



Office of the Information Commissioner Queensland

Decision and Reasons for Decision

Application Number: 310687

Applicants: North Goonyella Coal Mines Pty Ltd and Millard

Respondent: Department of Natural Resources and Mines

Decision Date: 26 June 2012

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – applicants sought information from Department of Employment, Economic Development and Innovation about decision to prosecute applicants under the *Coal Mining Safety and Health Act 1999* (Qld) – whether disclosure of the information could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case – whether the information comprised exempt information – section 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) – whether disclosure of the information would, on balance be contrary to the public interest – section 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicants applied¹ to the Department of Employment, Economic Development and Innovation (**Department**)² under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to certain information about an investigation and decision to prosecute persons in relation to a chemical exposure incident that occurred at North Goonyella Coal Mine on 15 July 2009.
2. The Department identified 3728 folios and decided³ to:
 - grant full access to 1229 folios
 - refuse partial access to 25 folios; and
 - refuse access in full to 2474 folios.⁴

¹ By application dated 13 August 2010, validated on 16 September 2010.

² Machinery of government changes in April 2012 transferred relevant responsibility from the Department of Employment, Economic Development and Innovation (**DEEDI**) to the Department of Natural Resources and Mines (**DNRM**). Accordingly, existing RTI applications and reviews involving certain applications made to DEEDI before the machinery of government changes now rest with DNRM, including this external review. For ease of reference, I will simply refer to 'the Department'.

³ By decision dated 24 March 2011.

⁴ I note that the Department invited the applicant to inspect 84 folios to which access was refused in full, because access in the form requested by the applicant would involve an infringement of the copyright of a person other than the State under section 68(4)(c) of the RTI Act.

3. The applicants sought internal review⁵ of the Department's decision to refuse access to information on 324 folios on the grounds that its disclosure:
 - could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case⁶; and
 - would, on balance, be contrary to the public interest.⁷
4. On internal review, the Department decided⁸ to release additional information but maintained that 312 folios comprised exempt information, the disclosure of which could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case.⁹
5. The applicants applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.¹⁰
6. In the current circumstances, the Department is **not** entitled to refuse access to information which remains relevant in this review, as it does not comprise exempt information, nor would its disclosure, on balance, be contrary to the public interest.

Reviewable decision

7. The decision under review is the Department's internal review decision dated 31 May 2011.

Relevant Information

8. As a result of steps taken on external review, a number of issues were informally resolved.¹¹ Accordingly, the information remaining in dispute (**Relevant Information**) has been reduced and is located across 127 folios.¹²
9. I am constrained in the extent to which I can discuss the Relevant Information in these reasons because the Department maintains that it comprises exempt information.¹³ However in general terms, the Relevant Information concerns the Department's review of the applicants' compliance with the *Coal Mining Safety and Health Act 1999* (Qld) (**CMSH Act**) in relation to the relevant incident at North Goonyella Coal Mine, including information created by the Department's Review Committee.
10. The Review Committee “provide(s) the Commissioner for Mines Safety and Health with an opinion on the appropriateness of an administrative response”¹⁴ to a compliance issue; and “(t)he decision to proceed with a prosecution rests with the Commissioner for Mine Safety and Health”.¹⁵ Therefore, the Relevant Information only concerns the decision to prosecute insofar as it reveals the Review Committee's considerations and

⁵ On 29 April 2011.

⁶ Sections 47(3)(a), 48 and schedule 3, section 10(1)(e) of the RTI Act.

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

⁸ By internal review decision dated 31 May 2011.

⁹ Sections 47(3)(a), 48 and schedule 3, section 10(1)(e) of the RTI Act.

¹⁰ On 27 June 2011 by correspondence dated 23 June 2011.

¹¹ Details concerning the informal resolution of these issues and additional information released by the Department on external review are contained in the Appendix.

¹² Folios 99-106 of File F; 54-58, 150-153 of File G; 25, 93, 94, 99-103 of File I; 5-7, 11-21, 31-38 of File M; 9-18, 25-45 of File R; 35, 79, 80, 121 of File S; 22, 23, 141 of File T; 126, 135,136 of File U; and 8, 12, 17-52, 56 of File V.

¹³ Section 108(3) of the RTI Act.

¹⁴ See the Mines Inspectorate Compliance Policy (**Policy**), November 2009, available at: http://mines.industry.qld.gov.au/assets/mines-safety-health/compliance_policy_ver_3_0_nov_09.pdf at page 5, point 3.

¹⁵ See the Policy at page 10, point 5.

recommendations. The Relevant Information does not reveal the reasons for any decision by the Commissioner for Mine Safety and Health.

Issues in this review

11. The issues for determination are whether:

- the Relevant Information comprises exempt information; and
- disclosure of the Relevant Information would, on balance, be contrary to the public interest.

Significant procedural steps

12. Significant procedural steps relating to the application and external review are set out in the Appendix.

Evidence relied upon

13. Evidence, submissions, legislation and other material I have considered in reaching this decision is disclosed in these reasons (including footnotes and Appendix).

Relevant law

Onus on external review

14. Section 87(1) of the RTI Act provides that on external review, the agency which made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the access applicant.

Right to access information

15. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

16. Sections 47(3)(a) and 48 of the RTI Act provide that access may be refused to a document to the extent that it comprises '*exempt information*'. Schedule 3 sets out the types of information which the Parliament has considered to be '*exempt information*' as its disclosure would, on balance, be contrary to public interest.

17. Sections 47(3)(b) and 49 of the RTI Act provide a ground for refusal of access where disclosure of information would, on balance, be contrary to the public interest. In determining whether disclosure of the information sought would, on balance, be contrary to the public interest I must:¹⁶

- identify and disregard irrelevant factors
- identify factors favouring disclosure of the information in the public interest
- identify factors favouring nondisclosure of the information in the public interest
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information would, on balance, be contrary to the public interest.

¹⁶ Section 49(3) of the RTI Act.

18. I will examine in turn whether the Relevant Information comprises exempt information and/or whether its disclosure would, on balance, be contrary to the public interest.

Whether the Relevant Information comprises exempt information

19. The Department submits that the Relevant Information comprises exempt information, the disclosure of which could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case.¹⁷
20. In the current circumstances, the applicants have been charged with offences under the CMSH Act and prosecutions are currently on foot. Therefore, there is an actual trial relevant to my consideration of whether this exemption applies.¹⁸
21. For the Relevant Information to qualify for exemption on this basis, it must be established that its disclosure '*could reasonably be expected to*' result in the anticipated prejudice. The term '*could reasonably be expected to*' requires the relevant expectation be reasonably based; that it is neither irrational, absurd or ridiculous,¹⁹ nor merely a possibility.²⁰ It is not necessary for me '*to be satisfied upon a balance of probabilities*' that disclosing the document will produce the anticipated result.²¹ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.²² Importantly, the expectation must arise as a result of disclosure, rather than in other circumstances.²³
22. The Department submits that the Relevant Information relates to the decision to prosecute the applicants and does not concern any issues that are relevant to the current trial covering charges under the CMSH Act.²⁴ With this in mind, the Department submits that disclosure could reasonably be expected to result in the defence raising or relying on at trial, issues that are not relevant to the trial in an effort "*to embark upon an 'investigation' by way of cross examination of prosecution witnesses... in an attempt to sidetrack the prosecution*".²⁵
23. Accordingly, the Department submits that if disclosure occurs, the following type of prejudice to a person's fair trial could reasonably be expected to result:²⁶
 - the defence would raise irrelevant matters beyond the scope of the elements of the offence, which would detract from the effectiveness of the prosecution; and
 - the prosecution would be required to address allegations about motivations, reasoning, alternate compliance options and the decision to prosecute (which are issues beyond the scope of proof of the elements of the issues under trial).
24. I recognise that prejudice to a person's fair trial may result if disclosure could detract from the effectiveness of the prosecution as well as the defence.²⁷

¹⁷ Sections 47(3)(a), 48 and schedule 3, section 10(1)(e) of the RTI Act.

¹⁸ *Uksi and Redcliffe City Council; Cook (Third Party)* (1995) 2 QAR 629 at paragraph 34 explains, in relation to the equivalent exemption in section 42(1)(d) of the Freedom of Information Act 1999 (Qld) (repealed), that the words '*a person's fair trial*' refer to the trial of a person charged with a criminal offence, rather than civil litigation.

¹⁹ *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

²⁰ *Murphy and Treasury Department* (1995) 2 QAR 744.

²¹ *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009).

²² *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraphs 45-47.

²³ *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 54.

²⁴ In its submissions dated 1 May 2012.

²⁵ At page 2 of Attachment B of the Department's submissions dated 1 May 2012.

²⁶ At page 3 of Attachment B of the Department's submissions dated 1 May 2012.

²⁷ *John Dale and Australian Federal Police* [1997] AATA 345 (24 September 1997) considering the exemption in section 37(2)(a) of the Freedom of Information Act 1982 (Cth).

25. I accept that the Relevant Information comprises information that may be irrelevant to issues to be considered at the relevant trial.
26. However I am not satisfied on the evidence before me that disclosure could reasonably be expected to prejudice a person's fair trial given that:
 - the applicants' representatives are legal professionals and are obliged to behave properly and ethically when presenting issues to the Court
 - the Court is capable of determining the relevance of issues and arguments presented to it by either party; and
 - the Court is equipped with appropriate mechanisms to deal with any conduct which it identifies as attempts of "*investigation*" or designed "*to sidetrack the prosecution*".²⁸
27. After carefully considering all of the information before me including the Relevant Information, I am satisfied that:
 - there is insufficient evidence before me to conclude that disclosure of the Relevant Information would necessarily result in the applicants presenting matters to the Court that are irrelevant to the trial at hand; and
 - even if disclosure **did** result in such behaviour on the applicants' part, it is not reasonable to expect that any prejudice to a person's fair trial could occur as a result, because the Court is capable of determining and appropriately dealing with such behaviour to ensure no prejudice occurs.
28. Therefore the Relevant Information does not comprise exempt information under the RTI Act, the disclosure of which could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case.

Whether the Relevant Document comprises information, the disclosure of which would, on balance, be contrary to the public interest

Irrelevant factors

29. The Department submits²⁹ that:
 - there would be "*no prejudice to the defence in non-release*" of the Relevant Information and its disclosure "*would not afford support to the defendant's case*"
 - the Relevant Information concerns issues that are not relevant to the trial
 - exercise of the discretion to prosecute is un-examinable within the criminal justice process,³⁰ and
 - the prosecution's obligations of disclosure at common law do not extend to the Relevant Information.³¹
30. There is an important distinction between the Department's disclosure obligations as an agency under the RTI Act and as a party to the relevant court process. I acknowledge that the prosecution's obligations of disclosure under common law may not extend to the Relevant Information. However the Relevant Information falls within

²⁸ As submitted at page 2 of Attachment B of the Department's submission dated 1 May 2012.

²⁹ In its submissions dated 1 May 2012

³⁰ Citing *Barton v R* (1980) 147 CLR 75 at 94, 107, 110.

³¹ Which the Department points out are the applicable disclosure obligations for the relevant trial, as discussed in *R v Rollason & Jenkins; ex parte A-G (Qld)* [2007] QCA 65 at paragraph 17.

the scope of the access application and therefore I must consider its disclosure under the RTI Act.

31. In this circumstance, the prosecution's duties of disclosure under the court process is a separate matter and does not impact upon disclosure of the Relevant Information under the RTI Act. I am satisfied that these considerations are irrelevant to a proper assessment of public interest factors.
32. The Department also states that disclosure "*will more readily be misunderstood by the public and mischaracterised by those who are unacquainted with the full details*".³² This is an irrelevant consideration when deciding the public interest in disclosure of the Relevant Information.³³
33. No other irrelevant factors arise on the information before me.

Factors favouring disclosure of the Relevant Information

34. On the information before me, I am satisfied that the public interest factors favouring disclosure of the Relevant Information include that disclosure could reasonably be expected to:
 - enhance the Government's accountability³⁴
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community³⁵
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁶
 - reveal the reason for a government decision and any background or contextual information that informed the decision³⁷; and
 - reveal measures relating to public health and safety.³⁸
35. As previously mentioned, the applicants are currently defendants in a trial. In this context, I am satisfied that disclosure of the Relevant Information could reasonably be expected to reveal information which may inform the applicants and contribute to the applicants' understanding of issues surrounding the charges and could therefore reasonably be expected to:
 - contribute to the administration of justice generally³⁹
 - contribute to the administration of justice for a person⁴⁰; and
 - contribute to the enforcement of the criminal law.⁴¹

³² At page 9 of its internal review decision, referring to *Haneef v Department of Immigration and Citizenship [2008] AATA 587 (Haneef)*.

³³ See schedule 4, part 1, item 2 of the RTI Act.

³⁴ Schedule 4, part 2, item 1 of the RTI Act.

³⁵ Schedule 4, part 2, item 3 of the RTI Act.

³⁶ Schedule 4, part 2, item 10 of the RTI Act.

³⁷ Schedule 4, part 2, item 11 of the RTI Act.

³⁸ Schedule 4, part 2, item 14 of the RTI Act.

³⁹ Schedule 4, part 2, item 16 of the RTI Act.

⁴⁰ Schedule 4, part 2, item 17 of the RTI Act.

⁴¹ Schedule 4, part 2, item 18 of the RTI Act.

Factors favouring nondisclosure of the Relevant Information

36. The Department emphasises that the Relevant Information relates to compliance review, consideration of appropriate compliance action and the decision to prosecute and on that basis, the following public interest factorsavouring nondisclosure arise:⁴²
- members of the Review Committee must be able to robustly consider all compliance options without fear they will be exposed to cross examination on those deliberations
 - the discretion to prosecute is un-examinable within the criminal justice process
 - decisions relating to compliance and the Commissioner for Mine Safety and Health's decision to prosecute are not decisions which require reasons under the *Judicial Review Act 1991 (Qld) (JR Act)*; and
 - it is undesirable for the Courts to be too closely involved in the question of whether or not to exercise the discretion to prosecute.⁴³
37. The Department also submits that the Relevant Information was created “*some months prior*” to the decision to prosecute and “*was preliminary in nature*”.⁴⁴ I have therefore identified that disclosure of information would reveal information forming a deliberative process involved in the functions of government.⁴⁵
38. The Department also submitted more generally⁴⁶ that disclosure of the Relevant Information could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities⁴⁷
 - prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct⁴⁸
 - prejudice security, law enforcement or public safety⁴⁹
 - impede the administration of justice generally, including procedural fairness.⁵⁰

Balancing the public interest

39. As previously mentioned, the Relevant Information concerns the compliance review relating to an incident that occurred at North Goonyella Coal Mine on 15 July 2009. I have reviewed the Mines Inspectorate Compliance Policy⁵¹ (**Policy**) and the Policy Implementation Guide⁵² which concern the Department's administration of the CMSH Act and the Department's procedures for dealing with those who may have failed to discharge mining health and safety obligations under the CMSH Act. Without discussing the Relevant Information further, it is clear that the Relevant Information relates to the type of action covered by the Policy.

⁴² In its submissions dated 1 May 2012.

⁴³ Citing *Connelly v DPP* [1964] AC 1254 and *DPP v Humphrey* [1977] AC 1.

⁴⁴ At page 8 of its internal review decision, referring to *Haneef*.

⁴⁵ Schedule 4, part 4, item 4.

⁴⁶ In its submissions dated 1 May 2012.

⁴⁷ Schedule 4, part 3, item 2 of the RTI Act.

⁴⁸ Schedule 4, part 3, item 6 of the RTI Act.

⁴⁹ Schedule 4, part 3, item 7 of the RTI Act.

⁵⁰ Schedule 4, part 3, item 8 of the RTI Act.

⁵¹ November 2009, available at: http://mines.industry.qld.gov.au/assets/mines-safety-health/compliance_policy_ver_3_0_nov_09.pdf

⁵² March 2010, available at: http://mines.industry.qld.gov.au/assets/mines-safety-health/mining_compliance_policy_implementation_guide_march_2010.pdf

40. Relevantly, the Policy states:⁵³

The following principles form the basis of this Compliance Policy:

...

5. *Investigations into non-compliance, determination of corrective actions and the selection of any administrative response will be made in an unbiased, transparent and consistent manner. This will promote and preserve confidence in the integrity and professional competency of mines inspectorate officers.*

...

41. The Policy also states, in relation to its accountability, that:⁵⁴

The Mines Inspectorate is accountable to the public for their actions. This means that it must have policies and standards against which they can be judged...

42. With this in mind, I afford significant weight to disclosure of information which would enhance the Government's accountability by revealing whether the Department and Review Committee complied with the Policy relating to compliance review and the extent of adherence to the principles and guidelines outlined in the Policy and the Policy Implementation Guide.

43. Similarly, the public interest in revealing measures relating to public health and safety should also be given considerable weight in light of the Department's key role in administrating the CSMH Act and expressly applicable Policy about accountability.

44. In the context of the applicants responding to relevant charges, I attribute significant weight to disclosure of information that would promote the public interest in:

- revealing the reason for the decision to prosecute and any background or contextual information that informed the decision
- contributing to the applicants' understanding of issues surrounding the criminal charges; and
- contributing to the administration of justice and enforcement of the criminal law.

45. The Department notes that the decision to prosecute is not a decision requiring reasons under the JR Act and submits that this weighs against disclosure of the Relevant Information. However as mentioned in paragraph 10, the Relevant Information would not reveal the Commissioner for Mine Safety and Health's decision to prosecute, rather it would reveal the consideration and recommendation of the Review Committee. I consider that the public interest in disclosure of information which would reveal the background or contextual information that informed the decision to prosecute should be afforded even greater weight in circumstances where no reasons for decision are provided to the person affected, because it is not a requirement of the JR Act.

46. For the same reasons, I consider that disclosure of the Relevant Information would greatly advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.

47. The Department's concerns that disclosure may result in members of the Review Committee being less frank or honest in their deliberations is to be afforded little weight in this particular situation. This is because the Review Committee consists of

⁵³ At page 5, point 4.

⁵⁴ At page 7, point 4.6.

professionals and experts⁵⁵ engaged to provide an opinion to the Commissioner for Mine Safety and Health in accordance with the Policy and the Policy Implementation Guide. Both documents establish a clear framework of accountability and reference by which compliance issues must be considered and situations are identified in which a recommendation for prosecution or other administrative action should be considered. Because of this express framework, I do not consider the Department's concerns about the impact on future conduct of Review Committee members should be afforded any significant weight.

48. Similarly, while I acknowledge that disclosure of the Relevant Information would reveal considerations and recommendations of the Review Committee which could be considered to be information forming a deliberative process, I do not consider this public interest factor favouring nondisclosure should be given much weight on the facts of this external review. Here, the relevant deliberative process (the Commissioner for Mine Safety and Health's decision to prosecute) has been finalised and proceedings have commenced. This significantly diminishes the public interest against disclosure of information forming a deliberative process.
49. The Department relies on the Administrative Appeal Tribunal's decision in *Haneef* to raise concern that the Relevant Information is “*preliminary in nature*” and should not be disclosed on that basis. I am satisfied that the nature of the information considered in *Haneef* is distinct from that of the Relevant Information because the information in *Haneef*.⁵⁶

...gathers information, and expresses some very preliminary or nascent opinions about the import of that information. It does so for the purpose of formulating, at some future stage, recommendations and options to be presented to the Minister... (the document) was drafted as a very preliminary piece of consideration, operating not as the culmination of research and consideration, but as the starting point of such.

50. Having carefully examined the Relevant Information – which comprises information relied upon by the Review Committee in reaching its final recommendation to the Commissioner for Mine Safety and Health – I am satisfied that the Relevant Information is not of the same preliminary nature as described in *Haneef*.⁵⁷ The Relevant Information may be described, adopting the language used in *Haneef*, as a “*culmination of research and consideration*”, rather than a “*starting point*”.
51. The Department also submitted more generally that disclosure of the Relevant Information could reasonably be expected to:
 - prejudice the private, business, professional, commercial or financial affairs of entities
 - prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct
 - prejudice security, law enforcement or public safety; and
 - impede the administration of justice generally, including procedural fairness.

⁵⁵ The Policy Dictionary states, at page 5 point 3, that the Review Committee consists of “*both Chief Inspectors...independent industry expert not involved in promoting the mining industry and Legal Services representative.*”

⁵⁶ According to *Haneef* at paragraph 40.

⁵⁷ I also note that in *Haneef*, the Administrative Appeals Tribunal gave weight to the factor that the information “*will more readily be misunderstood by the public and mischaracterised by those who are unacquainted with the full details* (of the case)”. However, this is explicitly recognised by schedule 4, part 1, item 2 of the RTI Act as an irrelevant factor to be given no weight in assessing whether disclosure would, on balance, be contrary to the public interest.

52. Having carefully assessed the Relevant Information I am satisfied that the public interest in nondisclosure of the Relevant Information on these bases should be afforded little to no weight. I am not satisfied that the prejudices referred to above arise in relation to the documents that remain in issue in this review.⁵⁸ I also note that the Department has not provided submissions about how the relevant prejudices may result.
53. As to the public interest favouring nondisclosure on the basis of the Court's potential involvement in the exercise of the discretion to prosecute, I repeat and rely upon the reasons set out in paragraphs 26-28 of this decision and find that this public interest factor should be afforded little weight in the circumstances of this review.
54. Accordingly, it is my finding that disclosure of the Relevant Information would not, on balance, be contrary to the public interest.

DECISION

55. I set aside the Department's decision to refuse access to the Relevant Information and find that the Relevant Information:
 - does not comprise exempt information under section 47(3)(a) of the RTI Act; and
 - would not, on balance, be contrary to the public interest to be disclosed under section 47(3)(b) of the RTI Act.
56. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

L Lynch
Acting Assistant Information Commissioner

Date: 26 June 2012

⁵⁸ The applicant no longer seeks access to some of the information identified by the Department which, in OIC's view would, on balance, be contrary to the public interest to be disclosed. These submissions may have attracted more weight in relation to the information no longer in issue.

APPENDIX

Significant procedural steps

Date	Event
16 September 2010	<p>Access application dated 13 August 2010 was validated upon the Department's receipt of proof that the applicants' representative held authority to act on behalf of the access applicants.</p> <p>The access application sought access to information about the investigation and decision to prosecute persons in relation to a chemical exposure incident at the North Goonyella Coal Mine.</p>
16 October 2010	Following discussions between the Department and the applicants' representatives, the scope of the access application was refined to exclude certain types of documents and information.
24 March 2011	<p>The Department advised the applicants of its decision to:</p> <ul style="list-style-type: none"> • grant full access to 1229 folios • refuse partial access to 25 folios • refuse access in full to 2474 folios; and • grant access to 84 folios by way of inspection only under section 68(4)(c) of the RTI Act.
3 May 2011	<p>By correspondence dated 29 April 2011, the applicants applied to the Department for internal review of its decision to refuse access to information on:</p> <ul style="list-style-type: none"> • 312 folios on the grounds that its disclosure could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case; and • 12 folios on the grounds that its disclosure would, on balance, be contrary to the public interest.
31 May 2012	On internal review, the Department decided to grant access to the information originally claimed to be contrary to the public interest to be released, and affirmed its decision to refuse access to information on 312 folios on the basis that it comprised exempt information under schedule 3, section 10(1)(e) of the RTI Act.
27 June 2011	By correspondence dated 23 June 2011, the applicants applied to OIC for external review of the Department's internal review decision.
26 March 2012	<p>By correspondence, OIC conveyed its preliminary view to the Department that:</p> <ul style="list-style-type: none"> • 7 folios were outside the scope of the access application • 106 folios were duplicate documents • 11 folios comprised exempt information which would be privileged from production in a legal proceeding on the ground of legal professional privilege; and • the Department had not discharged its onus to establish that the remaining 188 folios comprised exempt information or information that would, on balance be contrary to the public interest to be released.
1 May 2012	<p>By correspondence, the Department made submissions in which it accepted OIC's preliminary view in relation to out of scope information, duplicate documents and the 11 folios considered to be exempt. In relation to the remaining 188 the Department agreed to release 43 folios and submitted that:</p> <ul style="list-style-type: none"> • 9 folios comprised exempt information which would be privileged from production in a legal proceeding on the ground of legal professional privilege; and • the remaining folios comprised exempt information because disclosure could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case.

2 May 2012	In a telephone conversation between OIC staff and the applicants' representatives, the applicants accepted OIC's preliminary view that: <ul style="list-style-type: none"> • 7 folios were outside the scope of the access application; and • 106 folios were duplicate documents.
22 May 2012	By telephone conversation with the applicants' representatives, OIC conveyed the preliminary view that the Department was entitled to refuse access to some of the information remaining in issue on the basis that it comprised: <ul style="list-style-type: none"> • exempt information which would be privileged from production in a legal proceeding on the ground of legal professional privilege; and • information the disclosure of which would, on balance, be contrary to the public interest.
25 May 2012	OIC wrote to the applicants and confirmed its preliminary view that the Department is entitled to refuse access to: <ul style="list-style-type: none"> • 29 folios in full and 5 folios in part, on the basis that they comprise exempt information which would be privileged from production in a legal proceeding on the ground of legal professional privilege; and • parts of 26 folios on the basis that they comprise information the disclosure of which would, on balance, be contrary to the public interest. OIC also indicated that if the applicants did not accept the preliminary view, they should notify OIC by 4 June 2012 and that if no response to the preliminary view was received by 4 June 2012, OIC would proceed on the basis that the applicants accepted the preliminary view.
4 June 2012	The due date for the applicants to notify OIC that it did not accept the preliminary view passed and the applicants were taken to have accepted the preliminary view as set out in OIC's letter dated 25 May 2012.