



Decision and Reasons for Decision

Citation: *I7YL5P and Queensland Building and Construction Commission* [2018] QICmr 17 (19 April 2018)

Application Number: 313389

Applicant: I7YL5P

Respondent: Queensland Building and Construction Commission

Decision Date: 19 April 2018

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for information about fees paid to adjudicators appointed under the *Building and Construction Industry Payments Act 2004* (Qld) - whether identities of adjudicators can reasonably be ascertained from fee information cross-referenced with publicly available information - whether adjudicators fees constitute personal information

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for information about adjudicators and fees paid to adjudicators appointed under the *Building and Construction Industry Payments Act 2004* (Qld) - accountability and transparency in process of referring applications to adjudicators - income details of private citizens - whether disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to the Queensland Building and Construction Commission (**QBCC**) for access to certain information about adjudicators appointed to determine payment dispute applications under the *Building and Construction Industry Payments Act 2004* (Qld) (**BCIPA**).¹

¹ Access application dated 30 January 2017. The application requested particular details about each adjudicator and matters referred to them, including the fee paid, amount claimed, adjudicator grade and the date of acceptance. The applicant agreed that the names of adjudicators were not required but asked that a 'unique identifier' be used instead to allow analysis of the information. The applicant also agreed to accept information in the form of an Excel spreadsheet.

2. QBCC located a 20 page spreadsheet titled ‘*Adjudicators Appointed*’ (**Report**), which presented the requested information as follows:

Adjudicator Number	Adjudicator Classification	Adjudicator Acceptance Date	Adjudicator Fees	Claimed Amount
Released	Released	Released	<i>Redacted</i>	Released

3. QBCC released all of the information except that in the column titled ‘*Adjudicator Fees*’ representing the fees paid to the adjudicators for each decided application (**Adjudicator Fees**). QBCC decided that the disclosure of the Adjudicator Fees would, on balance, be contrary to the public interest.²
4. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QBCC’s decision.³ The applicant submitted that the public interest favours disclosure of the Adjudicator Fees as it would promote transparency and accountability in the referral of matters by the Registrar of the QBCC Adjudication Registry (**Registrar**). The applicant also considers there can be no concerns about prejudice to the adjudicators’ business, financial or private affairs as the information sought is in a ‘deidentified’ format.
5. For the reasons set out below, I affirm QBCC’s decision to refuse access to the Adjudicator Fees as disclosure would, on balance, be contrary to the public interest.⁴

Background

6. QBCC uses adjudication as a dispute resolution system to help resolve disagreements between homeowners and contractors over progress payments.⁵ Under the BCIPA, the Registrar has the power to refer adjudication applications to adjudicators.⁶ While the BCIPA does not prescribe specific criteria for the selection of adjudicators, QBCC’s *Adjudicator Grading and Referral Policy* (**Referral Policy**) provides guidance to the Registrar in making grading and referral decisions. The Referral Policy requires the Registrar to select adjudicators based on an analysis of each application and to ‘*marry that analysis with a suitably graded adjudicator*’.⁷ Under the Referral Policy, when selecting an adjudicator for a matter, the Registrar considers matters including the claim amount, material issues in dispute, any specialist discipline or expertise held by the adjudicator and any voided decisions made by the adjudicator.
7. Adjudicators are not paid by the QBCC nor are they paid out of public funds. The claimant and respondent to a dispute are jointly and severally liable to pay for adjudicator fees, and each are liable to contribute to the payment of the adjudicator in equal portions, or in the portions that the adjudicator decides.⁸ The fees may be agreed upon by the parties and the adjudicator. However, the BCIPA provides that where no amount is agreed, the adjudicator is entitled to be paid an amount that is reasonable having regard to the work and expenses incurred by the adjudicator.⁹ To provide guidance on what may constitute a reasonable amount, the Adjudication Registry has developed a schedule of

² Under sections 47(3)(b) and 49 of the RTI Act. Decision dated 1 June 2017.

³ External review application dated 30 June 2017.

⁴ Under sections 47(3)(b) and 49 of the RTI Act.

⁵ See <<http://www.qbcc.qld.gov.au/get-help-getting-paid-bcipa/what-adjudication>>, accessed on 8 February 2018.

⁶ The applicant has previously worked as an adjudicator and is currently listed as an adjudicator on the BCIPA website at <http://xweb.bcipa.qld.gov.au/ars_xweb/Pages/adj_search.aspx?Query=A>. Accessed on 12 April 2018.

⁷ See the Referral Policy at <www.qbcc.qld.gov.au/sites/default/files/Adjudicator_Grading_and_Referral_Policy_2015.pdf> Accessed on 12 April 2018.

⁸ Section 35(2) and (3) of the BCIPA.

⁹ Section 35(1) of the BCIPA.

recommended fees, which vary depending on the claim amount and how the adjudicator is graded.¹⁰

8. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

9. The decision under review is QBCC's decision dated 1 June 2017.

Evidence considered

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

Information in issue

11. As noted at paragraph 3 above, the information in issue in this review comprises the column of Adjudicator Fees in the 20 page Report identified by QBCC in response to the application.

Issue for determination

12. The issue to be determined is whether access to the Adjudicator Fees may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest. At the outset, I have also considered a preliminary issue with respect to deidentification, as both parties made submissions on this issue during the review, and it was the subject of an informal resolution proposal, which was ultimately unsuccessful.

Deidentification

13. As set out above, the applicant submits that the information sought does not include the names of adjudicators, and that the requested information is in a 'deidentified' format. The applicant argues this should negate any concerns about prejudice to the adjudicators' business, financial or private affairs that may apply to disclosure of the Adjudicator Fees.
14. QBCC has however, submitted that¹¹ while the Report does not contain the names of adjudicators, releasing the Adjudicator Fees would enable identification of adjudicators, through a process of cross-referencing the information already released in the Report, with the publicly available information on the BCIPA website. QBCC explained that the 'decision search' facility on the BCIPA website can be used as follows:¹²
 - navigate to the 'decision search' function on the BCIPA website
 - enter the relevant date range
 - open a decision and note the payment claim amount; and
 - cross-reference that figure with the information already released in the Report.
15. QBCC submits that following the above steps would allow the Adjudicator Fees (if released) to be matched to the identity of an adjudicator (obtained through the cross-

¹⁰ Referral Policy, p. 9-10, accessed on 12 April 2018.

¹¹ Submissions to OIC dated 24 July 2017. These submissions were made in response to OIC's letter to QBCC dated 10 July 2017, which set out OIC's initial view that adjudicators other than the applicant were not identified in the Report, and accordingly, the applicant was entitled to access the Adjudicator Fees. OIC changed its view after considering QBCC's submissions.

¹² Available at xweb.bcipa.qld.gov.au/ars_xweb/Pages/det_search.aspx. Accessed on 12 April 2018.

referencing process), thereby disclosing a component of an adjudicator's personal income.

16. OIC attempted to negotiate an informal resolution outcome between the parties to resolve the deidentification issue. OIC proposed that the Adjudicator Fees could be presented in a randomised format, i.e. not aligned with the other columns in the Report. While the applicant agreed to this proposal, QBCC was of the view that such an approach could still reasonably lead to identification of the adjudicators due to the value of claim amounts at the highest and lowest ends of the range, and the fact that some adjudicators only had one or two decisions. Therefore, QBCC did not consent to this informal resolution proposal.¹³
17. During the course of the review, OIC explained to the applicant that a party to an external review is not under any obligation to accept a negotiated solution proposed by OIC,¹⁴ and under the RTI Act, QBCC cannot be compelled to create a *new* document (i.e. the Adjudicator Fees in a randomised format) in order to provide deidentified (or less identifiable) information to the applicant.¹⁵ Accordingly, given that QBCC did not accept the informal resolution proposal, the only issue that OIC is able to consider is whether access to the Adjudicator Fees (in their existing format) may be refused.

Relevant law

18. The RTI Act provides a right of access to information in the government's possession or under its control.¹⁶ The RTI Act operates with a 'pro-disclosure bias'¹⁷ meaning that it is Parliament's intention for an agency to give access to information, unless the public interest favours nondisclosure.¹⁸ Various factors may be relevant to deciding where the balance of the public interest lies¹⁹ and a decision-maker is required to take specific steps in reaching a decision.²⁰

Findings

Irrelevant factors

19. The applicant made submissions to OIC about previous dealings with QBCC and the Registrar.²¹ The applicant's personal experiences with QBCC are irrelevant to deciding where the balance of the public interest lies in this case and therefore, I have disregarded those submissions in reaching my decision.²²

¹³ OIC has an obligation to identify opportunities for informal resolution and promote settlement of review applications under section 90 of the RTI Act. However, OIC does not have any power to direct parties to agree to the terms of an informal resolution proposal. Accordingly, where the agreement of both parties cannot be obtained, OIC must proceed to formally decide the matter under section 110 of the RTI Act.

¹⁴ OIC's letter to the applicant dated 22 February 2018.

¹⁵ An agency is not obliged by the terms of the RTI Act to create a new document in response to an access application. Rather, an agency is only obliged to locate existing documents which it is entitled to access or which are in its possession or under its control: see *Van Veenendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [27], citing *Dimitrijevic and Department of Education* (Unreported, Queensland Information Commissioner, 23 February 1998) at [21].

¹⁶ Section 3 of the RTI Act.

¹⁷ Section 44 of the RTI Act.

¹⁸ Under section 47(3)(b) of the RTI Act, access to information may be refused where disclosure would, on balance, be contrary to the public interest.

¹⁹ See schedule 4 of the RTI Act. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.

²⁰ Section 49 of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure, and balancing the relevant factors.

²¹ Oral submissions made to OIC on 10 July 2017 and 18 August 2017.

²² I have also disregarded the irrelevant factors in schedule 4, part 1 of the RTI Act.

Factors favouring disclosure

20. The applicant considers that disclosure of the Adjudicator Fees is vital in order to ascertain whether the Referral Policy is being applied fairly and appropriately. In this regard, the applicant's concerns are as follows:²³

An experienced person in the registrar's position is well able to judge which matters will generate significant fees and which will not and, as such, is in a position to allocate the most valuable work preferentially to some adjudicators and not others, and also to disguise any such preferential practice by keeping tabs on the number and frequency of matters referred. That is to say, an adjudicator may be allocated an average number of matters at regular intervals, but still generate a fraction of the fee income of other adjudicators. Unless fee income is disclosed, it is impossible to tell whether the registrar is engaging in this practice or not, or even whether the entirely regular application of the policy is generating unfair outcomes. It is not to the point that the more valuable matters are more valuable because they require more work on the part of the adjudicator, or that his or her fees are not paid from government funds. The issue is whether and, if so, to what extent, the registrar is allocating more valuable work to some adjudicators and why this is occurring, whether the referral policy facilitates the practice and whether it should be addressed.

21. I acknowledge that disclosing the Adjudicator Fees would reveal the value of applications that have been referred to each adjudicator, and the total value of referrals to the listed adjudicators, across the two year period. I consider there is a public interest in the community being able to scrutinise decisions of a government agency, such as QBCC, that have led, even where indirectly, to a monetary benefit being conferred on a private individual.²⁴ I am also satisfied that disclosing this information could, to a certain extent, reasonably be expected to promote open discussion of the Registrar's role in allocating adjudication matters, and enhance QBCC's accountability with respect to the appointment of adjudicators. The Adjudicator Fees are however, a list of monetary amounts only, and do not contain any reasons explaining the suitability of certain adjudicators for particular matters, nor reveal the Registrar's grounds for selecting each adjudicator. Accordingly, I afford these factors moderate weight in favour of disclosure.²⁵
22. I also consider that disclosure of the Adjudicator Fees would allow a level of transparency into QBCC's operations in terms of application of the Referral Policy, and what constitutes a 'reasonable' fee.²⁶ However, the level of insight into the latter is relatively limited given that a breakdown of the total fee paid is not included, only the total fee paid to the adjudicator. Further, as discussed above, the Adjudicator Fees do not reveal any qualitative aspects of the Registrar's decision-making process and therefore, I consider disclosure would only give partial insight into how the Referral Policy is applied.²⁷ Accordingly, I afford this factor moderate weight in favour of disclosure.
23. Adjudicators are not public servants, nor are they paid from the 'public purse'. Therefore, I find that disclosure would not contribute to any oversight of expenditure of public funds.²⁸ I also do not consider that disclosure of the Adjudicator Fees could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.²⁹ For this factor to apply, I consider the nature of the subject matter must be of broad community interest, e.g. a significant public infrastructure project or

²³ Applicant's submissions to OIC dated 11 December 2017.

²⁴ As explained above, the parties to the dispute pay the adjudicators' fees.

²⁵ Schedule 4, part 2, item 1 of the RTI Act.

²⁶ Schedule 4, part 2, item 3 of the RTI Act.

²⁷ The application of the Referral Policy can be subject to investigation by the Ombudsman and or the Crime and Corruption Commission. See paragraph 2.1.4 of the Referral Policy.

²⁸ Accordingly, the factor at schedule 4, part 2, item 4 of the RTI Act does not apply.

²⁹ Schedule 4, part 2, item 2 of the RTI Act.

public health and safety issues.³⁰ I find that disclosure of the Adjudicator Fees would be of interest to only a narrow segment of the community and therefore, this factor does not apply.

24. The applicant submits that disclosure of the Adjudicator Fees could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of QBCC and/or the Registrar.³¹ For this factor to apply, it is only necessary for disclosure to *'assist inquiry'* into *'possible deficiencies'*. This is a low threshold. I accept that for the applicant to further investigate concerns about whether *'more valuable work'* is being allocated to particular adjudicators, disclosure of the Adjudicator Fees may somewhat assist in this line of inquiry. The application of this factor should not however, be taken to confirm the applicant's suspicions in any way. In the circumstances, I afford this factor moderate weight in favour of disclosure.
25. I find that disclosure of the Adjudicator Fees would not reveal any reasons, or background or contextual information that informed the appointment decisions made by the Registrar, under the Referral Policy³² as the information is a list of monetary amounts only. As discussed above, there is no qualitative information included which could raise this public interest factor. Further, given the particular nature of the information, I find that disclosure could not reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper, or unlawful conduct, as submitted by the applicant.³³ I am satisfied that it would be improbable to establish conduct of that nature based solely on a list of monetary amounts which are, in many cases, subjectively determined by the parties to a dispute. Further, at the time of appointing an adjudicator, the Registrar, while aware of the claim amount, does not know exactly how much the adjudicator is going to be paid, as this will be determined in the future, either by agreement between the parties, and/or having regard to the schedule of recommended fees in the Referral Policy, and the principles set out in the BCIPA.
26. The applicant also raised a number of additional public interest disclosure factors concerning fair treatment³⁴ and the administration of justice.³⁵ The applicant has previously worked as an adjudicator and is currently listed on the BCIPA website as an adjudicator. The applicant has not however, particularised any instances of unfair treatment, for example, in terms of insufficient allocation of adjudication matters, nor has the applicant provided evidence of loss/damage, or articulated any available remedy.³⁶ In the absence of any supporting evidence or submissions, I am unable to find that these public interest factors apply in this case.

³⁰ For example, *Straker and Sunshine Coast Regional Council; NBN Co Limited (Third Party)* [2016] QICmr 44 (28 October 2016) at [74]-[75] and *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [50]-[53].

³¹ Schedule 4, part 2, item 5 of the RTI Act.

³² Accordingly, the factor at schedule 4, part 2, item 11 does not apply.

³³ Schedule 4, part 2, item 6 of the RTI Act. Raised by the applicant in the external review application.

³⁴ Schedule 4, part 2, item 10 of the RTI Act.

³⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act.

³⁶ In *Willsford and Brisbane City Council* (1993) 3 QAR 368 at [17], the Information Commissioner set out that there is recognisable public interest in the administration of justice where an applicant demonstrates that they have suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law, and they have a reasonable basis for seeking to pursue the remedy and disclosing the information itself would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.

Factors favouring nondisclosure

27. The RTI Act recognises that disclosure of another individual's '*personal information*' is a factor favouring nondisclosure which could reasonably be expected to lead to a public interest harm (**Harm Factor**).³⁷ The term '*personal information*' is defined as follows:

*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*³⁸

28. The Information Commissioner has previously established that the following questions are relevant in determining whether information is a particular individual's personal information:³⁹

- Can an individual be identified from the information sought?
- If so, is the information sought *about* that individual?

29. Generally, information about an individual which includes their name will be identifying⁴⁰ and information such as a photograph, or a detailed identifying description may also identify an individual.⁴¹

30. The Adjudicator Fees do not *identify* the adjudicators—names, photographs, adjudicator registration details or other detailed identifying information does not appear on the face of the Adjudicator Fees when viewed in isolation, or even when considered with the remainder of the Report. However, even where a person's identity is not readily apparent, it may be possible with the assistance of additional information to identify a person.⁴² In *Mahoney*,⁴³ the Right to Information Commissioner found that the question of whether an individual's identity can reasonably be ascertained will depend on a number of factors:

- how available the additional information is
- how difficult it is to obtain
- how many steps are required to identify the individual
- how certain the identification will be
- whether it will identify one specific individual or a group of people; and
- whether the individual receiving the information can use it to identify the individual.

31. As discussed at paragraphs 14-15 above, QBCC has submitted that the identities of the adjudicators can be ascertained through a process of cross-referencing the information released in the Report, with information that is publicly available on the BCIPA website. QBCC submits that if the Adjudicator Fees were released, the information could then be linked to the identity of the adjudicators through the cross-referencing process. Having

³⁷ Schedule 4, part 4, section 6 of the RTI Act.

³⁸ See schedule 5 of the RTI Act which adopts the definition in section 12 of the *Information Privacy 2009* (Qld) (**IP Act**).

³⁹ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (**Mahoney**) at [19].

⁴⁰ *Mahoney* at [20].

⁴¹ *Ibid.*

⁴² *Mahoney* at [21], cited with approval in *Marchant and Queensland Police Service* (Unreported, Queensland Information Commissioner, 10 September 2013) at [15]-[16] and *Swiatek and The University of Southern Queensland* [2017] QICmr 57 (8 December 2017) at [19]. These cases can be distinguished from this review as the identities of the subject individuals in those matters were found **not** to be reasonably ascertainable.

⁴³ *Ibid.*

followed the cross-referencing process set out by QBCC and having considered the factors set out in *Mahoney*,⁴⁴ I accept that:

- the information required to identify the adjudicators is readily available and simple to ascertain through the BCIPA website
- minimal steps⁴⁵ are required to identify the adjudicator, and the identification is relatively certain; and
- the process identifies each individual adjudicator (rather than a group of individuals) and the applicant will be in a position to use the information to identify these individuals.

32. Accordingly, I find that the identities of individual adjudicators can reasonably be ascertained from the Adjudicator Fees and the cross-referencing process.
33. In terms of whether the information is *about* the adjudicators, the Adjudicator Fees reflect a portion of the income received by the adjudicators within a two year period. I am satisfied that income information of an individual is '*about*' that individual and therefore comprises the adjudicators' personal information.⁴⁶
34. The concept of 'disclosure' as used in the Harm Factor apprehends the giving of information to a person or entity not otherwise possessed of knowledge of that information.⁴⁷ Where releasing personal information would involve conveying to any person or entity information that they already know, it cannot be said such release would 'disclose' personal information within the meaning of the Harm Factor, and therefore, that factor will not apply. In this case, the adjudicators are already aware of what they have been paid, as are the parties to the dispute (because they paid the fees), however, that is the extent to which the information has been disclosed. Accordingly, I find that releasing the Adjudicator Fees to the applicant would constitute a 'disclosure' of the personal information of the adjudicators listed in the Report, and therefore, the Harm Factor applies. I am satisfied that the extent of harm that could flow from disclosure of the Adjudicator Fees is relatively high as information about a private citizen's financial situation is inherently sensitive. Accordingly, I afford the Harm Factor significant weight.
35. The RTI Act also recognises that where disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy, the public interest will favour nondisclosure.⁴⁸ The concept of '*privacy*' is not defined in the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their '*personal sphere*' free from interference from others.⁴⁹ Given the nature of the Adjudicator Fees, I am satisfied that disclosure would interfere with the adjudicators' personal sphere, and that this factor favouring nondisclosure therefore applies.

⁴⁴ At paragraph 30 above.

⁴⁵ Four brief 'steps' are required, if each step is defined as set out in paragraph 14 above, although I note that a level of 'trial and error' is required to find the correct decision within the relevant date range.

⁴⁶ See *Edmystone and Blackall-Tambo Regional Council* [2016] QICmr 12 (15 April 2016) at [48], where it was accepted that an individual's total remuneration comprises their personal information. See also *Stewart and Department of Transport* (1993) 1 QAR 227 at [80], which noted that a person's income and personal financial position fall within the meaning of the phrase '*personal affairs*'.

⁴⁷ While '*disclose*' as used in the Harm Factor is not defined in the RTI Act, the word is defined in section 23 of the IP Act as it relates to the application of the Information Privacy Principles – to '*disclose personal information*' relevantly means to give that information to an entity who does not otherwise know the information and is not in a position to find it out. This accords with the ordinary dictionary definition of '*disclose*': relevantly, to '*make known; reveal*'. Macquarie Dictionary Online (accessed 19 April 2018).

⁴⁸ Schedule 4, part 3, item 3 of the RTI Act.

⁴⁹ Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

36. As set out above, the adjudicators are not public servants, nor are they contracted to perform a government service and are not paid from public funds.⁵⁰ In essence, the Adjudicator Fees represent a component of the gross income received by a group of private citizens within a two year period. For adjudicators with multiple matters, the total amount may represent a significant percentage of their annual income. While I acknowledge that the parties to each dispute will be aware of the fees paid to each adjudicator in a particular matter, the information relates only to individual matters and is not published more broadly. In contrast, the Adjudicator Fees disclose income information for individuals across BCIPA matters for a significant period of time. Accordingly, I afford significant weight to this factor in favour of nondisclosure.
37. A factor favouring nondisclosure will also arise if disclosure could reasonably be expected to prejudice the business affairs of a person.⁵¹ While I am satisfied that the Adjudicator Fees generally concern the income details of private citizens, I am not satisfied that adjudicators would suffer any adverse impacts to their business operations in terms of loss of income or competitive harm through disclosure of the Adjudicator Fees. Accordingly, I find that factor does not apply in the circumstances of this case.⁵²

Balancing the public interest

38. In summary, I have found that there are several public interest factors which apply to favour disclosure of the Adjudicator Fees. I am satisfied that there is moderate weight to be afforded to the public interest in promoting QBCC's accountability, open discussion of the Registrar's referral role, and in providing a level of transparency in application of the Referral Policy. I have also recognised that there is moderate weight to be afforded to assisting inquiry into possible deficiencies in the conduct of an agency or official. Balanced against these however, are two key nondisclosure factors, namely the Harm Factor which is designed to protect the personal information of individuals, and the factor intended to safeguard a citizen's right to privacy, which I have found applies in this case to protect the adjudicators' income details. I am satisfied that these factors carry significant, and determinative weight in favour of nondisclosure.
39. Accordingly I find that, on balance, disclosure of the Adjudicator Fees would be contrary to the public interest, and access may therefore be refused on that basis.

DECISION

40. For the reasons set out above, I affirm QBCC's decision to refuse access to the Adjudicator Fees under section 47(3)(b) of the RTI Act.
41. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 19 April 2018

⁵⁰ Compare to the analysis in *Stewart and Department of Transport* (1993) 1 QAR 227 at [80], which noted the public interest in 'seeing how the taxpayers' money is spent which is sufficient to justify the disclosure of the gross income payable from the public purse to the holder of a public office' applied in *Edmistone and Blackall-Tambo Regional Council* [2016] QICmr 12 (15 April 2016) at [49].

⁵¹ Schedule 4, part 3, item 15 of the RTI Act.

⁵² I find that no other factors favouring nondisclosure, including those set out in schedule 4, parts 3 and 4 of the RTI Act, apply in the circumstances of this case.

APPENDIX

Significant procedural steps

Date	Event
30 June 2017	OIC received the external review application and requested relevant procedural documents from QBCC.
4 July 2017	OIC received the requested procedural documents and further information from QBCC.
10 July 2017	OIC notified the applicant and QBCC that the external review application had been accepted. OIC conveyed a preliminary view to QBCC.
24 July 2017	OIC received submissions from QBCC in response to the preliminary view.
21 September 2017	OIC obtained further submissions from QBCC.
24 November 2017	OIC conveyed a preliminary view to the applicant.
11 December 2017	OIC received submissions from the applicant in response to the preliminary view.
19 December 2017	OIC presented an informal resolution proposal to the applicant.
15 January 2018	The applicant notified OIC of agreement with the informal resolution proposal.
19 January 2018	OIC conveyed the informal resolution proposal to QBCC.
1 February 2018	QBCC requested an extension of time within which to respond to the informal resolution proposal.
2 February 2018	OIC granted QBCC the extension of time. QBCC provided oral submissions to OIC in relation to the informal resolution proposal.
6 February 2018	OIC received submissions from QBCC rejecting the informal resolution proposal.
22 February 2018	OIC advised the applicant that the informal resolution could not be negotiated with QBCC and as a result, the review would proceed to be finalised by a formal decision. The applicant raised certain concerns regarding OIC's letter, including publication of the formal decision and the option of withdrawing the application.
27 February 2018	OIC addressed the applicants concerns, and asked to be notified if the applicant did not wish OIC to issue a formal decision in the matter. The applicant then requested clarification about the implications of withdrawing the application.
28 February 2018	OIC advised the applicant of the process and implications of resolving reviews informally under section 90(4) of the RTI Act. OIC confirmed that the next step, if the applicant did not elect to withdraw the application, would be a formal written decision to finalise the review.