



**(THIS DECISION HAS BEEN EDITED UNDER SECTION 110(7) OF THE RIGHT TO INFORMATION ACT 2009 TO REMOVE IDENTIFYING INFORMATION)**

## **Decision and Reasons for Decision**

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**Citation:** *D46 and Queensland Building and Construction Commission* [2025] QICmr 35 (16 June 2025)

**Application Number:** 317974

**Applicant:** D46

**Respondent:** Queensland Building and Construction Commission

**Decision Date:** 16 June 2025

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SCOPE OF APPLICATION - IRRELEVANT INFORMATION - request for documents about building works at the applicant's property - whether information falls outside the scope of the application - whether information may be deleted on the basis it is irrelevant - section 88 of the *Information Privacy Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications with agency's internal and external legal advisers - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - waiver and improper purpose - whether access to information may be refused on the basis that it is exempt - section 67(1) of the *Information Privacy Act 2009* (Qld) and 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 - CONTRARY TO PUBLIC INTEREST INFORMATION - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - whether access may be refused to a document on the basis that other access is available - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(f) and 53 of the *Right to Information Act 2009* (Qld)

**ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - 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 - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(e) and 52(1) of the *Right to Information Act 2009* (Qld)**

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Queensland Building and Construction Commission (**QBCC**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) to access a wide range of documents, which generally concern building works performed at her property.<sup>1</sup>
2. On 20 November 2023, QBCC issued a notice of intention to refuse to deal with the Access Application,<sup>2</sup> as QBCC considered the work involved in dealing with it would, if carried out, substantially and unreasonably divert QBCC's resources from their use in the performance of QBCC's functions.<sup>3</sup> Consultation then occurred between the applicant and QBCC about the terms of the Access Application and agreement was reached on the terms of a narrowed application which QBCC confirmed it was able to process (**Narrowed Application**).<sup>4</sup>
3. QBCC located 6946 pages and 44 audio documents as relevant to the Narrowed Application. Of those located documents, QBCC released 6364 pages and 43 audio documents and decided<sup>5</sup> (**Original Decision**) to refuse access, on various grounds, to 476 pages and parts of 106 pages and 1 audio document.<sup>6</sup>
4. The applicant applied to QBCC for an internal review of the Original Decision.<sup>7</sup> As QBCC did not make an internal review decision within the statutory timeframe, it was taken to have affirmed the Original Decision.<sup>8</sup>
5. The applicant then applied<sup>9</sup> to the Office of the Information Commissioner (**OIC**) for external review and raised concerns that QBCC had not located all relevant documents.
6. For the reasons set out below, I vary the decision under review and find that:
  - certain information falls outside the scope of, or is irrelevant to, the Narrowed Application<sup>10</sup>

<sup>1</sup> The access application is dated 24 October 2023 (**Access Application**). It nominated 17 specific categories of requested documents. The Access Application also nominated a timeframe of '1 November 2020 to when the Application is processed by RTI'.

<sup>2</sup> The notice was issued pursuant to section 61 of the IP Act.

<sup>3</sup> In the notice, QBCC estimated that in excess of 21,000 pages of documents and 80 audio files would be responsive to the Access Application.

<sup>4</sup> QBCC confirmed the terms of the Narrowed Application in its 18 December 2023 email to the applicant.

<sup>5</sup> Decision dated 9 February 2024.

<sup>6</sup> QBCC also deleted irrelevant information from 4 pages of the located documents.

<sup>7</sup> On 6 March 2024. In emails sent to QBCC dated 2 and 4 April 2024, the applicant raised additional matters she sought addressed on internal review. Accordingly, in this decision, I have collectively referred to the applicant's 6 March 2024, 2 April 2024 and 4 April 2024 requests as the **Internal Review Application**.

<sup>8</sup> Pursuant to 97(2) of the IP Act. QBCC's letter to the applicant dated 5 April 2024 confirmed this.

<sup>9</sup> By letter dated 27 April 2024 (**External Review Application**).

<sup>10</sup> Section 88 of the IP Act.

- some information comprises exempt information and access to it may be refused<sup>11</sup>
- access may be refused to certain information on the basis that disclosure would, on balance, be contrary to the public interest<sup>12</sup>
- access may be refused to one document, as other access to it is available,<sup>13</sup> and
- access to any further documents relevant to the Narrowed Application may be refused on the basis they do not exist.<sup>14</sup>

## Background

7. The agreed terms of the Narrowed Application were recorded as follows:

*All documents for all files for Matters 4 & 6, excluding:  
Correspondence from [the applicant] to the QBCC.  
Correspondence from the QBCC to [the applicant]  
Any duplicate audios.  
Any duplicate documents, where these are able to be identified.*

8. The relevant QBCC files for Matters 4 and 6, as referenced above, had previously been identified as part of a table QBCC emailed to the applicant on 14 November 2023. I have extracted the relevant parts of that table below:

Matter	4	6
Parent Case #	[file number]	[file number]
Claims #	[file number]	[file number]
IRU(s)	[file number] [file number] [file number] [file number] [file number]	[file number] [fil number]
Externals review	GAR[number]	

## Reviewable decision

9. The decision under review is the decision QBCC is taken to have made under section 97(2) of the IP Act, affirming the Original Decision.

## Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). The significant procedural steps taken by OIC in conducting this review are set out in the Appendix.
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression<sup>15</sup> (which includes the right to seek and receive information) and the right to privacy and reputation.<sup>16</sup> I consider a decision-maker will be '*respecting, and acting compatibly with*' these rights, and others prescribed in the HR Act, when

<sup>11</sup> Under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the *Right to Information Act 2009* (Qld) (**RTI Act**). Section 67(1) of the IP Act sets out that an agency may refuse access to information in the same way and to the same extent that the agency could refuse access to the document under section 47 of the RTI Act were the document the subject of an access application under the RTI Act.

<sup>12</sup> Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>13</sup> Under section 67(1) of the IP Act and sections 47(3)(f) and 53(a) of the RTI Act.

<sup>14</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

<sup>15</sup> Section 21 of the HR Act.

<sup>16</sup> Section 25 of the HR Act.

applying the law prescribed in the RTI Act.<sup>17</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent Victorian legislation,<sup>18</sup> that *'it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act'*.<sup>19</sup>

## Information in issue

12. In the External Review Application, the applicant confirmed that she did not seek to access the redacted bank account details of a particular individual.<sup>20</sup> While the applicant indicated she sought access to all the remaining information which had not been disclosed to her, the External Review Application referenced deleted irrelevant information on only three pages,<sup>21</sup> whereas the schedule to the Original Decision identified that information had been deleted as irrelevant on four pages.<sup>22</sup>
13. During the review, the applicant confirmed that she no longer sought access to small portions of information deleted as irrelevant on two pages,<sup>23</sup> small portions of information redacted on a further two pages<sup>24</sup> and the redacted mobile telephone numbers of two specified individuals.<sup>25</sup>
14. The applicant otherwise maintained her request to access all the remaining located information which had not been disclosed to her—in effect, submitting that she is entitled under the IP Act to access, in its entirety, all the information she requested. The information which remains for consideration (**Information in Issue**) broadly comprises:
  - the remaining information which QBCC deleted on the basis that it is irrelevant to the Narrowed Application<sup>26</sup> and a three page document<sup>27</sup> to which access was refused by QBCC (**Irrelevant Information**)
  - information to which QBCC refused access on the basis it comprised exempt information (**Category A Information**)<sup>28</sup>
  - a one page property search document (**Search Document**);<sup>29</sup> and
  - the remaining information redacted by QBCC (**Category B Information**).

<sup>17</sup> XYZ v Victoria Police (General) [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

<sup>18</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>19</sup> XYZ at [573]. This approach was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner 'was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.'

<sup>20</sup> This refused portion of information appears on page 17 in the file titled *Legal GAR[number] ECM A*.

<sup>21</sup> Which were subsequently identified in the applicant's submissions as being the information deleted as irrelevant on pages 2754 and 2772 in the file titled *[file number] ECM* and page 4 in the file titled *[file number] Case Notes*.

<sup>22</sup> The irrelevant information not referenced in the External Review Application appears on page 1192 in the file titled *[file number] Claims ECM (Additional Deletion)*.

<sup>23</sup> In the Applicant's submission dated 13 January 2025, she confirmed that she no longer sought access to portions of information deleted as irrelevant on pages 2754 and 2772 in the file titled *[file number] ECM*.

<sup>24</sup> In the Applicant's submission dated 13 January 2025, she confirmed that she no longer sought access to the health information of a private individual appearing on pages 287 and 289 in the file titled *[file number] Claims ECM*.

<sup>25</sup> Applicant's submission dated 13 January 2025. These excluded mobile telephone numbers were the only refused information on page 3250 in the file titled *[file number] ECM*; page 1121, 1122, 1129, 1138, 1139, 1152 and 1153 in the file titled *[file number] Claims ECM*. Accordingly, those pages are no longer in issue and are not addressed in these reasons for decision.

<sup>26</sup> Being a portion of information deleted on page 4 in the file titled *[file number] Case Notes* and the Additional Deletion.

<sup>27</sup> Pages 18-20 in the file titled *[file number] ECM*.

<sup>28</sup> This information appears on pages 2813-2857, 2859, 2861-2863, 2865-2867, 2875-2878, 2884-2893, 2906-2907, 3224, 3234-3235, 3260 and 3315 in the file titled *[file number] ECM*; pages 1023 and 1024 in the file titled *[file number] Claims ECM*; pages 254-257 in the file titled *Legal-GAR[number] ECM*; pages 303-312, 323-368, 379-381, 383-386, 387-598 and 599-606 in the file titled *Legal-GAR[number] ECM A*.

<sup>29</sup> Identified in the schedule to the Original Decision as page 431 in the file titled *[file number] ECM*.

## Issues for determination

15. The issues for determination are whether:

- the Irrelevant Information is outside the scope of the Narrowed Application or has been validity deleted under section 88 of the IP Act
- the Category A Information comprises exempt information and access to it may be refused on that basis<sup>30</sup>
- disclosure of the Category B Information would, on balance, be contrary to the public interest and access to it may be refused on that basis<sup>31</sup>
- access may be refused to the Search Document as other access to it is available; and
- access to further documents relevant to the Narrowed Application may be refused on the basis that they do not exist or cannot be located.<sup>32</sup>

## General submissions made by the applicant

16. I have addressed below the applicant's submissions which relate to the issues for determination. However, the applicant has also made submissions of a more general nature, mainly in respect of the external review process, and I address those here.

### ***Request to confirm relevance of certain information to other access applications***

17. The applicant has made a number of access applications to QBCC, both under the IP Act and the RTI Act, which relate (generally) to the same subject matter. In this context, the applicant has sought confirmation in this external review that certain information will be disclosed in connection with her other access applications.<sup>33</sup> This is not OIC's role in this external review. Here, and as noted in paragraph 15 above, the issues for determination concern the applicant's entitlement under the IP Act to access information relevant to the Narrowed Application. Whether, or not, the applicant has an entitlement to access particular documents (or information) in response to a separate access application is a question that is beyond the scope of this external review.

### ***The external review process***

18. The applicant has generally asserted that, in respect of the Information in Issue, she is in a '*disadvantageous position*'<sup>34</sup> on external review because she does not '*know what the documents are, as they have been redacted*' and she does not '*have a date range*'.<sup>35</sup> More specifically, the applicant argued that it was difficult for her to make submissions '*when QBCC and OIC can see the documents, but the applicant can't*'.<sup>36</sup> The applicant also continued to seek access to duplicate documents I had identified, because she did not '*personally know that they were duplicates*',<sup>37</sup> notwithstanding the Narrowed Application specifically excluded (my emphasis) '*[a]ny duplicate documents, where these are able to be identified*'.<sup>38</sup> The applicant's submissions in this regard appear to

<sup>30</sup> Sections 47(3)(a) and 48 of the RTI Act.

<sup>31</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>32</sup> Sections 47(3)(e) and 52(1) of the RTI Act.

<sup>33</sup> For example, in the applicant's submission dated 13 January 2025.

<sup>34</sup> Applicant's submission dated 19 August 2024.

<sup>35</sup> Applicant's submission dated 19 August 2024. Similarly, in the applicant's submission dated 13 January 2025 she stated: *One of the issues for me in this process is how am I supposed to know that I don't have what I don't know about.*

<sup>36</sup> Applicant's submission dated 13 January 2025.

<sup>37</sup> Applicant's submission dated 19 August 2024.

<sup>38</sup> See paragraph 7.

stem from a misunderstanding of the Information Commissioner's role on external review and the manner in which an external review application proceeds.<sup>39</sup>

19. External review under the IP Act is a merits review process.<sup>40</sup> After conducting an external review of an agency's decision under the IP Act (in circumstances where the review is unable to be resolved without a formal decision<sup>41</sup>), the Information Commissioner is required to decide, in a written decision, whether the agency's decision should be affirmed, varied or set aside.<sup>42</sup> As the Queensland Civil and Administrative Tribunal (**QCAT**) has noted, the role of the Information Commissioner, 'as an independent specialist',<sup>43</sup> is to conduct an examination of the information in question and 'decide whether or not there was a right to access' in accordance with the IP Act.<sup>44</sup>
20. Here, the schedule to the Original Decision identifies the general nature of the information which was not disclosed by QBCC and the basis upon which it was not disclosed. The Narrowed Application also nominated the date range for the documents sought by the applicant. Notwithstanding this, the applicant requested (on a number of occasions) that further, specific details be provided to her, particularly about the Category A Information. For example, in the External Review Application, the applicant submitted:<sup>45</sup>

*Unless I am informed more about all the documents for which LPP is claimed eg the date of the document, the purpose of why the document was created (noting that the QBCC letter dated 9 February 2024 refers to the "dominant purpose") and who the information was provided to and from, I am unable to assess whether the documents contain exempt information and if they do, whether only part or the whole of the document should not be provided. ... I also need to know the author of the documents for eg Legal Officer/Lawyer.*

21. Section 121 of the IP Act imposes clear restrictions upon the level of detail that the Information Commissioner (or their delegate) can provide to an applicant about the nature and content of information that an agency claims to be exempt information or contrary to the public interest information. When explaining the external review process, and the effect of section 121 of the IP Act, to the applicant,<sup>46</sup> I also noted that, when considering a similar request for provision of a detailed list of exempt documents, QCAT has confirmed that, on external review, the Information Commissioner was not required to provide an applicant with a list describing documents claimed to be exempt.<sup>47</sup> During the review, I also conveyed preliminary views to the applicant to broadly identify the

<sup>39</sup> In responding to the applicant's 19 August 2024 submissions in this regard, I explained the external review process and the Information Commissioner's external review powers to the applicant in a letter dated 22 August 2024. I also note that the attachments to other letters sent to the applicant (such as those dated 5 June 2024, 4 July 2024 and 20 November 2024) provided general information about the external review process.

<sup>40</sup> 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. The Court of Appeal noted in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 that section 118 of the IP Act 'provides for the relevant form of review to be merits review' (per Justice Holmes at [12]). Similarly, in *Mokbel v Queensland Police Service* [2023] QCATA 158 (**Mokbel**) at [12] and *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34 at [2], Judicial Member McGill confirmed that external review under the IP Act is a merits review process.

<sup>41</sup> As contemplated in section 103 of the IP Act.

<sup>42</sup> Section 123(1) of the IP Act.

<sup>43</sup> **Mokbel** at [12].

<sup>44</sup> **Mokbel** at [12].

<sup>45</sup> The applicant made similar statements in her other submissions. In the applicant's submission dated 19 August 2024, she asked: 'Are you able to tell me what the legal advice was on ie dominant purpose test?' and in her submission dated 13 January 2025, she reiterated the request in the External Review Application as follows: 'I need to know the dates of the documents for which it is said LPP is claimed, the purpose and who the information was provided to and from and the author of the documents. Could you please provide this information to me.'

<sup>46</sup> In letters dated 4 July 2024, 22 August 2024 and 15 January 2025.

<sup>47</sup> **Mokbel** at [8]-[12].

nature of the Information in Issue and explain the basis upon which it was not disclosed.<sup>48</sup> When doing this, I invited the applicant to provide submissions if she wished to contest those preliminary views. The applicant has provided a number of submissions to OIC in support of her position.

22. In the circumstances of this matter, the applicant has been appraised of the general nature of the Information in Issue (and the basis upon which it has been deleted or refused) and has been afforded a number of opportunities to put forward submissions supporting her position. As a result, I am satisfied that the applicant was able to properly respond to OIC concerning the reviewable issues in this matter and has been afforded due process in this review.
23. The applicant has confirmed that she is currently involved in a number of proceedings before QCAT. In this context, the applicant submitted<sup>49</sup> that, as the other parties to those proceedings have access to unredacted documents, she considers it is important that she obtains the information/documents requested in the Narrowed Application.<sup>50</sup> In this regard, it is relevant to note that the IP Act was not designed to serve as an adjunct to court disclosure processes<sup>51</sup> or as a mechanism for ensuring that all parties to a court proceeding have the same documents in their possession.<sup>52</sup>
24. The applicant has also raised concerns about the setting of timelines for her responses during external review process, including that she has felt '*rushed*' to provide submissions.<sup>53</sup> In the context of the court processes in which she is involved, the applicant submitted that she '*must triage all the demands and time limits put upon [her] [by various government departments]*' and her responses in those court proceedings '*must take priority*'<sup>54</sup> over responses to OIC on external review. More specifically, the applicant submitted that:<sup>55</sup>

*There are no time limits imposed on your Department for the External Review. Therefore, I don't understand why I am given deadlines, which places pressure and stress on me at this time, given everything else I have to do.*

25. Under the IP Act, the procedure to be taken on external review is, subject to the Act, at the discretion of the Information Commissioner and external reviews are required to be conducted with as much expedition as the requirements of the Act, and a proper consideration of the review issues, allow.<sup>56</sup> I acknowledge the applicant may be subject to timeframes nominated by QCAT in the separate proceedings she has referenced in her submissions. However, an applicant simultaneously pursuing an external review application and separate court (or complaint) processes is not an unusual situation and I do not accept that such a situation correlates to a requirement that OIC set no

<sup>48</sup> As set out in the Appendix. 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.

<sup>49</sup> Applicant's submission dated 13 January 2025.

<sup>50</sup> In the applicant's submission dated 13 January 2025, she also stated that, in her view, QBCC had not disclosed all relevant documents in the QCAT proceedings. The adequacy, or otherwise, of information disclosed in separate court processes is a matter OIC has no jurisdiction to address on external review.

<sup>51</sup> *Phyland and Department of Police* (Unreported, Queensland Information Commissioner, 31 August 2011) at [24], cited with approval in *Endeavour Foundation and Department of Communities, Child Safety and Disability Services; 32SGRU (Third Party)* [2017] QICmr 37 (31 August 2017) at [28].

<sup>52</sup> It is not the Information Commissioner's role on external review to determine what unredacted information may be in the possession of other parties to a court process or ensure that an applicant, as a party to the court process, has access to that same information.

<sup>53</sup> Applicant's submission dated 18 August 2024.

<sup>54</sup> Applicant's email dated 28 November 2024. I note this comment was made in the context of a request for further time to respond to OIC and an extension of time was granted to the applicant.

<sup>55</sup> Applicant's submission dated 19 August 2024. The applicant made a similar submission on 13 January 2025.

<sup>56</sup> Section 108(1) of the IP Act.

timeframes for an applicant's responses. As I have noted above, details of OIC's external review process were notified to the applicant on a number of occasions.<sup>57</sup> As demonstrated in the Appendix, the applicant was also granted a number of requested extensions of time for her responses. In these circumstances, I am satisfied that the applicant was afforded appropriate response timeframes, which enabled her to respond to OIC about the reviewable issues.

26. In respect of the applicant's concerns about the adequacy of QBCC's searches, the applicant requested copies of the search records and certifications OIC had received and the identity of QBCC staff who had conducted certain searches and inquiries. As noted above, the procedure to be taken on external review is at the discretion of the Information Commissioner. Under the determined external review procedure, the substance of a participant's submissions is conveyed to the other review participants—copies of received submissions are not ordinarily provided to other review participants.<sup>58</sup> In this review, the substance of QBCC's search submissions was conveyed to the applicant (including a summary of the content of the received search records and certifications) and the applicant was afforded the opportunity to put forward her submissions.<sup>59</sup> In these circumstances, I am satisfied that the applicant was able to properly respond to OIC about the issue concerning QBCC's searches and it was not necessary to also provide the applicant with copies of the received QBCC search records or further details about the individual QBCC officers who had conducted searches of QBCC's record keeping systems.
27. The applicant also requested release of the Information in Issue on her understanding that OIC was able to give access to documents even if the Act provided that access may be refused.<sup>60</sup> This request misapprehends the powers which are legislatively afforded to the Information Commissioner on external review. While the Information Commissioner is empowered under section 118 of the IP Act decide any matter in relation to an access application that could have been decided by an agency,<sup>61</sup> that provision also specifically confirms that, if information is established to be exempt or contrary to the public interest information, the Information Commissioner does not have power to direct that access be given to such information.<sup>62</sup>
28. In respect of the Category B Information, the applicant requested an explanation about why authorisation was not sought '*from the individuals concerned*' to facilitate disclosure of information to her.<sup>63</sup> I explained to the applicant that the IP Act does not require a decision-maker to seek the 'authorisation' of other individuals to the disclosure of their information.<sup>64</sup> Notwithstanding this, the applicant again questioned '*why weren't the views of third parties sought, as there is a pro-bias disclosure*'.<sup>65</sup> While I acknowledge the IP Act is to be administered with a pro-disclosure bias,<sup>66</sup> section 56 of the IP Act prescribes the circumstances in which the views of other individuals are obtained to the

<sup>57</sup> In letters dated 4 July 2024, 22 August 2024 and 15 January 2025. General information about the external review process was also provided to the applicant in the attachments to OIC's letters dated 5 June 2024, 4 July 2024 and 20 November 2024.

<sup>58</sup> This was confirmed when the applicant was notified about OIC's processes in the attachments to OIC's letters dated 4 July 2024 and 20 November 2024.

<sup>59</sup> This was confirmed to the applicant when I notified her, on 15 January 2025, that the requested copies of QBCC's search records and certifications would not be provided. As the preliminary view identified a number of QBCC officers who conducted searches for specific documents the applicant considered to be missing, I do not consider it necessary to provide any further identification of the individual officers who conducted searches for responsive documents.

<sup>60</sup> Applicant's submission dated 19 August 2024.

<sup>61</sup> Section 118(1)(b) of the IP Act.

<sup>62</sup> Section 118(2) of the IP Act. I notified the applicant as to the effect of this provision on 22 August 2024. In this decision, I have separately addressed the applicant's further contention that, as the terms of section 118(2) of the IP Act do not extend to documents for which other access is available, the Information Commissioner has discretion to disclose the Search Document on external review.

<sup>63</sup> Applicant's submission dated 19 August 2024.

<sup>64</sup> On 20 November 2024.

<sup>65</sup> Applicant's submission dated 13 January 2025.

<sup>66</sup> Section 64 of the IP Act.



proposed disclosure of information. As those circumstances did not arise in this matter, there was no requirement to undertake such consultation during the external review.

29. Finally, the applicant alluded to concerns she holds about QBCC's '*impartiality, transparency and procedural fairness*'.<sup>67</sup> The IP Act does not give OIC jurisdiction to investigate complaints about an agency's conduct or processes, or the way it has handled a particular application.<sup>68</sup> Accordingly, I cannot address the applicant's concerns in this regard.

## Irrelevant Information

### Relevant law

30. Under the IP Act, an individual has a right to be given access to documents of a Queensland government agency, to the extent they contain the individual's personal information.<sup>69</sup> Accordingly, a document will be outside the scope of an access application made under the IP Act if it does not contain the applicant's personal information.<sup>70</sup>
31. Section 88 of the IP Act also permits information that is not relevant to the access application to be deleted from the document before giving access to a copy of the document. This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.<sup>71</sup>
32. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the relevant access application.<sup>72</sup>

### Findings

33. While it is unclear whether the applicant sought to access the Additional Deletion via the external review process, I can confirm that it comprises a small portion of information (in one line of text within a disclosed table) which references a court proceeding that is entirely unrelated to the applicant or her property.<sup>73</sup> Having considered the terms of the Narrowed Application, I am satisfied that the Additional Deletion is not relevant to the Narrowed Application and was validly deleted by QBCC.<sup>74</sup>
34. In the Original Decision, QBCC noted that it had deleted as irrelevant '*a case note which related to a different person's dispute, which was placed on the incorrect file*'. Having reviewed that information, I confirmed to the applicant that this component of the Irrelevant Information was of the nature described in the Original Decision. In response,

<sup>67</sup> Applicant's submission dated 13 January 2025. The applicant indicated, in this submission, that she could provide particulars about these concerns, however, she did not provide any further details or supporting information.

<sup>68</sup> While section 126 of the IP Act empowers the Information Commissioner, in certain circumstances, to take specified disciplinary action at the conclusion of an external review, the RTI Act does not require an applicant to be notified about whether, or not, such disciplinary action is taken in any particular case.

<sup>69</sup> Section 40 of the IP Act.

<sup>70</sup> '*Personal information*' is defined in section 12 of the IP Act as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

<sup>71</sup> *Wyeth and Queensland Police Service* [2015] QICmr 26 at [12].

<sup>72</sup> *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) (*Van Veenendaal*) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

<sup>73</sup> It is therefore of the same nature as the irrelevant information which the applicant confirmed she did not seek to access on external review (as referenced in paragraph 13 above).

<sup>74</sup> Under section 88 of the IP Act.

the applicant submitted that she continued to seek access to this component of the Irrelevant Information *'if it relates to the builder and is captured by any of [the applicant's] other access applications'*.

35. As part of the merits review process, I also identified that a three page document, to which QBCC had refused access, was not relevant to the terms of the Narrowed Application.<sup>75</sup> I notified the applicant of this and, in response, the applicant confirmed that she continued to seek access to this document and requested confirmation of whether it would be reviewed in a separate external review matter.
36. As mentioned in paragraph 17 above, in this external review, I am only considering the applicant's entitlement to access information which is relevant to the Narrowed Application. Having carefully considered the terms of the Narrowed Application and the information referenced in the preceding two paragraphs, I am satisfied that:
- the portion of Irrelevant Information referenced in paragraph 34 above is not relevant to the terms of the Narrowed Application (as it does not relate in any way to the applicant or her property) and it has been validly deleted<sup>76</sup> from the documents that QBCC has disclosed; and
  - the remaining Irrelevant Information (being a three page document) is not relevant to the applicant's request, as it does not relate to matters 4 or 6 (as nominated in the Narrowed Application), and it therefore falls outside the scope of the Narrowed Application.
37. For these reasons, I find that the applicant is not entitled under the IP Act to access the Irrelevant Information.

### Category A Information

38. In the Original Decision, QBCC described the Category A Information as consisting of *'communications relating to legal advice prepared by QBCC, as well as communications in relation to QBCC preparation for and conduct of litigation by QBCC external lawyers'*.<sup>77</sup> As is evident from the terms of the Narrowed Application, the applicant's request encompasses documents related to the 'GAR' file referenced in paragraph 8, which concerns a review process commenced in QCAT.
39. On external review, while QBCC maintained that the Category A Information comprised exempt information, the applicant does not accept that legal professional privilege applies.

### Relevant law

40. The right of access under the IP Act is subject to limitations, including the grounds on which access to information may be refused.<sup>78</sup> One ground of refusal is where information comprises exempt information. Schedule 3 of the RTI Act identifies the types of information which Parliament has determined will comprise exempt information under the RTI Act.

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<sup>75</sup> Under section 118(1)(b) of the IP Act, the Information Commissioner (or her delegate) may rely on IP Act (or, where relevant, RTI Act) provisions which are different to those relied upon by the agency in the decision under review.

<sup>76</sup> Under section 88 of the IP Act.

<sup>77</sup> In the External Review Application, the applicant noted that the Original Decision also referred to the refused exempt information including copies of non-privileged documents which were made for the explicit purpose of obtaining legal advice, or the conduct of litigation.

<sup>78</sup> The grounds on which access can be refused are set out in section 47 of the RTI Act. As noted above, section 67(1) of the IP Act provides that access may be refused to information in the same way and to the same extent as information may be refused under the RTI Act.

41. Information will comprise exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.<sup>79</sup> 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.<sup>80</sup> The dominant purpose has been described as ‘the ruling, prevailing or most influential purpose’,<sup>81</sup> and it is to be determined objectively.<sup>82</sup> The privilege:
- will extend to copies of unprivileged documents made for the dominant purpose of obtaining legal advice;<sup>83</sup> and
  - may protect communications between salaried employee legal advisers of a government department or statutory authority and his/her 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.<sup>84</sup>
42. 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 IP Act.

### Findings

43. While the IP Act limits the extent to which I can describe the Category A Information in this decision,<sup>85</sup> having carefully reviewed it, I can confirm that the Category A Information broadly comprises:
- requests for legal advice
  - internal legal advice provided by QBCC legal officer/s and internal references to the seeking/provision of such internal legal advice; and
  - correspondence between QBCC and its external lawyers seeking/providing legal advice in relation to then existing legal proceedings and internal references to the seeking/providing of such external legal advice.
44. I can also confirm there is a level of duplication within the Category A Information.
45. There is no evidence before me to indicate that the Category A Information has been disclosed outside of the lawyer-client relationship. I am satisfied that this information is confidential. I am also satisfied that the necessary professional relationship exists between QBCC (as the client) and both its internal and external legal advisers, and that the communications were created for the dominant purpose of seeking or providing legal

<sup>79</sup> Schedule 3, section 7 of the RTI Act. This exemption reflects the requirements for establishing legal professional privilege at common law.

<sup>80</sup> *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 at page 73; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at page 552. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] 265 CLR 646 at page 659-660.

<sup>81</sup> *Commissioner of Taxation (Cth) v Spotless Services Ltd* (1996) 186 CLR 404 at page 416.

<sup>82</sup> In *AWB Limited v Cole (No 5)* (2006) 155 FCR 30 at [50], Justice Young observed that ‘[d]ominant purpose is a question of fact that must be determined objectively’.

<sup>83</sup> As confirmed by the High Court in *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 (*Propend*) at page 509 (Brennan CJ).

<sup>84</sup> *Waterford v Commonwealth* (1987) 163 CLR 54 at page 63-64 per Mason and Wilson JJ.

<sup>85</sup> Section 121(3) of the IP Act.

advice, or for use in existing or reasonably anticipated legal proceedings. Therefore, after careful review of the Category A Information, I am satisfied that it meets the requirements for legal professional privilege.

46. At common law, a person who would otherwise be entitled to the benefit of legal professional privilege (in this case, QBCC) may waive the privilege.<sup>86</sup> However, once a factual basis for a claim of legal professional privilege has been established, the party asserting that privilege has been waived bears the onus of establishing such waiver.<sup>87</sup> Additionally, while legal professional privilege will not apply to legal communications made in the furtherance of a fraud or crime,<sup>88</sup> a person alleging legal professional privilege is lost for reasons of illegality must do more than make vague or generalised contentions of crimes or improper purpose.<sup>89</sup>
47. The applicant referred generally to the legal principles concerning waiver and illegality,<sup>90</sup> however, she offered no evidence that legal professional privilege in the Category A Information has been waived (either expressly or impliedly) by QBCC or that any communication within the Category A Information was created in furtherance of an illegal, improper or dishonest purpose. Having carefully considered the applicant's submissions and the content of the Category A Information, I am satisfied that legal professional privilege in the Category A Information has not been expressly or impliedly waived by QBCC and there is nothing before me which suggests that the improper purpose exception arises in this matter to displace legal professional privilege in any of the Category A Information.
48. For the above reasons, I am satisfied that the Category A Information meets the requirements of legal professional privilege and that no qualification or exception to the privilege arises in respect of that information. Accordingly, I find that access to the Category A Information may be refused, as it comprises exempt information.<sup>91</sup>
49. For completeness, I also note the applicant's request that, where copies of non-privileged documents were made for the purpose of obtaining legal advice, I provide confirmation to her about whether the 'originals' (and copies) of such documents had been disclosed in response to the Narrowed Application.<sup>92</sup> In effect, the applicant's request is that I identify specific components of the Category A Information to her. As noted in paragraph 21 above, section 121 of the IP Act precludes me from doing this.

## Category B Information

50. QBCC described the Category B Information as being the personal information of 'third party individuals'; information concerning the business or financial affairs of a

<sup>86</sup> *Mann v Carnell* (1999) 201 CLR 1 (**Mann**) at page 13 (Gleeson CJ, Gaudron, Gummow and Callinan JJ). Waiver may be express (eg by the deliberate and intentional disclosure of the privileged communication to persons outside the relationship of privilege) or implied (eg where the conduct of the person entitled to the benefit of privilege is inconsistent with the maintenance of privilege (refer to *Mann* at page 13 and *Osland v Secretary, Department of Justice* [2008] 234 CLR 275 at page 296-297 (Gleeson CJ, Gummow, Heydon and Kiefel JJ)).

<sup>87</sup> *Sanrus Pty Ltd & Ors v Monto Coal 2 Pty Ltd & Ors* [2019] QSC 144 at [28], citing *New South Wales v Betfair Pty Ltd* (2009) 180 FCR 543 at 556 [54].

<sup>88</sup> *Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Limited & Ors* [2014] QSC 303 (**Fletcher**) at [51].

<sup>89</sup> *Propend* at 591. In *Fletcher* at [61], McMurdo J observed that a party alleging legal professional privilege does not apply is required to establish 'a prima facie case' that the relevant communications were for the purpose of facilitating the alleged misconduct.

<sup>90</sup> Applicant's submission dated 19 August 2024.

<sup>91</sup> Under sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

<sup>92</sup> In the External Review Application, the applicant requested more detail about the copies of non-privileged documents made for the purpose of obtaining legal advice and submitted that the originals of such non-privileged documents should be released to her. In her submission dated 13 January 2025, the applicant stated: *The letter from QBCC dated 9 February 2024 said there were copies of non-privileged documents made for the purpose of obtaining advice, have the originals or other copies of those been disclosed to me?*

number of entities; and quotes, tender assessments and internal discussion of quotes.<sup>93</sup> The schedule to the Original Decision also provides further details about the Category B Information. Again, I am constrained<sup>94</sup> as to the level of detail I can provide about the Category B Information in this decision, however, it broadly includes:

- contact details of individuals other than the applicant (such as email addresses and direct/mobile telephone numbers)
- health and personal circumstance information of individuals other than the applicant<sup>95</sup>
- images of individuals other than the applicant<sup>96</sup>
- personal information of QBCC staff<sup>97</sup>
- the opinions and feelings of individuals other than the applicant; and
- quotes/tender assessments and other business related information.

51. I can also confirm that there is a notable level of duplication within the Category B Information.

### **Relevant law**

52. Access to information may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>98</sup> The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests.<sup>99</sup>

53. In deciding whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:<sup>100</sup>

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

54. Schedule 4 of the RTI Act contains non-exhaustive 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 before me, in reaching my decision. I have also kept in mind Parliament's requirement that grounds for refusing access to information be interpreted narrowly<sup>101</sup> and that the IP Act is to be administered with a pro-disclosure bias.<sup>102</sup>

<sup>93</sup> Original Decision.

<sup>94</sup> By section 121 of the IP Act.

<sup>95</sup> As noted in the Original Decision, portions of information of this nature appear on pages 1-4 in file titled [file number] *Case Notes A*; pages 719, 720, 724, 729, 730, 734, 740, 744, 745, 747, 751, 753, 757, 758, 760, 765, 766, 768, 772, 773, 775, 791, 793, 794, 796, 797 and 951 in the file titled [file number] *ECM*; page 288 in the file titled [file number] *Claims ECM*; and in the partially disclosed audio recording.

<sup>96</sup> These images were redacted on five pages, as noted in the schedule to the Original Decision.

<sup>97</sup> As noted in the Original Decision, information of this nature was deleted on pages 6, 9, 33-36, 305, 309, 315, 318, 800 and 802 in the file titled [file number] *ECM*.

<sup>98</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>99</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>100</sup> Section 49 of the RTI Act.

<sup>101</sup> Section 47(2)(a) of the RTI Act.

<sup>102</sup> Section 64 of the IP Act.

### **Applicant's submissions**

55. The applicant submitted that, in respect of the various types of Category B Information, the public interest factors in schedule 4, part 2, items 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 16 and 17 of the RTI Act apply to favour its disclosure.<sup>103</sup>
56. The applicant more generally submitted that, as most of the Category A Information is known to her (including as a result of QBCC's investigation processes or disclosures made during the court processes in which she is involved), there is no basis for its refusal.<sup>104</sup> In this regard, I consider the following observations of Judicial Member McGill are apposite:<sup>105</sup>

*I do not consider that the mere fact that, under the pre-trial disclosure regime applicable to the appellant, certain information was provided to her in the past necessarily means that all of the same information will be properly disclosable to her now under the IP Act.*

### **Findings**

#### **Irrelevant factors**

57. As noted in the applicant's submissions, the public interest factor in schedule 4, part 1, item 1 of the RTI Act is irrelevant to deciding whether disclosure of information would, on balance, be contrary to the public interest.<sup>106</sup> I have not taken this factor, or any other irrelevant factors,<sup>107</sup> into account in making this decision.

#### **Factors favouring disclosure**

58. A small amount of the Category A Information relates to the applicant and comprises her personal information. This gives rise to a factor favouring disclosure,<sup>108</sup> to which I attribute significant weight for that personal information of the applicant. For clarity, I confirm that this factor does not apply to a significant amount of the Category B Information, which does not comprise, or include, the applicant's personal information.
59. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>109</sup>
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;<sup>110</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>111</sup>
60. As the regulator of the building and construction industry in Queensland, QBCC must be transparent in how it deals with complaints it receives about residential building work. Here, QBCC disclosed a large volume of information to the applicant in response to the

<sup>103</sup> Applicant's submission dated 13 January 2025.

<sup>104</sup> Applicant's submission dated 19 August 2024.

<sup>105</sup> *Deemal-Hall v Office of the Director of Public Prosecutions* [2024] QCATA 131 (*Deemal-Hall*) at [18].

<sup>106</sup> For example, the applicant's submission dated 13 January 2025.

<sup>107</sup> Including the remaining factors listed in schedule 4, part 1 of the RTI Act.

<sup>108</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>109</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>110</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>111</sup> Schedule 4, part 2, item 11 of the RTI Act.

Narrowed Application. I consider this disclosed information has substantially advanced the government accountability and transparency factors referenced in the preceding paragraph, by enabling scrutiny of QBCC's processes and providing contextual information to QBCC decisions which concern the subject matter of the Narrowed Application. Noting the nature of the Category B Information, I consider disclosure of some (but not all) of it could, to varying degrees, be expected to further advance these factors, as discussed below.

61. The Category B Information includes portions of health information about individuals other than the applicant. In respect of this Category B Information, the applicant submitted it was viewed and taken into account by QBCC and should be disclosed;<sup>112</sup> its disclosure '*may be relevant to the timing of events in [the applicant's] QBCC matters*'<sup>113</sup> and the content of the footer to QBCC's emails '*gives weight to information being released*'.<sup>114</sup> I note that, where this health information appears, QBCC has disclosed the surrounding information and, in almost all instances, that disclosed information confirmed what impact, if any, the health information may have had on QBCC's processes and their timeframes (for example, some of the surrounding information confirmed a relevant individual would be unavailable for a specific period). In these circumstances, I consider information relevant to how this health information was taken into account by QBCC, and any timing impacts it may have had on QBCC's processes, has already been disclosed by QBCC. Having carefully reviewed this health information (and the applicant's submissions about it), I am satisfied that its disclosure would not further advance these government accountability and transparency factors in any way. On this basis, I do not consider the public interest factors listed in paragraph 59 above apply to this component of the Category B Information.
62. In respect of other individuals' contact details and images within the Category B Information, the applicant's position is that this information should be released because information of this nature appears in documents provided to her via the court processes in which she is involved and certain contact details can be identified via a '*google search*'.<sup>115</sup> In respect of the images, the applicant further submitted that she was present when these individuals attended her property in connection with the subject matter of the Narrowed Application.<sup>116</sup> However, the applicant has not explained how she considers disclosure of this type of information would further advance government accountability and transparency. None of the individuals about whom this information relates are public sector officers. Having carefully reviewed this information and the applicant's submissions, I consider disclosing this component of the Category B Information would not further advance government accountability or transparency in any way. Accordingly, I find that these public interest factors do not apply to favour disclosure of these contact details and images within the Category B Information.
63. The applicant submitted that there were errors in how QBCC handled her matters and she considers the redacted non-work related information of QBCC officers would '*relate to or could relate to employees conduct/ability and availability at work*'.<sup>117</sup> I consider that, for most of the non-work related information of QBCC staff within the Category B Information, its disclosure would not provide information about '*employees*

<sup>112</sup> Applicant's submission dated 13 January 2025.

<sup>113</sup> External Review Application. Similarly, in her submission dated 19 August 2024, the applicant submitted that '*Health and personal information of QBCC staff and other parties might give context to other matters and events occurring at that time, particularly if they affect my file and its progress or their work performance on my file*'.

<sup>114</sup> Applicant's submission dated 13 January 2025. I note that not all Category B Information appears within email documents. To the extent the health information appears within partially disclosed email documents, not all of them contain the QBCC footer referenced in the applicant's submission.

<sup>115</sup> External Review Application and applicant's submissions dated 19 August 2024 and 13 January 2025.

<sup>116</sup> Applicant's submission dated 19 August 2024 and 13 January 2025.

<sup>117</sup> Applicant's submission dated 13 January 2025.

*conduct/ability and availability at work*', as contended by the applicant. Instead, this information comprises personal information of staff members about their activities outside work or information about their personal circumstances. I am satisfied that, given nature of this information, its disclosure would not further advance the government accountability and transparency factors in any way. For the small amount of remaining non-work related information of QBCC staff, I consider the factor in schedule 4, part 2, item 11 of the RTI Act may apply<sup>118</sup> however, I attribute only low weight to this public interest factor, given the limited nature of this information.<sup>119</sup>

64. The applicant submitted that *'[i]f comments, personal opinions or allegations are made that involve me or my house then I should be provided with the full information/document'*.<sup>120</sup> To the extent the Category B Information includes individuals' opinions about QBCC's complaint investigation processes, I consider disclosure of this information could be expected, in some way, to further advance the public interest factor in schedule 4, part 2, item 1 of the RTI Act.<sup>121</sup> However, this component of the Category B Information is quite limited in its nature and accordingly, I afford this factor only low weight. Within the Category B Information, there is also a small amount of information which records other individuals' feelings and opinions about the applicant. The applicant submitted that *'government accountability, transparency and decision making (as they were sent to QBCC)'* favours disclosure of this information. While I do not consider the factors in schedule 4, part 2, items 3 and 11 of the RTI Act apply to favour disclosure of this type of information (given its nature), I do consider disclosure of this information may, to a limited extent, further advance government accountability. Given the limited nature of this particular information, I afford the factor in schedule 4, part 2, item 1 of the RTI Act low weight in favour of its disclosure.
65. I acknowledge that the nature of the remaining components of the Category B Information is such that its disclosure could be expected to further advance the public interest factors relating to government accountability and transparency, by providing the applicant with further details about QBCC's complaint processes and a more complete picture of the information which was before QBCC when they made their decisions concerning the applicant's complaints. However, the applicant has confirmed that she already possesses certain quotes and tender assessment information, as they were provided to her in the ongoing proceedings before QCAT.<sup>122</sup> While I cannot confirm whether the information which the applicant identified as having been provided to her comprises the quotes and tender assessment components of the Category B Information (or some of them), I note that these prior disclosures have also advanced QBCC's accountability and transparency. In all these circumstances and given the particular nature of this remaining Category B Information, I afford moderate weight to these factors favouring disclosure.<sup>123</sup>
66. Under the RTI Act, public interest factors arise where disclosing information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest<sup>124</sup> and ensure effective oversight of expenditure of

<sup>118</sup> As its disclosure could provide background or contextual information concerning a QBCC decision.

<sup>119</sup> The nature of this information is such that I consider the factors in schedule 4, part 2, items 1 and 3 do not apply to favour its disclosure.

<sup>120</sup> External Review Application.

<sup>121</sup> The nature of this information is such that I consider the factors in schedule 4, part 2, items 3 and 11 do not apply to favour its disclosure.

<sup>122</sup> In the External Review Application, the applicant stated: *'I have already seen the building tender quotes relating to the original scope of works for my house from [X] (9 pages) and [Y] (6 pages) and [Z]'s assessment of the tenders (4 pages)'. In the applicant's submission dated 19 August 2024, she further submitted 'I already have the 2 Panel Builders quotes for the home warranty insurance as they are part of the QCAT material in the QBCC SOR ...I am not aware of any legislation or ruling which prevented QBCC from giving me the panel builder quotes when they came in.'*

<sup>123</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>124</sup> Schedule 4, part 2, item 2 of the RTI Act.



public funds.<sup>125</sup> The applicant has referenced these factors in her submissions. While she explained how she considered one factor applied to a particular component of the Category B Information,<sup>126</sup> she has not otherwise explained how she considers these factors are enlivened in respect of the remaining Category B Information. As noted in paragraph 1, the information requested in the access application relates (generally) to matters associated with building works undertaken at the applicant's property. While I acknowledge these matters are of particular importance to the applicant, I am not satisfied that disclosing the Category B Information could, given its nature,<sup>127</sup> 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. Given the nature of the majority of the Category B Information, I also consider that the factor in schedule 4, part 2, item 4 of the RTI Act does not apply. However, a small amount of the Category B Information concerns an estimate of costs to be paid by QBCC and I consider the factor in schedule 4, part 2, item 4 of the RTI Act may apply to this information. Noting this information represents an estimate only (and its disclosure would not, therefore, concern incurred expenditure),<sup>128</sup> I afford no weight to this disclosure factor for that small amount of Category B Information.

67. A public interest factor favouring disclosure will also arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person.<sup>129</sup> In determining whether this public interest factor applies, I must consider whether:<sup>130</sup>
- the applicant has suffered loss, damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law<sup>131</sup>
  - 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.
68. The applicant generally submitted that this factor applies to favour the disclosure of the Category B Information and, more specifically, submitted that this factor applies to certain components of it.<sup>132</sup> QBCC made certain decisions concerning the subject matter of the Narrowed Application. I note that rights of internal and external review existed in respect of those decisions, and some were exercised (including by the applicant). While the applicant raised concerns about the adequacy of information disclosed in those processes, this is not a matter I am able to address on external review—as I have also noted above, the access right under the IP Act was not intended to operate as an adjunct to court disclosure processes.<sup>133</sup>
69. After careful review of the applicant's submissions, I note that she has not explained how she considers disclosure, under the IP Act, of any particular component of the Category

<sup>125</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>126</sup> In the applicant's submission dated 13 January 2025, she submitted that the factor in schedule 4, part 2, item 4 of the RTI Act was relevant to the 'SOA, invoices/statements/costs disclosure/QBCC lawyers costs'.

<sup>127</sup> That is, it generally comprises the personal information of individuals or property specific information of a financial nature.

<sup>128</sup> When raising the factor in schedule 4, part 2, item 4 of the RTI Act in her submission dated 13 January 2025, the applicant referred to invoices 'paid by QBCC (including from external lawyers)' whereas the schedule attached to the Original Decision identified that access was refused to 'Standing Offer Arrangement' information, relating to the business affairs of solicitors.

<sup>129</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>130</sup> *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].

<sup>131</sup> In *Deemal-Hall*, Judicial Member DJ McGill SC confirmed, at [12], that this public interest factor 'refers to the ordinary processes for the administration of justice for a person'.

<sup>132</sup> In the applicant's submission dated 13 January 2025, she submitted that this factor applies to favour disclosure of health information of another individual, other individuals' personal opinions about her and tender assessment reports/quotes. However, in the applicant's earlier submission (dated 19 August 2024) she asserted that this factor applied to favour disclosure of all the Category B Information.

<sup>133</sup> Nor was it intended to replicate those separate disclosure processes.

B Information is required to assist her in the already commenced court processes in which she is involved. Nor has she explained how disclosure of the Category B Information is required to assist her to pursue or evaluate any other remedy that may be available to her. Given the nature of the Category B 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 her. This is particularly so in circumstances where the applicant has confirmed that certain types of information have been provided to her as part of the disclosure processes in the already commenced QCAT proceedings. For these reasons (and noting the nature of the Category B Information), I do not consider this public interest factor applies to favour disclosure of any of the Category B Information.

70. Under the RTI Act, factors favouring disclosure will also arise where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;<sup>134</sup> and
  - contribute to the administration of justice generally, including procedural fairness.<sup>135</sup>
71. The public interest factor relating to fair treatment is about providing information to advance fair treatment in an applicant's future dealings with agencies.<sup>136</sup> 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.<sup>137</sup> The applicant generally submitted that documents should be disclosed '*that relate to if I was treated fairly*'.<sup>138</sup> While the applicant has more specifically submitted<sup>139</sup> that the factors referenced in the preceding paragraph apply to some components of the Category B Information—namely, the quote/tender assessment information and other individuals' opinions—she has not explained how she considers disclosure of all the Category B Information would contribute to her fair treatment or procedural fairness.
72. Noting the applicant's submissions about the types of information which have already been disclosed to her in the separate court processes, I do not consider there is any reasonable expectation disclosing other individuals' contact details, images, health and personal circumstance information or the non-work related information of QBCC staff would in any way contribute to fair treatment or procedural fairness for the applicant or any other individual. In respect of the remaining Category B Information, I note that the applicant was the complainant to QBCC and, on the information before me, it appears that the applicant participated in QBCC's complaint investigation processes and pursued avenues of review that were available to her as part of those processes. In these circumstances, and given the particular nature of the remaining Category B Information, I am not satisfied that there is any reasonable expectation that its disclosure would, in any meaningful way, advance the applicant's fair treatment in her dealings with QBCC (or any other agency) or contribute to the general administration of justice. On this basis, while these factors may apply to some of the Category B Information,<sup>140</sup> I afford them only low weight.

<sup>134</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>135</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>136</sup> *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [101].

<sup>137</sup> *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., at p. 97. (Lord Diplock)).

<sup>138</sup> Applicant's submission dated 19 August 2024.

<sup>139</sup> Applicant's submission dated 13 January 2025.

<sup>140</sup> Schedule 4, part 2, items 10 and 16 of the RTI Act.

73. Where disclosure of information could reasonably be expected 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.<sup>141</sup> The applicant submitted that these factors apply to favour disclosure of the Category B Information.<sup>142</sup> While the applicant has explained her dissatisfaction with how QBCC handled her complaints and the actions of certain QBCC officers, this of itself does not give rise to these public interest considerations. I have carefully reviewed the Category B Information (together with the applicant's submissions and the information which has been disclosed to the applicant) and I am satisfied that there is nothing within the Category B Information which gives rise to an expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. For this reason, I do not consider these factors apply.
74. A public interest factor favouring disclosure also arises in circumstances where disclosing information could reasonably be expected to reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>143</sup> The applicant specifically raised this factor as favouring disclosure of other individuals' opinions within the Category B Information. Information of this nature generally includes the individuals' observations and versions of events which are shaped by factors such as the individuals' memories of relevant events and their subjective impressions. This inherent subjectivity does not itself mean that the information is necessarily incorrect, misleading or unfairly subjective.<sup>144</sup> I have carefully considered the Category B Information (together with the applicant's submissions and the information which has been released to the applicant). There is nothing before me which suggests that the Category B Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Accordingly, I do not consider this factor applies.
75. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, and given the nature of the Category B Information, I cannot identify any other public interest considerations favouring its disclosure.<sup>145</sup>

### **Factors favouring nondisclosure**

76. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm<sup>146</sup> 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.<sup>147</sup>

<sup>141</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>142</sup> Applicant's submission dated 13 January 2025. In that submission, the applicant more specifically referenced the factor in schedule 4, part 2, item 5 of the RTI Act as applying to favour disclosure of other individuals' health information and their opinions about QBCC's complaint investigation processes. In the applicant's earlier submission (dated 19 August 2024) she asserted that these factors applied to favour disclosure of all the Category B Information.

<sup>143</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>144</sup> *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

<sup>145</sup> I cannot see how disclosing the Category B Information could, for example, contribute to the maintenance of peace and order or the enforcement of the criminal law (schedule 4, part 2, items 15 and 18 of the RTI Act); or reveal environmental or health risks or measures relating to public health and safety (schedule 4, part 2, item 14 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 the Category B Information.

<sup>146</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>147</sup> Schedule 4, part 3, item 3 of the RTI Act. The concept of 'privacy' is not defined in the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in *For your information: Australian Privacy Law and Practice* Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

77. Having carefully reviewed the Category B Information, I am satisfied that most of it comprises personal information of individuals other than the applicant. Some of this personal information also appears intertwined with a small amount of the applicant's personal information. For this intertwined personal information, I am satisfied that disclosing the personal information of the applicant would necessarily also disclose the personal information of individuals other than the applicant.
78. As noted above, the applicant generally contends that she is already aware of the Category B Information (or at least many components of it) and considers she has already received some of the Category B Information via other disclosure processes. The applicant also contends the personal information of other individuals within the Category B Information was not provided to QBCC on a confidential basis and was 'viewed, responded to and taken account of by QBCC'.<sup>148</sup>
79. Schedule 4, part 4, section 6 of the RTI Act is not stated to be limited to confidential personal information. Therefore, if information meets the definition of personal information in the IP Act,<sup>149</sup> the public interest harm factor in schedule 4, part 4, section 6 of the RTI Act applies. In *Deemal-Hall*, Judicial Member McGill relevantly observed that:<sup>150</sup>

*In the case of confidential information, once it has been made public there is generally no basis on which further disclosure or use of it can be restrained by law. Considerations of privacy on the other hand do not disappear once some information has been disclosed, particularly where it has been disclosed in circumstances where the disclosure was required by law. Information which meets the definition of personal information in the IP Act s 12, or in the RTI Act, retains that nature, even if it has previously been disclosed to an applicant, and the significance of Item 6(1) in Part 4 of Schedule 3 is not by the Act confined to confidential personal information.*

80. As to the weight to be afforded to this public interest factor, almost all of this personal information is highly personal in nature, as it relates to the health or personal circumstances of other individuals or records their feelings and opinions.<sup>151</sup> For these highly personal components of the Category B Information, I consider their disclosure could reasonably be expected to cause a significant level of harm and accordingly, I afford this factor significant weight in favour of nondisclosure. In respect of the balance of the personal information within the Category B Information, I consider a slightly lower level of harm could be expected to arise from disclosure and I therefore afford this factor moderate weight for that remaining personal information.
81. I am also satisfied that disclosure of other individuals' personal information within the Category B Information would intrude into their privacy. For the highly personal components of the Category B Information, I consider that intrusion would be significant and I therefore afford significant weight to the factor in schedule 4, part 3, item 3 of the RTI Act for that information. Mobile and direct telephone numbers are different to other contact details (such as email addresses or general office phone numbers) in that they allow an individual to be contacted directly and potentially outside of office hours. This gives rise to a reasonable expectation of substantial intrusion into the personal sphere of these other individuals. Accordingly, for information of this nature, I also afford this nondisclosure factor significant weight. Given the nature of the remaining personal information within the Category B Information, I consider a lower level of intrusion could

<sup>148</sup> Applicant's submission dated 13 January 2025.

<sup>149</sup> Refer to the definition in footnote 70.

<sup>150</sup> [2024] QCATA 131 at [27].

<sup>151</sup> In considering the weight to be afforded to this factor, I have noted that the IP Act places no restriction on the use, dissemination or republication of information which has been disclosed in response to an access application.

be expected to arise from its disclosure and I afford moderate weight to the factor concerning privacy.

82. As noted in paragraph 50 above, some of the Category B Information concerns business or commercial information. Under the RTI Act, factors favouring disclosure will arise where disclosing information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities<sup>152</sup> or prejudice trade secrets, business affairs or research of an agency or person.<sup>153</sup> Additionally, the RTI Act recognises that disclosure of information concerning the business, professional, commercial or financial affairs of an agency or another person could reasonably be expected to cause a public interest harm where the disclosure 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.<sup>154</sup>
83. The applicant's main submission is that, as this type of Category B Information is known to her and/or has been previously disclosed to her in other processes, access to it should not be refused.<sup>155</sup> In this regard, I refer again the comments of Judicial Member McGill which I have referenced in paragraph 56 above. The applicant further submitted that the quotes are '*approximately a year and a half old now*' and she considers their disclosure would not give any commercial advantage to a competitor and building costs have substantially increased since then.<sup>156</sup>
84. Given the restrictions placed upon me under section 121 of the IP Act, I cannot address the applicant's assumption that this component of the Category B Information (or any part of it) is the information which she identified in her submissions as having been previously disclosed in other processes. QBCC noted in the Original Decision that this component of the Category B Information included costs/pay rates and information about the financial operations of entities. Having carefully considered this information, I am satisfied that its nature is such that its disclosure under the IP Act could reasonably be expected to lead to, at least, a moderate level of prejudice and adverse effect on the business, commercial and/or financial affairs of the non-public sector entities to which it relates, by providing details of the entities' methodologies and charging rates.<sup>157</sup> In the competitive markets in which these entities operate, I also do not agree that the age of this information negates any harm or prejudice that could be expected to arise from its disclosure. For these reasons, I afford moderate weight to the nondisclosure factors referenced in paragraph 82 above.
85. The applicant also submitted that this type of Category B Information would form part of the material in QCAT files for the proceedings she has referenced and it can therefore be accessed by members of the public.<sup>158</sup> Again, the IP Act prevents me from addressing the applicant's assumption that this component of the Category B Information (or any part of it) would exist in a QCAT file associated with one or more of the proceedings referenced by the applicant. The applicant's contention that this information should be disclosed because access to it would be available at QCAT seems, in my view, counterintuitive (given the refusal ground in section 47(3)(f) of the RTI Act). However, I also note that, contrary to the applicant's assertion, there right of access to QCAT files may be subject to limitations, as QCAT's website states: *While case files are generally*

<sup>152</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>153</sup> Schedule 4, part 3, item 15 of the RTI Act.

<sup>154</sup> Schedule 4, part 4, section 7(1)(c) of the RTI Act.

<sup>155</sup> External Review Application, and applicant's submission dated 19 August 2024.

<sup>156</sup> Applicant's submission dated 13 January 2025.

<sup>157</sup> Noting again that the IP Act places no restriction on how information disclosed in response to an access application is used, disseminated or published.

<sup>158</sup> Applicant's submission dated 13 January 2025.

*open for public inspection, not all documents can be inspected.*<sup>159</sup> Having reviewed this aspect of the applicant's submissions, I do not consider it reduces the weight which I have afforded above to these nondisclosure factors.

### ***Balancing the public interest***

86. After carefully reviewing the Category B Information, I have identified and considered above the public interest factors which are relevant to the various components of that information.
87. For the small amount of the applicant's personal information within the Category B Information, I have afforded significant weight to the public interest factor which favours disclosure of an applicant's personal information<sup>160</sup> (noting that where this personal information of the applicant appears, it is intertwined with the personal information of other individuals). I have also identified further public interest factors relating to government accountability and transparency, fairness and the general administration of justice which favour disclosure of some components of the Category B Information. For the reasons addressed above, I afford moderate, low and no weight to these factors, in respect of different components of the Category B Information.
88. On the other hand, I have identified a number of factors favouring nondisclosure of the Category B Information in Issue. For the reasons addressed above, I afford significant weight to the nondisclosure factors relating to the personal information and privacy for some parts of the Information in Issue. It is also my view that the considerations relating to personal information, privacy, business and professional affairs are deserving of moderate weight in respect of other components of the Category B Information.
89. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Category B Information outweigh the factor favouring disclosure. Accordingly, I find that disclosure of the Category B Information would, on balance, be contrary to the public interest and access may be refused on that basis.<sup>161</sup>

### **Search Document**

90. Where other access to a document is available, an agency may refuse access to it.<sup>162</sup> Section 53 of the RTI Act lists where other access is taken to be available.
91. In the Original Decision, QBCC stated '*The RP data search is commercially available through a subscription.*' The schedule to the Original Decision also identifies the property to which this document relates (namely, the applicant's property).
92. The applicant has not contested that the Search Document can be accessed commercially. Instead, the applicant submitted that she considers there would be less work involved in providing the Search Document to her than to '*exempt it*'.<sup>163</sup>
93. I am satisfied that a search of the applicant's property is commercially available to the applicant (that is, via RP Data). As other access is therefore available to the Search Document, I find that access to it may be refused.<sup>164</sup>

<sup>159</sup> Refer to <https://www.qcat.qld.gov.au/resources/searches> (accessed 9 June 2025).

<sup>160</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>161</sup> Under section 47(3)(b) of the RTI Act.

<sup>162</sup> Section 67(1) of the IP Act and section 47(3)(f) of the RTI Act.

<sup>163</sup> External Review Application.

<sup>164</sup> Under section 67(1) of the IP Act and sections 47(3)(f) and 53(a) of the RTI Act.

94. The applicant further submitted that, even if the RTI Act provided grounds for refusal of the Search Document, the Information Commissioner can still give it to her.<sup>165</sup> In support of her position, the applicant argued that, while section 118(2) of the IP Act confirms that the Information Commissioner has no power to direct that access to be given to an exempt document or a contrary to the public interest document, the limitations in this provision, and sections 120 and 121 of the IP Act, do not extend to documents refused on the basis other access is available to them.<sup>166</sup>
95. As noted in paragraph 19 above, the IP Act requires the Information Commissioner, after conducting an external review, to make a written decision affirming, varying or setting aside the agency decision under review.<sup>167</sup> However, the IP Act does not empower the Information Commissioner to direct an agency to give access to a document which the Information Commissioner is satisfied may be refused. As noted in paragraph 93 above, I have found that access may be refused to the Search Document and, accordingly, I have affirmed QBCC's decision as it relates to that document. In the circumstances, I cannot direct QBCC to provide a copy of the Search Document to the applicant, as she has requested.

### **Nonexistent or unlocatable documents**

96. As mentioned in paragraph 2 above, QBCC issued a notice to the applicant pursuant to section 61 of the IP Act and, following this, the terms of the access application were, by agreement, narrowed. The consultation which led to this narrowing focussed heavily on QBCC's responsive document estimates. That is, in agreeing that it would be able to process the Narrowed Application, QBCC was primarily focussed on the estimated volume, and nature, of responsive documents.

### **Relevant law**

97. Access may be refused to a document where the document is nonexistent or unlocatable.<sup>168</sup>
98. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:<sup>169</sup>
- the administrative arrangements of government
  - the agency's structure
  - the agency's functions and responsibilities<sup>170</sup>
  - 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.

<sup>165</sup> Applicant's submission dated 19 August 2024.

<sup>166</sup> Applicant's submission dated 13 January 2025.

<sup>167</sup> Section 123(1) of the IP Act. This requirement does not apply where an external review is resolved informally (as confirmed in section 123(2) of the IP Act).

<sup>168</sup> Sections 47(3)(e) and 52(1) 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. 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.

<sup>169</sup> 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*). These factors were more recently considered in *Van Veenendaal* at [23]-[25] and *P17 and Queensland Corrective Services* [2020] QICmr 68 (17 November 2020) at [17]-[19].

<sup>170</sup> Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

99. It may not be necessary for searches to be conducted when proper consideration is given to relevant factors. Rather, it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.<sup>171</sup> However, searches may be relied on to satisfy the decision-maker that a document does not exist—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.<sup>172</sup> What constitutes reasonable steps will vary from case to case.<sup>173</sup>
100. To determine whether a document exists, but is unlocatable, requires consideration of whether there are reasonable grounds 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 it.<sup>174</sup> In answering these questions, regard should again be had to the circumstances of the case and the key factors set out above.<sup>175</sup>
101. Under section 137(2) of the IP Act, 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.<sup>176</sup> QCAT has confirmed that the equivalent provision in the RTI Act '*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.<sup>177</sup>
102. Generally, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.<sup>178</sup> However, where an external review involves the issue of missing documents and the decision under review indicates the conducted searches encompassed record-keeping systems where the requested documents would likely be stored,<sup>179</sup> there is a practical onus placed on the applicant to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents. Suspicion and mere assertion will not satisfy this onus.<sup>180</sup>
103. In assessing an agency's searches, the Information Commissioner has recently confirmed the relevant question is whether the agency has taken all *reasonable* steps to identify and locate documents, as opposed to all *possible* steps.<sup>181</sup>

### ***Steps taken by QBCC to locate requested documents and the applicant's submissions***

104. In the Original Decision, QBCC stated that searches for responsive documents had been undertaken of its Salesforce databases (**Salesforce**) and its Electronic Content Manager system (**ECM**) and requests had also been sent to operational areas of QBCC to identify

<sup>171</sup> For example, where a particular document was not created because the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document.

<sup>172</sup> As set out in *PDE* at [49].

<sup>173</sup> As the search and enquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the particular circumstances.

<sup>174</sup> Section 52(1)(b) of the RTI Act.

<sup>175</sup> *Pryor* at [21].

<sup>176</sup> Section 137(2) of the IP Act. The Information Commissioner also has power under section 115 of the IP Act to require additional searches to be conducted during an external review.

<sup>177</sup> *Webb v Information Commissioner* [2021] QCATA 116 (**Webb**) at [6].

<sup>178</sup> Section 100(1) of the IP Act.

<sup>179</sup> In reviewing such information, the Information Commissioner (or delegate) may form a view that an agency has taken reasonable steps to identify and locate requested documents.

<sup>180</sup> *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].

<sup>181</sup> *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].



and obtain any additional responsive documents. As a result of these initial searches, QBCC located almost 7000 pages and in excess of 40 audio documents as relevant to the Narrowed Application.

105. QBCC provided OIC with a copy of its search records and certifications for the searches and inquiries referenced in the preceding paragraph. Those records confirmed searches were conducted of QBCC's electronic record management systems (Salesforce, ECM and Outlook<sup>182</sup>) and inquiries had been made of staff who had relevant knowledge about the locations where documents requested in the Narrowed Application would be stored.
106. The Internal Review Application raised concerns about documents the applicant considered to be missing. For the most part, the applicant raised the same missing document concerns in the External Review Application.<sup>183</sup>
107. I asked QBCC to provide a response addressing the missing documents the applicant had identified in the External Review Application. In addressing that request, additional inquiries were made of relevant staff and a number of QBCC officers conducted further searches of QBCC's electronic databases (Salesforce, ECM, email records and OneDrive). No additional responsive documents were located.
108. Having reviewed the information QBCC provided when responding to the applicant's concerns about missing documents (which included search records and certifications), there was nothing before me to suggest that QBCC was in possession of any further documents relevant to the Narrowed Application. Accordingly, I conveyed a preliminary view to the applicant that QBCC had conducted appropriately targeted searches of the locations where it was reasonable to expect that documents relevant to the Narrowed Application would be stored. In that preliminary view, I also summarised the response received from QBCC regarding the categories of missing documents which the applicant had identified in the External Review Application.
109. The applicant did not accept the preliminary view.<sup>184</sup> More specifically, the applicant suggested alternate ways she considered searches could be conducted by QBCC and requested that she be given access to certain documents in another external review matter.
110. QBCC relied on searches conducted by its officers to justify its position that reasonable steps have been taken to locate documents relevant to the Narrowed Application.

### **Analysis**

111. The question I must consider is whether QBCC has taken all reasonable steps to locate documents responsive to the Narrowed Application. This entails consideration of whether QBCC has required appropriate staff to conduct sufficient searches of all locations where the documents in question could reasonably be expected to be found.
112. Here, QBCC has provided information (including search records and certifications) about the searches it has undertaken (in processing the Narrowed Application, after receiving the Internal Review Application and during the external review). The applicant suggested that *'rather than have QBCC employees search for documents'*, a search could have

<sup>182</sup> Being the email system used by QBCC.

<sup>183</sup> Under the heading *'Other documents/information sought from the files not provided'*. Certain documents identified by the applicant under this heading concerned information to which access had been refused (for example, at item '15'), the applicant stated: *'In the exempt documents there was a SOA which I seek to be released to me together with any other invoices/statements/costs disclosures/QBCC lawyers costs.'* Such refused information has been dealt with in the previous sections of this decision.

<sup>184</sup> Applicant's submission dated 13 January 2025.

been undertaken by 'IT, who can also search the employees email addresses etc'.<sup>185</sup> However, there is nothing before me which calls into question either the efficacy of QBCC's searches or the accuracy of the QBCC's provided search records and certifications. I therefore accept QBCC's evidence in relation to its search efforts and inquiries and I do not consider any additional search by 'IT', as suggested by the applicant, is warranted in the circumstances of this matter. In reaching this conclusion, I have noted that QCAT has acknowledged that it is open to reach a finding that an agency has taken all reasonable steps 'even if, at least in theory, further and better searches might possibly disclose additional documents'.<sup>186</sup>

113. Based on my consideration of the entirety of the information before me (including the located documents and the parties' submissions), I consider that officers of QBCC have conducted comprehensive and appropriately targeted searches of all relevant QBCC record keeping systems for documents responsive to the Narrowed Application. QBCC also made inquiries of relevant staff regarding the possible existence, and location, of documents responsive to the Access Application.
114. Accordingly, I am satisfied that QBCC has taken all reasonable steps to locate documents relevant to the Narrowed Application and access to any further documents relevant to the Narrowed Application may be refused,<sup>187</sup> on the basis they do not exist.

## DECISION

115. For the reasons set out above, I vary the decision under review<sup>188</sup> and find that:

- the applicant is not entitled to access the Irrelevant Information, as it falls outside the scope of, or is irrelevant to, the Narrowed Application
- the Category A Information comprises exempt information and access to it may be refused on that basis<sup>189</sup>
- access may be refused to the Category B Information on the basis that its disclosure would, on balance, be contrary to the public interest<sup>190</sup>
- access may be refused to the Search Document, as other access to it is available;<sup>191</sup> and
- access to any further documents relevant to the Narrowed Application may be refused on the basis they do not exist or cannot be located.<sup>192</sup>

116. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.



**T Lake**  
**Principal Review Officer**  
**Date: 16 June 2025**

<sup>185</sup> Applicant's submission dated 13 January 2025.

<sup>186</sup> *Webb* at [6].

<sup>187</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

<sup>188</sup> Under section 123(1)(b) of the IP Act.

<sup>189</sup> Under section 67(1) of the IP Act and sections 47(3)(a) and 48 of the RTI Act.

<sup>190</sup> Under section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

<sup>191</sup> Under section 67(1) of the IP Act and sections 47(3)(f) and 53(a) of the RTI Act.

<sup>192</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1) of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
27 April 2024	OIC received the External Review Application.
5 June 2024	OIC notified the applicant and QBCC that the External Review Application had been accepted and requested information from QBCC.
20 June 2024	OIC received the requested information from QBCC.
4 July 2024	<p>OIC conveyed a preliminary view to the applicant about refusal of access issues and invited the applicant to provide a submission by 18 July 2024 if she wished to contest the preliminary view. OIC also asked the applicant to confirm whether she agreed to identified duplicate documents.</p> <p>OIC wrote to QBCC to seek further information and asked QBCC to address the applicant's submission about the missing documents identified in the External Review Application.</p>
31 July 2024	At the applicant's request, the due date for the applicant's response was extended to 15 August 2024.
15 August 2024	At the applicant's request, the due date for the applicant to provide a submission in support of her notified disagreement with the preliminary view was extended to 19 August 2024.
19 August 2024	OIC received the applicant's submission and confirmation that she did not agree to exclude the identified duplicates.
22 August 2024	OIC wrote to the applicant to acknowledge her submission and provide an explanation about aspects of the external review process.
25 August 2024	OIC received the applicant's request that OIC not require any further response from her until after the end of October 2024.
29 August 2024	OIC received QBCC's search submission.
20 November 2024	OIC conveyed a further preliminary view to the applicant about refusal of access issues and a preliminary view about the adequacy of QBCC's searches. OIC invited the applicant to provide (i) a submission by 4 December 2024 in respect of the refusal of access and (ii) a submission by 6 December 2024 in respect of the search issue.
29 November 2024	At the applicant's request, the due dates for the applicant's responses to both preliminary views were extended to 6 January 2025.
31 December 2024	The applicant requested a further one month extension for her response.
2 January 2025	OIC notified the applicant that an extension to 13 January 2025 had been granted for her responses.
13 January 2025	OIC received the applicant's submission.
15 January 2025	OIC wrote to the applicant reiterating the preliminary view about refusal of access and search issues and notified the applicant a decision would be issued to finalise the external review.