



Decision and Reasons for Decision

Citation:	<i>Seven Network (Operations) Limited and the Board of Trustees of the State Public Sector Superannuation Scheme [2015] QICmr 33 (14 December 2015)</i>
Application Number:	312449
Applicant:	Seven Network (Operations) Limited
Respondent:	Board of Trustees of the State Public Sector Superannuation Scheme
Decision Date:	14 December 2015
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - CEO's travel expenses - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Treasury under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents relating to the overseas travel expenses of QSuper's then Chief Executive Officer (**CEO**) since 1 January 2013. This application was transferred to the Board of Trustees of the State Public Sector Superannuation Scheme (**Board**).¹
2. One document was located and Queensland Treasury, on behalf of the Board, refused access in full on the basis that its disclosure would, on balance, be contrary to the public interest.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Board's decision. On external review, the applicant accepted OIC's view that the Board had taken all reasonable steps to locate relevant documents.³ The applicant also agreed to limit the information in issue to the part of the one located document that relates to travel expenses of the CEO on the basis of OIC's view that the remainder of the page is irrelevant information.⁴

¹ Section 38 of the RTI Act and telephone conversation between Queensland Treasury and OIC dated 19 May 2015.

² Sections 47(3)(b) and 49 of the RTI Act.

³ Sections 47(3)(e), 52 and 130(2) of the RTI Act and telephone conversation between the applicant and OIC dated 15 October 2015.

⁴ Section 73 of the RTI Act and telephone conversation between the applicant and OIC dated 15 October 2015.

4. On review, OIC received submissions on behalf of both the Board and QSuper Limited. In this decision I have used the term 'QSuper' to refer to both entities, unless otherwise specified.
5. For the reasons set out below, I set aside the Board's decision to refuse access to the information in issue as I consider disclosure would not, on balance, be contrary to the public interest.

Background

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

Reviewable decision

7. The decision under review is the Board's decision dated 6 May 2015 refusing access to the information in issue.

Evidence considered

8. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).

Information in issue

9. The information in issue is the part of one page of the CEO's Report to the Board dated 23 October 2014 that relates to the then CEO's travel expenses, as attached to OIC's preliminary view dated 9 July 2015 (**Information in Issue**).

Relevant law

10. Under the RTI Act, a person has a right to be given access to documents of an agency.⁵ However, this right is subject to limitations, including grounds for refusal of access.⁶
11. Access to information may be refused where disclosure would, on balance, be contrary to the public interest.⁷ The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and also explains the steps that a decision-maker must take 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
 - decide whether disclosing the information would, on balance, be contrary to the public interest.⁸
12. On external review, the Board has the onus of establishing that its decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁹

⁵ Section 23(1)(a) of the RTI Act.

⁶ Section 47 of the RTI Act sets out the grounds on which access may be refused to documents.

⁷ Section 47(3)(b) of the RTI Act.

⁸ Section 49(3) of the RTI Act.

⁹ Section 87(1) of the RTI Act.

Findings

Irrelevant factors

13. QSuper raised concerns about the applicant's intentions.¹⁰ This is an irrelevant factor so I have not taken it into consideration.¹¹ In any event, I do not consider there is any evidence to suggest that disclosure of the Information in Issue could reasonably be expected to result in mischievous conduct by the applicant.
14. QSuper submitted that disclosure could result in the applicant misunderstanding the Information in Issue because some of the travel expenses were accrued by another employee whose information would not be released.¹² QSuper was concerned that this would lead the applicant to mistakenly attribute all of the expenses to the CEO.¹³ A reasonable expectation that disclosure will lead to the applicant misunderstanding or misinterpreting a document is another factor recognised by the RTI Act as irrelevant to deciding the public interest so I have not taken it into consideration.¹⁴ In any event, I consider there is sufficient contextual information to indicate that there was more than one person travelling and therefore, I do not consider a misunderstanding or misinterpretation would arise.

Factors favouring disclosure

Open discussion of public affairs and Government accountability

15. The RTI Act recognises that it is in the public interest to disclose information that could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.¹⁵ To determine whether this factor applies and, if so, how much weight it should be afforded, I have considered the role of the Board and the content of the Information in Issue.
16. On external review, QSuper submitted:

The QSuper Board's only function is to administer a superannuation scheme. As such, the Board must act solely for the purpose of providing benefits to QSuper members either upon the retirement of the member or upon the member's death.

The QSuper Board is not permitted to carry on any other business. That is, only a member or individual with an interest in the QSuper superannuation scheme (not the general public) has the ability to go to court in relation to the Board's administration of the scheme. The administration of the QSuper scheme is a private matter between the QSuper Board and the QSuper members.

The members of the QSuper scheme include, but are not limited to, current public servants.

Members of the scheme include former public servants, spouses of current public servants, spouses of former public servants and spouses of former members. It is not possible for a member of the general public, who is not an employee of Government or related entity or a spouse of a current QSuper member, to become a member of QSuper.

¹⁰ Telephone conversation between QSuper and OIC on 8 September 2015.

¹¹ Schedule 4, part 1, item 3 of the RTI Act.

¹² Telephone conversation between QSuper and OIC on 2 July 2015.

¹³ Telephone conversation between QSuper and OIC on 2 July 2015.

¹⁴ Schedule 4, part 1, item 2 of the RTI Act.

¹⁵ Schedule 4, part 2, item 1 of the RTI Act.

The funds held and invested by the QSuper Board can solely be used for the purposes of the superannuation scheme. That is, the Government is not able to access those funds. Those funds do not form part of consolidated revenue. Those funds cannot be used by the elected Government for general government business, public policy purposes or other public or governmental purpose of the elected Government's choosing.

Therefore, the administration of the QSuper scheme is of a private nature between the QSuper Board and the QSuper members and is not a 'public affair'.

The travel of the CEO is not a public affair; it is a commercial matter carried out for the purposes of the QSuper group.

Further, it is argued that the term "Government" does not extend to the QSuper Board. The term "Government" is not defined in the [RTI Act] (noting that the reference here is to Government with a capital "G" indicating the legislature's intention for it to be something different to the defined term "government"). The Board considers that the term Government should be given its natural meaning, referring the business and affairs of the elected government. The day to day operation of the QSuper scheme is solely within the control of the QSuper Board. Further, for the reasons discussed in this submission, the QSuper Board is not concerned with the affairs of 'Government' (ie the expenditure of consolidated revenue or the implementation of public policy set by the elected representatives).¹⁶

17. The Parliament of Queensland established the Board to administer the State Public Sector Superannuation Scheme, otherwise known as QSuper,¹⁷ for the provision of superannuation, retirement, provident or other benefits from the State Public Sector Superannuation Fund.¹⁸ On this basis, I consider the Board is an entity established for a public purpose by an Act and therefore constitutes a 'public authority' and 'agency' for the purposes of the RTI Act.¹⁹ This indicates Parliament clearly considered the public had a right to information held by entities such as the Board unless disclosure would, on balance, be contrary to the public interest.
18. It is compulsory for the superannuation contributions of most State government employees to be made to QSuper.²⁰ In addition, many members are required to make compulsory additional contributions.²¹ As a result, 'QSuper is... responsible for the administration of more than 840,000 individual superannuation accounts for more than 530,000 members, amounting to approximately \$78 billion...'²²
19. The Board is responsible for setting investment objectives and establishing investment strategies and policies to achieve the objectives.²³ The Board appoints the CEO to whom it delegates the day-to-day administration of QSuper.²⁴ The Board must keep appropriate financial statements about the administration of the Superannuation scheme and these statements are subject to Auditor-General scrutiny.²⁵ QSuper Limited is owned by the Board and is responsible for administration and investment

¹⁶ Letter from QSuper to OIC dated 24 July 2015.

¹⁷ Sections 3 and 4 of the *Superannuation (State Public Sector) Act 1990* (Qld) (**SSPS Act**).

¹⁸ Sections 2, 4 and 12 of the SSPS Act.

¹⁹ Sections 14(1)(c) and 16(1)(a)(i) of the RTI Act.

²⁰ Section 13 of the SSPS Act, section 7 and schedule of the *Superannuation (State Public Sector) Notice 2010* (Qld) (**SSPS Notice**) and section 72 of the *Superannuation (State Public Sector) Deed 1990* (Qld) (**SSPS Deed**), although I note that Queensland Government employees may transfer amounts from their QSuper account to another superannuation fund once in every 12 month period, provided a minimum balance of \$2000 is maintained, under section 27(2)(b)(ii) of the SSPS Deed.

²¹ Section 71A of the SSPS Deed.

²² Page 1 of QSuper's 2014 Annual Report.

²³ Section 11(2) of the SSPS Act.

²⁴ Page 14 of QSuper's 2012 Annual Report, <https://qsuper.qld.gov.au/about/governance/the-board/> (accessed 24 November 2015) and section 6A of the SSPS Act.

²⁵ Section 20A of the SSPS Act.

management services.²⁶ At the time the Information in Issue was created the same person was CEO of both the Board and QSuper Limited.²⁷

20. The Information in Issue demonstrates one aspect of the Board's oversight of QSuper's CEO. It summarises the type and cost of the CEO's travel expenses for a certain period. I consider that disclosure of this information could reasonably be expected to promote open discussion of public affairs for the following reasons:
- QSuper is the largest superannuation fund in Queensland²⁸ and one of the largest in Australia²⁹ and therefore manages the superannuation of a large proportion of Queensland's general public
 - many of QSuper's customers do not have a choice of fund, as their contributions are made compulsorily under the SSPS Act
 - the CEO is integral to the administration of QSuper and the amount the CEO considers appropriate to spend on travel, and the type of events attended, gives insight into the judgment and performance of the CEO; and
 - the Information in Issue demonstrates the level of oversight the Board had over the CEO's travel decisions and expenses at a particular point in time.
21. On external review, it was submitted that the term 'Government' in the relevant item of the RTI Act does not include the Board.³⁰ However, I am not required to make a finding on this matter; the relevant issue for me to determine is whether disclosure of the Information in Issue could reasonably be expected to enhance the Government's accountability. Whether or not the Board is part of the 'Government', I must determine whether release of the Information in Issue, which is held by the Board as an entity subject to the RTI Act, would enhance the Government's accountability.
22. The Board is established by legislation enacted by the Queensland Parliament. Four of the nine members are nominated by the Queensland Government³¹ and all members of the Board are appointed by a Queensland Government Minister.³² The accountability of the Board is a matter of serious public interest as the Board sets investment objectives and establishes investment strategies and policies that affect the financial security of over half a million members whose funds amount to approximately \$78 billion. Given the Government's role in the Board's establishment and composition, in combination with the Board's central responsibility administering the State Public Sector Superannuation Scheme, I consider that a high level of accountability attaches to it. This extends to the Board's role of overseeing the CEO, whose powers are delegated by the Board under the SSPS Act and who is responsible for administering the fund on a day-to-day basis.³³ As the Information in Issue demonstrates one aspect of the Board's oversight of the CEO, I consider that disclosure could reasonably be expected to enhance Government accountability.³⁴
23. In considering the weight to be attributed to this factor favouring disclosure, I have taken into account that the Information in Issue does not represent a full account of travel expenses during the time period of the access application due to changes in

²⁶ Page 3 of QSuper's 2011 Annual Report.

²⁷ Page 5 of QSuper's 2014 Annual Report.

²⁸ Page 1 of QSuper's 2014 Annual Report.

²⁹ Page 1 of QSuper's 2014 Annual Report.

³⁰ Letter from QSuper to OIC dated 24 July 2015.

³¹ Section 2B(1)(a) of the *Superannuation (State Public Sector) Regulation 2006* (Qld) and page 16 of QSuper's 2014 Annual Report.

³² Section 5 of the SSPS Act.

³³ Section 6C of the SSPS Act and <https://qsuper.qld.gov.au/about/governance/the-board/> (accessed 24 November 2015).

³⁴ This is irrespective of whether the Board itself is considered part of the 'Government'.

reporting, and therefore is less informative than if the one reporting system applied across the entire time period.³⁵

24. On this basis, I consider the weight to be afforded to this factor favouring disclosure is moderate.

Positive and informed debate

25. The RTI Act recognises that it is in the public interest to disclose information that could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.³⁶ QSuper submits that this factor favouring disclosure does not apply on the following basis:

The QSuper Board considers that this paragraph in favour of disclosure is in relation to the discussion of public affairs... the administration of the superannuation scheme is a private matter and is not a 'public affair' nor does it involve the expenditure of 'public funds'. For example, the travel arrangements of other superannuation funds are not within the scope of the Act and would not be considered to be matters of public affairs.

It is argued that the requirement to be audited by the Auditor General or to provide an annual report to Parliament does not detract from the above arguments. Those matters go to the reporting on the overall performance of an entity created by statute. They do not of themselves change the nature of the Board's operations to that of general Government business as opposed to the administration of a private superannuation scheme.³⁷

26. I do not consider QSuper's submissions are applicable to the public interest factor favouring disclosure relating to positive and informed debate. This factor does not require consideration of whether the administration of QSuper is a private or public matter, rather it simply requires consideration of whether positive and informed debate on important issues or matters of serious interest could reasonably be expected to arise from disclosure of the Information in Issue.

27. QSuper administers the largest superannuation fund in Queensland.³⁸ I consider the type and cost of the CEO's travel expenses to be an important issue or matter of serious interest for the reasons set out at paragraphs 17 to 22 above. I consider that disclosure of the Information in Issue could reasonably be expected to contribute to debate given the publicity that similar affairs of QSuper have attracted in the past.³⁹ I consider this debate would be:

- positive, because it would further government transparency and accountability; and
- informed, because it would be based on actual data, rather than speculation.

28. In considering the weight to be attributed to this factor favouring disclosure, I have taken into account that, as set out at paragraph 23 above, the Information in Issue does not represent a full account of travel expenses during the time period of the access application. For this reason, I consider this factor favouring disclosure is of moderate weight.

³⁵ Telephone conversation between QSuper and OIC on 2 July 2015.

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

³⁷ Letter from QSuper to OIC dated 24 July 2015.

³⁸ Page 1 of QSuper's 2014 Annual Report.

³⁹ Renee Viellaris, 'QSuper bosses get generous bonuses while members wait for advice', *The Sunday Mail* (online), 20 September 2014 <<http://www.couriermail.com.au/news/queensland/qsUPER-bosses-get-generous-bonuses-while-members-wait-for-advice/story-fnihsrf2-1227065147936>>.

Factors favouring nondisclosure

Prejudice to private, business, professional, commercial or financial affairs of entities

29. QSuper submitted that disclosure of the Information in Issue could reasonably be expected to:⁴⁰

- prejudice the private, business, professional, commercial or financial affairs of QSuper;⁴¹ and
- cause a public interest harm because disclosure of the information (**public harm factor**):
 - would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person; and
 - could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.⁴²

30. The following reasons were given:⁴³

...disclosure of information would be tantamount to disclosing strategy to a competitor. I consider that the dissemination of such information to a competitor has the potential to cause significant pecuniary harm.

... I believe that there is a real and present expectation that the commercial value of the information would be destroyed or diminished by disclosure, and a reasonable basis for that expectation exists. Even though the information is contained within a report that was prepared for the QSuper Board which represents the interests of members of the State Public Sector Superannuation Scheme, the information concerns the commercial operations of QSuper Limited.

... There is... a stronger public interest argument for non-disclosure of this information as the travel identified in the document relates to overseas travel where the CEO was representing the commercial interests of QSuper Limited. QSuper Limited operates within a competitive industry and any information that is disclosed to its competitors and to the world at large would have an impact on the future commercial activities of QSuper Limited.

Other information held on the document could also be characterised as including references to matters such as the strategies of QSuper Limited in their negotiations, the commercial position of QSuper Limited in moving forward in its commercial decisions. The release could prejudice the commercial and financial affairs of QSuper Limited by disclosing their commercial position and reasoning behind certain actions that it has taken in connection with its commercial activities.⁴⁴

⁴⁰ Letter from QSuper to OIC dated 24 July 2015. Queensland Treasury's decision on behalf of the Board relied on an additional factor: disclosure could reasonably be expected to prejudice a deliberative process of government (Schedule 4, part 3, item 20 of the RTI Act), however, no specific reasons were provided. By letter dated 9 July 2015, OIC sought further information from the Board, but no explanation was provided about how this factor might be expected to arise. On external review, the agency has the onus of establishing that its decision was justified (section 87 of the RTI Act). On the basis that no reasons were provided, I consider this factor is not established.

⁴¹ Schedule 4, part 3, item 2 of the RTI Act, which uses the term 'entities'. Under the *Acts Interpretation Act 1954* (Qld) (**AI Act**), 'entity' is defined to include a person and an unincorporated body. A 'person' includes an individual and a corporation. As QSuper Limited is a corporation, I consider it is an entity for the purpose of Schedule 4, part 3, item 2 of the RTI Act.

⁴² Schedule 4, part 4, item 7(1)(c) of the RTI Act.

⁴³ Decision dated 6 May 2015.

⁴⁴ In a letter to the Board dated 9 July 2015, OIC explained its understanding that the last paragraph of these reasons related to other information in the CEO's Report to the Board and not the travel expenses of the CEO. OIC requested advice if this was not the case. No response was received and therefore, I consider that the last paragraph of this reasoning relates to information other than the Information in Issue.

31. The term 'could reasonably be expected to' requires that the expectation is reasonably based and not irrational, absurd or ridiculous,⁴⁵ nor merely a possibility.⁴⁶ This requires an objective examination of the relevant evidence.⁴⁷ Importantly, the expectation must arise as a result of disclosure, rather than from other circumstances.⁴⁸
32. The two nondisclosure factors set out at paragraph 29 are similar. However, establishing the public harm factor is a two-step test. In relation to the first step, I am satisfied that the travel expenses of QSuper's CEO are correctly characterised as concerning the financial affairs of QSuper Limited⁴⁹ because they relate to QSuper's finances (ie. money resources).⁵⁰
33. The Information Commissioner has recognised that the two nondisclosure factors otherwise require a 'reasonable expectation of similar harm'.⁵¹ Therefore, I consider whether this harm arises for both factors together below.
34. An adverse effect '*will almost invariably be pecuniary in nature, whether directly or indirectly.*'⁵² The Information Commissioner has previously considered the following to constitute an adverse effect:
- loss of business reputation or goodwill '*feared ultimately for its potential to result in loss of income or profits, through loss of customers*';⁵³ and
 - competitive harm.⁵⁴
35. QSuper submitted there is a risk that the information may be used to create a negative impression of QSuper which may have a negative impact on QSuper's reputation and business and result in loss of members.⁵⁵ I consider that the nature of the travel, events attended and expenses incurred are of the kind members of the public would commonly expect of a CEO of a fund that administers approximately \$78 billion worth of investments. The risk that the information would be portrayed in a negative light is not something that could be said to be reasonably expected to occur, as required by the wording of the RTI Act. I consider QSuper's concern is more in the nature of a mere possibility - an unlikely one. Therefore, I do not consider that disclosure would damage QSuper's reputation and result in loss of income through loss of customers.
36. I do not accept that QSuper operates in a solely competitive commercial environment as:
- certain members are required by legislation to have an account⁵⁶
 - certain Queensland Government employers are required to make contributions;⁵⁷ and

⁴⁵ *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

⁴⁶ *Murphy and Treasury Department* (1995) 2 QAR 744.

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

⁴⁸ *Murphy and Treasury Department* (1995) 2 QAR 744 at [54].

⁴⁹ As QSuper Limited is a corporation, I consider it is a 'person' for the purpose of Schedule 4, part 4, item 7(1)(b) of the RTI Act (Schedule 1 of the AI Act).

⁵⁰ The RTI Act does not define 'financial affairs' so I have adopted the ordinary meaning as set out in *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 (**Cannon**) at [76]. *Cannon* considered the application of sections 45(1)(b) and (c) of the *Freedom of Information Act 1992* (Qld) (**FOI Act**). Schedule 4, part 4, items 7(1)(b) and (c) of the RTI Act were drafted in substantially the same terms as the provisions of the FOI Act in *Cannon*.

⁵¹ *Kalinga Wooloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd (Third Party); Treasury Department (Fourth Party)* (Unreported, Queensland Information Commissioner, 9 May 2012) at [89].

⁵² *Cannon* at [82].

⁵³ *Cannon* at [82].

⁵⁴ *Cannon* at [84].

⁵⁵ Conversation between QSuper and OIC on 8 September 2015.

⁵⁶ Section 13 of the SSPS Act and section 7 of the SSPS Notice and schedule.

⁵⁷ Section 72 of the SSPS Deed.

- many members are required to make compulsory additional contributions.⁵⁸
37. I do accept QSuper's superannuation products operate in a competitive commercial environment in some respects, for example:
- employees may choose to transfer all but \$2000 out of their account to another superannuation fund, although this can only be done once every 12 months;⁵⁹ and
 - once members leave the public service, they may move their superannuation to another fund or choose to stay with QSuper.⁶⁰
38. However, QSuper has not provided OIC with any evidence to suggest that the Information in Issue itself is of a commercially sensitive nature such that it would prejudice the above commercially competitive aspects of the superannuation products. The Information in Issue is a very high level summary of travel expenses incurred by the CEO which shows that the CEO attended certain conferences and meetings over a short time period. As set out above, the events are the kind members of the public would commonly expect a CEO of a fund that administers approximately \$78 billion of investments to attend. In addition, the descriptions are very general in nature. The Information in Issue does not appear to disclose sensitive investment strategy information or comprise information that would give a competitor an edge over QSuper.
39. OIC invited QSuper to explain the specific prejudice about which they were concerned and how disclosure of the Information in Issue could reasonably be expected to result in that prejudice. QSuper did not identify a particular commercial strategy that would be disclosed by the Information in Issue, nor explain how disclosure 'could reasonably be expected to' result in pecuniary or competitive harm. QSuper's submissions were generalised and suggested concern about the availability of *any* information under the RTI access regime,⁶¹ which it perceived would create an imbalance with its competitors:

A reasonably foreseeable outcome of the public release of information such as that under discussion is that it will be freely available to QSuper's direct competitors. The superannuation industry is competitive, especially in relation to member retention and acquisition of quality investments. That QSuper is not able to obtain similar information about those competitors, as they are not subject to the RTI Act, creates a fundamental competitive imbalance which may prove detrimental to QSuper's interests.

*The QSuper Board confirms its view that the disclosure of information about the travel and travel expenses of the CEO is a commercially sensitive matter, including by informing competitors of the nature of travel, destination, timing, length of stays, events attended, counterparties visited and costs.*⁶²

40. As set out above, to establish these nondisclosure factors, the expectation of prejudice must arise as a result of disclosure of the specific information in issue, rather than other circumstances,⁶³ such as the fact that the Board is subject to the RTI Act and its competitors are not, or that QSuper cannot approach the market and seek members outside the SSPS Act.⁶⁴ Each information access application is considered on its own particular merits and the RTI Act offers protections against the release of information

⁵⁸ Section 71A of the SSPS Deed.

⁵⁹ Section 27(2)(b)(ii) of the SSPS Deed.

⁶⁰ Section 27(2)(a) of the SSPS Deed.

⁶¹ Telephone conversation between QSuper and OIC on 8 September 2015.

⁶² Letter from QSuper to OIC dated 24 July 2015.

⁶³ *Murphy and Treasury Department* (1995) 2 QAR 744 at [54].

⁶⁴ Telephone conversation between QSuper and OIC on 8 September 2015.

that could reasonably be expected to prejudice business, commercial and financial affairs. In relation to the Information in Issue in this review, QSuper has not demonstrated that disclosure would have this adverse effect.

41. Lastly, I do not consider that release of this information could reasonably be expected to prejudice the future supply of information of this type to the Board⁶⁵ because the CEO's role involves providing information to the Board and to refuse to provide requested information, I expect would render the CEO unfit for the position.
42. On the basis of the above, I do not consider that any of the nondisclosure factors set out at paragraph 29 apply and I have not taken them into consideration.

Public interest harm through disclosure of information of commercial value

43. QSuper submitted that disclosure of the Information in Issue could reasonably be expected to cause a public interest harm because it:
 - would disclose information that has a commercial value to an agency or another person; and
 - could reasonably be expected to destroy or diminish the commercial value of the information.⁶⁶
44. Information has a commercial value if:
 - *'it is valuable for the purposes of carrying on the commercial activity in which that agency or other person is engaged'* (i.e. *'because it is important or essential to the profitability or viability of a continuing business operation, or a pending "one-off" commercial transaction'*);⁶⁷ or
 - *'a genuine, arms-length buyer is prepared to pay to obtain that information from that agency or person'*, such that *'the market value of that information would be destroyed or diminished if it could be obtained from a government agency that has come into possession of it'*.⁶⁸
45. I have carefully assessed the nature of the Information in Issue to determine whether it has commercial value. As set out at paragraph 38, the Information in Issue is a high level summary which contains very basic information and general descriptions and covers only a short time period. I do not consider that limited and general details of the CEO's travel and associated expenses over a short time period are valuable for the purposes of providing superannuation products, important for the profitability or viability of a continuing business operation, nor do I consider that a genuine 'arm's length' buyer would be prepared to pay to obtain the information. I invited QSuper to explain how the Information in Issue is of commercial value (eg. by suggesting what kind of party would be interested in purchasing the information), however they did not provide any further information.
46. Where I do not consider the Information in Issue is of commercial value, it is unnecessary for me to consider whether disclosure would destroy or diminish any commercial value. Therefore, I do not consider that this factor favouring nondisclosure is established.

⁶⁵ The definition of 'government' in schedule 6 of the RTI Act includes 'agency'. The Board is an agency for the purpose of the RTI Act as set out at paragraph 17 above.

⁶⁶ Schedule 4, part 4, item 7(1)(b) of the RTI Act.

⁶⁷ Cannon at [54].

⁶⁸ Cannon at [55].

Prejudice to competitive commercial activities of an agency

47. QSuper submitted that disclosure of the Information in Issue could reasonably be expected to prejudice the competitive commercial activities of an agency.⁶⁹ For the reasons set out at paragraphs 36 to 40 above, I do not consider that this factor favouring nondisclosure is established.

Balancing the public interest factors

48. Despite QSuper's objection to the release of the Information in Issue, it has not provided evidence to demonstrate that any factors favouring nondisclosure could reasonably be expected to result from the disclosure of the Information in Issue. Therefore, I consider no factors favouring nondisclosure apply. In these circumstances, even if there were no factors favouring disclosure, the prodisclosure bias of the RTI Act would weigh in favour of disclosure. However, I consider that a moderate weight attaches to the public interest factors favouring disclosure that relate to promoting open discussion of public affairs, enhancing the Government's accountability and contributing to positive and informed debate on important issues or matters of serious interest. Therefore, I consider disclosure of the Information in Issue would not, on balance, be contrary to the public interest.⁷⁰

DECISION

49. For the reasons set out above, I set aside the Board's decision and find that there is no basis to refuse access to the Information in Issue under the RTI Act.
50. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Clare Smith
Right to Information Commissioner

Date: 14 December 2015

⁶⁹ Schedule 4, part 3, item 17 of the RTI Act.

⁷⁰ Sections 47(3)(b) and 49, and schedule 4 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
25 March 2015	Access application received by Queensland Treasury.
26 March 2015	Application transferred to the Board from Queensland Treasury.
6 May 2015	Queensland Treasury, on behalf of the Board, issued its decision to the applicant.
7 May 2015	OIC received the applicant's external review application. OIC notified Queensland Treasury and the applicant that the external review application had been received and requested copies of relevant procedural documents.
14 May 2015	OIC received a copy of the relevant procedural documents from Queensland Treasury.
19 May 2015	Queensland Treasury confirmed that the agency for the purpose of the review is the Board.
22 May 2015	OIC notified the applicant and Queensland Treasury of its acceptance of the external review application and requested a copy of the Information in Issue.
5 June 2015	OIC received a copy of the Information in Issue from Queensland Treasury.
12 June 2015	OIC requested further information from QSuper about the searches conducted for the requested documents.
25 June 2015	OIC received QSuper's response to the request for further search information.
26 June 2015	OIC requested further search information from QSuper.
2 July 2015	QSuper provided OIC with search records and signed certifications and OIC made verbal enquiries with QSuper.
9 July 2015	OIC conveyed a preliminary view to QSuper that disclosure of the Information in Issue would not, on balance, be contrary to the public interest under the RTI Act.
31 July 2015	OIC received QSuper's response objecting to OIC's preliminary view.
8 September 2015	OIC received further oral submissions from QSuper.
15 October 2015	By telephone, the applicant accepted OIC's view that the Board had taken all reasonable steps to locate relevant documents and agreed to limit the Information in Issue to part of the one located document that relates to travel expenses of the CEO.
22 October 2015	OIC conveyed a second preliminary view to QSuper that disclosure of the Information in Issue would not, on balance, be contrary to the public interest under the RTI Act.
9 November 2015	OIC received QSuper's response objecting to OIC's second preliminary view.
25 November 2015	OIC invited QSuper Limited to become a participant in the review under section 89 of the RTI Act.
1 December 2015	QSuper confirmed QSuper Limited does not wish to become a participant in the review.