵⁴ *Gapsa and Department of Transport and Main Roads* (Unreported, Queensland Information Commissioner, 6 September 2013) at [31].

¹⁵⁵ *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [17].

¹⁵⁶ Schedule 4, part 2, items 1, 2, 3, 10 and 11 of the RTI Act.

¹⁵⁷ Schedule 4, part 2, item 5 of the RTI Act.

¹⁵⁸ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹⁵⁹ Schedule 4, part 3, items 6 and 19 of the RTI Act.

¹⁶⁰ Sections 47(3)(b) and 49 of the RTI Act.

¹⁶¹ Section 110(1)(b) of the RTI Act.

- (a) the Category A Information is not relevant to the terms of the Application and may be deleted as irrelevant information¹⁶²
- (b) the existence of documents may be neither confirmed nor denied in response to Item 3(a) of the Application seeking access to prescribed information¹⁶³
- (c) access may be refused to the Category B Information as it is exempt information that would be privileged from production in a legal proceeding on the ground of legal professional privilege¹⁶⁴
- (d) access may be refused to the Category C Information as it is exempt information subject to the Prescribed Crime Body Exemption, to which the exception does not apply;¹⁶⁵ and
- (e) access may be refused to the Category D Information as it would, on balance, be contrary to the public interest to disclose.¹⁶⁶

Joanne Kummrow
Information Commissioner

Date: 19 December 2024

¹⁶² Section 73 of the RTI Act.

¹⁶³ Section 55 of the RTI Act.

¹⁶⁴ Section 47(3)(a) and schedule 3, section 7 of the RTI Act.

¹⁶⁵ Section 47(3)(a) and schedule 3, section 10(4) of the RTI Act.

¹⁶⁶ Section 47(3)(b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
9 March 2023	OIC received the application for external review. OIC requested preliminary information from the CCC.
16 March 2023	OIC received preliminary information from the CCC.
29 March 2023	OIC advised the parties that the application for external review had been accepted. OIC requested the CCC provide the located documents.
28 April 2023	OIC received the located documents from the CCC.
22 June 2023	OIC updated the applicant.
8 September 2023	OIC requested the CCC's views on disclosure of further information to the applicant.
12 September 2023	OIC updated the applicant.
28 September 2023	OIC received submissions and information from the CCC.
30 October 2023	OIC received correspondence from the applicant.
16 November 2023	OIC updated the applicant.
9, 13, 16, 21 and 22 February 2024	OIC requested and received further submissions from the CCC regarding certain information in issue.
29 February 2024	OIC updated the applicant.
5 March 2024	OIC issued a preliminary view to the applicant.
11 March 2024	OIC received information from the CCC.
19 March 2024	OIC approved the applicant's request for an extension of time to respond to the preliminary view.
8 April 2024	OIC approved the applicant's request for an extension of time to respond to the preliminary view.
10 April 2024	OIC received submissions from the applicant contesting part of the preliminary view.
29 May 2024	OIC requested the CCC disclose further information to the applicant.
31 May 2024	OIC confirmed with the CCC the disclosure of further information to the applicant.
7 June 2024	OIC issued a further preliminary view to the applicant. OIC requested the CCC disclose further information to the applicant.
11 June 2024	The CCC disclosed further information to the applicant.
12 June and 12 July 2024	OIC approved the applicant's request for an extension of time to respond to the preliminary view.
31 July 2024	OIC received submissions from the applicant contesting part of the preliminary view.

