



Decision and Reasons for Decision

Citation: *Tager and Queensland Treasury Corporation* [2016] QICmr 45 (4 November 2016)

Application Number: 312639

Applicant: Tager

Respondent: Queensland Treasury Corporation

Decision Date: 4 November 2016

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CABINET INFORMATION - information relating to funding, finance and the financial viability of government support for proposed mining projects - whether information would reveal considerations of Cabinet or otherwise prejudice the confidentiality of Cabinet considerations - whether information is exempt under section 48 and schedule 3, section 2(1)(b) of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CABINET INFORMATION - information relating to funding, finance and the financial viability of government support for proposed mining projects - documents created to inform Cabinet Budget Review Committee - whether information has been brought into existence in the course of the State's budgetary processes - whether information is exempt under section 48 and schedule 3, section 2(1)(c) of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - information relating to funding, finance and the financial viability of government support for proposed mining projects - accountability and transparency - prejudice to commercial affairs of an entity - prejudice to economy of the State and deliberative processes of government - whether disclosure would, on balance, be contrary to the public interest under section 49 of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Queensland Treasury Corporation (**QTC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents 'addressing funding or finance options relating to the port at Abbot Point or any of Adani's proposed projects in Queensland' and/or 'relating to the financial viability of any Adani development proposals in Queensland'¹ since January 2014 to the date of the application.²
2. QTC located 1723 pages³ and decided to release 45 part pages to the applicant. QTC refused access to the remaining information on the basis that it was exempt, or would, on balance, be contrary to the public interest to disclose.⁴ On internal review, QTC affirmed its original decision.
3. The applicant applied for external review⁵ and confirmed to OIC that he only sought review of QTC's decision to refuse access to documents on the basis that they were exempt or because their disclosure, would, on balance, be contrary to the public interest under the RTI Act.
4. For the reasons set out below, I find that access to the information remaining in issue on external review may be refused under the RTI Act. In part, my decision is based on different grounds to those relied on by QTC and therefore, I have varied the internal review decision. I find that access may be refused on the following grounds:
 - the information is exempt under schedule 3, section 2(1)(b) or (c) of the RTI Act;⁶ or
 - disclosure of the information would, on balance, be contrary to the public interest.⁷

Background

5. Significant procedural steps relating to the application and external review process are set out in Appendix A.
6. The information in issue relates to QTC's assessment of the financial impact and viability of the Adani's proposed Carmichael Coal Mine and related infrastructure projects (**Adani Projects**) and the merits of government assistance for these projects. These documents appear to have been created by QTC, following a request from staff of Queensland Treasury (**Treasury**), in its role as a financial adviser to the Queensland Government.
7. Documents published on Treasury's Disclosure Log indicate that the Adani Projects will involve the largest coal mine in Australia and multibillion dollar investments in railway and port infrastructure.⁸ This has been recognised as a major project by the Queensland

¹ The Adani Group (**Adani**) is a group of companies seeking to develop the largest coal mine in Australia, the Carmichael Coal Mine in central north Queensland. The development of this mine will also involve the development of related rail infrastructure and port infrastructure at Abbott Point in central north Queensland.

² Access application made on 22 June 2015.

³ As indicated in the schedule to its decision dated 11 August 2015.

⁴ QTC also relied on sections 47(3)(f) and 53 of the RTI Act to refuse access to commercially available information. QTC also decided that some of the information responding to the terms of the access application fell outside the scope of the RTI Act under schedule 2, part 2, item 9 of the RTI Act.

⁵ External review application dated 6 November 2015.

⁶ Under section 47(3)(a) of the RTI Act.

⁷ Under section 47(3)(b) of the RTI Act.

⁸ See Treasury's Disclosure Log, Reference 577 J Tager available from: <https://www.treasury.qld.gov.au/about-us/right-to-information/previous-disclosure-log.php> (accessed on 28 October 2016). That application involved the same applicant.

- Coordinator General⁹ and the relevant mining leases have been granted to Adani by the State Government.¹⁰
8. The timeframe of the access application covers both the time of the former and current Queensland Governments. The former Deputy Premier announced that the Queensland Government was in negotiations with the Adani Group regarding direct investment in infrastructure to facilitate the Adani Projects.¹¹ The current Queensland Government has since indicated that it will not *contribute taxpayer money to Adani's project*.¹²
 9. While considering this external review application, OIC also conducted three other related external reviews involving the same or largely similar documents, subject matter and submissions from participants. The applicant, and the environmental action group which he represents,¹³ made separate access applications to various Queensland government agencies, requesting similar information relating to the Adani Projects. Due to the nature of the Adani Projects, information relating to this subject matter is held across a number of different Queensland government agencies, and in many cases copies of the same information appears in the records of various agencies.
 10. The first external review was finalised by the decision *North Queensland Conservation Council Incorporated and Queensland Treasury* [2016] QICmr 9 (29 February 2016) (**NQCC1**). Some of the documents in issue in this review, particularly those created in 2015 and identified below as Cabinet Information,¹⁴ are the same as, or substantially similar to, the information considered by the Right to Information Commissioner in *NQCC1*.
 11. The second review was finalised by my decision in *North Queensland Conservation Council Inc and Queensland Treasury* [2016] QICmr 21 (10 June 2016) (**NQCC2**). In *NQCC2*, I considered the issue of access to information which is also in issue in this external review. In particular, the information identified at [19] below as Cabinet Information created in 2014, Budgetary Process Information and CTPI Information is either the same as, or substantially similar to, the information which was the subject of my decision in *NQCC2*.
 12. I have also concurrently reached a decision in external review 312645 regarding a decision of the Department of State Development (**DSD**).¹⁵ Some of the CTPI Information in issue in this review, i.e., the Due Diligence Assessment, is the same as the CTPI Information in issue in external review 312645.
 13. Given the commonality in the information in issue, the applicant's submissions and subject matter across the four external reviews, in reaching this decision, I have taken into account the submissions made by the applicant's legal representatives and agencies across all four reviews, to the extent the submissions apply to the information in issue in this review. While I have made a fresh and independent decision on the merits of this matter, I have not departed from the findings in *NQCC1* and *NQCC2*, to the extent this

⁹ Further details appear on the Coordinator General's website at <http://www.statedevelopment.qld.gov.au/assessments-and-approvals/carmichael-coal-mine-and-rail-project.html> (accessed on 25 February 2016).

¹⁰ Ministerial statement dated 3 April 2016 available at <http://statements.qld.gov.au/Statement/2016/4/3/carmichael-mine-approvals-put-thousands-of-new-jobs-step-closer> (accessed on 4 April 2016).

¹¹ Media release dated 17 November 2014 available at: <http://statements.qld.gov.au/Statement/2014/11/17/historic-agreements-bring-jobs-to-queensland> (accessed on 27 October 2016).

¹² See relevant media at: <http://www.dailymercury.com.au/news/claims-adani-rail-could-be-taxpayer-funded-denied/3067271/> (accessed on 29 August 2016) as raised by the applicant's submissions dated 24 August 2016.

¹³ North Queensland Conservation Council. In each review, the applicants have been legally represented by the Environmental Defenders' Office (**EDO**) and the EDO has authored all of the written submissions to OIC in the reviews.

¹⁴ At [25].

¹⁵ *North Queensland Conservation Council and Department of State Development* [2016] QICmr 46 (4 November 2016)

review concerns the same information in issue.¹⁶ In these reasons, I have referred to, and relied on, the reasons I gave in *NQCC2*, and therefore, a copy of *NQCC2* appears at Appendix B.

Reviewable decision

14. The decision under review is QTC's internal review decision dated 8 October 2015.

Material considered

15. Evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and the Appendices).

Information in issue

16. The information in issue comprises reports, studies, internal memos, correspondence with other Queensland government agencies, and emails created and/or considered by QTC staff in assessing the financial viability of the Adani Projects and the risks/benefits of various funding and finance options for these projects. The information includes comprehensive financial, commercial and economic data and forecasts.¹⁷

17. Following discussions between OIC and the applicant's legal representatives in this and two other related reviews,¹⁸ certain categories of information were excluded from consideration in this review:

- the personal information of individuals which was decided would, on balance, be contrary to the public interest to disclose
- information to which other access was available; and
- information which was outside the scope of the RTI Act under schedule 2, part 2, item 9 of the RTI Act.¹⁹

18. During this review, OIC provided the applicant with a schedule confirming each page of information that OIC considered fell within the scope of this external review.²⁰ For the sake of clarity, the documents listed in that schedule represent the information in issue in this review and these reasons for decision apply to those documents only.

Issues to be considered

19. In this decision, I have considered whether access to the information in issue may be refused on the basis that it is:

- A. exempt information, the disclosure of which would reveal a consideration of Cabinet (**Cabinet Information**)²¹
- B. exempt information brought into existence in the course of the State's budgetary processes (**Budgetary Process Information**);²² or

¹⁶ Following *NQCC2*, the applicant made additional submissions to OIC on 24 August 2016. This decision also considers and addresses those submissions.

¹⁷ Under section 108(3) of the RTI Act, the Information Commissioner cannot disclose information claimed to be exempt or contrary to the public interest to disclose, in reasons for decision on an external review. Accordingly, I am prevented from providing any more detailed description of the information in issue.

¹⁸ External review no. 312534 and 312645.

¹⁹ This category of information was excluded by the applicant in a telephone discussion with OIC on 25 November 2015.

²⁰ Letter dated 28 April 2016.

²¹ Under sections 47(3)(a), 48 and schedule 3, section 2(1)(b) of the RTI Act.

²² Under sections 47(3)(a), 48 and schedule 3, section 2(1)(c) of the RTI Act.

C. information, the disclosure of which would, on balance, be contrary to the public interest (**CTPI Information**).²³

A. Cabinet Information

Relevant law

20. Under the RTI Act a person has a right to be given access to documents of an agency unless giving access would, on balance, be contrary to the public interest.²⁴ However, this right is subject to other provisions of the RTI Act, including the grounds on which access to information may be refused.
21. Access may be refused to exempt information.²⁵ Relevantly, information is considered exempt if:
 - it has been brought into existence for the consideration of Cabinet;²⁶ or
 - its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations.²⁷
22. The term '*consideration*' is defined as including '*discussion, deliberation, noting (with or without discussion) or decision; and consideration for any purpose, including, for example, for information or to make a decision*'.²⁸
23. The following types of Cabinet documents are taken to be comprised exclusively of exempt information²⁹ without any further consideration of their contents:
 - (a) Cabinet submissions
 - (b) Cabinet briefing notes
 - (c) Cabinet agendas
 - (d) notes of discussions in Cabinet
 - (e) Cabinet minutes
 - (f) Cabinet decisions
 - (g) drafts of documents (a) to (f) above.
24. There are three exceptions to this exemption:
 - if it is more than 10 years after the information's relevant date³⁰
 - if the information was brought into existence before 1 July 2009;³¹ or
 - if the information has been officially published by decision of Cabinet.³²

Findings

25. The Cabinet Information in this review includes copies and drafts of Cabinet³³ submissions, discussion papers, draft Terms Sheets for Cabinet discussion, information

²³ Under sections 47(3)(b) and 49 of the RTI Act.

²⁴ Section 44(1) of the RTI Act. This is referred to as the pro-disclosure bias.

²⁵ Sections 47(3)(a) and 48 of the RTI Act.

²⁶ Schedule 3, section 2(1)(a) of the RTI Act.

²⁷ Schedule 3, section 2(1)(b) of the RTI Act.

²⁸ Schedule 3, section 2(5) of the RTI Act.

²⁹ Schedule 3, section 2(3) of the RTI Act.

³⁰ Schedule 3, section 2(1) of the RTI Act. For information considered by Cabinet, the '*relevant date*' is the date information was most recently considered by Cabinet; otherwise, '*relevant date*' is the date information was brought into existence, schedule 3, section 2(5) of the RTI Act.

³¹ Schedule 3, section 2(2)(a) of the RTI Act.

³² Schedule 3, section 2(2)(b) of the RTI Act.

³³ Schedule 3, section 2(5) of the RTI Act provides that '*Cabinet*' includes a Cabinet committee or subcommittee. The Cabinet Budget Review Committee is a Cabinet committee for this purpose.

prepared for the Treasurer and email correspondence between officers within QTC and Treasury.

26. I am satisfied that the exceptions to the exemption do not apply as the Cabinet Information was brought into existence after 1 July 2009 and there is no evidence available to OIC to indicate that this information has been officially published.
27. Having carefully considered the Cabinet Information, I note that these documents concern the same subject matter and contain the same information as the Cabinet Information considered in *NQCC1* and *NQCC2*. In *NQCC2* I found that that the Cabinet Information either comprises exclusively exempt information or its disclosure would reveal a consideration of Cabinet.³⁴ In *NQCC2*, I specifically addressed the submissions made by the applicant about the Cabinet exemption and found that the Cabinet Information, if disclosed to a reasonable person, would reveal the considerations of Cabinet to that person. Due to the commonality in the information in issue, I am satisfied that reasoning equally applies to the Cabinet Information in issue in this review.
28. Therefore, I find that access may be refused to the Cabinet Information under section 47(3)(a) of the RTI Act on the basis that it either comprises exclusively exempt information³⁵ or its disclosure would directly reveal a consideration of Cabinet.³⁶

B. Budgetary Process Information

Relevant law

29. The RTI Act provides that information is exempt if it has been brought into existence in the course of the State's budgetary processes.³⁷ To determine whether information is exempt under this section it is necessary to consider the circumstances under which the information in issue was brought into existence. The exceptions set out at [24] above also apply when considering this provision.

Findings

30. I do not consider that any of the exceptions to this exemption apply as the relevant information was brought into existence in the past three years and has not been officially published by decision of Cabinet.
31. Having carefully considered the Budgetary Process Information, I am satisfied that this information is largely the same as what I considered in *NQCC2*, where I explained that:³⁸

The RTI Act does not define the words 'State's budgetary processes', however, I am satisfied that one of the processes contemplated by this section is the State's annual budgetary process recognised on the Queensland Treasury website which lists 11 separate components that together make up the annual budget process. The first and fourth of these components refer to the role of the CBRC in relation to:

- *considering an overall strategy for the budget*
- *identifying key areas for resource allocation that respect the government priorities, fiscal principles and key budget decisions; and*
- *considering specific departmental budget submissions.*

³⁴ For the reasons set out at [21] - [28] of that decision.

³⁵ Schedule 3, section 2(3) of the RTI Act.

³⁶ The applicant did not make any additional submissions regarding the application of the Cabinet exemption following *NQCC2*.

³⁷ Under schedule 3, section 2(1)(c) of the RTI Act.

³⁸ At [32] - [33] (footnotes and internal citations omitted).

The Queensland Government Cabinet Handbook further provides that CBRC generally works closely with the Treasury Department in relation to obtaining financial information in order to make informed decisions on financial and budgetary matters.

32. In this case, Treasury asked QTC to provide detailed financial and economic forecasts and advice in relation to the Adani Projects specifically in order to provide advice to CBRC.³⁹ In response, QTC provided a number of financial reports including a High Level Risk Review Report, Financial Capacity Report and High Level Credit Assessment Report. I am satisfied that these reports and information directly relating to the creation of these reports was only brought into existence for the specific purpose of informing CBRC considerations and, as identified in *NQCC2*, ‘*the relevant CBRC considerations would have had a direct and significant impact on the State’s budget had the CBRC settled on a particular course of action*’.⁴⁰
33. Having considered the Budgetary Process Information, I am satisfied that this information was created by QTC upon instructions from Treasury for the purpose of informing CBRC in relation to its specific budgetary advisory role, and that this forms part of the State’s budgetary processes. Accordingly, I find that this information is exempt⁴¹ and access to it may be refused under section 47(3)(a) of the RTI Act.

C. CTPI Information

Relevant law

34. Access to information may also be refused where disclosure, would, on balance, be contrary to the public interest.⁴²
35. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest⁴³ and explains the steps that a decision-maker must take⁴⁴ in deciding the public interest as follows:
- (i) identify any irrelevant factors and disregard them
 - (ii) identify relevant public interest factors favouring disclosure and nondisclosure
 - (iii) balance the relevant factors favouring disclosure and nondisclosure; and
 - (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

36. The CTPI Information comprises the following two documents:
- Due Diligence Assessment of the Adani Projects completed by DSD staff; and
 - Bankable⁴⁵ Feasibility Study commissioned by Adani (**BFS**).

³⁹ This information was both evident on the face of the information in issue and also conveyed to OIC in a telephone discussion on 12 April 2016 by a Treasury officer involved in creating the information in issue.

⁴⁰ *NQCC2* at [35].

⁴¹ Under schedule 3, section 2(1)(c) of the RTI Act.

⁴² Sections 47(3)(b) and 49 of the RTI Act. The term ‘public interest’ refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

⁴³ Schedule 4 of the RTI Act sets out the factors relevant to deciding whether disclosure of information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive and therefore, other factors may also be relevant in a particular case.

⁴⁴ Section 49(3) of the RTI Act.

⁴⁵ In *NQCC2*, this document was incorrectly described as a ‘*Bank Feasibility Study*’. This inconsistency in description of the document is of no material effect – the document in *NQCC2* is exactly the same in content as the document in issue in this review.

37. I considered these exact documents in *NQCC2* and found that their disclosure would, on balance, be contrary to the public interest.⁴⁶ Following my decision in *NQCC2*, the applicant's legal representatives made additional submissions to OIC concerning the application of specific public interest factors in schedule 4 of the RTI Act. In considering those additional submissions, OIC contacted an officer of DSD who provided OIC with additional background information regarding the Due Diligence Assessment and BFS.⁴⁷ In assessing the public interest factors below, I have had specific regard to the additional submissions provided to OIC by the applicant's legal representatives and DSD, since the decision in *NQCC2* was issued.

Irrelevant factors

38. I have not taken into account any irrelevant factors in reaching this decision.⁴⁸

Factors favouring disclosure

39. Under section 44(1) of the RTI Act there is a pro-disclosure bias in deciding access to documents and this is the starting point for considering disclosure of the CTPI Information.
40. Given the particular nature of the CTPI Information, the level of community interest in the Adani Projects and the potentially significant impact of the Carmichael Coal Mine and related infrastructure to the Queensland economy, I also consider the below factors favour disclosure of the information, as disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability⁴⁹
 - contribute to positive and informed debate on important issues⁵⁰
 - inform the community of the Government's operations;⁵¹ and
 - ensure effective oversight of expenditure of public funds.⁵²
41. For the reasons I gave in *NQCC2*, I am satisfied that each of the above factors carries significant weight in favour of disclosure of the CTPI Information.⁵³
42. The RTI Act also recognises a factor in favour of disclosure where disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁴ In my view, the CTPI Information reveals background and contextual information that informed some government decisions with respect to the Adani Projects. Specifically, I note that the Due Diligence Assessment informed the Coordinator General's decision making process.⁵⁵ Accordingly, I consider that this factor also carries significant weight in favour of disclosure.

⁴⁶ At [42] - [82]. In that decision I also considered an additional document that is not part of the CTPI Information in this review.

⁴⁷ As the CTPI Information was initially received or created by DSD officers and later received by QTC, OIC contacted the same workgroup in order to obtain a full background to the relevant information.

⁴⁸ In particular, I have not considered whether the disclosure of the relevant information could reasonably be expected to embarrass or cause a loss of confidence in the current or former Governments.

⁴⁹ Schedule 4, part 2, item 1 of the RTI Act.

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

⁵¹ Schedule 4, part 2, item 3 of the RTI Act.

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

⁵³ See [47] - [48].

⁵⁴ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁵ This was confirmed in a telephone discussion between a DSD officer and OIC on 30 August 2016. As set out above, DSD authored the Due Diligence Assessment and therefore, is the agency with authority to speak to its contents.

43. The applicant has also argued that the disclosure of the information could reasonably be expected to reveal that the information was out of date, misleading, gratuitous, unfairly subjective or irrelevant and refers to a recent decision of the Land Court⁵⁶ relating to financial and economic statements provided by Adani. In *NQCC2*, I considered this submission as follows:⁵⁷

I have considered the Land Court decision and while I am prevented from describing the CTPI Information in any significant detail, on the evidence available to OIC, I am unable to identify how its disclosure could reasonably be expected to reveal that it was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Accordingly, I consider that this factor does not apply.

44. I am satisfied that the above reasoning continues to apply and therefore, I find that this factor does not apply to the CTPI Information.

45. The applicant also contends that disclosure of the CTPI Information could reasonably be expected to:

- contribute to the protection of the environment⁵⁸
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁵⁹ and
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.⁶⁰

46. With respect to the first of the above three factors, the applicant argues that:

...it is not irrational, absurd or ridiculous that disclosed economic or financial information could be used to indirectly contribute to environment protection by highlighting a basis as to why a proposed project, that will have significant environment impacts, should not proceed.⁶¹

47. The potential environmental impacts of the Adani Projects have been the subject of media attention.⁶² However, having carefully considered the information in the Due Diligence Assessment and BFS I have formed the view that the disclosure of this information could **not** reasonably be expected⁶³ to contribute to the protection of the environment. This is because these documents do not discuss environmental issues nor do I have any evidence to suggest that the disclosure of this information could reasonably be expected to prevent some sort of environmental harm.

48. The applicant asserts that the information would assist him in challenging the proposed Adani Projects, which he considers will have detrimental effects on the environment if allowed to proceed, and for this reason, disclosure will contribute to the protection of the environment. Accepting this submission would require me to find not only that the Adani Projects are likely to lead to environmental harm but that disclosure of the CTPI Information would directly lead to the applicant succeeding in stopping the Adani Projects from proceeding.⁶⁴ To make such findings would, in my view, be a hypothetical exercise. In any event, based on my assessment of the CTPI Information, I do not consider there

⁵⁶ *Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors* [2015] QLC 48, 15 December 2015.

⁵⁷ At [53] (internal footnotes and citations omitted).

⁵⁸ Schedule 4, part 2, item 13 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 5 of the RTI Act.

⁶⁰ Schedule 4, part 2, item 10 of the RTI Act.

⁶¹ Applicant's submissions dated 24 August 2016.

⁶² See for example: <http://www.abc.net.au/news/2015-08-05/federal-court-overturms-approval-of-adani-s-carmichael-coal-mine/6673734?pfmredir=sm> (accessed on 3 November 2016).

⁶³ The applicant correctly submits that the words 'could reasonably be expected' are to be given their ordinary meaning and the relevant expectation must be reasonably based and not irrational, absurd or ridiculous: see *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at 190.

⁶⁴ The expectation of what 'could reasonably be expected to occur' must be considered as a consequence of disclosure rather than other circumstances. *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 54.

is any evidence to suggest that disclosure could lead to the outcomes predicted by the applicant.

49. I consider that, save for a mere possibility,⁶⁵ there is no evidence available to OIC to establish that the disclosure of the CTPI Information could reasonably be expected to contribute to the protection of the environment. Accordingly, I consider that this factor favouring disclosure does not apply.
50. I am also satisfied that disclosure of the CTPI information could **not** reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.⁶⁶ The nature of the information in issue is limited to a Due Diligence Assessment and the BFS, both of which are based on information provided, or authored, by Adani. I am not satisfied that the CTPI Information contains the type of information that would ordinarily be required to assess the conduct or administration of an agency or official, in order for this factor to apply.

Factors favouring nondisclosure

Prejudice the private, business, professional, commercial or financial affairs of entities⁶⁷ or the business affairs of a person⁶⁸

51. Having considered the CTPI Information, I am satisfied that the focus of this information is on the commercial and financial affairs of Adani. Specifically, I note that the CTPI Information details Adani's own economic and financial forecasts. In considering the specific CTPI Information, I am satisfied, for the reasons I gave in *NQCC2*,⁶⁹ that significant weight can be attributed to both factors in favour of nondisclosure.
52. The applicant argues in its additional submissions to OIC that the weight of these factors should be reduced as the Treasurer has since indicated that the current Queensland Government will not '*contribute taxpayer money to Adani's project*.'⁷⁰ I am not satisfied that this submission affects the application of these public interest factors as the relevant business, commercial and financial interests of Adani extend beyond the granting of taxpayer funds for its projects and extend to its ability to negotiate with investors, in a broader sense.
53. The CTPI Information details sensitive economic and financial forecasts that, on their face, are likely to underpin Adani's business case in deciding to invest in the proposed projects. I am satisfied that disclosure of the CTPI Information could reasonably be expected to prejudice Adani's ability to negotiate funding for its proposed mine as well as its ability to compete with other similar mining ventures. Accordingly, I am satisfied that both of these factors carry significant weight in favour of nondisclosure.

Prejudice the economy of the State

54. I am satisfied that disclosure of the CTPI Information could reasonably be expected to prejudice the economy of the State⁷¹ in being able to:

⁶⁵ Previous decisions of the Information Commissioner have established that a mere possibility is not sufficient to show that a particular consequence could reasonably be expected; see *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 44, citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at paragraph 160.

⁶⁶ As suggested by the applicant in his submissions dated 24 August 2016.

⁶⁷ Schedule 4, part 3, item 2 of the RTI Act.

⁶⁸ Schedule 4, part 3, item 15 of the RTI Act.

⁶⁹ See [54] - [58].

⁷⁰ See relevant media at: <http://www.dailymercury.com.au/news/claims-adani-rail-could-be-taxpayer-funded-denied/3067271/> (accessed on 29 August 2016) as raised by the applicant in submissions dated 24 August 2016.

⁷¹ Schedule 4, part 3, item 12 of the RTI Act.

- obtain commercial investment advice without concern of broader disclosure; and
- negotiate on competitive commercial terms with third parties regarding State investment in large infrastructure projects.

55. In *NQCC2*, I stated⁷² that:

Treasury has explained that negotiations remain ongoing between the Government and Adani regarding infrastructure investment options. Specifically the Due Diligence Assessment ...includes internal advice provided to Government in relation to the various investment options available to it and the likely returns and risks of those investments. Disclosure of the Government's internal investment advice to the general public, including the private sector entities which the Government seeks to conduct commercial negotiations with could reasonably be expected to have a significant adverse impact on the Government's ability to conduct these negotiations on a commercial and competitive basis. For this reason I have attributed this factor in favour of nondisclosure significant weight.

56. For the reasons I gave in *NQCC2*,⁷³ I find that this factor carries significant weight in favour of nondisclosure.

Deliberative process

57. The RTI Act recognises that a public interest factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice a deliberative process of government (**Nondisclosure Factor**).⁷⁴ The RTI Act also provides that disclosing information could reasonably be expected to cause a public interest harm through disclosure of an opinion, advice or recommendation that has been obtained, prepared or recorded or a consultation or deliberation that has taken place in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**).⁷⁵

58. In *NQCC2* I attributed both the Nondisclosure Factor and Harm Factor significant weight in favour of nondisclosure of the CTPI Information.⁷⁶ The applicant has since argued that lower weight should be attributed to these factors as a recent announcement made by the Queensland Treasurer, The Honourable Curtis Pitt indicated that the current Queensland Government will not *contribute taxpayer money to Adani's project*.⁷⁷ The applicant argues that on the basis of this announcement the current Government has finished deliberating on some of the investment options.⁷⁸

59. I do not consider that the Treasurer's announcement necessarily confirms that the Government's deliberative processes with respect to supporting the Adani Projects are finalised. While the current Government may have ruled out some options, I am satisfied that there are other options on which a final decision has not yet been made. Having carefully considered the information in issue in this review and the other related external reviews, I am satisfied that the Treasurer's recent statement cannot be interpreted as unequivocal confirmation that the Government has completed all of its deliberations with respect to the way in which it will support (if at all), the Adani Projects.

60. Accordingly, I adopt the reasons I gave in *NQCC2* and find that disclosure of the CTPI Information could reasonably be expected to have a detrimental impact on the

⁷² At [60].

⁷³ At [60] - [62].

⁷⁴ Schedule 4, part 3, item 20 of the RTI Act.

⁷⁵ Schedule 4, part 4, item 4 of the RTI Act.

⁷⁶ See [73] - [78].

⁷⁷ See relevant media at: <http://www.dailymercury.com.au/news/claims-adani-rail-could-be-taxpayer-funded-denied/3067271/> (accessed on 29 August 2016) as raised by applicant in his submissions to OIC dated 24 August 2016.

⁷⁸ Applicant's submissions to OIC dated 24 August 2016.

Government's ability to continue considering its options and engage in open and frank negotiations with third parties including Adani.⁷⁹ I am therefore satisfied that disclosure of the CTPI Information is likely to prejudice the deliberative processes of government and cause significant public interest harm to these processes. I have therefore attributed both the Nondisclosure Factor and Harm Factor significant weight in favour of nondisclosure of the CTPI Information.

Balancing the public interest factors

61. The CTPI Information was created by, or communicated to, the former Queensland Government in order to inform its decision making processes with respect to the Adani Projects. These documents are based on financial data provided to the Queensland Government by Adani. I am satisfied that, in addition to the pro-disclosure bias, several factors favouring disclosure carry significant weight due to the potential significance of the Adani Projects to the Queensland economy, and the level of community interest in the subject matter, generally.
62. I am however, also satisfied that disclosure of the CTPI Information could prejudice the economy of the State, the business and commercial affairs of Adani and the deliberative processes of government. I consider that disclosing the CTPI Information is likely to have a detrimental impact on the economy of the State and the State's ability to fully consider and deliberate upon the financial and economic merits of large scale mining projects through open and direct communication with private entities such as Adani. I am satisfied that these factors carry significant and determinative weight in favour of nondisclosure.

Conclusion

63. On the basis of the above, I find that disclosure of the CTPI Information would, on balance, be contrary to the public interest and therefore, access to it may be refused under section 47(3)(b) of the RTI Act.

DECISION

64. For the reasons set out above, I vary the decision under review and find that:
 - access may be refused to exclusively exempt Cabinet information, information the disclosure of which would reveal a consideration of Cabinet and information brought into existence in the course of the State's budgetary processes under section 47(3)(a) of the RTI Act on the basis that it is exempt information;⁸⁰ and
 - access may be refused to the CTPI information as its disclosure would, on balance, be contrary to the public interest, under section 47(3)(b) of the RTI Act.
65. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 4 November 2016

⁷⁹ See *NQCC2* [73] - [78].

⁸⁰ Under section 48 and schedule 3, section 2(1) of the RTI Act.

APPENDIX A

Significant procedural steps

Date	Event
22 June 2015	QTC received the access application.
11 August 2015	QTC issued its decision on the access application.
9 September 2015	QTC received the application for internal review.
8 October 2015	QTC issued its internal review decision.
6 November 2015	OIC received the external review application.
23 November 2015	OIC contacted the applicant's representative by phone to confirm the issues to be considered on external review.
25 November 2015	The applicant's representative contacted OIC to confirm that the applicant did not seek external review in relation to some documents.
26 November 2015	OIC notified the applicant and QTC that the external review application had been accepted for external review. OIC asked QTC for copies of the information in issue and other procedural documents.
14 December 2015	QTC provided OIC with the requested documents.
15 December 2015	OIC contacted the applicant's representatives to explain the progress of this and three other related external reviews.
18 December 2015	QTC provided OIC with further requested documents.
13 January 2016	QTC provided OIC with the information in issue.
7 April 2016	OIC obtained additional submissions from the Department of State Development in relation to the Due Diligence Assessment process.
12 April 2016	OIC contacted an officer of Queensland Treasury to obtain additional background information relevant to the information in issue.
28 April 2016	OIC conveyed a preliminary view to the applicant and invited the applicant to provide submissions in response.
16 May 2016	OIC received submissions from the applicant.
14 July 2016	The applicant's representatives contacted OIC to discuss the progress of this external review.
24 August 2016	OIC received further submissions from the applicant's representatives.
30 August 2016	OIC contacted an officer of the Department of State Development to obtain additional information regarding the information in issue.
20 October 2016	OIC provided the applicant with an update on the status of the review.

APPENDIX B

Copy of *North Queensland Conservation Council Inc and Queensland Treasury [2016] QICmr 21 (10 June 2016)*, as published on the OIC website.

Available at: <https://www.oic.qld.gov.au/decisions/north-queensland-conservation-council-inc-and-queensland-treasury-2016-qicmr-21-10-june-2016>