

Decision and Reasons for Decision

Citation: *Q39 and Board of Professional Engineers of Queensland [2026] QICmr 71 (11 May 2026)*

Application Number: 318366

Applicant: Q39

Respondent: Board of Professional Engineers of Queensland

Decision Date: 11 May 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - request for documents related to an investigation - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - whether access to information may be refused on the basis that it is exempt - sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

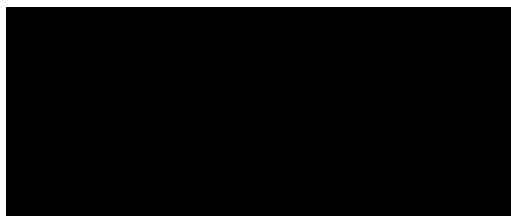
ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - scope of access application - whether agency has taken all reasonable steps to locate requested documents - whether access to further documents can be refused on the ground they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)

DECISION

1. For the reasons set out below, I vary¹ the reviewable decision of the Board of Professional Engineers of Queensland (**Board**) and find that:
 - disclosing the Category 1 Information, Category 3 Information and Category 4 Information would, on balance, be contrary to the public interest and access to it may be refused on that basis

¹ Under section 110(1)(b) of the *Right to Information Act 2009* (Qld) (RTI Act).

- access may be refused to the Category 2 Information as it is exempt; and
 - access to further relevant documents may be refused on the basis they do not exist.
2. This means that no further information is to be released to the applicant.
 3. My reasons for the decision follow.



Joanne Kummrow
Information Commissioner

Date: 11 May 2026

REASONS FOR DECISION

Summary

4. The applicant applied² to the Board under the RTI Act³ to access documents '*generated and/or in the possession of the Board since*' the Board's receipt of a nominated Fire Engineering Peer Review Report (**Report**) which had been referred for the Board's consideration.
5. The applicant subsequently agreed⁴ to narrow the terms of his original request, by excluding certain types of information.⁵
6. The Board located 67 documents (comprising 599 pages) as relevant to the Access Application, disclosed some of those documents (or parts of them) and decided⁶ to refuse access to the remaining located information on various grounds.⁷
7. The applicant then applied⁸ to the Office of the Information Commissioner (**OIC**) for external review.
8. During the review, the Board disclosed some further information to the applicant, however, the applicant does not agree with the level of information which has been disclosed to him and seeks access the requested documents in full.

Background

9. On 21 December 2020, another agency referred the Report to the Board for its consideration. In October 2021, the Board authorised an 'own motion' investigation under section 41(1)(b) of the *Professional Engineers Act 2002* (Qld) (**PE Act**) to consider the conduct of two registered engineers (**Engineers**) in preparing the Report.
10. The Board appointed⁹ two individuals from a legal firm (**Firm**) to conduct the investigation and appointed¹⁰ another individual (**Expert**) to assist the investigators. Following completion of the investigation, the Board decided, in June 2023, to take no further action.¹¹
11. Separate to the Report referral, the Board received the applicant's complaints about the Engineers' conduct in December 2022 and January 2023. The Board notified the applicant of its decision¹² about his complaints by letter dated 6 July 2023.

² On 29 August 2024. The date range nominated in the access application is '*28 September 2022 - present/contemporary*'.

³ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009* (Qld) (**IP Act**). As the applicant's application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP 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 RTI Act and IP Act in this decision are to those Acts, which may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> respectively.

⁴ Applicant's email to the Board dated 3 October 2024.

⁵ I will refer to the application, as narrowed by the applicant, as the Access Application in this decision.

⁶ Decision dated 14 November 2024. This is the reviewable decision.

⁷ The Board also deleted information which was irrelevant to the terms of the Access Application.

⁸ On 10 December 2024 (**External Review Application**).

⁹ Pursuant to section 48 of the PE Act.

¹⁰ Pursuant to section 45 of the PE Act.

¹¹ Pursuant to section 73(2)(e) of the PE Act.

¹² Which was to take no further action in relation to the applicant's complaints (that is, the Board decided not to proceed with an investigation of the applicant's complaints).

Evidence considered

12. External review under the RTI Act is a merits review process.¹³ The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁴ 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.¹⁵ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹⁶
14. The applicant has made a number of submissions to OIC.¹⁷ I have carefully reviewed those submissions and taken into account the parts of them which are relevant to the issues for determination.
15. The applicant also seeks to raise matters beyond my jurisdiction, and which fall outside the scope of this review (for example, they relate to the applicant's disagreement with the conclusions in the Report,¹⁸ the manner in which the Board dealt with the Report referral and conducted its 'own motion' investigation following the referral of that Report¹⁹ and the Board's investigation decision²⁰). In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination.
16. As a result of allegations the applicant made in his submissions against a particular OIC officer, I also confirm that I am the decision maker in this matter and there is no actual, perceived or potential conflict of interest of which I am aware that should preclude me carrying out my function under the RTI Act as the decision maker in this matter.²¹

¹³ That is, external review is an administrative reconsideration of a case which can be described as '*stepping into the shoes*' of the primary decision-maker to reach the correct and preferable decision. Under section 95 of the RTI Act, the procedure to be taken on external review is, subject to the Act, within my discretion.

¹⁴ Section 21 of the HR Act.

¹⁵ *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].

¹⁶ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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*'.

¹⁷ Namely:

- the External Review Application
- a letter dated 12 February 2024, which was received by OIC on 13 February 2025 and related to a number of the applicant's external review matters (**13 February 2025 letter**)
- letter dated 4 April 2024, which was received by OIC on 4 April 2025 (**4 April 2025 letter**)
- letter dated 26 June 2025 (which related to a number of the applicant's external review matters)
- letter dated 20 February 2026
- letter dated 30 March 2026, received by OIC on 31 March 2026; and
- four emails received by OIC on 6 May 2026.

¹⁸ For example, the applicant submits (letter dated 30 March 2026) that '*It is necessary for the decision maker in this External Review to at least have a cursory understanding of the engineering, or lack of engineering, in the [Report] that underlies the BPEQ investigation*'. This submission misapprehends my jurisdiction under the RTI Act and the merits review nature of this review.

¹⁹ For example, the applicant's 30 March 2026 submission contended that he should have been permitted to participate in, and provide submissions to, the Board's 'own motion' investigation and that the Board '*deliberately denied [the applicant] an information notice that can be referred to the Tribunal for a proper review and decision*'. I have no jurisdiction under the RTI Act to review (or make any determinations about) the Board's processes for investigating matters under the PE Act.

²⁰ In his letter dated 30 March 2026, the applicant states that I '*must consider*' how the Board could believe one expert over another and make their decision. As the Board's decision about its 'own motion' investigation is not the reviewable decision in this matter, this submission misunderstands the limits of my external review jurisdiction under the RTI Act.

²¹ In this regard, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias-refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

17. I am also satisfied that the External Review Application has been properly considered on its merits and the applicant was afforded a number of opportunities to put forward submissions (and relevant information) supporting his position, thereby affording him due process.

Information in issue

18. During the review:

- the applicant agreed to exclude certain information from further consideration²²
- the Board located five additional documents (comprising 15 pages) and disclosed these to the applicant, subject to the redaction of certain information²³
- in the interests of resolving the review, the Board also agreed to disclose a number of documents to which access had previously been refused, subject to the redaction of certain information;²⁴ and
- the applicant accepted OIC's preliminary view²⁵ about some types of the undisclosed information and agreed to exclude that information from further consideration.²⁶

19. As a result of the matters outlined in the preceding paragraph, the undisclosed information which remains for consideration²⁷ (**Information in Issue**) comprises information appearing on 479 pages. The RTI Act restricts the amount of detail I can provide about the Information in Issue in these Reasons for Decision.²⁸ I can however confirm that the Information in Issue falls into the following broad categories

Category	Description
Category 1 Information ²⁹	email addresses of non-public sector individuals
Category 2 Information ³⁰	submissions to the Board and internal legal communications
Category 3 Information ³¹	Investigation report (and annexures)
Category 4 Information	Invoice descriptions ³² and remaining redacted information ³³

²² In the 13 February 2025 letter, the applicant agreed to exclude the following information to which the Board had refused access—signatures, direct telephone and mobile numbers, facsimile numbers and the minutes of a 21 June 2023 Board meeting that do not relate to the subject matter of the Access Application.

²³ This disclosure occurred on 26 November 2025.

²⁴ Namely, on 26 November 2025, the Board disclosed information on 108 pages to the applicant and, on 16 January 2026, the Board disclosed information on a further 20 pages.

²⁵ It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

²⁶ Namely, in the applicant's letter dated 30 March 2026, he accepted OIC's preliminary views that (i) portions of information had been validly deleted from disclosed documents pursuant to section 73 of the RTI Act; (ii) disclosure of email addresses which concern 'Employer-provided email accounts of Board officers and a QBCC officer' would, on balance, be contrary to the public interest; (iii) disclosure of the street addresses for non-public sector individuals would, on balance, be contrary to the public interest; and (iv) disclosure of non-work related information of a Board officer would, on balance, be contrary to the public interest.

²⁷ Which includes undisclosed information within the additional documents which were located and partially disclosed by the Board.

²⁸ By virtue of section 108 of the RTI Act.

²⁹ Appears on pages 1, 2, 6, 8, 10, 11, 12, 13, 14, 17, 18, 19, 22, 23, 24, 25, 32, 33, 37, 38, 39, 42, 43, 44, 45, 46, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 83, 85, 87, 88, 89, 90, 92, 93, 409, 410, 415, 416, 417, 418, 419, 423, 425, 426, 427, 476, 477, 585, 586, 588, 589 and 596.

³⁰ Comprising pages 428-443, 444-459, 460-475, 478-493, 505-520, 532, 533-534, 535, 536, 537-538, 539, 540-558, 559-560, 561-574, 582, 590, 591-592, 593-595 and 598-599.

³¹ Pages 65-82, 95-216, 217-237, 300-345 and 346-408.

³² Invoice descriptions appear on pages 4, 5, 6, 8, 16, 28, 36, 49, 413 and 414.

³³ Being small portions of information on two further pages.

Issues for determination

20. The issues for determination are whether:
- disclosure of the Category 1 Information, Category 3 Information and Category 4 Information would, on balance, be contrary to the public interest
 - Category 2 Information comprises exempt information on the basis that it is subject to legal professional privilege; and
 - access to any further documents relevant to the Access Application may be refused on the basis they do not exist or cannot be located.

Category 1 Information

Relevant law

21. The RTI Act gives a right of access to documents of government agencies.³⁴ However, this access right is subject to other provisions of the RTI Act, including grounds on which access may be refused.
22. One refusal ground is where disclosing information would, on balance, be contrary to the public interest.³⁵ 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.³⁶ 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.
23. In deciding whether disclosure of information would, on balance, be contrary to the public interest, section 49 of the RTI Act requires a decision maker to 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. Schedule 4 of the RTI Act contains lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my decision. I have also kept in mind the RTI Act's pro-disclosure bias³⁷ and that access refusal grounds are to be interpreted narrowly.³⁸

Applicant's submissions

25. When disagreeing with OIC's preliminary views about this category of the Information in Issue, the applicant submits:

... logic dictates that the [initials of Firm]-domain email address of any other [initials of Firm] member/officer can be inferred, so long as their name is known. Further, and consistent with BPEQ appointing non-public sector individuals to perform public sector administrative tasks (paid for with public sector monies) under the Professional Engineers Act 2002 and repeatedly

³⁴ Section 23(1)(a) of the RTI Act.

³⁵ Sections 47(3)(b) and 49 of the RTI Act.

³⁶ Refer to Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

³⁷ Section 44 of the RTI Act.

³⁸ Section 47(2)(a) of the RTI Act.

*and unlawfully shielding those activities, these “non-public sector individuals” are more properly classified as “public sector individuals”.*³⁹

*... for completeness and continuity, there should be no genuine reason to favour nondisclosure and redact [initials of Firm]-domain email addresses. Therefore accountability and transparency has not been advanced enough, and under Schedule 4, Part 2 of the RTI Act, the following factors are relevant and ought to attract significant weight favouring disclosure: 1, 2, 3, 4, 5, 6, 10, 11, 12, 15, 16, 17 and 18.*⁴⁰

*... the substance of communications includes identifying the people making the decisions relevant to the communications and how they are doing it ... It is necessary to identify the decision-makers, and their influencers and influences, in the way the investigation has been carried out.*⁴¹

Findings

26. I have not taken any irrelevant factors into account⁴² in reaching my decision about this information.

Analysis of public interest factors favouring disclosure and nondisclosure

27. There is a notable level of duplication within this category of the Information in Issue, and I note that:

- the substance of the communications in which this information appears has been disclosed to the applicant
- the names of the individuals about whom these addresses relate have been disclosed to the applicant together with (on most pages) their work titles
- these disclosures confirm that not all of the Category 1 Information relates to the appointed investigators.

28. The public interest factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act relate, generally, to government accountability and transparency. I consider the information which the Board has disclosed in response to the Access Application has advanced these factors, by enabling scrutiny of the Board’s investigation processes and providing some background to the decision made by the Board in respect of the ‘own motion’ investigation.⁴³ Noting the matters outlined in the preceding paragraph and the limited nature of the Category 1 Information, I do not consider disclosing these email addresses would further advance government accountability considerations in any meaningful way. On that basis, I afford the accountability and transparency factors no weight.

29. Under the RTI Act, public interest factors arise where disclosing information could reasonably be expected⁴⁴ to allow or assist inquiry into possible conduct deficiencies of agencies or officials, or reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct, public interest factors favouring disclosure will arise.⁴⁵ Although the applicant submits these factors apply to significantly

³⁹ 4 April 2025 letter.

⁴⁰ 4 April 2025 letter.

⁴¹ Applicant’s letter dated 30 March 2026.

⁴² Including those set out in schedule 4, part 1 of the RTI Act.

⁴³ I also note that, when responding to the applicant’s separate complaints, the Board provided the applicant with a summary of its processes and decision concerning the ‘own motion’ investigation.

⁴⁴ The phrase ‘could reasonably be expected to’ has been considered previously by the Information Commissioner and, in essence, requires that the expectation must be based in reason (as distinct from something that is irrational, absurd or ridiculous) and not merely a possibility. The expectation must also arise as a result of disclosure, rather than from other circumstances. See, for example, *Sheridan and South Burnett Regional Council and Others* [2009] QICmr 26 (9 April 2009) at [189]-[193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97.

⁴⁵ Schedule 4, part 2, items 5 and 6 of the RTI Act.

favour disclosure, he has not explained how he considers the disclosure of the email addresses of these individuals (who are not agency officers) could be expected to give rise to these public interest considerations. Noting the Board's disclosure of the names of relevant individuals and the substance of the communications in which this category of Information in Issue appears, I am satisfied that there is no expectation disclosure of these email addresses would allow or assist enquiry into, reveal or substantiate, deficiencies in agency or official conduct. For this reason, I do not consider these factors apply.

30. In respect of the other public interest factors referenced in the applicant's submissions, I note that the applicant has not explained how he considers the disclosure of these email addresses, when the names (and other identifying information) of the relevant individuals have been disclosed, could reasonably be expected to:
- contribute to a positive and informed debate on important issues or matters of serious interest⁴⁶
 - ensure the effective oversight of expenditure of public funds⁴⁷
 - advance the fair treatment of any individual⁴⁸
 - reveal the email addresses to be incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant⁴⁹
 - contribute to the maintenance of peace and order⁵⁰
 - contribute to the administration of justice, generally, including procedural fairness⁵¹
 - contribute to the administration of justice for a person;⁵² or
 - contribute to the enforcement of the criminal law.⁵³
31. Taking into account the limited nature of this category of the Information in Issue, I do not consider the public interest factors referenced in the preceding paragraph apply to favour disclosure of the Category 1 Information.
32. I cannot identify any other public interest factors which would apply to favour disclosure of the Category 1 Information.
33. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁵⁴ and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁵⁵
34. In considering these factors, I have taken into account that the RTI Act does not impose any restriction on the use, dissemination or publication of information which is disclosed in response to an access application. I am satisfied this information comprises the personal information of the individuals about whom it relates. For the email addresses of the appointed investigators, I consider their disclosure would represent a moderate intrusion into their privacy and that a moderate level of harm could be expected to arise from disclosure of this personal information as it would allow these individuals to be contacted directly.

⁴⁶ Schedule 4, part 2, item 2 of the RTI Act.

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

⁴⁸ Schedule 4, part 2, item 10 of the RTI Act.

⁴⁹ Schedule 4, part 2, item 12 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 15 of the RTI Act.

⁵¹ Schedule 4, part 2, item 16 of the RTI Act.

⁵² Schedule 4, part 2, item 17 of the RTI Act.

⁵³ Schedule 4, part 2, item 18 of the RTI Act.

⁵⁴ Schedule 4, part 4, section 6 of the RTI Act.

⁵⁵ Schedule 4, part 3, item 3 of the RTI Act.

35. For the remaining Category 1 Information, I consider that its disclosure could be expected to lead to a higher level of prejudice and harm and, for that reason, I afford significant weight to these nondisclosure factors. As noted above, the applicant considers some of these email addresses can be inferred from the information which the Board has disclosed. He also submits⁵⁶ that he has received contact details for Firm members/officers via other information disclosures. Having considered the applicant's submission in this regard, I do not consider they negate or diminish the prejudice and harm that I consider could reasonably be expected to arise from disclosure in this matter.

Conclusion

36. I have identified and considered the public interest factors which are relevant to the Category 1 Information.
37. For the reasons explained above, I have afforded no weight to the public interest factors relating to government accountability and transparency. On the other hand, for the nondisclosure factors relating to personal information and privacy, I have afforded significant weight for some parts of the Category 1 Information and moderate weight for the remainder.
38. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Category 1 Information outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Category 1 Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁵⁷

Category 2 Information

Relevant law

39. Access may also be refused to exempt information.⁵⁸ Relevantly, information will qualify as exempt if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.⁵⁹ Legal professional privilege protects confidential communications between a lawyer and their client, made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or, for use in legal proceedings either on foot or reasonably anticipated, at the time of the relevant communication.⁶⁰ The privilege:

- will extend to copies of unprivileged documents made for the dominant purpose of obtaining legal advice; and
- may protect communications between salaried employee legal advisers and their employer as the client (including communications through other employees of the same employer) provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character, notwithstanding the employment.⁶¹

⁵⁶ 4 April 2025 letter.

⁵⁷ Under section 47(3)(b) of the RTI Act.

⁵⁸ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act identifies the types of information which Parliament has determined will comprise exempt information.

⁵⁹ Schedule 3, section 7 of the RTI Act. This exemption reflects the requirements for establishing legal professional privilege at common law.

⁶⁰ *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] HCA 26 at [23]-[25].

⁶¹ *Waterford v Commonwealth* (1987) 163 CLR 54 at 95 per Mason and Wilson JJ.

40. Qualifications and exceptions to legal professional privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to legal professional privilege, and therefore whether the information comprises exempt information under the RTI Act.

Applicant's submissions

41. As mentioned above, the applicant disagrees with OIC's preliminary view that this category of the Information in Issue comprises exempt information. More specifically, the applicant submits:⁶²

Communications and content involving [Firm] are not covered by LPP. That is not the nature of the relationship between BPEQ and [Firm]. BPEQ cannot further add another layer of BPEQ internal lawyers to hide the investigation ... The investigation documents are not covered by LPP. If [Firm] are attracting LPP purely because they are lawyers, that is not the contracted relationship between BPEQ and [Firm] and their communications do not constitute legal advice. To the extent [Firm] was providing legal advice, it was unlawful for it to do so. I agree that following the investigation, any subsequent documents or communications thereafter between internal lawyers and BPEQ would attract LPP, but not the underlying investigation or documents that led to the investigation. I do not accept the Preliminary View and seek access to [this information], except for those documents created after the investigation that concerns the giving of legal advice between internal lawyers and BPEQ.

Findings

42. Noting the restrictions imposed by section 108 of the RTI Act when conveying a preliminary view to the applicant about the Category 2 Information, the applicant was notified that:
- the majority of this information comprises submissions and draft submissions to the Board by its internal legal advisers and comprises legal advice; and
 - the remaining information is broadly internal communications between the Board's internal legal advisers about such legal advice and internal communications between the internal legal advisers and other Board officers seeking, providing or referencing legal advice.
43. I have carefully reviewed the Category 2 Information and confirm that it does not comprise the investigation documents or communications with appointed investigators, as referenced in the applicant's submissions.
44. There is no evidence before me to indicate that the Category 2 Information has been disclosed outside the lawyer-client relationship, and I am therefore satisfied that it is confidential. I am also satisfied that the necessary professional relationship exists between the Board (as the client) and its internal legal advisers, and that this information was created for the dominant purpose of seeking or providing legal advice. Accordingly, I find that the Category 2 Information meets the requirements for legal professional privilege.
45. There is no evidence available to me that there has been any express or implied waiver of the privilege in this information by the Board (as the party entitled to the benefit of legal professional privilege) or that any other exception to the privilege arises in this matter.

⁶² Letter dated 30 March 2026.

46. For these reasons, I am satisfied that access to the Category 2 Information may be refused as it comprises exempt information.⁶³

Category 3 Information

Applicant's submissions

47. The applicant's submissions in respect of the Category 3 Information include the following:⁶⁴
- *'If the investigators made findings against the RPEQ's, the process of disciplinary action in the Tribunal and the open disclosure of the investigation report and annexures is not contrary to the public interest. It cannot be against the public interest to disclose the investigation report and annexures just because the decision went another, ridiculous, way'*
 - he was *'factually'* a *'complainant by proxy (and the investigator owed me a notice which I was never given)'*,⁶⁵ and
 - *'Disclosure of the investigation report and annexures would absolutely further advance BPEQ's accountability and transparency in a significant way, and this should be given significant weight'*.⁶⁶

Findings

48. In reaching my decision about this category of the Information in Issue, I have considered the public interest factors listed in schedule 4 of the RTI Act, together with all other relevant information, and I have not taken any irrelevant factors into account.⁶⁷
49. The applicant's submissions include substantial background information he considers relevant to this review. However, it is not in dispute that the Report referral (which is the subject of the Access Application) was not made by the applicant and the Board decided to conduct an 'own motion' investigation into the Engineers' conduct in preparing the Report. Nor is it in dispute that the Board decided to take no action in respect of the applicant's separate, albeit similar, complaints to the Board about the Engineers.
50. Notwithstanding the applicant's extensive submissions, the issue of whether the applicant was entitled under the PE Act to be named as a party to (and therefore participate in) the Board's 'own motion' investigation is an issue that I have no jurisdiction to determine in this review. Nor do I accept the applicant's submission that, because he considers he was entitled to receive the Category 3 Information *'as of right'* under the PE Act provisions, he is also entitled to receive it under the RTI Act. My role here is to determine the applicant's entitlement to access information under the RTI Act—as I do not consider the Category 3 Information meets the requirement of any exemption under schedule 3 of the RTI Act, I am required to apply the process specified in section 49(3) of the RTI Act to determine whether disclosing that information would, on balance, be contrary to the public interest.

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

⁶⁴ Letter dated 30 March 2026.

⁶⁵ In this regard, the applicant further submits that *'BPEQ would not have received the information or referral from [agency], or committed to an investigation, if not for my complaints. This is why the QBCC's action makes me a complainant by proxy ... I am indistinguishable from the complaint/investigation axis, and I am entitled to the information as of right, and I am entitled to it under the RTI Act'*.

⁶⁶ Letter dated 30 March 2026. The applicant also made a more generalised submission in this letter that *'... the public interest in [Expert's] opinion and BPEQ's ability to perform an investigation of unsatisfactory professional conduct by RPEQ's carries enormous weight. In the alternative, the public interest is also served by revealing a system of building design and construction that could solve Australia's housing crisis'*.

⁶⁷ Including those listed in schedule 4, part 1 of the RTI Act. I have, however, kept in mind the RTI Act's pro-disclosure bias (section 44) and the requirement in section 47(2)(a) that access refusal grounds are to be interpreted narrowly.

Analysis of public interest factors favouring disclosure and nondisclosure

51. The information which has been disclosed by the Board in response to the Access Application has, in my view, advanced government accountability and transparency. As I have noted above, when notifying the applicant of its decision about his complaints, the Board provided the applicant with a summary of the 'own motion' investigation (including its outcome). Having reviewed the Category 3 Information, I accept that its disclosure will further advance the Board's accountability and transparency, by providing a more complete picture of the information which was obtained and considered in the 'own motion' investigation. In the circumstances of this matter and noting the nature of the Category 3 Information, I afford the factors in schedule 4, part 2, items 1, 3 and 11 of the RTI Act moderate weight in favour of disclosure.
52. The applicant submits that the investigation report and its annexures were '*never*' about the Engineers and, instead, were '*about* [the applicant] *and preventing* [the applicant] *and the public from ever understanding what ridiculous breaches and misconduct the RPEQ's, private building certifier, QFES, the structural engineer, the builder, QBCC, Queensland Ombudsman, CCC, and BPEQ have all allowed to transpire*'. Having carefully reviewed the Category 3 Information, I confirm that it is not about the applicant. Rather, it is about the investigation of the Engineers' conduct in preparing the Report.⁶⁸ The applicant's name is referenced on two pages within this category of the Information in Issue only. In respect of that limited amount of the applicant's personal information, I afford significant weight to the public interest factor in schedule 4, part 2, item 7 of the RTI Act, noting that one portion of it appears intertwined with the personal information of another individual (giving rise to nondisclosure factors discussed below). For clarity, I confirm that the remaining Category 3 Information does not comprise, or include, the applicant's personal information.
53. As I have noted, the information requested in the Access Application relates generally to matters associated with an investigation conducted about the Engineers' conduct in preparing the Report. That Report relates to specific residential construction works at a particular property. The applicant submits that, because he considers the Board's decision, and the Expert's opinion, were '*dead wrong*',⁶⁹ disclosing the Category 3 Information would contribute to positive and informed debate on important issues or matters of serious interest. While I acknowledge this is a matter of particular importance to the applicant and that he has his own opinion about the Board's decision and Expert's opinion, I am not satisfied that disclosing the Category 3 Information could, given its nature, reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest. Accordingly, I do not consider the public interest factor in schedule 4, part 2, item 2 of the RTI Act applies.
54. Given the nature of this Category 3 Information, I also consider that the factor in schedule 4, part 2, item 4 of the RTI Act does not apply.
55. In determining whether the public interest factor in schedule 4, part 2, item 17 of the RTI Act applies, I must consider whether:⁷⁰

⁶⁸ I confirm that, in reaching this factual conclusion, I carefully considered all of the applicant's submissions outlining why he considers the Report is about him (including those in his letters dated 26 June 2025 and 30 March 2026). To avoid identifying the applicant, I cannot provide further detail of those submissions in this decision. I have also noted that, in the documents disclosed to the applicant, the investigation was referred to as the '[Engineers] *matter*' and the Report was referred to as the '[Engineers] *Report*'.

⁶⁹ Letter dated 30 March 2026.

⁷⁰ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16]-[17].

- the applicant has suffered loss, damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law⁷¹
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.
56. After careful review of the applicant's submissions, I note that the applicant has not identified any specific remedy he is pursuing, or which considers is available to him. Nor has he explained how he considers disclosure, under the RTI Act, of the Category 3 Information is required to assist him to commence, or evaluate, any such remedy. Given the nature of the Category 3 Information, I am unable to identify how its disclosure is required to assist the applicant to pursue, or evaluate, any remedy that may be available to him. For these reasons, I do not consider this public interest factor applies to favour disclosure of any of the Category 3 Information.
57. Although the applicant's submissions raise concerns about the Board's processes (and decisions) in respect of both the Board's 'own motion' investigation and the applicant's separate complaints (including as to the adequacy of information disclosed to him via those processes), I have confirmed these are not matters I am able to address on external review. Having carefully reviewed the Category 3 Information, I do not consider its disclosure could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁷² or reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁷³ Accordingly, I find that these public interest factors do not apply.
58. The public interest factor favouring disclosure which relates to fair treatment⁷⁴ is about providing information to advance fair treatment in an applicant's future dealings with agencies.⁷⁵ In respect of the factor in schedule 4, part 2, item 16 of the RTI Act, I also note that the fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of a decision.⁷⁶
59. As I have mentioned above, the applicant's submissions generally outline the basis upon which he considers he should have been able to participate in the Board's 'own motion' investigation and what he believes the investigation outcome should have been. However, that investigation is complete and the Board has informed the applicant of its decision about his separate complaints.⁷⁷ While I understand the applicant has an interest in accessing all the information which was available to the Board, he has not clearly explained how he considers disclosure of the Category 3 Information would advance his fair treatment in his future dealings with the Board or any other agency. On this basis, to the extent the factor in schedule 4, part 2, item 10 of the RTI Act may apply, I afford it no weight.
60. Notwithstanding the applicant's submissions to the contrary, from a procedural fairness perspective, he was not the subject of that investigation—rather the Engineers were the subject of both the Board's 'own motion' investigation and the applicant's complaints.

⁷¹ In *Deemal-Hall v Office of the Director of Public Prosecutions* [2024] QCATA 131 at [12], it was confirmed that this public interest factor 'refers to the ordinary processes for the administration of justice for a person'.

⁷² Schedule 4, part 2, item 5 of the RTI Act.

⁷³ Schedule 4, part 2, item 6 of the RTI Act.

⁷⁴ Schedule 4, part 2, item 10 of the RTI Act.

⁷⁵ *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [101].

⁷⁶ *Kioa v West* (1985) 159 CLR 550 (*Kioa*) at 584 per Mason J. Accordingly, the person who is the subject of a decision must be provided with an opportunity to deal with adverse information that is credible, relevant and significant to the decision (*Kioa* at 629 per Brennan J citing *Bushell v Environment Secretary* [1981] A.C. 75 at page 97 (Lord Diplock)).

⁷⁷ I note again that, when doing this, the Board also provided some details about its 'own motion' investigation.

Given this and having reviewed the Category 3 Information, I am not satisfied that there is any reasonable expectation that disclosing the Category 3 Information could contribute, in a meaningful way, to the general administration of justice (including procedural fairness) for any person. For this reason, to the extent the factor in schedule 4, part 2, item 16 of the RTI Act may apply, I afford it no weight

61. I have noted above the applicant submits that the Board's determination and the Expert's opinion, were wrong. This, of itself, does not enliven the public interest factor in schedule 4, part 2, item 12 of the RTI Act. After review of the Category 3 Information, I do not consider that disclosing the Category 3 Information could reveal that it is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Accordingly, I find that this factor does not apply.
62. Having carefully reviewed the applicant's submissions and the Category 3 Information, there is also nothing before me to indicate that disclosing the Category 3 Information could reasonably be expected to:
- contribute to the protection of the environment or reveal environmental or health risks or measures relating to public health and safety⁷⁸
 - contribute to the maintenance of peace and order;⁷⁹ or
 - contribute to the enforcement of the criminal law.⁸⁰
63. I am therefore satisfied that the factors in the preceding paragraph do not apply and I am unable to identify any other public interest consideration which would favour disclosure of the Category 3 Information.
64. The 'own motion' investigation related to the conduct of the Engineers. The information disclosed to the applicant also confirms that the Engineers were:
- invited to provide information to the Board regarding the Report referral⁸¹
 - given notice of the Board's decision to conduct the 'own motion' investigation (as required by the PE Act) and were informed that they may make submissions to the investigators;⁸² and
 - given notice (pursuant to section 55 of the PE Act) requiring attendance before the investigators to answer questions.
65. I can confirm that the Category 3 Information includes a substantial amount of the Engineers' personal information—this includes information about the Engineers and a significant amount of information they provided to the investigation⁸³ (which, by its nature, reflects the Engineers' views, recollections and opinions). The Category 3 Information also includes information about, and the opinions of, the Expert—which comprise his personal information—and some limited personal information of another individual.⁸⁴ This gives rise to the factor in schedule 4, part 4, section 6 of the RTI Act.
66. In determining the weight to be afforded to this factor, I consider that individuals would have held an expectation that their personal information would only be used by the Board to reach its decision in the 'own motion' investigation (and in any disciplinary proceedings the Board may have subsequently decided to take). However, I do not consider that they

⁷⁸ Schedule 4, part 2, items 13 and 14 of the RTI Act.

⁷⁹ Schedule 4, part 2, item 15 of the RTI Act.

⁸⁰ Schedule 4, part 2, item 18 of the RTI Act.

⁸¹ In notices issued under section 41(3) of the PE Act.

⁸² The disclosed documents also included the Board's Policy titled '*Professional Discipline Decisions (s.73)*'.

⁸³ Pursuant to notices they received under the PE Act.

⁸⁴ I can only confirm that this individual's report was considered during the investigation.

would have contemplated that their personal information would be disclosed under the RTI Act, where there can be no restriction on its use, dissemination or publication. In these circumstances, I consider the harm that could be expected to arise from disclosure of this personal information under the RTI Act would be significant and, accordingly, I afford this factor significant weight. I am also satisfied that disclosure of this personal information within the Category 3 Information would represent a high level of intrusion into the privacy of these individuals and, given the nature of this information, I find that the public interest factor in schedule 4, part 3, item 3 of the RTI Act is deserving of moderate weight.

67. Under the RTI Act, a factor favouring nondisclosure will arise where the disclosure of 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.⁸⁵ When responding to OIC's preliminary view about the Category 3 Information, the applicant submits that *'The fact that the decision went in favour of the RPEQ's does not diminish the accountability, transparency, and openness the investigation should attract. The outcome of the investigation is in fact one of the strongest reasons why it should be disclosed, because the decision made is so unreasonable, it is physically, factually, and lawfully, not possible'*. I note that, after consideration of the investigation report, the Board decided to take no further action against the Engineers regarding their conduct in preparing the Report. Given this, I consider this nondisclosure factor is enlivened and applies to the Category 3 Information, particularly as the RTI Act places no restriction on how information disclosed in response to an access application can be used or published. I afford this factor significant weight.
68. The public interest also favours nondisclosure where disclosure of information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.⁸⁶ The applicant submits that this factor applies and that *'If natural justice and procedural fairness is always followed and correct decisions have been made, then worry about the free flow of information is never an issue'*.⁸⁷ The PE Act empowers the Board to publish certain decisions about registered professional engineers.⁸⁸ I also note that, although certain coercive investigation powers exist under the PE Act,⁸⁹ the Board (and its investigators) also rely upon the cooperation of involved parties (whether they be the subject of the investigation, witnesses or experts) when conducting investigations. I consider it is reasonable to expect that the routine disclosure of the Board's investigation reports under the RTI Act may result in relevant individuals being reluctant to cooperatively provide information to, or be involved in, the Board's future investigations (which could negatively impact the ability of the Board to effectively undertake its regulatory obligations). Taking this into account, I consider that substantial prejudice could be expected to arise from disclosing the Category 3 Information under the RTI Act and I afford significant weight to this factor as a result.

Conclusion

69. I have identified and considered above the public interest factors which are relevant to the Category 3 Information.
70. For the reasons explained above, I have afforded significant weight to the factor favouring disclosure of a very small amount of the applicant's personal information

⁸⁵ Schedule 4, part 3, item 6 of the RTI Act.

⁸⁶ Schedule 4, part 3, item 13 of the RTI Act. As the Board regulates registered professional engineers in Queensland, I am satisfied they are a regulatory agency.

⁸⁷ Letter dated 30 March 2026.

⁸⁸ Under section 74A of the PE Act. The Board's investigation decision in this matter is not the type of decision the Board is empowered to publish.

⁸⁹ Such as the power in section 55 of the PE Act.

(noting that part of it appears intertwined with the personal information of another individual). I consider factors relating to government accountability and transparency are deserving of moderate weight. I have also identified further public interest factors relating to fairness and the general administration of justice which favour disclosure, however, I have afforded them no weight given the nature of the Category 3 Information and the circumstances of this matter.

71. On the other hand, I have identified a number of factors favouring nondisclosure of the Category 3 Information in Issue. For the reasons addressed above, I afford significant weight to the nondisclosure factor relating to the disclosure of other individuals' personal information and moderate weight to the factor relating to the privacy of those individuals. I also consider the factors relating to the fair treatment of individuals concerning unsubstantiated allegations and the flow of information are deserving of significant weight.
72. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Category 3 Information outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Category 3 Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁹⁰

Category 4 Information

73. I have considered the public interest factors listed in schedule 4 of the RTI Act, together with all other relevant information, in reaching my decision about the Category 4 Information.⁹¹ I have not taken any irrelevant factors into account.⁹²

Applicant's submissions

74. In respect of this category of the Information in Issue, the applicant submits:

The information already disclosed hasn't assisted with scrutiny of my own formal complaint, and I cannot see information about BPEQ's steps in dealing with my own formal complaint, except the unilateral decision by the Registrar to hide it for months from the Board until after a decision on the same matters had already been made. Scrutiny, and the costs paid by BPEQ to quarantine the RPEQ's and [Expert] from the BCA, myself, [a named individual], and the public, has not been enabled. The expenditure is in fact a waste of money, because it has significantly detracted from public confidence in the RPEQ's, [Expert] and BPEQ. Further, business and commercial affairs of the investigators and [Expert] are not relevant considerations where their business model is a compromised one. The BCA is freely available, and the incorrect interpretation and application of the BCA carries no value. In fact, the value lies in disclosure of these practices so that BPEQ, and other agencies like it, can learn what not to do.

Findings – invoice descriptions

75. I have noted above that the Board notified the applicant of its decision about his complaints and, when doing so, also outlined the process and outcome of its separate 'own motion' investigation.
76. Apart from the Category 1 Information and information which the applicant excluded from consideration, the documents in which the invoice descriptions appear have otherwise been disclosed by the Board. This disclosed information specifically includes the total

⁹⁰ Under section 47(3)(b) of the RTI Act.

⁹¹ I have kept in mind the RTI Act's pro-disclosure bias section 44 of the RTI Act and that section 47(2)(a) of the RTI Act requires access refusal grounds are to be interpreted narrowly.

⁹² Including those listed in schedule 4, part 1 of the RTI Act.

amount of each invoice. It also identified the sub-totals of the individual invoiced work components and the individuals who performed those work components. Additionally, one invoice also confirms that each work component of the invoice aligned with an agreed fee. This disclosed invoice information (and the information provided to the applicant as noted in the preceding paragraph) has, in my view, advanced the Board's accountability and transparency. I accept that disclosing this part of the Category 4 Information will provide some further information about the steps taken in the 'own motion' investigation. However, given the particular nature of these invoice descriptions, I do not consider their disclosure would, in any significant way, inform the community about government operations. On this basis, I afford low weight to the public interest factor in schedule 4, part 2, item 3 of the RTI Act. As I consider the nature of the Category 4 Information is such that its disclosure would only marginally advance the other public interest factors relating to government accountability and transparency,⁹³ I afford those factors no weight.

77. I also consider that the information which was been disclosed within the invoices has enabled scrutiny of the costs incurred by the Board for the 'own motion' investigation and this has substantially advanced the public interest factor in schedule 4, part 2, item 4 of the RTI Act. Given the nature of the invoice descriptions, I do not consider disclosure would further advance this factor in any meaningful way and, on that basis, I afford this factor no weight.
78. I have considered all the public interest factors in schedule 4, part 2 of the RTI Act and I cannot identify any other factors which apply to favour disclosure of these invoice descriptions.⁹⁴
79. Although I am unable to describe the content of this information in any detail,⁹⁵ it is reasonable to expect that, given the nature of the investigation to which these invoices relate, the Category 4 Information would include the personal information of other individuals. I consider this raises personal information and privacy considerations⁹⁶ which significantly favour the nondisclosure of such personal information.
80. I also consider that disclosure of these invoice descriptions could be expected to cause some level of prejudice to the business and commercial affairs of the appointed investigators and Expert, by revealing their investigation methodologies and procedures.⁹⁷ I also consider that such methodologies would have a commercial value to these individuals and it is reasonable to expect that their disclosure under the RTI Act (where there is no restriction placed on the use, dissemination and publication of disclosed information) could diminish that value.⁹⁸ In the circumstances of this matter, I afford these factors low weight.

⁹³ Schedule 4, part 2, items 1 and 11 of the RTI Act.

⁹⁴ This information is not the applicant's personal information and the factor in schedule 4, part 2, item 7 of the RTI Act does not apply. I also cannot see how disclosing this component of the Category 4 Information could, for example, contribute to a positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); allow or assist enquiry into, reveal or substantiate, agency or officer conduct deficiencies (schedule 4, part 2, items 5 and 6 of the RTI Act); advance the fair treatment of any individual or contribute to the administration of justice generally or for a person (schedule 4, part 2, items 10, 16 and 17 of the RTI Act); reveal this information to be incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); contribute to the protection of the environment and reveal environmental or health risks or measures relating to public health and safety (schedule 4, part 2, items 13 and 14 of the RTI Act); or contribute to the enforcement of the criminal law (schedule 4, part 2, item 18 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the weight that I have afforded to the public interest factors that favour the nondisclosure of this part of the Category 4 Information.

⁹⁵ Pursuant to section 108(3) of the RTI Act.

⁹⁶ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁹⁷ Giving rise to the factors in schedule 4, part 3, items 2 and 15 of the RTI Act.

⁹⁸ Thereby enlivening the factor in schedule 4, part 4, section 7(1)(b) of the RTI Act.

81. On balance, I am satisfied that the public interest factors favouring nondisclosure of this part of the Category 4 Information outweigh the factors which favour disclosure. Accordingly, I find that disclosure of the invoice descriptions within the Category 4 Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁹⁹

Findings – remaining Category 4 Information

82. This remaining information comprises a limited number of refused portions on two pages. The applicant's submissions did not directly address OIC's preliminary view about this information.
83. Given its limited nature, disclosing this information could not be expected to advance government accountability or transparency in any way. There is also nothing before me which indicates that the public interest factors in schedule 4, part 2, items 2, 4, 5, 6, 7, 10, 12, 13, 14, 16, 17 and 18 of the RTI Act would apply to favour disclosure of these limited information portions.
84. On the other hand, I find that personal information and privacy considerations¹⁰⁰ arise in respect of some of this information and, given its limited nature, these considerations deserve only low weight. I also consider that a small portion of this information comprises financial affairs information of a private entity, which gives rise to the factors in schedule 4, part 3, items 2 and 15 of the RTI Act, to which I afford low weight.
85. I am therefore satisfied that, on balance, the public interest favours nondisclosure of this remaining Category 4 Information and access to it may be refused on that basis.¹⁰¹

Sufficiency of search

Relevant law

86. The RTI Act requires that an access application must '*give sufficient information concerning the document to enable a responsible officer of the agency or Minister to identify the document*'.¹⁰² There are sound practical reasons for requiring the documents sought in an access application to be clearly and unambiguously identified, including that the terms of the access application set the parameters for an agency's response and the direction of an agency's search efforts.¹⁰³
87. On external review, the Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.¹⁰⁴ However, access to a document may be refused if it is nonexistent or unlocatable.¹⁰⁵

⁹⁹ Under section 47(3)(b) of the RTI Act.

¹⁰⁰ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

¹⁰¹ Under section 47(3)(b) of the RTI Act.

¹⁰² Section 24(2)(b) of the RTI Act.

¹⁰³ *H40 and Queensland Police Service* [2023] QICmr 30 (28 June 2023) at [13]; *M34 and Sunshine Coast Hospital and Health Service* [2023] QICmr 55 (5 October 2023) at [13].

¹⁰⁴ Section 130(2) of the RTI Act. In *Webb v Information Commissioner* [2021] QCATA 116, it was confirmed (at [6]) that this obligation '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents. The Information Commissioner also has power under section 102 of the RTI Act to require additional searches to be conducted during an external review.

¹⁰⁵ Sections 47(3)(e) of the RTI Act. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist—section 52(1)(a) of the RTI Act. A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found — section 52(1)(b) of the RTI Act.

88. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider.¹⁰⁶ By considering these key factors, a decision-maker may conclude that a particular document was not created.¹⁰⁷ If searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
89. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.¹⁰⁸ What constitutes reasonable steps will, as noted above, vary case by case as the search inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the circumstances.¹⁰⁹
90. A simple assertion that an agency has not discharged its obligation to locate relevant documents is insufficient to discharge the practical onus which falls on an applicant where they are contesting the adequacy of an agency's conducted searches.¹¹⁰

Applicant's submissions

91. The applicant submits that:
- as the Board had estimated a large volume of documents would be responsive to the applicant's separate request made under the IP Act—which sought access to his personal information in the email accounts of specified Board Officers—he considered that those documents were '*also properly considered responsive documents under*' this external review;¹¹¹ and
 - all relevant information held by the Firm and the organisation which employed the Expert (**Organisation**) should be located and disclosed.¹¹²

Findings

92. The question I must consider is whether the Board took all reasonable steps to locate documents responsive to the Access Application. The Board maintains a centralised system for retention of its records and the Board's searches of that system located almost 600 pages of responsive documents.

¹⁰⁶ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (**PDE**). They include the administrative arrangements of government; the agency's structure; the agency's functions and responsibilities; the agency's practices and procedures (including but not exclusive to its information management approach); and other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

¹⁰⁷ For example, the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.

¹⁰⁸ In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors (*Pryor* at [21]).

¹⁰⁹ Such steps may, for example, include inquiries and searches of all relevant locations identified after consideration of relevant key factors.

¹¹⁰ See *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38]. In *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23], cited with approval in *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19], the Information Commissioner's delegate also confirmed that the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.

¹¹¹ Letter dated 26 June 2025.

¹¹² Letter dated 30 March 2026.

93. As noted in paragraphs 4 and 5 above, the Access Application:
- requested documents '*generated and/or in the possession*' of the Board;¹¹³ and
 - excluded documents previously provided by the Board to the applicant or by the applicant to the Board.
94. I consider the terms of the Access Application are clear. They are confined to documents which were ***generated by the Board*** and/or which were ***in the possession of the Board*** as at the date of the Access Application. It is not open for an access applicant to unilaterally expand the terms of an access application on external review.¹¹⁴ Assessing the Access Application scope objectively and without undue technicality,¹¹⁵ I find on a factual basis that the Access Application does not encompass documents that may be in the possession of other entities (i.e. the Firm or the Organisation). Therefore, I consider the applicant's submission in this regard has not raised any reasonable expectation that further documents relevant to the Access Application exist and have not been located by the Board.
95. Nor do I consider the applicant's submission about the volume of documents identified as potentially responsive to a separate application raises an expectation that further documents relevant to this Access Application exist within the Board's record keeping system and have not been located. This is particularly so given the separate application referenced in the applicant's submission appears to seek the types of documents which the applicant agreed to exclude from the scope of this Access Application.
96. On the material presently before me, I consider the Board has conducted appropriately targeted searches of relevant record keeping systems where it would be reasonable to expect the requested information would be located. Accordingly, I am satisfied that Board has taken all reasonable steps to locate documents relevant to the Access Application, and access to any further documents may therefore be refused on the basis they are nonexistent.¹¹⁶
97. The above are the reasons for my decision set out at paragraph 1.

¹¹³ The applicant also identified in the access application that he thought the requested documents would be located with the Board and the Board's officers.

¹¹⁴ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 at [17]. See also *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 at [14].

¹¹⁵ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [10] and *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [35].

¹¹⁶ Under sections 47(3)(e) and 52 of the RTI Act.