



Decision and Reasons for Decision

Application Number: 311075

Applicant: Argus Probity Auditors & Advisors Pty Ltd

Respondent: Queensland Rail

Decision Date: 26 June 2013

Catchwords: **ADMINISTRATIVE LAW – RIGHT TO INFORMATION – GROUNDS ON WHICH ACCESS MAY BE REFUSED – EXEMPT INFORMATION – communications between the agency and its internal and external legal advisers providing legal advice – internal communications summarising legal advice provided by external legal advisers – an agency may refuse access to a document to the extent the document comprises exempt information – information subject to legal professional privilege – whether the information would be privileged from production in a legal proceeding on the ground of legal professional privilege – sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld)**

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – GROUNDS ON WHICH ACCESS MAY BE REFUSED – CONTRARY TO PUBLIC INTEREST INFORMATION – information identifying unsuccessful tenderers – an agency may refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest – whether disclosure 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 – GROUNDS ON WHICH ACCESS MAY BE REFUSED – UNLOCATABLE AND NONEXISTENT DOCUMENTS – applicant contends additional documents exist – an agency may refuse access to a document because the document is nonexistent or unlocatable – whether the agency has taken all reasonable steps to locate the documents but the documents cannot be found or do not exist – sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Rail (**QR**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to information relevant to:
 - (1) the appointment, preparation and evaluation of the contract between QR and the applicant in relation to Probity Auditor Appointment Agreement for the Moreton Bay Rail Link; and
 - (2) deliberations and decision to terminate the contract with the applicant.
2. QR located 394 pages relevant to the access application and granted access to 193 pages in full and 6 pages in part. Access to the remaining information was refused on the basis that it was subject to legal professional privilege or its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to this information and also submitted that additional documents relevant to the access application had not been located.
4. A number of issues were resolved informally on external review. In relation to the remaining issues, for the reasons set out below, I find that:
 - access to the information in issue can be refused on the basis that it is subject to legal professional privilege or its disclosure would, on balance, be contrary to the public interest; and
 - there is a reasonable basis to be satisfied that additional documents do not exist or cannot be located.

Background

5. QR ran a tender process for the roles of Probity Auditor and Probity Advisor in relation to the Moreton Bay Rail Link project. The applicant submitted a tender and was appointed to the role of Probity Auditor for the project. Another tenderer was appointed to the role of Probity Advisor. QR terminated the contract with the applicant and subsequently appointed a different tenderer to the role of Probity Auditor. These circumstances prompted the applicant's access application.
6. Significant procedural steps relating to the application and the external review are set out in the appendix to this decision.

Reviewable decision

7. The decision under review is QR's decision dated 5 June 2012 refusing access to the information in issue.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

Issues for determination

9. A number of issues were informally resolved on external review.¹ The remaining issues for determination are whether:
- the Category A information is subject to legal professional privilege
 - disclosure of the Category B information would, on balance, be contrary to public interest; and
 - there is a reasonable basis to be satisfied that additional documents do not exist or cannot be located.

Is the Category A information subject to legal professional privilege?

10. Yes, for the reasons that follow.

Relevant law

11. Under the RTI Act, a person has a right to be given access to documents of an agency.² However, this right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.³ The RTI Act provides that access may be refused to documents to the extent that they comprise exempt information⁴—that is, information the disclosure of which Parliament has considered would, on balance, be contrary to the public interest.⁵ Schedule 3 of the RTI Act sets out categories of exempt information.
12. Schedule 3, section 7 of the RTI Act provides that information will be exempt from disclosure if it would be privileged from production in a legal proceeding on the ground of legal professional privilege. This exemption reflects the requirements for establishing legal professional privilege at common law.⁶
13. Confidential communications between a lawyer and client will be privileged where the communications are for the dominant purpose of seeking or giving legal advice (advice privilege) or use in existing or anticipated legal proceedings (litigation privilege).⁷ The dominant purpose is '*the ruling, prevailing, or most influential purpose*'⁸ and is to be determined objectively, having regard to the evidence, the nature of the document and the parties' submissions.

Findings

14. The Category A information⁹ comprises:

¹ For example, QR agreed to release some information it claimed to be exempt in its decision dated 5 June 2012, and to release nearly all additional information that it located following further searches during the external review; and the applicant did not contest OIC's preliminary view that disclosure of certain signatures and mobile phone numbers would, on balance, be contrary to the public interest or that some information on one page was irrelevant to the applicant's access application.

² Section 23 of the RTI Act.

³ As set out in section 47 of the RTI Act.

⁴ Section 47(3)(a) of the RTI Act.

⁵ Section 48(2) of the RTI Act.

⁶ *Ozcare and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 13 May 2011) at [12].

⁷ The general principles of legal professional privilege were summarised by the High Court of Australia in *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at [9] as follows: '*It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings...*'

⁸ *Federal Commissioner of Taxation v Spotless Services Ltd* (1996) 186 CLR 404 at [416].

⁹ The Category A information comprises 38 pages.

- correspondence between QR and its internal and external legal advisers seeking or providing legal advice about QR's termination of its contract with the applicant; and
- correspondence within QR summarising the legal advice sought from or provided by the external legal adviser.

15. Having examined the Category A information, I am satisfied that the communications:

- are confidential
- comprise direct communications or records of communications between QR and its internal and external legal advisers; and
- were made for the dominant purpose of obtaining or providing legal advice.

16. The applicant submits that:

Although privilege may attach to the communications by internal legal counsellors with QR, recommendations that have been made in relation to that advice are not covered by privilege. These recommendations will 'be an activity of the corporation, and not a transmission of the advice from one officer of the corporation to another'. Even if the internal communications contain the legal advice, if there is any further discussion as to the advice, this will not be protected by privilege and will need to be disclosed.

The facts in Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd are similar to those here in that a contract was terminated. An internal memorandum discussing the termination was held not to be privileged, even though it referred to advice received by solicitors. Depending on the nature of the internal communications, this principle may be applicable.

Such recommendations as were made may be "an activity of the corporation" and are disclosable.¹⁰

...

... written communications of this type within the "activity of the corporation" are not to be held as privileged, particularly if they are relevant to a change in policy as to a tender which has been publicly advertised, evaluated and awarded and then contemplating a different scope of work and/or the elimination of a position.¹¹

17. Legal advice does not include advice that is predominantly for administrative, financial, personal, commercial or public relations purposes.¹² However, it can involve more than just advising a client about the law—it also includes advice as to '*what should prudently and sensibly be done in the relevant legal context*'.¹³

18. The internal QR correspondence comprises six emails,¹⁴ each involving one or more of QR's internal legal advisers. Having carefully reviewed this correspondence, I am satisfied that the communications summarise legal advice provided by the external legal advisers, convey legal advice provided by internal legal advisers, or seek such legal advice. Further, two of the communications also consider '*what should prudently and sensibly be done in the relevant legal context*'. In the circumstances, I am satisfied that each communication was made for the dominant purpose of obtaining or providing legal advice.

¹⁰ Applicant's submissions dated 13 May 2013.

¹¹ Applicant's submissions dated 18 June 2013.

¹² *Three Rivers District Council v Governor and Company of the Bank of England (No.6)* [2005] 4 All ER 948 at [989]; *Barnes v Commissioner of Taxation* [2007] FCAFC 88 at [8] and *Waterford v Commonwealth* (1987) 163 CLR 54 at [77] and [85].

¹³ *Balabel v Air India* [1988] 1 Ch 317 per Lord Justice Taylor at [330] and referred to with approval in *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 136 FCR 357 at [382].

¹⁴ There are two copies of two of the six emails.

19. The applicant further submits that:

...under the [RTI Act] the expert opinion or analysis by a person considered an expert in the field of knowledge to which the opinion or analysis relates is not generally exempt from release ... Any so-named "legal advice" which offered "opinion or analysis" on the competency or knowledge base of [the applicant] or its consultants should, therefore, be disclosed.¹⁵

20. While a provision in the RTI Act regarding deliberative processes¹⁶ excludes expert opinion or analysis from its scope, there is no such exclusion in schedule 3, section 7 of the RTI Act with respect to legal professional privilege. As mentioned above, the schedule 3, section 7 exemption reflects the requirements for establishing legal professional privilege at common law.¹⁷

21. The applicant also questions whether any waiver of legal professional privilege has occurred. There is no evidence available to me of either express or implied waiver of privilege in relation to the Category A information. The confidential disclosure of information that is subject to legal professional privilege within a government department does not amount to waiver of privilege.¹⁸ Accordingly, I am satisfied that the internal QR communications do not comprise a waiver of privilege. Further, on the information before me, I am satisfied that there has been no waiver of privilege regarding communications involving the external legal advisers.

22. For these reasons, I do not accept the applicant's submissions on legal professional privilege and find that access to the Category A information can be refused as it comprises exempt information on the ground that it is subject to legal professional privilege.¹⁹

Would disclosing the Category B information, on balance, be contrary to the public interest?

23. Yes, for the reasons that follow.

Relevant law

24. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.²⁰ The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest²¹ and explains the steps that a decision-maker must take²² in deciding the public interest as follows:

- 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

¹⁵ Applicant's submissions dated 13 May 2013.

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

¹⁷ *Ozcare and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 13 May 2011) at [12].

¹⁸ *N55WLN and Department of Health* (Unreported, Queensland Information Commissioner, 30 April 2012) at [29].

¹⁹ Section 47(3)(a), 48 and schedule 3, section 7 of the RTI Act.

²⁰ Section 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²¹ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

²² Section 49(3) of the RTI Act.

- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

25. During the external review, QR agreed to release to the applicant a range of documents created or received by QR in the tender evaluation process—including, for example, the Tender Evaluation Report, the Probity Advisor Appointment Agreement, the Tender Evaluation and Probity Plan, tender evaluation spread sheets, the tender submission by the successful tenderer for the Probity Advisor role, correspondence sent to unsuccessful tenderers. This information was released subject to the deletion of a small amount of information—that is, the Category B information.²³
26. The Category B information comprises information that identifies unsuccessful tenderers including, for example, the tenderer names, previous experience in the industry and capacity to provide services.²⁴ Given the scope of the applicant's access application, the Category B information includes identifying information about the tenderer who was unsuccessful at the time that the applicant was appointed but, after the applicant's contract was terminated, was subsequently appointed to the role of Probity Auditor.²⁵
27. No irrelevant factors arise in the circumstances of this case. I will now consider the relevant factors favouring disclosure and nondisclosure of the Category B information.

Factors favouring disclosure of the Category B information

28. It is relevant to consider whether disclosing the Category B information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability²⁶
 - contribute to positive and informed debate on important issues or matters of serious interest,²⁷ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²⁸
29. In *CH32GI and Department of Justice and Attorney-General; Third Parties*,²⁹ the Right to Information Commissioner relevantly explained that:

Government is accountable to the public regarding the decisions it makes to award tenders for the performance of work that is to be paid for from public funds ... Government agencies must be able to demonstrate that tender processes have been carried out fairly and equitably, and that the successful tenderers were the best candidates, in terms of efficiency, effectiveness and economy in the delivery of services to be paid for from public funds. This is consistent with the Queensland Government

²³ The Category B information comprises parts of 55 pages. Some of these pages are duplicates.

²⁴ The Category B information does not include certain signatures and mobile phone numbers that were also deleted from the relevant documents prior to releasing them to the applicant. The applicant did not contest OIC's preliminary view in relation to this information. As a result, this information is not in issue and is not considered in these reasons for decision.

²⁵ The applicant did not contest OIC's preliminary view that, given the terms and scope of the applicant's access application, information identifying the subsequently appointed Probity Auditor should be considered and treated the same as such information regarding the other unsuccessful tenderers.

²⁶ Schedule 4, part 2, item 1 of the RTI Act.

²⁷ Schedule 4, part 2, item 2 of the RTI Act.

²⁸ Schedule 4, part 2, item 11 of the RTI Act.

²⁹ (Unreported, Queensland Information Commissioner, 22 November 2012) at [47] and [48].

State Procurement Policy which requires that agencies publish basic details of all awarded contracts over a certain amount on the eTender website.

30. The applicant submits:

Given the public nature of the tender it is in the public's best interest to release the specific details of unsuccessful tender information. In addition, disclosing all non-identifying information does not provide the public with any useful information in determining who has applied for the public tender. This disclosure fails to consider experience and reputation within the industry, both of which are important when examining suitability for the job (and in the interests of the public to know).

Suggesting the disclosure of non-identifying unsuccessful tender information is in the public's best interest is unreasonable when examined in light of the mentioned factors. Non-identifying information does not provide background or contextual information informing the decision, nor does it promote open discussion and enhance Government accountability.

...

While the appointment is not valued at more than \$10 million the principles behind the new Schedule E to the State Procurement Policy creates a public interest disclosure requirement ... [It] requires the publication of results of procurement processes valued at more than \$10 million on the eTender website within 60 days of a contract being awarded. The details to be provided include the number of offers sought, evaluation criteria and weightings, form of contract, deliverables, contract milestones, and contract performance management mechanisms.³⁰

...

[I]t is my opinion that [non-release of identifying information] is contrary to the statutory intention of the State Procurement Policy ...

I refer you to the State Procurement Policy at s.9 which alludes to the transparent publication of contracts awarded for services for sums greater than \$100,000. This is apposite to disclosing who the competitive bidders were and what qualities made Argus Probity the preferred candidate.³¹

31. In relation to the Category B information, I am satisfied that the above public interest factors favouring disclosure apply, as identifying information about the unsuccessful tenderers could provide the applicant with more information about how QR assessed the tender submissions and weighed up the relative strengths and weaknesses of each tenderer. I note that identifying information alone could provide context regarding 'experience and reputation within the industry', while identifying information viewed in conjunction with already released *non-identifying* information regarding QR's evaluation of the various tenders could also add to the applicant's understanding.
32. However, I also note that QR has disclosed a considerable amount of information to the applicant about the tender evaluation process, including all *non-identifying* information about unsuccessful tenderers, reasons for its recommendation to appoint the applicant and the successful Probity Advisor, and the successful Probity Advisor's submission. This information provides a detailed understanding of the tender process and its disclosure significantly advances the above factors favouring disclosure.
33. In addition, QR has also disclosed to the applicant information about its reasons for terminating the contract with the applicant.³² Disclosure of this information also significantly advances the above factors favouring disclosure.

³⁰ Applicant's submissions dated 13 May 2013.

³¹ Applicant's submissions dated 18 June 2013.

³² The Category B information does not reveal or relate to QR's reasons for terminating the contract with the applicant.

34. Consequently, while I note that disclosing the Category B information may advance the above factors favouring disclosure by providing the applicant with more information about QR's assessment process, I consider it would do so to a limited extent, given the information that has already been released. I also consider that the weight of the factors favouring disclosure is reduced given that the tenderers were unsuccessful and therefore not engaged by QR nor paid from public funds. Further, I do not consider that the State Procurement Policy regarding transparent procurement³³ requires or supports the disclosure of identifying information regarding unsuccessful tenderers in the present circumstances.
35. Given these considerations, I do not consider that there are strong public interest factors favouring disclosure of the identities of the unsuccessful tenderers. Accordingly, I afford limited weight to the factors favouring disclosure in relation to the Category B information, and only to the extent that such information reveals how QR assessed the tender submissions.

Factors favouring nondisclosure of the Category B information

36. It is relevant to consider whether disclosing the Category B information could reasonably be expected to:
- prejudice the business, professional, commercial and financial affairs of the unsuccessful tenderers;³⁴ and
 - prejudice or have an adverse effect on the business affairs of the unsuccessful tenderers.³⁵
37. The Category B information reveals the perceived strengths and weaknesses of the unsuccessful tenderers and QR's view on their capacity to perform the relevant services. In my view, disclosing this information under the RTI Act could have an adverse impact on the reputations of the tenderers and could reasonably be expected to prejudice their business affairs. For these reasons, I afford moderate weight to these factors favouring nondisclosure.

Balancing the relevant public interest factors

38. Disclosure of the Category B information gives rise to the factors favouring disclosure, as it would provide the applicant with a more detailed understanding of how QR assessed the tender submissions. However, it would do so in a limited sense, given the information that has already been released. The weight of the factors is also reduced as the information relates to unsuccessful tenderers that were not engaged by QR nor paid from public funds. Accordingly, the factors favouring disclosure are afforded limited weight.
39. On the other hand, given the nature of the Category B information, its disclosure could reasonably be expected to prejudice the business affairs of the unsuccessful tenderers. In these circumstances, the factors favouring nondisclosure warrant moderate weight.
40. For the reasons set out above, I find that access to the Category B information can be refused on the basis that its disclosure would, on balance, be contrary to the public interest.³⁶

³³ Clause 9 and schedule E in particular, viewed 25 June 2013, < <http://www.hpw.qld.gov.au/SiteCollectionDocuments/QueenslandProcurementPolicy2013.pdf>>.

³⁴ Schedule 4, part 3, item 2 of the RTI Act.

³⁵ Schedule 4, part 3, item 15 and part 4, item 7 of the RTI Act.

³⁶ Sections 47(3)(b) and 49 of the RTI Act.

Is there a reasonable basis to be satisfied that additional documents do not exist or cannot be located?

41. Yes, for the reasons that follow.

Relevant law

42. Access to a document may be refused if the document is nonexistent or unlocatable.³⁷ 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.³⁸ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.³⁹

43. The RTI Act is silent on how an agency can be satisfied that a document does not exist. However in *PDE and The University of Queensland*,⁴⁰ the Information Commissioner explained that, to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- 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 the request relates to.

44. When these factors are properly considered and a conclusion reached that the document does not exist, it may be unnecessary for searches to be conducted. Alternatively, an agency may rely on searches to justify a decision that the document sought does not exist. If an agency relies on searches, all reasonable steps must be taken to locate the requested document. In determining whether all reasonable steps have been taken, regard should be had to the factors listed in *PDE* as set out above.

Findings

45. Throughout the external review, the applicant has submitted that various additional documents may exist and should have been located by QR in response to the access application. Where requested by OIC, QR has conducted further searches for these categories of documents and either released relevant documents to the applicant or advised OIC that no additional documents had been located. In its final submission to OIC,⁴¹ the applicant contended that four categories of additional documents may exist, based on its review of the released documents.

³⁷ Sections 47(3)(e) and 52 of the RTI Act.

³⁸ Section 52(1)(b) of the RTI Act.

³⁹ Section 52(1)(a) of the RTI Act.

⁴⁰ (Unreported, Queensland Information Commissioner, 9 February 2009). Although *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

⁴¹ Applicant's submissions dated 18 June 2013.

46. I do not consider it necessary in these reasons for decision to specifically deal with each of the categories of additional documents identified by the applicant. The applicant did not provide any evidence—beyond reference to information contained in the released documents—to support its contention that these further categories of documents exist. Having carefully reviewed the relevant released documents, I am not satisfied that they support the applicant’s contention that further documents may exist. I consider the applicant’s contentions are based on a subjective interpretation of the relevant material.
47. I also consider that if several of the categories of additional documents identified by the applicant existed, they would, in any event, be outside the scope of the access application as they do not relate to either (1) the appointment, preparation and evaluation of the relevant contract, or (2) the deliberations and decision to terminate that contract.
48. The applicant submits more generally that *‘there has been a selective process as to disclosure by QR’*. As QR has conducted searches in response to the sufficiency of search issues, it is relevant to consider whether QR has taken all reasonable steps to locate documents relevant to the access application, including the additional documents referred to in the applicant’s final submissions to OIC.
49. OIC made enquiries with QR on three separate occasions during the external review in response to the sufficiency of search issues. As a result of performing further searches on external review, QR located a large number of additional documents, almost all of which QR agreed to release to the applicant. Where required, QR responded to the applicant’s specific submissions about the existence of particular documents.
50. During the initial processing of the access application, QR performed searches of its Procurement Unit, Legal Unit and Projects Unit. These searches identified 394 pages. On external review and in response to the sufficiency of search issues raised by the applicant, QR submits:
- it performed over 16 hours of additional searches
 - it located over 140 additional pages of documents, almost all of which were released to the applicant
 - it performed electronic searches of its document storage and management system (TRIM), email accounts and network drives by keywords and date
 - it performed physical searches of paper files in a particular office, personal notebooks and a home office
 - it searched the backup system for emails of a particular officer who was no longer with QR; and
 - where officers who may have created documents were no longer with QR, other staff searched the relevant records.
51. In reaching my view on the sufficiency of search issues, I have had regard to:
- the information in issue in this review, along with the documents already released to the applicant
 - the applicant’s submissions on the sufficiency of search issues
 - QR’s submissions particularly in relation to its recordkeeping practices for the types of documents to which the applicant seeks access
 - the nature and extent of the searches conducted by QR in processing the access application and on external review; and
 - the signed certifications provided to OIC by QR officers.

52. I accept QR's evidence in relation to its search efforts and enquiries. QR has identified and produced to OIC over 500 pages relevant to the applicant's access application. I am satisfied that QR's approach to these searches was appropriate based on the nature of the information requested by the applicant. QR has conducted targeted searches of its electronic records using a range of search terms designed to identify all relevant documents. Where a particular officer, central to the matters that were the subject of the access application, had subsequently left QR and was unable to perform further searches on external review, QR restored the officer's emails from the backup drive and conducted thorough searches of the mailbox to identify all relevant documents. I also accept the search certifications provided by a number of QR officers as further evidence that QR has taken all reasonable steps to find documents.
53. Having reviewed all of the material before me, and in view of the extensive nature of QR's searches, both in processing the access application and on external review, I am satisfied that:
- QR has taken all reasonable steps to locate the relevant documents; and
 - there is a reasonable basis to be satisfied that any additional documents do not exist or cannot be located.⁴²

DECISION

54. For the reasons set out above, I vary the decision under review and find that:
- access to the Category A information can be refused on the basis that it comprises exempt information as it is subject to legal professional privilege⁴³
 - access to the Category B information can be refused as its disclosure would, on balance, be contrary to the public interest;⁴⁴ and
 - there is a reasonable basis to be satisfied that additional documents do not exist or cannot be located.⁴⁵
55. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Anna Rickard
Acting Assistant Information Commissioner

Date: 26 June 2013

⁴² Sections 47(3)(e) and 52 of the RTI Act.

⁴³ Sections 47(3)(a) and 48 and schedule 3 section 7 of the RTI Act.

⁴⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁴⁵ Sections 47(3)(e) and 52 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
30 April 2012	QR received the access application under the RTI Act.
5 June 2012	QR issued its decision to the applicant.
12 June 2012	OIC received the external review application.
13 June 2012	OIC asked QR to provide a number of procedural documents by 18 June 2012.
15 June 2012	OIC received the requested documents from QR.
20 June 2012	OIC notified the applicant and QR that it had accepted the external review application and asked QR to provide a copy of the documents in issue by 4 July 2012.
27 June 2012	OIC received the requested information from QR.
9 July 2012	The applicant provided submissions supporting its case.
10 August 2012	OIC provided the applicant with an update on the status of the external review.
20 September 2012	OIC asked QR to provide an electronic copy of the documents in issue by 27 September 2012.
25 September 2012	OIC received the requested information from QR.
4 October 2012	OIC received a further copy of the requested information from QR.
15 October 2012	OIC provided the applicant with an update on the status of the external review. OIC asked QR to provide the tender submission of the tenderer who replaced the applicant as Probity Auditor by 22 October 2012.
22 October 2012	QR requested an extension of time to provide the requested information. OIC granted QR an extension until 29 October 2012 to provide the requested information.
30 October 2012	OIC received the requested information from QR.
20 December 2012	OIC conveyed a preliminary view to QR in relation to the refusal of access issues and asked QR to provide submissions addressing the applicant's sufficiency of search submissions by 17 January 2013.
21 December 2012	OIC provided the applicant with an update on the status of the external review. QR requested an extension of time until 22 February 2013 to provide a response to the preliminary view.
2 January 2013	OIC granted QR an extension of time until 8 February 2013 to provide submissions in response to the preliminary view.
4 January 2013	OIC provided the applicant with an update on the status of the external review.
11 January 2013	OIC consulted with a third party in relation to the possible release of information under the RTI Act and invited it to provide submissions supporting its case by 29 January 2013 if it objected to disclosure of the information.
14 January 2013	OIC consulted with a third party in relation to the possible release of information under the RTI Act and invited it to provide submissions supporting its case by 30 January 2013 if it objected to disclosure of the information.
29 January 2013	One of the third parties objected to disclosure of some information and provided submissions supporting their case.
8 February 2013	OIC received QR's submissions in response to the preliminary view.
10 April 2013	OIC received further submissions from QR.

Date	Event
11 April 2013	QR provided a further submission to OIC.
17 April 2013	<p>OIC conveyed its preliminary view to the applicant and invited it to provide submissions supporting its case by 6 May 2013 if it did not accept the view.</p> <p>OIC conveyed a further preliminary view to QR and invited it to provide submissions supporting its case by 1 May 2013 if it did not accept the view.</p>
22 April 2013	The applicant provided submissions supporting its case in a telephone conversation with OIC.
1 May 2013	OIC received submissions from QR in response to the preliminary view.
3 May 2013	The applicant requested an extension of time until 13 May 2013 to provide submissions in response to the preliminary view.
6 May 2013	OIC granted the applicant the requested extension of time.
7 May 2013	OIC conveyed a further preliminary view to the applicant on a small amount of information and invited it to provide submissions supporting its case by 13 May 2013 if it did not accept the view. OIC notified one of the third parties that OIC had revised its view in relation to some information, given the scope of the access application, and that, as a result, it was not necessary for OIC to consult with it in relation to that information.
13 May 2013	The applicant notified OIC that it did not accept the preliminary view and provided submissions supporting its case. OIC conveyed a further preliminary view to QR and invited it to provide submissions supporting its case by 17 May 2013 if it did not accept the view.
15 May 2013	OIC asked QR to provide further submissions addressing the applicant's sufficiency of search claims by 27 May 2013.
23 May 2013	QR requested an extension of time until 31 May 2013 to provide the requested submissions.
24 May 2013	OIC granted QR the requested extension of time. QR made further submissions to OIC.
27 May 2013	OIC conveyed a further preliminary view to the applicant on a small amount of information and invited it to provide submissions supporting its case by 31 May 2013 if it did not accept the view.
28 May 2013	The applicant requested, and OIC granted, an extension of time until 10 June 2013 to provide the requested submissions.
31 May 2013	OIC received further submissions from QR. QR released additional information to the access applicant.
4 June 2013	QR advised OIC it had located additional documents relevant to the access application. QR released the additional documents to the applicant. OIC made further enquiries with QR about its searches.
5 June 2013	QR provided OIC with further submissions about its searches. OIC requested QR conduct an additional search for documents relevant to the access application. OIC conveyed a preliminary view to the applicant on the sufficiency of QR's searches and invited the applicant to provide submissions supporting its case by 11 June 2013 if it did not accept the view. QR released additional documents to the applicant.
6 June 2013	QR provided OIC with additional documents located as a result of the requested search.
7 June 2013	OIC conveyed a preliminary view on the additional documents to QR. QR released the additional documents to the applicant in accordance with OIC's preliminary view.

Date	Event
11 June 2013	OIC conveyed a preliminary view to the applicant on the additional documents located by QR and invited it to make submissions supporting its case by 18 June 2013 if it did not accept the view.
18 June 2013	OIC received further submissions from the applicant on a number of issues.
19 June 2013	OIC contacted QR to make further enquiries about its searches. OIC provided the applicant with an update.
21 June 2013	QR provided a submission on its searches.