



## Decision and Reasons for Decision

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Citation:	<b><i>Z41 and Legal Services Commission [2025] QICmr 57 (28 August 2025)</i></b>
Application Number:	<b>318467</b>
Applicant:	<b>Z41</b>
Respondent:	<b>Legal Services Commission</b>
Decision Date:	<b>28 August 2025</b>
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NEITHER CONFIRM NOR DENY - request for documents containing applicant's personal information or identifying applicant's company - whether the existence of responsive information can be neither confirmed nor denied - section 69 of the <i>Information Privacy Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to the Legal Services Commission (**LSC**) under the *Information Privacy Act 2009* (Qld) (**IP Act**)<sup>2</sup> for access to documents containing his personal information or otherwise identifying him or his company.
2. The LSC decided,<sup>3</sup> under section 69 of the IP Act, to neither confirm nor deny the existence of documents sought by the applicant.
3. The applicant applied<sup>4</sup> to the Office of the Information Commissioner (**OIC**) for an external review of that decision.
4. For the reasons set out below, I affirm the LSC's decision to neither confirm nor deny the existence of the requested documents.<sup>5</sup>

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<sup>1</sup> On 22 November 2025.

<sup>2</sup> On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 8, Part 3 of the IP Act and Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts **as in force prior to 1 July 2025**. These may be accessed at <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014> and <https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013> respectively.

<sup>3</sup> Decision dated 14 February 2025.

<sup>4</sup> On 14 February 2025.

<sup>5</sup> Under section 123(1)(a) of the IP Act.

## Reviewable decision

5. The decision under review is the LSC's decision dated 14 February 2025.

## Evidence considered

6. Evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).
7. In making this decision, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the rights to seek and receive information, privacy and reputation.<sup>6</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' those rights, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (**RTI Act**).<sup>7</sup> 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,<sup>8</sup> 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*'.<sup>9</sup>

## Issue for determination

8. The issue for determination is whether the LSC was entitled, under section 69 of the IP Act, to neither confirm nor deny the existence of the documents sought by the applicant.

## Relevant law

9. Under the IP Act, an individual has a right to be given access to documents of an agency, to the extent they contain the individual's personal information.<sup>10</sup> This right is subject to limitations, including grounds for refusal of access.<sup>11</sup>
10. Section 69 of the IP Act allows a decision-maker to neither confirm nor deny the existence of a document which, if it existed, would contain prescribed information. This provision is intended to apply in situations where, due to the specific wording of the request, revealing whether the agency has the requested documents would reveal information to which an agency would normally be entitled to refuse access.
11. '*Prescribed information*' is defined<sup>12</sup> as including '*personal information the disclosure of which would, on balance, be contrary to the public interest, under the Right to Information Act, section 47(3)(b)*'.

<sup>6</sup> Sections 21(2) and 25 of the HR Act.

<sup>7</sup> *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].

<sup>8</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>9</sup> *XYZ* at [573]. This approach, in the context of the 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.*'

<sup>10</sup> Section 40 of the IP Act.

<sup>11</sup> Section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under section 47 of the RTI Act.

<sup>12</sup> In schedule 5 of the IP Act.

12. Determining this issue essentially requires a decision-maker to conduct a hypothetical public interest<sup>13</sup> balancing exercise, making a judgment as to where the balance of the public interest would lie were requested documents to exist. This involves a notional application of the public interest balancing test prescribed in section 49 of the RTI Act, including identifying public interest factors that would favour disclosure and nondisclosure, assuming the existence of requested documents.<sup>14</sup>

## Findings

13. Nothing in this decision should be taken to either confirm or deny the existence of the requested documents.
14. The applicant claims he has documentary evidence that a barrister or barristers have acted inappropriately and unlawfully.<sup>15</sup> He also claims to know that the LSC hold the requested documents. The applicant has not provided any information to OIC, beyond his assertions, which independently confirms his knowledge of the LSC holding documents containing his personal and business information.

### ***If the requested documents existed, would they contain personal information?***

15. For the reasons that follow I find that, if the requested documents existed, they would contain personal information.
16. *'Personal information' is defined<sup>16</sup> as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.*
17. Given the wording of the access application, it is reasonable to expect that, if the requested documents exist, they would contain the applicant's personal information. While information that is only about the applicant's company would not, of itself, be 'personal information',<sup>17</sup> I consider any such information, if it exists, would likely be very limited given the company name includes the applicant's first and last name.
18. I also consider it reasonable to expect that, if the requested documents exist, they would contain the personal information of an individual or individuals other than the applicant. The primary role of the LSC is to investigate complaints about lawyers. To my knowledge, the applicant is not a lawyer and his company does not provide legal services. It is reasonable to assume that information the LSC holds about the applicant or his business, if it exists, would be in the context of the LSC having received a complaint about another person who is a lawyer.
19. If the existence of the requested documents were confirmed, it would also be reasonable for the applicant to conclude they relate to a lawyer or lawyers he or his business have dealt with in some capacity. This would, in turn, enable the identity of the individual or individuals to whom the requested documents (if they exist) relate to be reasonably ascertained, as well as the fact of a complaint having been made against them.

<sup>13</sup> 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, *'The Public Interest: We Know It's Important, But Do We Know What It Means'* (2006) 48 AIAL Forum 12, 14.

<sup>14</sup> *Nadel and Queensland Police Service* [2020] QICmr 19 (6 April 2020) at [15].

<sup>15</sup> Submission received 15 July 2025.

<sup>16</sup> In section 12 of the IP Act.

<sup>17</sup> See *WJA Trading Pty Ltd and Office of Industrial Relations; R97 (Third Party)* [2023] QICmr 12 (15 March 2023) at [41].

20. Accordingly, if the requested documents were to exist, it is reasonable to expect that both disclosure of these documents and the confirmation of their existence would disclose the personal information of other individuals.

***If the requested documents existed, would disclosing the personal information, on balance, be contrary to the public interest?***

21. For the reasons that follow I find that, if the requested documents existed, disclosing the personal information would, on balance, be contrary to the public interest.
22. 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.<sup>18</sup>
23. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest.<sup>19</sup> When deciding whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:<sup>20</sup>
- 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.
24. I do not consider any irrelevant factors<sup>21</sup> arise in this case and I have not taken any into account in making this decision.

**Factors favouring disclosure**

25. In response to OIC’s preliminary view, the applicant submitted:<sup>22</sup>
- he knows that the LSC hold documents containing his personal and business information
  - disclosure may allow or assist inquiry into possible deficiencies in conduct or administration of LSC, for example by revealing:
    - the nature and extent of the applicant’s personal and business information held by LSC
    - the reason or reasons why LSC has his personal and business information
    - the purpose or purposes for which his personal and business information is being used
    - the circumstances in which LSC obtained his personal and business information, including whether it was obtained lawfully
    - how his personal and business information is being protected and stored; and
    - the accuracy and completeness of his personal and business information.
  - it is dishonest for the LSC to claim ‘*information that does exist does not*’; and

<sup>18</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>19</sup> Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest.

<sup>20</sup> Section 49(3) of the RTI Act.

<sup>21</sup> Including those identified in schedule 4, part 1 of the RTI Act.

<sup>22</sup> Submission received on 15 July 2025.

- for LSC to have not taken any action in relation to the unlawful and improper conduct by a legal professional is anomalous, and ‘possibly evidence of maladministration, corruption, incompetence or negligence’.
26. As mentioned at paragraph [17], if the requested documents exist, they would contain the applicant’s personal information. The IP and RTI Acts recognise a public interest in a person receiving access to their own personal information held by government.<sup>23</sup> I afford significant weight to this factor favouring disclosure.
27. Disclosure of the requested information, if it exists, would allow the applicant to check its accuracy and completeness. However, the applicant has not provided any reasons or evidence to suggest the LSC holds inaccurate or incomplete information about him or his business. The phrase ‘*could reasonably be expected to*’, as it appears in many factors listed in schedule 4 of the RTI Act,<sup>24</sup> requires that the relevant expectation is reasonably based. There must be real and substantial grounds for expecting the relevant occurrence, which can be supported by evidence or reasoning.<sup>25</sup> I do not consider there is a reasonable basis to expect that disclosure of the requested information (if it exists) could reveal that information held by the LSC is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>26</sup> I find that this factor favouring disclosure does not apply.
28. The applicant’s submissions also raise the following factors favouring disclosure:
- allowing or assisting inquiry into possible deficiencies in the conduct or administration of an agency or official<sup>27</sup>
  - revealing or substantiating that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct<sup>28</sup>
  - informing the community of the government’s operations<sup>29</sup> and enhancing the government’s accountability;<sup>30</sup> and
  - revealing reasons for a government decision and any background or contextual information that informed the decision.<sup>31</sup>
29. Schedule 4 requires reasonable grounds to enliven an expectation that favours these disclosure factors. To the extent the applicant submits disclosure could reveal that the LSC have obtained, held, used or stored his personal or company information inappropriately or unlawfully, the applicant has not provided any reasons or evidence to support these assertions. I consider this is speculative, rather than an expectation for which reasonable grounds exist.<sup>32</sup> Accordingly, I do not consider that this submission gives rise to these factors favouring disclosure.<sup>33</sup> However, I have considered these factors below with respect to the applicant’s other submissions.
30. Generally speaking, if the requested information exists, I am satisfied its disclosure could reasonably be expected to reveal actions taken by the LSC in response to a complaint

<sup>23</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>24</sup> Including schedule 4, part 2, item 12 of the RTI Act.

<sup>25</sup> See *Murphy and Treasury Department* (1995) 2 QAR 744 (*Murphy*) at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (*Re B and NBRHA*) at [160]. See also *Attorney-General’s Department and Australian Iron and Steel Pty Ltd v Cockcroft* (1986) 10 FCR 180.

<sup>26</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>27</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>29</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>30</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>31</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>32</sup> *Murphy* at [44] and *Re B and NBRHA* at [160].

<sup>33</sup> Schedule 4, part 2, items 5 or 6 of the RTI Act.

or complaints, reveal reasons and background information for the LSC's decisions, and enhance the government's accountability.<sup>34</sup>

31. However, on the information before me, I do not consider that disclosure of the requested information, if it exists, could reasonably be expected to allow or assist inquiry into possible deficiencies in conduct or reveal or substantiate that the LSC has engaged in misconduct or negligent, improper or unlawful conduct. I find that, of the factors listed at paragraph [28], only the accountability and transparency factors apply,<sup>35</sup> and only in the general sense discussed at paragraph [30]. I consider these factors deserve moderate weight.

### **Factors favouring nondisclosure**

32. As mentioned at paragraphs [18], if the LSC were to hold any relevant information, it is reasonable to expect this would be in the context of having received a complaint about a lawyer.
33. The fact of a complaint having been made about a person is their personal information within the meaning of section 12 of the IP Act. The RTI Act presumes that disclosure of third party personal information would give rise to a public interest harm.<sup>36</sup> I also consider disclosure of the requested information, if it exists, could reasonably be expected to prejudice the protection of the right to privacy of other individuals.<sup>37</sup> While the applicant submits the LSC could redact or de-identify the requested documents to protect the identity of other individuals,<sup>38</sup> I consider that any information about the applicant or his company occurring in the context described at paragraphs [18] and [32] would likely be inextricably intertwined with information about another person.
34. The applicant claims personal knowledge of the matters at hand and the identity of the relevant legal professional or professionals. I am satisfied that subjects of complaints, complainants and any witnesses are entitled to protection of their right to privacy in terms of their connection with matters complained about. The Information Commissioner has previously recognised that information about complaints to agencies is sensitive in nature.<sup>39</sup> I also note that there can be no restriction or condition on the use, dissemination or republication of information released under the IP Act.<sup>40</sup> In those circumstances, even if the requested information were to exist and the applicant was aware of the matters claimed, I do not consider this reduces the weight to be afforded to these factors favouring nondisclosure.
35. I afford significant weight to these factors favouring nondisclosure.<sup>41</sup>
36. Given the role of the LSC as discussed in paragraph [18], the requested documents (if they exist) would likely include information about, or provided by, complainants or witnesses. For this information, I also afford significant weight to the factors favouring disclosure which relate to protecting an agency's ability to obtain confidential

<sup>34</sup> Giving rise to the factors favouring disclosure at schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>35</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>36</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>37</sup> A factor favouring nondisclosure of information: schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the IP Act. OIC has adopted the Australian Law Reform Commission's definition of the concept, being the right of an individual to preserve their personal sphere free from interference from others: "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

<sup>38</sup> Submission received on 15 July 2025.

<sup>39</sup> See, for example, *Alsop and Redland City Council* [2017] QICmr 27 (2 August 2017) at [32] and *F60XCX and Queensland Ombudsman* [2014] QICmr 28 (13 June 2014) at [32] and [75].

<sup>40</sup> *FLK v Information Commissioner* [2021] QCATA 46 at [17].

<sup>41</sup> Schedule 4, part 3, item 3 and part 4, section 6(1) of the RTI Act.

information<sup>42</sup> and the flow of information to a regulatory agency.<sup>43</sup> Regulatory agencies such as the LSC rely upon information provided by community members to enable and assist it to perform their regulatory functions. I am satisfied that routinely disclosing this information would, if it exists, tend to discourage individuals from coming forward with information and cooperating with the LSC, as they may consider that their identity and other personal information could be released to other individuals.<sup>44</sup> This, in turn, could reasonably be expected to negatively impact the LSC's ability to obtain this type of information in the future.<sup>45</sup> Complainants reasonably expect that complaint information they provide to an agency to assist it to discharge its functions will be held in confidence unless, and until, it becomes necessary to disclose it for the purposes of an investigation.<sup>46</sup>

37. A factor favouring nondisclosure arises where disclosure 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.<sup>47</sup> This factor only applies where the information is about allegations that have been unsubstantiated. If the requested information were to exist and give rise to this nondisclosure factor, the weight I would afford this factor would depend upon the individual circumstances of the case, including the severity of any documented allegations and the nature of the expected prejudice that could arise from disclosure. In any case, even if this factor favouring nondisclosure does not apply, I would be satisfied that the strong public interest factors favouring nondisclosure identified above are sufficient to outweigh the public interest in disclosure of the requested information.

### **Balancing the public interest**

38. In balancing the public interest, I have had regard to the pro-disclosure bias of the IP Act.<sup>48</sup>
39. I have afforded significant weight to the factor favouring disclosure of the applicant's own personal information, if it exists. I have also afforded moderate weight to the factors relating to the LSC's accountability and transparency.
40. On the other hand, I have afforded significant weight to the nondisclosure factors safeguarding personal information and privacy. For information that is about or has been provided to the LSC by complainants or witnesses, if it exists, I have also afforded significant weight to the nondisclosure factors safeguarding the LSC's ability to obtain confidential information and the flow of information to the LSC.
41. I have also considered the factor favouring nondisclosure which arises where disclosure 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. Regardless of whether this factor applies, I am satisfied that the other nondisclosure factors identified at paragraph [40] are strong enough to comfortably outweigh the factors favouring disclosure of the requested information, if it exists. In those circumstances, I consider the factors favouring nondisclosure are determinative.

<sup>42</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>43</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>44</sup> *Suskova and Council of the City of Gold Coast* [2015] QICmr 31 (27 November 2015) at [28]; *Y39 and Brisbane City Council* [2021] QICmr 51 (13 October 2021) at [34].

<sup>45</sup> *W34 and Department of Agriculture and Fisheries* [2013] QICmr 10 (8 March 2023) at [28].

<sup>46</sup> *Y39 and Brisbane City Council* [2021] QICmr 51 (13 October 2021) at [34].

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

<sup>48</sup> Section 64 of the IP Act.

42. Accordingly, I find that disclosure of the requested information (if it exists) would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>49</sup>

### ***Other matters raised by the applicant***

43. During the review, the applicant submitted that the LSC failed to properly articulate the nature and extent of the information it holds and the specific reasons why releasing this information would not be in the public interest.<sup>50</sup> Section 69(2) of the IP Act confirms that an agency may give a prescribed written notice of its decision that does not include the details mentioned in sections 199(a) or (b) of the IP Act. Instead, that provision enables the agency to state that it neither confirms nor denies the existence of documents but, assuming their existence, they would be documents to which access would be refused under section 67 to the extent it comprised prescribed information. I am satisfied the decision under review complied with the requirements of section 69(2) of the IP Act. The purpose of a 'neither confirm nor deny' decision is to permit an agency to not acknowledge the existence or non-existence of requested information where doing so would cause the kind of detriment that section 69 of the IP Act is designed to prevent. For the LSC to explain the nature and extent of the information it holds in response to the applicant's request (if it exists) would defeat this purpose.
44. The applicant submitted<sup>51</sup> that, unless the LSC can reasonably demonstrate that his personal and business information pertains to an ongoing investigation, there is no legitimate reason to deny access. In support of this submission, the applicant cites schedule 3, section 10(6) of the RTI Act.<sup>52</sup> As schedule 3, section 10(6) is an exception to the exemptions at subsections (4) and (5), and neither of these exemptions are in issue for this review, I find that it does not apply to the requested information.
45. The applicant has also claimed that it is dishonest for the LSC to claim '*information that does exist does not*'.<sup>53</sup> The applicant submits that it is anomalous, and '*possibly evidence of maladministration, corruption, incompetence or negligence*', that LSC has not taken any action in relation to such matters. To the extent these submissions raise public interest factors favouring disclosure, I have considered them. Otherwise, it is not within the Information Commissioner's jurisdiction to investigate the conduct of other government agencies.<sup>54</sup>
46. For completeness, I also note that the Information Commissioner has reporting obligations under section 126 of the IP Act if she is of the opinion that there is evidence on review of disciplinary matters. There is nothing before the Information Commissioner on this review that enlivens this obligation. In any event, I note that the Information Commissioner is not required to account to an applicant for any action taken, or not taken, under section 126 of the IP Act.<sup>55</sup>

<sup>49</sup> Under section 47(3)(b) of the RTI Act.

<sup>50</sup> External review application received 14 February 2025.

<sup>51</sup> Submission received on 15 July 2025.

<sup>52</sup> Schedule 3, section 10(6) provides that information is not exempt information under subsections (4) and (5) of that section if it consists of information about the applicant and the relevant investigation has been finalised.

<sup>53</sup> Submission received on 15 July 2025.

<sup>54</sup> On 24 July 2025, OIC informed the applicant by email that, if he had concerns about the conduct of a government agency or its employees, he could make a complaint to the Queensland Ombudsman or the Crime and Corruption Commission.

<sup>55</sup> *K77 and Department of State Development and Infrastructure (Office of Industrial Relations)* [2024] QICmr 24 (5 June 2025) at [30]; *T51 and Townsville Hospital and Health Service* [2024] QICmr 58 (7 November 2024) at [38].



## **DECISION**

47. For the reasons set out above, I affirm the reviewable decision<sup>56</sup> and find that LSC was entitled to neither confirm nor deny the existence of the requested documents under section 69 of the IP Act.
48. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.



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**C Flynn**  
**Acting Principal Review Officer**

**Date: 28 August 2025**

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<sup>56</sup> Under section 123(1)(a) of the IP Act.