



## Decision and Reasons for Decision

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Citation:	<i>McCrystal and Queensland Building and Construction Commission</i> [2018] QICmr 2 (30 January 2018)
Application Number:	313173
Applicant:	McCrystal
Respondent:	Queensland Building and Construction Commission
Decision Date:	30 January 2018
Catchwords:	<p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL TO DEAL - PREVIOUS APPLICATION FOR SAME DOCUMENTS</b> - application for information concerning a regulatory decision - documents sought in previous access applications by the applicant that were the subject of completed external reviews - whether Information Commissioner should decide not to deal with those aspects of this review - section 43(3)(d) of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION</b> - application for information concerning a regulatory decision - accountability, transparency, administration of justice and procedural fairness considerations - personal information of other individuals - business and commercial information of entities - flow of information to agency - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p><b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS</b> - application for information concerning a regulatory decision - whether agency has taken all reasonable steps to locate documents - whether the documents cannot be found or do not exist - sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</p>

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the Queensland Building and Construction Commission (**QBCC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:

*All documents<sup>1</sup> relating to QBCC's enquiries, the responses and material evidence provided by parties and experts (identified in complaint or not) in response to those enquiries, consideration and advice of the QBCC of those materials, which satisfied the QBCC in all of its decisions (particularly that Certifier [Mr A] did not engage in unsatisfactory conduct or professional misconduct) regarding Certifier Complaint and Internal Review under QBCC Ref. A1126608, A21174, 920989\_20, 00000000009533. Consideration, discussion & correspondence by QBCC in case notes/ERDMS/Ministerial RTI for QBCC Ref 1263834\_6 relating to licensing, certification and construction of buildings at [Property 1 and Property 2] certified by [Mr A or his firm].*

2. QBCC located responsive documents and provided access to 3217 pages<sup>2</sup> and parts of 219 pages. QBCC refused access to the rest of the 219 pages and five pages in full, on the ground that disclosure of this information would be contrary to the public interest. QBCC also deleted information from one page of the documents released to the applicant, on the basis that it was irrelevant to the access application.
3. The applicant sought internal review of QBCC's decision. On internal review, QBCC affirmed<sup>3</sup> its original decision.
4. The applicant then applied<sup>4</sup> to the Information Commissioner for external review of QBCC's internal review decision refusing access to information and raised concerns that QBCC had not located all relevant documents.
5. On external review, QBCC released small portions of additional information to the applicant.
6. For the reasons set out below, I vary QBCC's decision and have decided:
  - not to deal with part of the applicant's external review application under section 43(3)(d) of the RTI Act, as that part of the application seeks access to documents which were the subject of previous access applications by the applicant and have been considered in completed external reviews; and
  - that access to the information remaining for consideration in this review may be refused on the grounds that:
    - its disclosure would, on balance, be contrary to the public interest; or
    - it is nonexistent or unlocatable.

## Background

7. QBCC is the State's building and construction industry regulator and a range of legislation falls within QBCC's regulatory responsibilities.<sup>5</sup> QBCC's responsibilities include regulation of licensees in the performance of building work. Relevant to this review, QBCC has responsibility for the licensing of building certifiers and investigating complaints made against building certifiers.
8. In 2015, the applicant made a complaint to QBCC about building certifier, Mr A. QBCC investigated that complaint and determined that Mr A had not engaged in unsatisfactory conduct in relation to the matter of the applicant's complaint, however, Mr A had engaged in unsatisfactory conduct in relation to an additional matter identified during the

<sup>1</sup> The access application seeks documents for the period April 2015 to 4 August 2016 (being the date the application was received by QBCC) and identifies the types of documents sought as: *Case notes, EDRMS, legal EDRMS, internal & external correspondence, image/video/audio recordings & interviews, documents including plans/referral agency correspondence/work contracts & receipts/employee contracts/values/suppliers/insurance/licensing requirements/certificates.*

<sup>2</sup> This included a number of pages which were blank.

<sup>3</sup> By letter dated 23 December 2016.

<sup>4</sup> On 23 January 2017.

<sup>5</sup> Refer to <<http://www.qbcc.qld.gov.au/about-us/overview>> and <<http://www.qbcc.qld.gov.au/about-us/legislation>>.

investigation. The applicant sought QBCC's internal review of that decision and, on internal review, QBCC confirmed its decision that Mr A had not engaged in unsatisfactory conduct in relation to the matter of the applicant's complaint.

9. The applicant has made a number of other complaints to QBCC, which primarily relate to residential building work undertaken by LJ Technical Control Construction Pty Ltd (**LJ Technical**) at two adjoining properties—Property 1 and Property 2. The applicant's submissions provide extensive information about his various complaints, including the complaint referred to in paragraph 8 above, and the outcomes of QBCC's investigations of his complaints. A summary of the applicant's complaints to QBCC concerning Property 1 and Property 2 is set out in Appendix 1.
10. In addition to these complaints, the applicant and his legal representatives also sought Ministerial responses concerning certain matters raised in the complaints.<sup>6</sup>
11. On external review, the applicant has provided extensive submissions to the Office of the Information Commissioner (**OIC**) in support of his view that QBCC's decisions concerning his complaints about building certifier Mr A and unlicensed contracting at Property 1 and Property 2 were wrong, and that QBCC officers knew those decisions were wrong when the decisions were being made. He considers that certain QBCC investigation outcomes *'permitted the building contractor to construct a building where they would otherwise be prohibited from doing so'*<sup>7</sup> and believes that disclosure of the refused information in this review will *'demonstrate the reasons for QBCC's decision that the Certifier did not engage in unsatisfactory conduct or professional misconduct'*.<sup>8</sup>
12. The significant procedural steps relating to the external review are set out in Appendix 2.

### Reviewable decision

13. The decision under review is QBCC's internal review decision dated 23 December 2016.

### Evidence considered

14. Evidence, submissions, legislation and other material that I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendices).
15. The Information Commissioner's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies. As noted at paragraph 11 above, the applicant has made extensive submissions to OIC regarding QBCC's decisions concerning his complaints about building certifier Mr A. The applicant's submissions<sup>9</sup> raise a number of concerns in this regard, including that QBCC's decisions were:

- *'not consistent with the legislation, the Tribunal's interpretation and approach to such matters, or relevant case law'*
- *'not the decision that should have been made under the Building Act 1974'; and*
- *'not independent and [were] subject to undue influence'*.<sup>10</sup>

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<sup>6</sup> For example, pages 54-113 in File 1126608 Ministerial EDRMS, comprise the applicant's letter to a Minister dated 20 November 2015 (which attaches the applicant's Notice of Offence submitted to QBCC on 26 October 2015).

<sup>7</sup> External review application.

<sup>8</sup> External review application.

<sup>9</sup> As set out in Appendix 2.

<sup>10</sup> External review application.

16. I have given consideration to these submissions for the purpose of determining whether there are public interest factors favouring disclosure of information. Otherwise, however, OIC has no jurisdiction to address the applicant's concerns that QBCC's decisions about his complaints were wrong, or to make any findings or provide any remedy to the applicant in respect of such concerns.<sup>11</sup>

### Information in issue

17. The applicant has made the following access applications to QBCC:

Date	QBCC reference number and decision	External review and status
16 September 2014 ( <b>First Application</b> )	RTI_053_14_15 – decision dated 30 September 2014	Not sought
21 April 2016 ( <b>Second Application</b> )	RTI_248_15_16 – decision dated 14 July 2016	312924 – completed
4 August 2016 ( <b>Third Application</b> )	RTI_029_16_17 – internal review decision dated 12 January 2017	313174 – ongoing
4 August 2016 ( <b>Fourth Application</b> )	RTI_030_16_17 – decision dated 30 September 2016	312996 – completed
4 August 2016 ( <b>Fifth Application</b> )	RTI_031_16_17 – internal review decision dated 23 December 2016	<b>313173 – this review</b>
5 August 2016 ( <b>Sixth Application</b> )	RTI_032_16_17 – decision dated 2 November 2016	313091 – ongoing

18. It is evident from the material before me that, in processing the Fifth Application which is the subject of this review, QBCC:

- considered there was some overlap between the documents sought in this application and the documents QBCC had dealt with in the Second Application (which, at that time, was the subject of external review 312924); and
- sought clarification from the applicant<sup>12</sup> about the information sought in the second part of the Fifth Application (that is, the request for documents concerning *'Consideration, discussion & correspondence by QBCC in case notes/ERDMS/Ministerial RTI for QBCC Ref 12683834\_6 relating to licensing, certification and construction of buildings at [Property 1 and Property 2], certified by [Mr A or his firm]'*).

19. Based on the applicant's response,<sup>13</sup> QBCC reconsidered the following information in its processing of the Fifth Application which is the subject of this review:

- documents from File *1263834 Ministerials*, which were previously located as responsive to the Second Application and were fully or partially released to the applicant;<sup>14</sup> and

<sup>11</sup> During the external review, OIC has advised the applicant that that he may wish to take his concerns to other agencies which have jurisdiction to investigate those matters.

<sup>12</sup> QBCC's emails to the applicant dated 5 and 9 September 2016.

<sup>13</sup> Applicant's letter to QBCC dated 23 September 2016.

<sup>14</sup> Information was refused in such documents on the basis that its disclosure would, on balance, be contrary to the public interest. As the Fifth Application sought documents for a different period to the documents sought in the Second Application, I note that not all the File *1263834 Ministerials* documents located as responsive to the Second Application were reconsidered in processing the Fifth Application.

- information deleted under section 73 of the RTI Act in documents from File 1263834 Compliance EDRMS, which were previously located as responsive to the Second Application.<sup>15</sup>

20. During this external review, some issues were resolved informally<sup>16</sup> as follows:

- QBCC released portions of information to the applicant
- the applicant advised he did not wish to pursue access to:
  - mobile telephone numbers of QBCC employees, state government employees and certifiers
  - information deleted from photographs; and
  - signatures
- the applicant accepted OIC's view that disclosure of one category of information would, on balance, be contrary to the public interest;<sup>17</sup> and
- the applicant accepted OIC's view that the information QBCC deleted from one page released to the applicant was irrelevant to the access application.<sup>18</sup>

21. Therefore, the information remaining for consideration in this review (**Information in Issue**) comprises 5 full pages and portions of information appearing on 42 pages.<sup>19</sup>

### Issues to be determined

22. As set out in paragraph 20 above, some issues have been resolved informally during the review process. The remaining issues to be determined are whether:

- I may refuse to deal with the applicant's request for certain documents on the grounds that the applicant had previously applied for the same documents and those previous applications were the subject of completed external reviews
- the Information in Issue may be refused on the ground that its disclosure would, on balance, be contrary to the public interest; and
- the additional documents that the applicant considers should have been located by QBCC may be refused on the ground that they are nonexistent or unlocatable.

### Preliminary issues

23. Before considering the issues for determination, it is necessary to deal with the following preliminary issues arising from concerns expressed in the applicant's submissions.

### Requested review of matters dealt with in another decision

24. As set out at paragraph 17 above, the applicant has made six access applications, and the Fifth Application is the subject of this review.

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<sup>15</sup> Refer to page 3 of the internal review decision dated 23 December 2016. It is noted that QBCC's agreed reconsideration did not extend to information which was refused in those documents on the basis that its disclosure would, on balance, be contrary to the public interest.

<sup>16</sup> In accordance with the requirement under section 90(1) of the RTI Act that the Information Commissioner identify opportunities and processes for early resolution and promote settlement of external review applications.

<sup>17</sup> Paragraph 73 of the applicant's submissions dated 30 November 2017.

<sup>18</sup> Paragraph 82 of the applicant's submissions dated 30 November 2017.

<sup>19</sup> Pages 569, 572, 575, 578, 579, 587, 588, 591, 592, 593, 596, 597, 598, 610, 631, 632, 635, 636, 637 and 641 in File 920989\_20 EDRMS; pages 85, 87, 90, 94, 97, 102, 106, 118, 119, 120, 121, 122, 124, 125 and 127 in File 1126608\_1 EDRMS; page 57 in File 1263834 Ministerials; and pages 2, 38, 44, 48, 52, 59, 66, 74, 82, 84 and 91 in File RTI 248 15 16 1263834 Compliance s73 sections.

25. The Second Application was the subject of external review 312924, which was finalised by the Information Commissioner's decision<sup>20</sup> of *McCrystal and Queensland Building and Construction Commission* [2017] QICmr 32 (**McCrystal No. 1**) on 10 August 2017.
26. In this review, the applicant requested that the Information Commissioner reconsider whether information was '*incorrectly deleted*' from documents released in external review 312924.
27. Under section 110 of the RTI Act, after conducting an external review, the Information Commissioner must make a written decision either affirming, varying or setting aside an agency's decision under review.<sup>21</sup> Once the formal decision has issued, the decision is irrevocable because the Information Commissioner's decision-making power is spent.<sup>22</sup> The Information Commissioner only has a limited right to correct errors in a written decision.<sup>23</sup>
28. The applicant's request seeks the Information Commissioner's reconsideration of matters determined in *McCrystal No 1*. As such, the applicant's request is beyond the power of the Information Commissioner, who is *functus officio* in the circumstances. Accordingly, I am unable to consider or address the applicant's submissions that information was '*incorrectly deleted*' from documents released in completed external review 312924.
29. For completeness, I note that:
  - in paragraphs 184-190 of *McCrystal No. 1*, the Information Commissioner set out findings about the information which was deleted in external review 312924 on the basis that it was irrelevant to the Second Application, and these findings included consideration of the applicant's submissions that such information could not be deleted on that basis; and
  - the applicant did not appeal the *McCrystal No. 1* decision under section 119(2) of the RTI Act.
30. In this review, the applicant also contended<sup>24</sup> that:
  - information was '*incorrectly deleted*' in external review 312924 and this should have been considered in external review 312924
  - '*OIC did not consider the submission under the intended external review*'
  - as his submission was not considered in external review 312924, it should be considered in this review; and
  - '*QBCC may have committed offences against the RTI Act by "incorrectly" deleting this information from documents subject to external review 312924.*'
31. These submissions indicate the applicant continues to seek access to the information which was deleted, on the basis that it was irrelevant, from documents released in external review 312924. As noted in paragraph 19 above, in processing the Fifth Application which is the subject of this review, QBCC reconsidered information deleted under section 73 of the RTI Act in documents which were the subject of external review 312924. During this external review, some of this reconsidered information was released

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<sup>20</sup> By her delegate.

<sup>21</sup> Except for those external reviews resolved informally.

<sup>22</sup> *Price and Nominal Defendant* (Unreported, Queensland Information Commissioner, 13 February 2009).

<sup>23</sup> Under section 110 of the RTI Act, the Information Commissioner may correct an obvious error or an error resulting from an accidental slip or omission. I have identified no errors of this nature in *McCrystal No. 1*.

<sup>24</sup> Submissions dated 30 November 2017.

to the applicant<sup>25</sup> and the remainder forms part of the Information in Issue. Accordingly, the applicant's requested access to this previously deleted information, and his submissions regarding such information, have been considered in this external review.

### **Concerns regarding QBCC decision-makers**

32. On external review,<sup>26</sup> the applicant raised a number of concerns about QBCC's initial processing of the access application and the experience of QBCC's original decision-maker.
33. More specifically, the applicant submitted<sup>27</sup> the following in respect of QBCC's RTI decision-makers:<sup>28</sup>
  - *'an independent decision on the request by the decision maker was subject to undue influence or direction'*
  - QBCC's original decision-maker and internal review decision-maker *'may not have acted independently or without undue influence'*
  - *'[a]s a consequence, the eventual decision for the request is contentious';* and
  - he therefore considers that QBCC's decision *'may not be the decision that should have been made under the RTI Act'*.
34. As noted in paragraph 3 above, the applicant sought internal review of QBCC's original decision. Under section 80(2) of the RTI Act, an internal review decision-maker is required to make a new decision, as if the reviewable decision had not been made.
35. I further note that external review by the Information Commissioner<sup>29</sup> is merits review, which is an administrative reconsideration of a case that can be described as 'stepping into the shoes' of the primary decision-maker, to determine what is the correct and preferable decision. Given this position, the applicant's submissions concerning QBCC's RTI decision-makers do not raise matters requiring consideration in the context of the remaining issues to be determined.
36. I have, however, carefully considered the applicant's submissions concerning QBCC's decision-makers in terms of my obligation to notify relevant parties about evidence of deficiencies in the conduct of agency officers.<sup>30</sup> There is no evidence before me which supports the applicant's assertions that QBCC's internal review decision-maker has been influenced or directed as the applicant alleges.
37. Further, while the decision being considered on external review is QBCC's internal review decision, not QBCC's original decision, for completeness I also note that there is no evidence before me which supports the applicant's assertions that QBCC's original decision-maker has been influenced or directed as the applicant alleges.<sup>31</sup>
38. I will now turn to consideration of the substantive issues to be determined in this review.

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<sup>25</sup> As part of informal resolution in accordance with section 90(1) of the RTI Act.

<sup>26</sup> External review application.

<sup>27</sup> External review application.

<sup>28</sup> I note these submissions are expressed in similar terms to the applicant's concerns referenced in paragraph 15 above, relating to the QBCC Officer who made the decision concerning his complaint about building certifier, Mr A.

<sup>29</sup> Or delegate.

<sup>30</sup> Section 113 of the RTI Act.

<sup>31</sup> In terms of both of QBCC's decision-makers, if OIC considered there was such evidence, the Information Commissioner must take the actions specified in section 113 of the RTI Act.

## Refusal to deal

### Relevant law

39. Under the RTI Act, an individual has a right to be given access to documents of an agency,<sup>32</sup> however, this right of access is subject to a number of exclusions and limitations.
40. Where an applicant has made an access application under the RTI Act or the *Information Privacy Act 2009* (Qld) (**IP Act**), and then makes a later application under the RTI Act or IP Act to the same agency seeking access to one or more of the same documents,<sup>33</sup> section 43 of the RTI Act enables the agency to refuse to deal with the later access application if:
- the agency's decision in respect of the first application is the subject of a review<sup>34</sup> that is not complete or a completed review (other than an internal review);<sup>35</sup> and
  - the later application does not on its face disclose a reasonable basis for seeking access to those same documents.<sup>36</sup>
41. As external review is a merits review, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency, under the RTI Act.<sup>37</sup>

### Findings

42. On external review the applicant requested<sup>38</sup> that '*searches be conducted to locate documents that satisfy the RTI request, particularly those demonstrating a deliberative process and the consideration and advice of the QBCC of those materials, which satisfied the QBCC in all of its decisions (such as case notes and relevant internal correspondence)*'.
43. OIC requested<sup>39</sup> that the applicant confirm the categories of information which, in his view, existed and should have been located by QBCC. In response, the applicant identified<sup>40</sup> the following categories of documents:

Category	Description
(i)	investigation case notes, discussion notes or diary notes that tracked Officer S's investigation of the applicant's complaint concerning the conduct of the private certifier in respect of building works at Property 1
(ii)	further correspondence related to the investigation of the applicant's complaint about building certifier Mr A, including correspondence from the certifier providing information to QBCC

<sup>32</sup> Section 23 of the RTI Act.

<sup>33</sup> Section 43(1) of the RTI Act.

<sup>34</sup> 'Review' is defined in section 43(5) of the RTI Act to include an external review or a proceeding under chapter 3, part 11 of the RTI Act (that is, certain proceedings before the Queensland Civil and Administrative Tribunal (**QCAT**)).

<sup>35</sup> Section 43(3)(d)(i) and (ii) of the RTI Act.

<sup>36</sup> Section 43(1)(b) of the RTI Act.

<sup>37</sup> Section 105(1)(b) of the RTI Act. However, this does not apply to the discretion in section 44(4) of the RTI Act to give access to a document to which access can be refused, as the Information Commissioner does not have power to direct that access be given to a document which is exempt or contrary to public interest to disclose: section 105(2) of the RTI Act.

<sup>38</sup> External review application.

<sup>39</sup> On 13 September 2017.

<sup>40</sup> Submissions dated 27 September 2017. These submissions make specific reference to various QBCC Officers, who have been de-identified in this decision.



(iii)	the request from Officer T to Officer S which led to Officer S's reply contained in an email dated 26 November 2015 <sup>41</sup>
(iv)	further drafts of the QBCC decision regarding the applicant's complaint about building certifier Mr A <sup>42</sup>
(v)	audio recordings of two telephone conversations between Officer T and the private certifier in November 2015 which ' <i>could not be located under the terms of the RTI application in 312924</i> '
(vi)	further documents held by three specified officers relevant to a further review and a detailed investigation of the legislation.

44. The Category (v) documents are documents that were the subject of the applicant's Second Application considered in external review 312924, which have been addressed in paragraphs 194-201 of the Information Commissioner's decision in *McCrystal No. 1*. Accordingly, these documents are the subject of a completed external review.<sup>43</sup>
45. Similarly, the Category (vi) documents were the subject of the applicant's Fourth Application considered in external review 312996 and have been addressed in the Information Commissioner's decision of *McCrystal and Queensland Building and Construction Commission (No. 2) [2017] QICmr 50 (McCrystal No. 2)* dated 6 October 2017. This decision is the subject of a current appeal to QCAT under section 119 of the RTI Act.<sup>44</sup> Therefore, these documents are both the subject of a completed external review and an ongoing review under chapter 3, part 11 of the RTI Act.<sup>45</sup>
46. I have carefully considered the terms of the Fifth Application that is the subject of this review. I am satisfied that there is no information on the face of this application which discloses any reasonable basis for again seeking access to the Category (v) and Category (vi) documents.
47. I have also carefully considered the applicant's submissions in this review regarding the Category (v) and Category (vi) documents. In this regard, I note that:
- the applicant's submissions in this review concerning the Category (v) documents<sup>46</sup> are substantially the same as the submissions he made when seeking the same documents in completed external review 312924 – that is, the applicant refers to QBCC's policy to record telephone conversations; contends that these '*...two (2) telephone conversations known to have occurred between [Officer T] and the Certifier in November 2015 could not be located under the terms of the RTI application in 312924*'; and expresses his belief that these discussions were '*proximal to the [Property 1] Certifier decision*'; and
  - the applicant's submissions in this review regarding the Category (vi) documents<sup>47</sup> simply reference submissions that were made to, and considered by, the Information Commissioner in completed external review 312996.
48. Accordingly, I am satisfied that there is nothing in the applicant's Fifth Application or his submissions in this external review that persuades me there is any reasonable basis to again seek access to the Category (v) and Category (vi) documents.

<sup>41</sup> The referenced 26 November 2015 email comprises pages 386-387 in File 92089\_20 EDRMS (which were released to the applicant, apart from a mobile telephone number that the applicant did not wish to access on external review).

<sup>42</sup> I note that the applicant's submissions reference a draft Information Notice appearing on pages 314-336 in File 92089\_20 EDRMS (which were released to the applicant). The final version Information Notice and an accompanying letter to the applicant appear on pages 338-361 and 364-365 in File 920989\_20 EDRMS (which have also been released to the applicant).

<sup>43</sup> Section 43(3)(d)(ii) of the RTI Act.

<sup>44</sup> The appeal comprises a 'review' for the purposes of section 43(d)(i) of the RTI Act.

<sup>45</sup> Section 43(3)(d)(i) and (ii) of the RTI Act.

<sup>46</sup> Submissions dated 27 September 2017.

<sup>47</sup> Submissions dated 27 September 2017.

49. For these reasons, I refuse to deal with part of the applicant's application for external review under section 43(3)(d) of the RTI Act, in so far as it again seeks access to the documents identified in Category (v) and Category (vi) above.

### **Contrary to the public interest information**

50. As noted above, in processing the access application, QBCC reconsidered certain information which was deleted from documents released to the applicant in response to the Second Application on the basis it was irrelevant to that application. As noted at paragraph 31, during this external review, some of this reconsidered information was released to the applicant. The Information in Issue includes the portions of this reconsidered information which has not been released to the applicant (**Reconsidered Information**).
51. While the RTI Act prevents me from disclosing the content of the Information in Issue,<sup>48</sup> I am able to generally categorise the Information in Issue as follows:
- 5 pages<sup>49</sup> and portions of information appearing on 31 pages<sup>50</sup> which comprise names, contact details and other personal information of individuals other than the applicant which was provided to or obtained by QBCC in its investigation of the applicant's complaints (**Third Party Information**);<sup>51</sup> and
  - the portions of information on 11 pages comprising the Reconsidered Information.<sup>52</sup>

### **Relevant law**

52. An agency may refuse access to information the disclosure of which would, on balance, be contrary to the public interest.<sup>53</sup> In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:<sup>54</sup>
- identify factors irrelevant to the public interest and disregard them
  - identify factors in favour of disclosure of information
  - identify factors in favour of nondisclosure of information; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.
53. 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>55</sup>

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<sup>48</sup> Section 108(3) of the RTI Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

<sup>49</sup> Pages 118-122 in File 116608\_1 EDRMS.

<sup>50</sup> Pages 569, 572, 575, 578, 579, 587, 588, 591, 592, 593, 596, 597, 598, 610, 631, 632, 635, 636, 637 and 641 in File 920989\_20 EDRMS; pages 85, 87, 90, 94, 97, 102, 106, 124, 125 and 127 in File 1126608\_1 EDRMS; and page 57 in File 1263834 Ministerials.

<sup>51</sup> This information was identified in OIC's letter to the applicant dated 3 November 2017 as 'Category 1 Information'. (The applicant accepted OIC's view that disclosure of 'Category 2 Information'—which comprised the rest of the information addressed in that letter—would, on balance, be contrary to the public interest.)

<sup>52</sup> Pages 2, 38, 44, 48, 52, 59, 66, 74, 82, 84 and 91 in File RTI 248 15 16 1263834 Compliance s73 sections.

<sup>53</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>54</sup> Section 49(3) of the RTI Act.

<sup>55</sup> However, there are some recognised public interest considerations that may apply for the benefit of an individual.

### **Applicant's submissions**

54. Generally, the applicant submitted<sup>56</sup> that there are 'overriding public interest factors favouring disclosure of the information in issue'.
55. I will first consider the Third Party Information.

### **Findings – Third Party Information**

56. Most of the Third Party Information appears in email chains and, as a result, there is significant duplication in certain portions of the Third Party Information. For example:
- the portion of information refused on page 569 in File 920989\_20 EDRMS is duplicated on pages 572, 575, 579, 588, 593, 598, 632 and 637 in File 920989\_20 EDRMS
  - the portion of information refused on page 578 in File 920989\_20 EDRMS is duplicated on pages 587, 592, 597, 632 and 636 in File 920989\_20 EDRMS
  - the portion of information refused on page 591 in File 920989\_20 EDRMS is duplicated on pages 596, 631 and 635 in File 920989\_20 EDRMS
  - the portion of information refused on page 85 in File 1126608\_1 EDRMS is duplicated on pages 87, 90, 94, 97 and 102 in File 1126608\_1 EDRMS
  - the portion of information refused on page 106 in File 1126608\_1 EDRMS is duplicated on page 124 in File 1126608\_1 EDRMS; and
  - the portion of information refused on page 125 in File 1126608\_1 EDRMS is duplicated on page 127 in File 1126608\_1 EDRMS.
57. Also, the nature of certain portions of the Third Party Information can be discerned from the surrounding information which has been released to the applicant. For example:
- the portion of information refused on pages 578, 587, 592, 597, 632 and 636 is identified in the released sections of those pages as being a file link provided to QBCC by building certifier, Mr A, for the purpose of QBCC's investigation of the applicant's complaint; and
  - the portions of information refused on pages 85, 87, 90, 94, 97, 102, 125 and 127 in File 1126608\_1 EDRMS are identified in the released text of those pages to be work cessation and commencement dates for building certifier, Mr B.
58. The applicant's submissions identify the factors favouring disclosure of the Third Party Information that he considers relevant, namely, where disclosure of the refused information could reasonably be expected to:
- enhance the government's accountability<sup>57</sup>
  - contribute to positive and informed debate on important issues or matters of serious interest<sup>58</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>59</sup>
  - allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official<sup>60</sup>

<sup>56</sup> Submission dated 30 November 2017.

<sup>57</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>58</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>59</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>60</sup> Schedule 4, part 2, item 5 of the RTI Act.

- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct<sup>61</sup>
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies<sup>62</sup>
- reveal the reason for a government decision and any background or contextual information that informed the decision<sup>63</sup>
- reveal the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant<sup>64</sup>
- contribute to the administration of justice generally, including procedural fairness<sup>65</sup>
- contribute to the administration of justice for a person,<sup>66</sup> and
- disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law.<sup>67</sup>

### **Irrelevant factors**

59. I do not consider that any irrelevant factors arise in respect of the Third Party Information and I have not taken any irrelevant factors into account.

### **Factors favouring disclosure**

#### ***Accountability, transparency and informing the community***

60. The RTI Act recognises that it may be in the public interest to disclose information where disclosing information could reasonably be expected to:
- enhance the Government's accountability<sup>68</sup>
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by Government in its dealings with members of the community;<sup>69</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>70</sup>
61. The applicant submitted<sup>71</sup> that these factors favour disclosure of the Third Party Information and that each should be afforded high weight.
62. QBCC must be transparent and accountable in how it deals with investigations of complaints about potential breaches of the legislation it administers. However, there are circumstances in which disclosure of some, but not all, information in an agency's records will achieve an accountable and transparent Government. Accordingly, in considering how disclosing the Third Party Information could advance these accountability and transparency factors, I have also considered how, if at all, the weight to be afforded to the public interest factors has been impacted by the information that has already been provided to the applicant.

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<sup>61</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>62</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>63</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>64</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>65</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>66</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>67</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>68</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>69</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>70</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>71</sup> Submissions dated 30 November 2017.

63. From my review of the released information, it is apparent that QBCC has released a substantial amount of information to the applicant about the handling and outcomes of its investigations into the applicant's various complaints, including the applicant's complaints about building certifiers, Mr A and Mr B. In particular, I note that the released information in this review includes:
- two QBCC Information Notices (**Information Notices**)<sup>72</sup> which set out the reasons for QBCC's decisions regarding the applicant's complaints about building certifiers, Mr A and Mr B; and
  - a QBCC Review Decision (**Review Decision**)<sup>73</sup> which sets out the reasons for QBCC's internal review of its decision concerning his complaint about building certifier, Mr A.
64. In terms of the public interest, I consider that the released information affords the public (and the applicant personally) an understanding of how the various QBCC investigations were conducted, and provides background and contextual information to those investigations and QBCC's decisions concerning the applicant's various complaints, and in particular, his complaints about building certifiers, Mr A and Mr B.
65. I also note that:
- in the Information Notice regarding the applicant's complaint against building certifier Mr B, QBCC determined that Mr B was not the certifier who assessed and issued the approval for the building works relevant to the applicant's complaint
  - a QBCC licence search<sup>74</sup> of building certifier Mr A's licence records QBCC's findings as set out in the Information Notice regarding Mr A (which resulted from QBCC's investigation of the applicant's complaint relating to Mr A's certification of development at Property 1); and
  - a QBCC licence search<sup>75</sup> of LJ Technical's building licence confirms that LJ Technical's licence classes are currently cancelled and it is an excluded company by reason of a listed influential person (who is excluded from holding a contractor or nominee supervisor licence or from running a licensed company due to an insolvency event).
66. There is a public interest in affording the parties to QBCC's investigations (and the public generally) with an understanding of the conclusions and outcomes of such investigations. However, I consider this does not extend to affording complainants a right to reinvestigate such investigations, particularly in circumstances where other avenues of redress for perceived investigative inadequacy are available.<sup>76</sup>
67. In the present case, while the applicant does not agree with the decisions made by QBCC regarding his complaints concerning building certifiers, he was provided with written reasons for QBCC's decisions and information as to how the investigations were conducted. I consider provision of this information has substantially advanced the public interest factors relating to QBCC's accountability and transparency.

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<sup>72</sup> Pages 126-130 in File 1126608\_1 EDRMS comprise an Information Notice and an accompanying letter addressed to the applicant regarding the applicant's complaint about building certifier Mr B. Pages 338-361 and 364-365 in File 920989\_20 comprise an Information Notice and an accompanying letter addressed to the applicant regarding the applicant's complaint about building certifier Mr A.

<sup>73</sup> Pages 90 and 92-97 in File AD-310396-9533 EDRMS comprise a Review Notice and an accompanying letter addressed to the applicant regarding the applicant's request for QBCC to internally review its decision concerning his complaint about building certifier Mr A.

<sup>74</sup> Search conducted by OIC on 6 December 2017, via QBCC's website.

<sup>75</sup> Search conducted by OIC on 6 December 2017, via QBCC's website.

<sup>76</sup> In this regard, I note the applicant has referred certain of his concerns regarding the construction work at Property 1 and Property 2 and QBCC's handling of his complaints to the Queensland Ombudsman.

68. Taking into consideration the nature of the Third Party Information (being names, contact details and other personal information of individuals), the documents that have been released to the applicant and the publicly available licence information, I am satisfied that disclosure of the Third Party Information would not further advance QBCC's accountability and transparency or inform the community about QBCC's investigative processes in any meaningful way. Accordingly, I afford low to no weight to the factors relating to QBCC's accountability and transparency and informing the community about QBCC's investigative processes.<sup>77</sup>

***Contribute to informed debate***

69. The applicant submitted<sup>78</sup> that this public interest factor favouring disclosure<sup>79</sup> should be afforded moderate weight. However, the applicant has not identified or addressed how disclosure of the Third Party Information (names, contact details and other personal information of individuals) could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.
70. As noted above, QBCC determined that building certifier Mr B was not the certifier who assessed and issued the approval for the building works relevant to the applicant's complaint, and the findings from QBCC's decision concerning the applicant's complaint regarding building certifier Mr A are publicly accessible, as is the current status of LJ Technical's licence.
71. Given the nature of the Third Party Information, QBCC's determination regarding Mr B, the publicly recorded findings from QBCC's decision concerning Mr A and the cancellation of LJ Technical's licence, I do not consider that disclosing the Third Party Information could reasonably be expected to contribute to positive and informed debate.
72. Accordingly, I afford low to no weight to this factor favouring disclosure.

***Deficiencies in the conduct or administration of an agency or official***

73. Factors favouring disclosure will also arise where disclosing information could reasonably be expected to:
- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official,<sup>80</sup> and
  - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.<sup>81</sup>
74. The applicant submitted<sup>82</sup> that these factors favouring disclosure should each be afforded high weight in respect of the Third Party Information. While the applicant has not specifically identified how he considers disclosure of the Third Party Information would allow or assist inquiry into, or substantiate claims about, agency or official conduct deficiencies, it appears that he considers<sup>83</sup> disclosure of the Third Party Information would substantiate his concerns that QBCC officers:

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<sup>77</sup> Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

<sup>78</sup> Submissions dated 30 November 2017.

<sup>79</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>80</sup> Schedule 4, part 2, item 5 of the RTI Act.

<sup>81</sup> Schedule 4, part 2, item 6 of the RTI Act.

<sup>82</sup> Submissions dated 30 November 2017.

<sup>83</sup> Based on his assessment of information that has been released to him.

- knew the decisions they were making concerning his complaints about the Property 1 building works were in fact wrong but they continued to make them; and
- have made '*conflicting, contradictory, or patently false and misleading*' representations with regard to his complaints about building certifier, Mr A.

75. In this regard, I note that the applicant submitted<sup>84</sup> that specific documents which have been released to him '*demonstrate that the QBCC knew that the [Property 1] decisions it was making were in fact wrong (Unlicensed Contracting, Certifier, Certifier Internal Review), yet the QBCC continued to make them anyway ...*'. That is, the applicant considers information already released to him reveals or substantiates what he considers to be improper or deficient conduct by QBCC Officers.
76. As noted above, the Third Party Information comprises names, contact details and other personal information of individuals other than the applicant which were provided to or obtained by QBCC in its investigation of the applicant's complaints. On careful consideration of the Third Party Information, I am satisfied that there is nothing in the Third Party Information which gives rise to a reasonable expectation that its disclosure would allow or assist enquiry into, reveal or substantiate, any deficiencies in the conduct of QBCC or its officers.
77. Regarding the concerns the applicant has raised on external review about the conduct of QBCC's officers in making the decisions concerning his complaints, I consider there are other avenues of redress open to the applicant<sup>85</sup> which do not require disclosure of the Third Party Information.
78. Accordingly, I afford low to no weight to the factors favouring disclosure relating to allowing or assisting inquiry into, or substantiating claims about, deficiencies in the conduct of an agency or official.<sup>86</sup>

### **Administration of justice for the applicant**

79. The applicant submitted<sup>87</sup> that '*the health and amenity of the Applicant has been significantly affected and the integrity of their property has been compromised, in the past, present and future, by the QBCC's investigation – where tier 1 defective building work and the unmitigated spread of fire to other property has been allowed by both the Certifier and the QBCC*'.
80. A public interest factor favouring disclosure<sup>88</sup> will arise where disclosing information could reasonably be expected to contribute to the administration of justice for a person (for example, by allowing a person to access information that may assist them in legal proceedings). In determining whether this public interest factor in favour of disclosure applies, I must consider whether:
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law
  - 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.<sup>89</sup>

<sup>84</sup> Submissions dated 30 November 2017.

<sup>85</sup> Such as raising his concerns with relevant integrity bodies.

<sup>86</sup> Schedule 4, part 2, items 5 and 6 of the RTI Act.

<sup>87</sup> Submissions dated 30 November 2017.

<sup>88</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>89</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).

81. I acknowledge the applicant's view that he has been adversely affected. I note, in particular, the applicant's submissions<sup>90</sup> that his health and amenity have been significantly affected and the integrity of his property has been compromised by the decisions QBCC has made in respect of his various complaints.
82. The applicant submitted<sup>91</sup> that specific documents which have been released to him '*demonstrate that the QBCC knew that the [Property 1] decisions it was making were in fact wrong (Unlicensed Contracting, Certifier, Certifier Internal Review), yet the QBCC continued to make them anyway ...*', and that this had significantly affected him. That is, the applicant considers that the already released information includes information pertinent to consideration of whether a remedy is available and worth pursuing against any entity or individual in respect of the adverse effects he considers have occurred as a result of the referenced QBCC decisions.
83. I have carefully considered the Third Party Information and the information which has been released to the applicant. QBCC's reasons for its decisions regarding the applicant's complaints concerning building certifiers, Mr A and Mr B, were notified to the applicant at the time those decisions were made. I also note that further copies of those decisions, together with additional background information, have been released to the applicant. This information has provided the applicant with a level of detail about the investigations undertaken and decisions made by QBCC that would enable him to evaluate whether a remedy is available and worth pursuing against any entity or individual in respect of the adverse effects he considers have occurred as a result of those decisions.
84. Taking into consideration the nature of the Third Party Information and the information that has been released to the applicant concerning QBCC's investigations and decisions regarding his various complaints, I am satisfied that disclosing the Third Party Information would not assist the applicant in evaluating or pursuing any remedy that may be available to address the wrongs that he submitted he has suffered as a consequence of QBCC's decisions regarding his complaints. Therefore, I afford no weight to this public interest factor.<sup>92</sup>

#### ***Advance fair treatment and procedural fairness***

85. Public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies;<sup>93</sup> and
  - contribute to the administration of justice generally, including procedural fairness.<sup>94</sup>
86. The applicant submitted that:
- '*there was no fair assessment of the evidence submitted by the Applicant (where the QBCC in fact meant to, or should have decided in favour of the Applicant – as evidenced by the correspondence of QBCC Officers above and the QBCC's persistent attempts to refuse or obstruct the disclosure of such documents)*'<sup>95</sup>

<sup>90</sup> Submissions dated 30 November 2017.

<sup>91</sup> Submissions dated 30 November 2017, as noted in paragraph 75 above.

<sup>92</sup> Schedule 4, part 2, item 17 of the RTI Act.

<sup>93</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>94</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>95</sup> Submissions dated 30 November 2017.



- *‘the decision-makers were biased in favour of the interest of the Certifier who has occasioned professional misconduct’*<sup>96</sup>
- *‘[t]he details of the complaints, and the evidence provided to the QBCC, were in fact disregarded or not properly considered by the QBCC’*<sup>97</sup>
- *‘... the QBCC has made substantially differing and conflicting decisions that were incorrect, and in fact did not afford the Applicant procedural fairness – evidence of which is found within the information in issue’*<sup>98</sup>
- specific documents that have been released to him *‘demonstrate that the QBCC knew that the [Property 1] decisions it was making were in fact wrong (Unlicensed Contracting, Certifier, Certifier Internal Review), yet the QBCC continued to make them anyway – significantly affecting the Applicant and denying them not only procedural fairness, but natural justice as well’*,<sup>99</sup> and
- the factors favouring disclosure in schedule 4, part 2, items 10 and 16 of the RTI Act should each be afforded high weight.<sup>100</sup>

87. QBCC’s investigations regarding the applicant’s complaints concerning building certifiers, Mr A and Mr B, have been finalised. Additionally, the applicant’s requested internal review of QBCC’s decision concerning his complaint about Mr A has been finalised. I note that the information released to the applicant includes the Information Notices and Review Decision, which set out the reasons for those three decisions.<sup>101</sup> Those documents summarise the applicant’s complaints and his supporting submissions and outline the reasons for QBCC’s decisions.
88. The public interest factor relating to advancing the fair treatment of individuals does not require a decision-maker to ensure that an applicant is provided with sufficient information to enable the applicant to be subjectively satisfied that he or she received fair treatment. Rather, it is about providing information to ensure fair treatment in an applicant’s future dealings with agencies.<sup>102</sup>
89. I again acknowledge the applicant’s view that he has been adversely affected by QBCC’s decisions concerning his complaints. However, taking into consideration the nature of the Third Party Information, there is no evidence before me which indicates that disclosing this information (for example, the names and contact details of a number of individuals, employment commencement and end dates for one individual and other personal information of other individuals) could reasonably be expected to advance the fair treatment of the applicant in his future dealings with QBCC or any other government entity. Further, if the applicant intends to refer any of the matters raised in his submissions on external review to other agencies or complaint handling bodies, I am also satisfied that provision of the Third Party Information will not advance his fair treatment in dealing with those other agencies and bodies, as the information that has already been disclosed to him is sufficient to enable him to make such referrals.
90. For these reasons, I am satisfied that disclosure of the Third Party Information would not advance the applicant’s fair treatment in his dealings with QBCC and other government agencies and bodies. Accordingly, I consider that no weight should be afforded to the factor favouring disclosure relating to advancing the applicant’s fair treatment.<sup>103</sup>

<sup>96</sup> Submissions dated 30 November 2017.

<sup>97</sup> Submissions dated 30 November 2017.

<sup>98</sup> Submissions dated 30 November 2017.

<sup>99</sup> Submissions dated 30 November 2017.

<sup>100</sup> Submissions dated 30 November 2017.

<sup>101</sup> Refer to footnotes 72 and 73.

<sup>102</sup> *F60XCX and Department of Natural Resources and Mines* [2017] QICmr 19 (9 June 2017) at [89]-[90].

<sup>103</sup> Schedule 4, part 2, item 10 of the RTI Act.

91. As previously noted, the applicant is the complainant in relation to the various complaints, rather than the subject of those complaints. Generally speaking, the principle of procedural fairness does not extend to the complainant in the same manner in which it applies to the subject of the investigation. In this matter, I note that, in respect of the building certifier complaints, the applicant was given the right to put what he considered to be relevant information to QBCC in support of his complaints and to reply in respect of QBCC's findings which were adverse to him. On the material before me, this is evidenced by released information, which confirms the applicant:
- provided information to QBCC's investigation of his complaints
  - exercised a right to seek internal review of QBCC's decision concerning building certifier, Mr A;<sup>104</sup> and
  - had the right to seek external review of QBCC's internal review decision relating to building certifier, Mr A.
92. There is no evidence before me to suggest the applicant sought external review of QBCC's decision in the Review Notice,<sup>105</sup> notwithstanding his submissions in this external review that he considers the QBCC decision to be incorrect.
93. Further, while the applicant has concerns about QBCC's decisions regarding his various complaints (including his complaints about the building certifiers), there is no evidence before me to support the applicant's contention that the details of his complaints, and the evidence he provided to QBCC, were disregarded or not properly considered by QBCC. In this regard, I note that:
- the Information Notice issued by QBCC in respect of the applicant's complaint against building certifier, Mr A, includes a summary of the applicant's complaint and confirms that the complaint documents lodged by the applicant were considered by QBCC in making the decision; and
  - the Review Notice was sent to the applicant and addresses the applicant's submissions which were provided in support of his request for QBCC to internally review its decision concerning building certifier, Mr A.
94. Given these circumstances and the nature of the Third Party Information, it is unclear to me how disclosure of that information would contribute to procedural fairness for any individual or entity. For these reasons, I consider that the factor favouring disclosure relating to the administration of justice, including procedural fairness<sup>106</sup> does not arise in respect of Third Party Information.
- Disclosure would reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant***
95. The RTI Act also recognises that a public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.<sup>107</sup>
96. The applicant asserts that this factor favouring disclosure should be afforded high weight.<sup>108</sup>

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<sup>104</sup> QBCC's Information Notices concerning Mr A and Mr B both stated that the applicant could seek internal or external review of those decisions.

<sup>105</sup> Page 6 of the Review Notice sets out the right to have the decision externally reviewed in the Queensland Civil and Administrative Tribunal.

<sup>106</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>107</sup> Schedule 4, part 2, item 12 of the RTI act.

<sup>108</sup> Submissions dated 30 November 2017.

97. As previously noted, it is clear from the applicant's submissions that he considers QBCC's decisions concerning his various complaints about certifier, Mr A, and LJ Technical are incorrect and that *'the representations by the QBCC with regard to the Certifier Complaint are conflicting, contradictory, or patently false and misleading'*. However, the applicant has not identified or addressed how disclosure of the Third Party Information (being names, contact details and other personal information of individuals other than the applicant) could reasonably be expected to reveal that the Third Party Information itself is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
98. There is nothing on the face of the Third Party Information, nor any other information before me, to suggest that:
- the names and contact details recorded in the Third Party Information are not correct
  - the other personal information of individuals (such as employment commencement and end dates) provided to or obtained for QBCC's investigations and recorded in the Third Party Information is not correct; or
  - the applicant could be possessed of knowledge that the Third Party Information is not correct (given the Third Party Information is information about individuals other than the applicant).
99. To the extent the Third Party Information includes personal opinions or recollections provided to QBCC's investigations of the applicant's complaints, such information is, by its very nature, shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not mean that the Third Party Information is necessarily incorrect or unfairly subjective.<sup>109</sup>
100. For these reasons, I do not consider this factor<sup>110</sup> arises to be considered in respect of the Third Party Information.
101. For the sake of completeness, I note that even if I were incorrect in this regard, and the factor could be said to apply, it nonetheless warrants low to no weight in favour of disclosing the Third Party Information, given the nature of the Third Party Information.

***Contribute to enforcement of the criminal law***

102. A public interest factor favouring disclosure will arise where disclosure of information could reasonably be expected to contribute to the enforcement of the criminal law.<sup>111</sup>
103. The applicant submitted<sup>112</sup> that this factor should be afforded high weight in favour of disclosure of the Third Party Information. While the applicant alleges that *'[o]ffences were not only occasioned by the individuals the subject of the complaints, but also by QBCC and its Officers'*, the applicant's submissions do not address how disclosure of the Third Party Information (such as names, contact details and employment commencement and end dates of an individual other than the applicant) could reasonably be expected to contribute to the enforcement of the criminal law.

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<sup>109</sup> *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20].

<sup>110</sup> Schedule 4, part 2, item 12 of the RTI Act.

<sup>111</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>112</sup> Submissions dated 30 November 2017.

104. Given the enforcement action that has been taken by QBCC in respect of the applicant's complaints,<sup>113</sup> the nature of the Third Party Information and the context in which it appears, I am satisfied there is no reasonable expectation that disclosure of the Third Party Information could contribute to the enforcement of the criminal law. Accordingly, I do not consider that this factor favouring disclosure<sup>114</sup> arises for consideration in relation to the Third Party Information.
105. Again, for the sake of completeness, I note that even if I were incorrect in this regard, and the factor could be said to apply, it nonetheless warrants low to no weight, given the nature of the Third Party Information.

### ***Iniquity***

106. The applicant submitted<sup>115</sup> that the relevant factors favouring disclosure that he has identified '*are relevant not only to the iniquity of these individuals, but also to the conduct of the QBCC and its Officers*'. In making this submission, the applicant has incorporated by reference specific parts of the submissions he made to the Information Commissioner in completed external review 312924.<sup>116</sup>
107. In the applicant's referenced submissions, the applicant described the '*Iniquity Principle*' as follows:<sup>117</sup>

*117. The iniquity principle, or exception, is traditionally applied as a defence to legal professional privilege that has been intended to act as a cloak for illegal activity, such as crime or fraud.*

*118. ... The scope of the iniquity exception has evolved over time, and although many reported cases at common law relate to the iniquity exception for breach of confidence, the underlying principle remains the same - the disclosure of information that represents crime or illegal activity will outweigh nondisclosure.*

108. For ease of reference in this decision, I have adopted the applicant's wording and simply refer to this concept as **Iniquity**.
109. I have considered and agree with the Information Commissioner's understanding and consideration of the applicant's previous submissions concerning the application of Iniquity, which are set out at paragraphs 103 and 109-110 of *McCrystal No. 1* as follows:

*I understand the applicant's submissions about Iniquity to have twofold meaning. Firstly, where there is Iniquity, this is akin to an exception to a public interest ground of refusal, in the same way as some of the exemption provisions in the RTI Act contain exceptions to the exemption (for example, as an exception to information being subject to legal professional privilege). Secondly, as a public interest factor favouring disclosure.*

*... I do not accept that Iniquity applies as an exception to the contrary to the public interest ground of refusal in section 47(3)(b) of the RTI Act as the applicant contends. I am instead satisfied that the concept captured by the applicant's Iniquity submissions is now recognised*

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<sup>113</sup> Being the steps required to be undertaken by building certifier Mr A, the recording of the investigation findings against the building certifier licence of Mr A and the cancellation of LJ Technical's licence, as noted in the information referred to in paragraph 65 above.

<sup>114</sup> Schedule 4, part 2, item 18 of the RTI Act.

<sup>115</sup> Submissions dated 30 November 2017.

<sup>116</sup> Specifically paragraphs 112-276 of submissions dated 12 July 2017 in external review 312924. I note that the applicant's submissions in this regard have been considered and addressed in *McCrystal No. 1* at [100]-[113].

<sup>117</sup> In the applicant's submissions dated 12 July 2017 in external review 312924, which also included extensive submissions about the origin of this principle, his opinion that its traditional application was as a defence to legal professional privilege claims and its extension to deny protection of information that would otherwise be confidential or private, in the context of breach of confidence claims.

*by individual public interest factors favouring disclosure in the RTI Act, such as those relating to Government accountability and transparency, administration of justice, assisting enquiry into or reveal agency or official conduct deficiencies and contributing to enforcement of the criminal law....*

*Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant. Given this, I have also considered the applicant's submissions regarding Iniquity in the context of an additional factor favouring disclosure ...*

110. In this review, the applicant submitted<sup>118</sup> that the 'scope of the RTI access application encompasses documents that do demonstrate, and will further demonstrate, the conclusions of Iniquity and false and misleading representation by the QBCC'. In support of these assertions, the applicant makes reference to various documents released in response to his other access applications.<sup>119</sup>
111. There is nothing before me, apart from the applicant's submissions, which suggests that disclosing the Third Party Information would reveal a crime, civil wrong or serious misdeed of public importance.
112. Given the enforcement action that has been taken by QBCC in respect of its findings about building certifier Mr A, the nature of the Third Party Information and the context in which it appears, I am not satisfied that a factor favouring disclosure relating to Iniquity arises in respect of the Third Party Information. For the sake of completeness, I note that even if I were incorrect in this regard, and such a factor could be said to apply, I nevertheless consider that it warrants no weight in favour of disclosing the Third Party Information, given the nature of that information and the extensive information that has already been released to the applicant.

### **Other factors**

113. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and can identify no other public interest considerations telling in favour of disclosure of the Third Party Information. Taking into consideration the nature of the Third Party Information, I cannot see how its disclosure could, for example, ensure the effective oversight of expenditure of public funds,<sup>120</sup> contribute to the protection of the environment<sup>121</sup> or reveal environmental or health risks or measures relating to public health and safety.<sup>122</sup>

### **Factors favouring nondisclosure**

#### **Personal information and privacy of other individuals**

114. The RTI Act recognises factors favouring nondisclosure will arise where disclosure of information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;<sup>123</sup> and
  - cause a public interest harm because it would disclose personal information of a person, whether living or dead.<sup>124</sup>

<sup>118</sup> Submissions dated 30 November 2017 and 11 December 2017.

<sup>119</sup> Refer to page 15 of submissions dated 30 November 2017.

<sup>120</sup> Schedule 4, part 2, item 4 of the RTI Act.

<sup>121</sup> Schedule 4, part 2, item 13 of the RTI act.

<sup>122</sup> Schedule 4, part 2, item 14 of the RTI act.

<sup>123</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>124</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

115. As already observed, most of the Third Party Information is the personal information of individuals other than the applicant, who were contacted during the course of QBCC's investigation of the applicant's complaints about building certifiers or whose personal information appears in information provided to or obtained by QBCC for that investigation.<sup>125</sup> This personal information comprises:
- identifying information, including names and contact details (such as their addresses, mobile telephone numbers and email addresses); and
  - information about individuals' personal circumstances, their recollections and opinions.
116. In some cases, it would be clear to the applicant from the information that has been released to him whose personal information has been refused in the Third Party Information.
117. Information disclosed to the applicant during this external review included the name of a director of a QBCC licensed company. The applicant submitted that any reference in the Third Party Information to the Western or English name of a director of a QBCC licensed company, or any nickname or known alias of the same individual, should be released.<sup>126</sup>
118. I have carefully considered the Third Party Information and I am satisfied, on the material before me, that:
- the names are those of individuals who are not officers of a QBCC licensed company
  - the email address on pages 106 and 124 in File *1126608\_1 EDRMS* is the private email addresses of an individual, not the email addresses of a QBCC licenced company, and such email address is not publicly available
  - the work cessation and commencement dates for building certifier Mr B is not publicly available information
  - disclosure of the mobile telephone number and email address appearing on page 610 in File *92089\_20 EDRMS* could potentially enable an individual who was not the subject of the applicant's various complaints to QBCC to be contacted outside of business hours; and
  - disclosure of information appearing on page 641 in File *92089\_20 EDRMS* would identify one individual who was not the subject of the applicant's various complaints to QBCC and potentially enable that individual to be contacted.
119. It is relevant then to consider the extent of the harm that could result from disclosing the personal information of these individuals under the RTI Act.
120. The Third Party Information appears in information provided to or obtained by QBCC for the investigation of the applicant's building certifier complaints. I consider that individuals who provided such information, or about whom this information relates, would have expected QBCC would use the information for the investigation of the applicant's complaints and that such information may be disclosed in any formal proceedings that resulted from QBCC's investigation of those complaints. However, they would not have anticipated further disclosure of such information under the RTI Act, where there can be no restriction on its use, dissemination or republication.

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<sup>125</sup> As QBCC noted, in its internal review decision dated 23 December 2016 regarding the Fifth Application, some of this information relates to one building certifier's licence changes.

<sup>126</sup> Submissions dated 30 November 2017.

121. Having carefully considered the applicant's submissions, the Third Party Information and the context in which it appears, I consider that disclosing the Third Party Information under the RTI Act would be a significant intrusion into the privacy of these individuals, as that information includes the names, contact details, personal circumstances and opinions of these individuals. Further, I consider that the extent of the public interest harm that could be anticipated from disclosure is significant.
122. For these reasons, I afford significant weight to the public interest factors relating to the protection of personal information and privacy<sup>127</sup> in respect of the Third Party Information.

### ***Business and commercial information of entities***

123. Public interest factors favouring nondisclosure will arise where disclosure of information could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities;<sup>128</sup> and
  - cause a public interest harm because it would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person, and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.<sup>129</sup>
124. I note that QBCC described<sup>130</sup> the pages to which access was refused in full as relating to '*the Certifier's licence changes and professional Indemnity Insurance*'. Some of that refused information can be characterised as the private, business, professional, commercial or financial affairs of entities. On the evidence before me, those parts of the Third Party Information comprise information that is not publicly available.
125. Given the nature of those components of the Third Party Information and the context in which they were provided to or obtained by QBCC, I afford significant weight to the nondisclosure factors relating to protection of an entity's private, business, professional commercial and financial information.<sup>131</sup>

### ***Flow of information***

126. The RTI Act recognises that a factor favouring nondisclosure of information arises where disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.<sup>132</sup>
127. As noted above, the Third Party Information appears in information provided to or obtained by QBCC in the context of QBCC's investigations into the applicant's complaints about building certifiers. In this case, some but not all of the information provided by other individuals to the investigation has been released by QBCC and, as noted at paragraph 66 above, the public interest does not extend to affording complainants the right to second-guess or reinvestigate such investigations.
128. While the efficacy of QBCC's investigations of received complaints is facilitated by QBCC being able to seek and obtain information from a range of individuals and entities, the

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<sup>127</sup> Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

<sup>128</sup> Schedule 4, part 3, item 2 of the RTI Act.

<sup>129</sup> Schedule 4, part 4, section 7(1)(c) of the RTI Act.

<sup>130</sup> In its internal review decision dated 23 December 2016.

<sup>131</sup> Schedule 4, part 3, item 2 of the RTI Act and schedule 4, part 4, section 7(1)(c) of the RTI Act.

<sup>132</sup> Schedule 4, part 3, item 13 of the RTI Act.

legislation which QBCC administers does not contain provisions that enable QBCC to compel the provision of information or the answering of questions in a complaint investigation. As previously noted at paragraph 120 of this decision, I consider these individuals would not have anticipated disclosure of the Third Party Information under the RTI Act, where there can be no restriction on its use, dissemination or republication.

129. Given these circumstances, I consider there is a very strong public interest in protecting the free flow of information to QBCC for investigation purposes, and that routinely disclosing information provided to QBCC in relation to its complaint investigations would tend to discourage individuals from coming forward with relevant information and cooperating with future QBCC investigations. This, in my view, would significantly prejudice QBCC's ability to effectively investigate the complaints that it receives.
130. For these reasons, I consider that disclosing the Third Party Information could reasonably be expected to discourage individuals from involvement in future QBCC investigations and, accordingly, I afford significant weight to the public interest factor<sup>133</sup> relating to protecting the flow of information to QBCC.

### **Balancing the public interest**

131. I consider the factors relating to the need to protect the personal information and privacy of individuals, the private, business, professional, commercial or financial affairs of entities, and the flow of information to QBCC in its investigations outweigh the relevant factors favouring disclosure of the Third Party Information, and disclosing that information would, on balance, be contrary to the public interest. Accordingly, I find that access to the Third Party Information may be refused on this basis.<sup>134</sup>

### **Findings - Reconsidered Information**

132. The Reconsidered Information appears in email chains and, as a result, there is significant duplication in certain portions of the Reconsidered Information. For example, the portion of information refused on page 48 in File *RTI\_248\_15\_16 1263834 Compliance S73 sections* is duplicated on pages 52, 59, 66, 74, 82, and 91 in File *RTI\_248\_15\_16 1263834 Compliance S73 sections*.
133. While the RTI Act prevents me from disclosing the content of the Reconsidered Information,<sup>135</sup> it generally comprises names, contact details (including email addresses) and opinions of individuals other than the applicant which were provided to or obtained by QBCC in its investigations of the applicant's complaints.
134. The applicant submitted that:
- information deleted '*incorrectly*' as irrelevant in external review 312924 is '*instead replaced with redaction under CPI*'<sup>136</sup>
  - he considers that the refusal of this information is incorrect as he believes this is information which directly or indirectly provides the reasons for a government decision<sup>137</sup>
  - '[t]he disclosure of the Reconsidered Information, where the information includes "*personal information*" of parties engaged in iniquity and is likely to include

<sup>133</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>134</sup> Under section 47(3)(b) of the RTI Act.

<sup>135</sup> Section 108(3) of the RTI Act, which relevantly prevents OIC from revealing information claimed to be contrary to the public interest information.

<sup>136</sup> External review application.

<sup>137</sup> External review application.



*reference to [Mr L] (a demonstrably Influential Person or director of LJ Technical Control Construction Pty Ltd) in circumstances that the QBCC was aware that [Mr L] was an undischarged bankrupt and QBCC permanently-excluded individual, must be afforded*;<sup>138</sup> and

- *'[t]he iniquity of the parties identified in the documents and the conduct of the QBCC and its Officers is relevant'*.<sup>139</sup>

### **Irrelevant factors**

135. I do not consider that any irrelevant factors arise in respect of the Reconsidered Information and I have not taken any irrelevant factors into account.

### **Factors favouring disclosure**

136. The Reconsidered Information is the personal information of individuals other than the applicant, which appears in information provided to QBCC or recorded about QBCC's interactions with individuals during its investigation of the applicant's complaint about unlicensed contracting at Property 2.
137. Where disclosure of information may reveal the reason for a Government decision, this is just one factor<sup>140</sup> to be taken into account in deciding whether it would be in the public interest to release information, and the weight afforded to this factor favouring disclosure may not necessarily be determinative of the public interest.
138. I refer to the applicant's submissions set out at paragraph 58 above regarding the public interest factors favouring disclosure which he considers are relevant to the Third Party Information. The applicant made the same submissions<sup>141</sup> concerning the Reconsidered Information. I have carefully reviewed the Reconsidered Information (being names, contact details and opinions of individuals other than the applicant) and the content of the information that has been released to the applicant. For the reasons set out in paragraphs 60-112 above, I afford the same weight to those factors regarding the Reconsidered Information.
139. I have carefully considered all factors listed in schedule 4, part 2 of the RTI Act, and, taking into consideration the nature of the Reconsidered Information, I can identify no other public interest considerations telling in favour of disclosure of the Reconsidered Information.

### **Factors favouring nondisclosure**

140. As noted above, the Reconsidered Information is the personal information of individuals other than the applicant, which appears in information provided to QBCC or recorded about QBCC's interactions with individuals during its investigation of the applicant's complaint about unlicensed contracting at Property 2. This information includes the names, contact details and opinions of those individuals. On the information before me, I am satisfied that the contact details appearing in the Reconsidered Information are not publicly available information.

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<sup>138</sup> Submissions dated 30 November 2017. In these submissions, the applicant also states that he has requested full release of such information in separate external review 313091, which is currently before the Information Commissioner.

<sup>139</sup> Submissions dated 30 November 2017.

<sup>140</sup> That is, schedule 4, part 2, item 11 of the RTI Act.

<sup>141</sup> Page 16 of the applicant's submissions dated 30 November 2017 contains the applicant's submissions about the Reconsidered Information. Those submissions reference the table of factors and weightings submitted in respect of the Third Party Information (that is, the public interest factors in schedule 4, part 2, items 1, 3, 5, 6, 10, 11, 12, 16, 17 and 18 of the RTI Act should each be afforded high weight, and the public interest factor in schedule 4, part 2, item 2 of the RTI Act should be afforded moderate weight), and the associated discussion regarding those factors submitted in respect of the Third Party Information.

141. For the reasons set out in paragraphs 114-122 above in respect of the Third Party Information, I consider the individuals who provided this information, or about whom this information relates, would have expected QBCC would use the information for the investigation and that such information may be disclosed in any formal proceedings that resulted from QBCC's investigation, but they would not have anticipated further disclosure of such information under the RTI Act. Accordingly, I afford significant weight to the factors favouring nondisclosure related to protection of personal information and privacy<sup>142</sup> in respect of those portions of personal information within the Reconsidered Information.
142. Similarly, for the reasons set out in paragraphs 126-130 above in respect of the Third Party Information, I afford significant weight to the nondisclosure factor relating to protecting the flow of information.<sup>143</sup>

### **Balancing the public interest**

143. For the reasons set out above, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Reconsidered Information and its disclosure would, on balance, be contrary to the public interest. Accordingly, I find that the Reconsidered Information may be refused on this basis.<sup>144</sup>

### **Nonexistent or unlocatable documents**

#### ***Relevant law***

144. Access to a document may be refused if the document is nonexistent or unlocatable.<sup>145</sup> A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.<sup>146</sup> 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.<sup>147</sup>
145. To be satisfied that a document is *nonexistent*, the Information Commissioner has previously recognised that a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors, including:<sup>148</sup>
- the administrative arrangements of government
  - the agency structure
  - the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
  - the agency's practices and procedures (including but not exclusive to its information management approach); and
  - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.

<sup>142</sup> Schedule 4, part 3, item 3 of the RTI Act and schedule 4, part 4, item 6(1) of the RTI Act.

<sup>143</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>144</sup> Under section 47(3)(b) of the RTI Act.

<sup>145</sup> Sections 47(3)(e) and 52 of the RTI Act.

<sup>146</sup> Section 52(1)(a) of the RTI Act.

<sup>147</sup> Section 52(1)(b) of the RTI Act.

<sup>148</sup> *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* [2009] QICmr 7 (9 February 2009) (*PDE*). The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

146. When proper consideration is given to relevant factors, it may not be necessary for searches to be conducted. However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case 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.
147. To determine whether a document exists, but is *unlocatable*, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document. In answering these questions, regard should again be had to the circumstances of the case and the key factors.<sup>149</sup>

### ***Applicant's submissions***

148. The applicant submitted<sup>150</sup> that:

- under the *Public Records Act 2002* (Qld) (**Public Records Act**), QBCC must keep records in the exercise of its statutory, administrative or other public responsibilities or for a related purpose; make and keep full and accurate records of its activities and not dispose of a public record without proper authority
- *'[b]ased upon the types of documents sought, evidence that the documents sought do in fact exist, the knowledge retained by identifiable QBCC Officers regarding the content and location of the documents sought, and the QBCC's requirements under the Public Records Act, it is not reasonable to accept the QBCC never held, or did hold but cannot locate, the specific documents sought by the Applicant as detailed in the sufficiency of search concerns'*; and
- unless the *'reasonable grounds'* he submitted (that is, the grounds he submitted in support of his contention that the Category (i)-(iv) documents exist) can be reconciled and the *'reasonable steps'* he submitted can be demonstrated, I cannot be satisfied that documents are nonexistent or unlocatable.

149. The *'reasonable steps'* the applicant submitted the Information Commissioner is required to undertake include the Information Commissioner's exercising its powers under sections 103 and 104 of the RTI Act, to consult directly with specific QBCC Officers to obtain specific explanations as to why requested documents have not been located by QBCC's further searches.

### ***Steps taken by QBCC to locate documents***

150. QBCC provided OIC with a copy of its search records and certifications<sup>151</sup> for its processing of the Fifth Application. In summary, the documents provided to OIC show that:

- searches were conducted of:
  - QBCC's electronic document records management system (**EDRMS**) to locate and extract relevant electronic documents
  - QBCC's Salesforce system to locate documents and file notes
  - QBCC's Administration file to locate internal review documents

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<sup>149</sup> Pryor at [21].

<sup>150</sup> Submissions dated 11 December 2017.

<sup>151</sup> Submissions received 2 March 2017.

- QBCC's Ministerial EDRMS and Ministerial Liaison Unit electronic files, which had previously been searched in response to the applicant's prior access applications<sup>152</sup>
- documents which had previously been located in response to the applicant's prior access applications
- searches of QBCC's electronic records were conducted using relevant participant numbers in the EDRMS; and
- the QBCC decision-maker liaised with other QBCC decision-makers regarding information that had been captured under the applicant's previous access applications.

151. As a result of these searches, QBCC located in excess of 3400 responsive pages.
152. On external review, the applicant identified, as noted in paragraph 43 above, six categories of documents which, in his view, existed and should have been located by QBCC.
153. I have set out my reasons for not dealing with the applicant's request for the Category (v) and Category (vi) documents.
154. As for the Category (i)-(iv) documents, OIC requested that QBCC conduct further searches for additional information responsive to the access application, including the Category (i)-(iv) documents.
155. No additional documents were located by QBCC as a result of the further searches.
156. QBCC provided OIC with a copy of its search records and certifications<sup>153</sup> regarding these further searches. In summary, those documents show that QBCC conducted further searches of its EDRMS and the notebooks of relevant QBCC officers.

### **Analysis**

157. The manner in which an external review is conducted is, subject to the RTI Act, at the Information Commissioner's discretion.<sup>154</sup>
158. 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>155</sup> 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>156</sup> However, where an external review involves the issue of missing documents, the applicant has a practical onus to establish reasonable grounds to believe that the agency has not discharged its obligation to locate all relevant documents.
159. Given QBCC has relied on searches by its officers to demonstrate that all relevant documents have been located, the question I must consider is whether QBCC has taken *all reasonable steps* to locate documents responsive to the access application. This entails consideration of whether QBCC has required appropriate staff to conduct

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<sup>152</sup> Which are identified in the table at paragraph 17 above.

<sup>153</sup> Submissions received 14 November 2017. The search certifications are signed by Officer T, a manager, and certify that Officer S conducted the further searches requested by the Information Commissioner.

<sup>154</sup> Section 95(1)(a) of the RTI Act.

<sup>155</sup> Section 130(2) of the RTI Act.

<sup>156</sup> Section 87(1) of the RTI Act.

sufficient searches of all locations where the documents in question could reasonably be expected to be found.

160. The Information Commissioner's powers under the RTI Act are set out in Part 9, Division 5 and include the power to request production of documents or attendance of individuals to answer questions,<sup>157</sup> as referenced in the applicant's submissions.
161. In this review, OIC requested that QBCC conduct further searches for the Category (i)-(iv) documents. QBCC conducted those further searches and provided search records and certifications to OIC regarding those further searches. On the material before me, there is nothing which calls into question either the efficacy of the searches or the accuracy of the QBCC's search records and certifications provided to OIC, and I therefore accept QBCC's evidence in relation to its search efforts and enquiries. In the circumstances, I consider there is no reason for the Information Commissioner to issue any notice to QBCC or any QBCC officer pursuant to section 103 of the RTI Act concerning the Category (i)-(iv) documents.
162. Based on consideration of the entirety of searches conducted by QBCC and the information before me, I consider that officers of QBCC have:
- conducted comprehensive, appropriately targeted searches of all relevant QBCC record keeping systems for information responsive to the access application, including the Category (i)-(iv) documents; and
  - identified relevant staff and made enquiries of them regarding the possible existence and location of the Category (i)-(iv) documents.
163. While I am not required to deal separately with each of the applicant's sufficiency of search submissions or to make separate findings about QBCC's search efforts in relation to each of the types of documents the applicant believes exist,<sup>158</sup> the circumstances of this review are amenable to consideration, in turn, of each of the four categories the applicant contends should be located.

### **Findings – Category (i) documents**

164. The applicant submitted<sup>159</sup> that QBCC should have located investigation case notes, discussion notes or diary notes that tracked Officer S's investigation of the applicant's complaint concerning building certifier, Mr A. More specifically, the applicant submitted that:

*I am not satisfied that the QBCC's investigation into this complaint which lead [sic] to the Certifier decision did not generate **case notes** which would best demonstrate a deliberative process; and locating this document may demonstrate that the QBCC's decision was likely to have a different outcome.*<sup>160</sup>

[applicant's emphasis]

*It is not reasonable to accept that there are no **case notes** for the Certifier complaint investigation when, in recent experience and standard QBCC procedure, every QBCC investigation generates a set of **case notes** which provide evidence of a deliberative process and consideration and advice of the QBCC of those materials, which satisfied the QBCC in all of its decisions.*<sup>161</sup>

<sup>157</sup> Section 103 of the RTI Act. The applicant also referenced section 104 of the RTI Act, which empowers the Information Commissioner to administer an oath to any individual required, under section 103, to attend before the Information Commissioner.

<sup>158</sup> Refer to *Goodman and Department of Justice and Attorney-General* [2014] QICmr 4 (6 February 2014) at [23].

<sup>159</sup> External review application and submissions dated 27 September 2017 and 11 December 2017.

<sup>160</sup> External review application.

<sup>161</sup> External review application.

[applicant's emphasis]

*There is a well-documented history of the QBCC generating case notes for investigations ... I believe that the investigation conducted by the QBCC ought to have generated a set of case notes or other relevant document or diary that tracked [Officer S's] investigation into the conduct of the Certifier, [Mr A].*<sup>162</sup>

165. The information released to the applicant includes 8 pages of case notes relating to the applicant's requested internal review of QBCC's decision regarding building certifier, Mr A.<sup>163</sup>
166. QBCC conducted further searches of QBCC's EDRMS and officer notebooks and, as noted above, no additional case notes, discussion notes or diary notes of the nature requested by the applicant were located. QBCC's search records regarding the Category (i) documents were completed by Officer S and note that all documentation created or received for the investigation of the applicant's complaint against the building certifier, Mr A, was filed in QBCC's EDRMS and there were no additional documents to locate.
167. I accept that the applicant may have, in respect of his other access applications to QBCC, received electronically generated case notes relating to QBCC's investigations of his other complaints, and he may therefore have expected that additional case notes would have been generated in response to the Fifth Application considered in this review. However, there is nothing before me which calls into question the accuracy of the QBCC's search record that all documents created or received for the investigation would be located in QBCC's EDRMS. I consider that the applicant's expectation that additional case notes should exist is not evidence that the Category (i) documents do exist.
168. While I have carefully considered the applicant's submissions regarding the Category (i) documents, I consider that those documents would, if they existed, be located within the QBCC EDRMS records that have been searched by QBCC.
169. In terms of the applicant's assertion or belief that QBCC *should* have created further case notes regarding its investigation of the applicant's complaint about building certifier, Mr A, this too is insufficient to support a reasonable expectation that such records were, in fact, created.
170. In the circumstances, I am satisfied that:
- QBCC has taken all reasonable steps to locate the Category (i) documents; and
  - there are reasonable grounds to be satisfied that the Category (i) documents are nonexistent or unlocatable and may be refused on this ground.<sup>164</sup>

### **Findings – Category (ii) documents**

171. The applicant submitted<sup>165</sup> that QBCC should have located further correspondence related to the investigation of his complaint about building certifier, Mr A, including correspondence from the certifier providing information to QBCC. More specifically, the applicant submitted:

<sup>162</sup> Submissions dated 27 September 2017.

<sup>163</sup> Being pages 1-8 in File SF 9533 case notes.

<sup>164</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

<sup>165</sup> External review application and submissions dated 27 September 2017 and 11 December 2017.

*There is a paucity of evidence of internal correspondence or any kind of deliberative process regarding the frank but likely unintentional admissions of misconduct in the Certifier's own responses to the complaint...*<sup>166</sup>

*There are believed to be further documents (internal QBCC correspondence) that exist under the RTI application. The QBCC actually received documents and evidence (including from the Certifier himself) demonstrating that the Certifier did not act in accordance with the legislation. ... It is not reasonable to believe that the QBCC either did not recognise this or did not document these findings.*<sup>167</sup>

*There are reasonable grounds to conclude that in accordance with QBCC policy and procedure, matters of accountability and transparency, and the QBCC's requirements under the Public Records Act, that the QBCC would generate more deliberation or internal correspondence than what has been located. It is evident that when [Mr A] submitted a letter with attachments to [Officer S], that [Officer S] was alerted to the fact that one of the documents was not dated. [Officer S] accepted [Mr A's] response without question and [Officer S] subsequently relied upon these representations in his Decision Notice. There is no evidence that [Officer S] further deliberated this issue, in circumstances where the document in question formed a significant justification for his decision.*<sup>168</sup>

[footnotes omitted]

172. The information that has been released to the applicant includes various QBCC emails to building certifier, Mr A, requesting information for QBCC's investigation of the applicant's complaint, and emails and other correspondence from Mr A providing information to QBCC's investigation.<sup>169</sup> Apart from small portions of Third Party Information on certain pages, these documents have been released in full to the applicant.
173. QBCC conducted further searches and, as noted above, no additional correspondence of the nature requested by the applicant was located.
174. QBCC's search record, which was completed by Officer S in respect of the Category (ii) documents, states that all documentation created or received for the investigation of the applicant's complaint about building certifier, Mr A, was filed in QBCC's EDRMS and there were no additional documents to locate.
175. As noted in respect of the Category (i) documents, there is nothing before me which calls into question the accuracy of the QBCC's search record that all documents created or received for the investigation would be located in QBCC's EDRMS. I am satisfied that those Category (ii) documents would, if they existed, have been located within the QBCC EDRMS records that have been searched by QBCC. I consider that the applicant's expectation that additional internal correspondence should exist is not evidence that the Category (ii) documents do exist. In terms of the applicant's assertion that QBCC *would have generated more deliberative or internal correspondence*, I consider that this too is insufficient to support a reasonable expectation that such records were, in fact, created.
176. In the circumstances, I am satisfied that:
  - QBCC has taken all reasonable steps to locate the Category (ii) documents; and
  - there are reasonable grounds to be satisfied that the Category (ii) documents are nonexistent or unlocatable and may be refused on this ground.<sup>170</sup>

<sup>166</sup> External review application. Repeated in submissions dated 27 September 2017.

<sup>167</sup> Submissions dated 27 September 2017.

<sup>168</sup> Submissions dated 11 December 2017.

<sup>169</sup> The majority of these released documents are contained in File 920989 20 EDRMS.

<sup>170</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

### **Findings – Category (iii) documents**

177. The applicant submitted<sup>171</sup> that QBCC should have located the request from Officer T to Officer S which led to Officer S's reply comprised in an email dated 26 November 2015.<sup>172</sup> More specifically, the applicant submitted:<sup>173</sup>

*The reason that [Officer T] requested the information is not known, and evidence of the request [by Officer T] itself is not found in the RTI decision.*

178. I acknowledge that the 26 November 2015 email has given the applicant the impression that it was prepared and sent by Officer S in response to a request from Officer T. However, a mere assertion or belief that a written request prompted the email in question does not mean that such a written request was in fact created.

179. QBCC's search record completed by Officer S in respect of the Category (iii) documents<sup>174</sup> relevantly states:

*The email trail between the manager and investigation officer regarding the type of construction appears to have been initiated from an internal verbal discussion however this was over 2 years ago and what triggered the reason for same is unknown.*

180. In the circumstances, and taking into consideration the search records and certifications provided to OIC, I am satisfied there is no evidence before me, apart from the applicant's assertions, which points to the existence of a written request from Officer T seeking the information set out in the 26 November 2015 email. Accordingly, I am satisfied that there are reasonable grounds to accept Officer S's statement referred to above, that the request that led to the 26 November 2015 email was, to his understanding, made orally.

181. In terms of the applicant's assertion or belief that QBCC *should* have created a record of Officer T's request to Officer S, again this is insufficient to support a reasonable expectation that such records were, in fact, created. OIC's jurisdiction does not extend to determining whether QBCC has failed to meet the requirements of the Public Records Act. In this review, I am only required to determine if there are reasonable grounds to expect that the documents do not exist or cannot be located. In any event, I am satisfied that any further documents which exist and are relevant to the access application would be located within the QBCC records that have been searched by QBCC.

182. In the circumstances, I am satisfied that:

- QBCC has taken all reasonable steps to locate the Category (iii) documents; and
- there are reasonable grounds to be satisfied that the Category (iii) documents are nonexistent or unlocatable and may be refused on this ground.<sup>175</sup>

### **Findings – Category (iv) documents**

183. QBCC's investigation of the applicant's complaint about building certifier, Mr A, is finalised and the information released to the applicant includes:

- an Information Notice dated 25 November 2015, which sets out QBCC's decision regarding that complaint;<sup>176</sup> and

<sup>171</sup> External review application and submissions dated 27 September 2017 and 11 December 2017

<sup>172</sup> Being page 386 in File 92089\_20 EDRMS.

<sup>173</sup> External review application. Repeated in submissions dated 27 September 2017.

<sup>174</sup> Dated 8 November 2017.

<sup>175</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

<sup>176</sup> Pages 338-361 in File 92089\_20 EDRMS.



- a draft of that Information Notice, which forms an attachment to an internal QBCC email dated 24 November 2015.<sup>177</sup>

184. Both of these documents were located in QBCC's EDRMS.

185. The applicant submitted<sup>178</sup> that QBCC should have located further drafts of the QBCC decision regarding the applicant's complaint about building certifier, Mr A. More specifically, the applicant submitted:

*When [Officer T] emailed [Officer S] on 24 November 2015, he informed [Officer S] that he understood from [Officer P] that the decision was currently at 33 pages. [Officer S] did not correct [Officer T] in his reply email, indicating that [Officer S] also accepted the decision was 33 pages. However, the decision submitted by [Officer S] later that day is only 23 pages ... Any draft or alternate version of [Officer S's] decision, particularly those numbering 33 pages, are known to exist and should be locatable.*<sup>179</sup>

[applicant's emphasis]

*It appears that only after the interest and influence of [Officer T], was the size and content of the Decision Notice dramatically reduced and a decision was executed that was not consistent with the requirements of the BCA or the Building Act (1975) (the Building Act).*<sup>180</sup>

*There is also a well-documented history of the QBCC generating, saving/declaring, emailing and locating under RTI access applications, draft and final versions of a prescribed decision notice or correspondence<sup>16</sup>. It is evident from QBCC correspondence that there was a great deal of internal and external interest in the outcome of [Officer S's] decision.*<sup>181</sup>

*There are reasonable grounds to conclude that:*

- [Officer S] and/or other QBCC Officers hold draft(s) versions of the Decision Notice; and*
- [Officer S] meant to make, or should have made, a decision different to the one he executed on **25 November 2015**.*<sup>182</sup>

[applicant's emphasis]

*It is a reasonable step for the OIC to consult with [Officer S], [Officer T] and other relevantly identifiable and proximal QBCC Officers directly, request further documents(s), and if the documents cannot be produced, to request a specific explanation as to why the documents(s) are non-existent or unlocatable; and report this in the prescribed decision notice.*<sup>183</sup>

[footnotes omitted]

186. QBCC conducted further searches of its EDRMS and notebooks of relevant QBCC officers and did not locate any further documents or drafts of QBCC's decisions. In this regard, I note that QBCC's search record,<sup>184</sup> which was completed by Officer S, relevantly states:

*Information notice is a working document for which notes and details are kept within document until completed.*

187. The applicant appears to be primarily concerned that there exists a different version of the Information Notice to the document issued on 25 November 2015 and the 24 November 2015 draft that has been released to him. However, I do not consider the applicant's submissions in this regard point to further drafts of the Information Notice

<sup>177</sup> Being pages 313-336 in File 920989\_20 EDRMS.

<sup>178</sup> Submission dated 27 September 2017.

<sup>179</sup> Submission dated 27 September 2017.

<sup>180</sup> Submissions dated 11 December 2017.

<sup>181</sup> Submission dated 11 December 2017.

<sup>182</sup> Submission dated 11 December 2017.

<sup>183</sup> Submission dated 11 December 2017.

<sup>184</sup> Dated 8 November 2017.

existing, or the creation of further drafts that are different to the issued Information Notice in the way the applicant suggests.

188. The documents released to the applicant include a number of emails referring to Officer S's finalisation of the Information Notice. From those documents, it is relevant to note the following timeline:

- at 9.16am on 24 November 2015 Officer T sent the email to Officer S which the applicant has referenced in his submissions
- at 9.19am on 24 November 2015, Officer S replied to Officer T, stating he was finishing the Information Notice and would email it to another officer (and copy Officer T) '*when its complete*'; and
- at 10.28am on 24 November 2015 (that is, just over an hour later), Officer S emailed the Information Notice to another officer (and copied Officer T) stating: '*...can you issue this completed Information Notice please. I will be in tomorrow and sign it then*'.

189. I have carefully reviewed the information located by QBCC which has been released to the applicant. I have also considered the searches conducted by QBCC and the search record specifically relating to the Category (iv) documents. I consider it is reasonable to conclude that any further drafts of the Information Notice, if they existed, would exist within QBCC's EDRMS. Further searches of that record keeping system were conducted on external review and no additional drafts of the Information Notice were located.

190. Based on all the information before me, I consider that QBCC has ensured that relevant staff have undertaken appropriately targeted searches of all relevant locations where it is reasonable to expect that the types of documents requested in the access application, including the Category (iv) documents raised by the applicant, would be found.

191. In these circumstances, I am satisfied that:

- QBCC has taken all reasonable steps to locate the Category (iv) documents; and
- there are reasonable grounds to be satisfied that the Category (iv) documents are nonexistent or unlocatable and may be refused on this ground.<sup>185</sup>

## DECISION

192. I vary QBCC's decision and find that:

- access to the Information in Issue may be refused on the grounds that its disclosure would, on balance, be contrary to the public interest;<sup>186</sup> and
- the additional information the applicant contends should have been located by QBCC may be refused on the ground that it does not exist or is unlocatable.<sup>187</sup>

193. I also refuse to deal with part of the applicant's external review application under section 43(3)(d) of the RTI Act.

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<sup>185</sup> Under sections 47(3)(e) and 52(1) of the RTI Act.

<sup>186</sup> Under section 47(3)(b) of the RTI Act.

<sup>187</sup> Under section 47(3)(e) of the RTI Act.

194. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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A Rickard  
**Assistant Information Commissioner**

**Date: 30 January 2018**

## APPENDIX 1

### Summary of applicant's complaints concerning building works at Property 1 and Property 2

Date of complaint or request	Nature and subject of complaint/request	QBCC action/response
10 July 2014	Notification of Offence form - complaint about unlicensed contracting by LJ Technical at Property 1. Also included a complaint that the builder's nominee was in breach of its licence.	QBCC investigated the complaint and, on 24 July 2014, determined that LJ Technical had engaged in unlicensed contracting and issued a stop work order and an infringement notice. The determination was notified to the applicant by letter dated 24 July 2014.  Subsequently, based on an approved alternative solution, the infringement notice was withdrawn by QBCC on 8 August 2014 and construction was permitted to continue.
17 February 2015	Complaint <sup>188</sup> that the approved alternative solution was not compliant with the Building Code of Australia and therefore LJ Technical was engaged in unlicensed contracting at Property 1.  Also included complaints that: <ul style="list-style-type: none"> <li>• the builders nominee had acted outside its licence; and</li> <li>• a permanently excluded individual was acting as an influential person for LJ Technical.</li> </ul>	QBCC responded, by letter dated 23 February 2015, <sup>189</sup> stating that an investigation of the unlicensed contracting complaint had previously been carried out and determined LJ Technical was appropriately licensed for the building work at Property 1.
Received by QBCC 26 February 2015 from a Councillor	Request for investigation – a Councillor attached applicant's 6 January 2015 complaint to that Councillor about unlicensed contracting at Property 1 and an influential person.	QBCC responded to the Councillor, by letter dated 10 March 2015, which: <ul style="list-style-type: none"> <li>• confirmed the outcome of QBCC's prior investigation of the unlicensed contracting complaint</li> <li>• determined that the influential person complaint could not be substantiated; and</li> <li>• stated QBCC was unable to take further action regarding the applicant's complaints.</li> </ul> <p>The Councillor sent a copy of this QBCC response to the applicant, by letter dated 19 March 2015.</p>
13 March 2015	Request for internal review of decision that LJ Technical did not engage in unlicensed contracting at Property 1. <sup>190</sup>	QBCC responded, by email dated 24 March 2015, <sup>191</sup> that no further action would be taken regarding the unlicensed contracting complaint, as the decision was not a 'reviewable decision'.  The email also noted that no further action would be taken in respect of the complaint about the builder's nominee.

<sup>188</sup> Submitted to QBCC by the applicant's legal representative.

<sup>189</sup> QBCC's letter was addressed to the applicant's legal representative.

<sup>190</sup> Submitted to QBCC by the applicant's legal representative.

<sup>191</sup> QBCC's email was addressed to the applicant's legal representative.

<p>13 March 2015</p>	<p>Complaint about excluded individual acting as an influential person (referencing back to the complaint initially contained in letter dated 17 February 2015).<sup>192</sup></p> <p>Supplementary evidence was provided<sup>193</sup> in support of the influential person complaint on 7 July 2015.</p>	<p>QBCC responded, by email dated 8 September 2015,<sup>194</sup> that QBCC determined there was insufficient evidence to demonstrate the excluded individual was acting as an influential person for LJ Technical.</p>
<p>18 March 2015 (received by QBCC 30 March 2015)</p>	<p>Building Certifier complaint form – complaint of professional misconduct by building certifier, Mr B, relating to certification of development at Property 1.</p>	<p>QBCC investigated the complaint and, on 11 May 2015, determined that building certifier, Mr B, had not engaged in unsatisfactory conduct or professional misconduct (on the basis that Mr B was not the certifier who assessed and issued the approval for building work at Property 1). QBCC issued an Information Notice containing its reasons for decision.<sup>195</sup></p> <p>This decision was notified to the applicant by letter dated 11 May 2015.</p>
<p>4 August 2015 (received by QBCC 11 August 2015)</p>	<p>Building Certifier complaint form – complaint of professional misconduct by building certifier, Mr A, regarding his certification of development at Property 1.</p>	<p>QBCC investigated the complaint and, on 25 November 2015, determined that building certifier, Mr A:</p> <ul style="list-style-type: none"> <li>• had not engaged in unsatisfactory conduct in relation to the matter of the applicant's complaint</li> <li>• however, had engaged in unsatisfactory conduct in relation to an additional matter identified in the process of QBCC's investigation.</li> </ul> <p>QBCC issued an Information Notice containing its reasons for decision, which also required certain certifications steps to be undertaken by the building certifier.<sup>196</sup></p> <p>This decision was notified to the applicant by letter dated 25 November 2015.</p>
<p>26 October 2015 (received by QBCC on 30 October 2015)</p>	<p>Notification of offence form – complaint about LJ Technical undertaking unlicensed contracting at Property 2 and exceeding its maximum revenue.</p> <p>Also, included a complaint that the builder's nominee was in breach of its licence.</p>	<p>QBCC investigated the complaint and, on 20 January 2016, determined that LJ Technical had engaged in unlicensed contracting and issued a written warning.</p> <p>This decision was notified to the applicant by letter dated 20 January 2016.</p>

<sup>192</sup> Submitted to QBCC by the applicant's legal representative.

<sup>193</sup> Submitted by the applicant's legal representative.

<sup>194</sup> QBCC's email was addressed to the applicant's legal representative.

<sup>195</sup> The Information Notice and covering letter to the applicant stated that the applicant had the right to seek QBCC's internal review of the decision or to apply to the Queensland Civil and Administrative Tribunal for external review of the decision. On the information before me, the applicant did not seek internal or external review of this QBCC decision.

<sup>196</sup> The Information Notice and covering letter to the applicant stated that the applicant had the right to seek internal and external review of the decision. On 21 December 2015, the applicant sought internal review of the decision (see below entry in this table).

<p>29 October 2015</p>	<p>Influential person complaint - further supplementary information was provided, in support of the prior complaint.<sup>197</sup></p> <p>Further supporting information was provided on 18 November 2015.<sup>198</sup></p>	<p>QBCC investigated the complaint and, on 28 April 2016, QBCC cancelled LJ Technical's building licence, on the basis that an excluded individual did not stop being an influential person.</p> <p>This decision was notified to the applicant on 29 April 2016.<sup>199</sup></p>
<p>21 December 2015</p>	<p>Request for internal review of decision dated 25 November 2015 that building certifier, Mr A, had not engaged in unsatisfactory conduct in relation to the matter of the applicant's complaint.</p>	<p>QBCC reviewed the 25 November 2015 decision and, on 21 April 2016, decided that Mr A had not engaged in unsatisfactory conduct or professional misconduct in relation to the matter of the applicant's complaint.</p> <p>QBCC issued a Review Notice containing its reasons for decision to the applicant under cover of letter dated 21 April 2016.<sup>200</sup></p>
<p>8 February 2016</p>	<p>Notification of Offence form<sup>201</sup> – reiterating the applicant's prior complaint about unlicensed contracting at Property 1 and seeking review of QBCC's prior decision.</p> <p>Includes complaint that builder and nominee continue to commit offences regarding works at Property 2.</p>	<p>QBCC notified the applicant,<sup>202</sup> by email dated 15 March 2016, that the applicant's 2014 unlicensed contracting complaint matter would not be further investigated.</p> <p>By letter dated 28 July 2016, QBCC notified the applicant that, after further review, QBCC determined the work at Property 1 and Property 2 was technically outside the builder's licence and QBCC had ensured the licensee was made aware of the breaches and took appropriate action.</p>
<p>18 April 2016</p>	<p>Notification of Offence form – complaints about:</p> <ul style="list-style-type: none"> <li>• unlicensed building work (specifically, fire protection work at Property 1)</li> <li>• a permanently excluded individual continued to act as an influential person in respect of the fire protection works at Property 1; and</li> <li>• building certifier, Mr A, has not complied with requirements of Information Notice dated 25 November 2015 concerning Property 1.</li> </ul> <p>Supplementary information was provided in support of the complaint on 4 May 2016 and 1 June 2016.</p>	<p>QBCC investigated the complaint and determined that one breach had been identified, however, there was insufficient evidence to pursue the alleged breach.</p> <p>This was notified to the applicant by letter dated 28 July 2016.</p>
<p>1 June 2016</p>	<p>Notification of Offence form – complaint about:</p> <ul style="list-style-type: none"> <li>• unlicensed building work at Property 1 (specifically, fire protection work) and Property 2; and</li> <li>• permanently excluded individual continued to act as an influential person for building works at both properties.</li> </ul>	<p>Refer to above notification in letter dated 28 July 2016.</p>

<sup>197</sup> Submitted by the applicant's legal representative.

<sup>198</sup> Submitted by the applicant's legal representative.

<sup>199</sup> By email addressed to the applicant's legal representative.

<sup>200</sup> The Review Notice noted that the applicant had the right to apply to the Queensland Civil and Administrative Tribunal for external review of the decision. On the information before me, the applicant did not seek external review.

<sup>201</sup> Lodged by the applicant's legal representative.

<sup>202</sup> Notification sent to applicant's legal representative.

11 July 2016	<p>Complaint about numerous building licence breaches at Property 2.</p> <p>By letters dated 25 August 2016 and 7 September 2016, the applicant requested the investigation of this complaint.</p>	<p>By letter to the applicant dated 28 July 2016, QBCC advised the matter had been investigated and a warning letter had been issued to LJ Technical.</p> <p>By email to the applicant dated 24 August 2016, QBCC confirmed that, as it had assessed and investigated matters relating to building works at Property 1 and Property 2, no further action would be taken regarding the complaint.</p>
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## APPENDIX 2

### Significant procedural steps

Date	Event
23 January 2017	OIC received the external review application.
10 February 2017	OIC notified the applicant and QBCC that it had accepted the external review application and asked QBCC to provide information.
20 February 2017	OIC received the requested information from QBCC.
2 March 2017	OIC received QBCC's search information.
April 2017 to August 2017	Initially OIC attempted to progress the applicant's various external reviews concurrently; however, this proved difficult given the volume of interconnected material across the reviews requiring consideration. OIC then progressed three earlier external reviews of the applicant, proceeding on the basis that OIC would deal with each of the external reviews in turn.
13 September 2017	OIC requested that the applicant confirm his sufficiency of search concerns and advise whether he continued to seek access to certain types of information.
27 September 2017	OIC received the applicant's submissions.
31 October 2017	OIC conveyed a preliminary view to QBCC and requested that QBCC conduct further searches to address the applicant's sufficiency of search submissions.
1 November 2017	QBCC released small portions of information on 10 pages to the applicant.
3 November 2017	OIC conveyed a preliminary view to the applicant that, apart from portions of information on 10 pages, the information QBCC had decided not to disclose may be refused or deleted on the grounds that its disclosure would, on balance, be contrary to the public interest, or it was information that was outside the scope of or irrelevant to the access application. OIC invited the applicant to provide submissions if he did not accept the preliminary view.
14 November 2017	OIC received QBCC's search response.
27 November 2017	OIC conveyed a preliminary view to the applicant that QBCC had taken all reasonable steps to locate information relevant to the access application and the information raised by the applicant which had not been located was nonexistent or unlocatable. OIC invited the applicant to provide submissions if he did not accept the preliminary view.
30 November 2017	OIC received the applicant's submissions regarding refused and deleted information.
11 December 2017	OIC received the applicant's submissions regarding the sufficiency of QBCC's searches.