



Decision and Reasons for Decision

Citation: *Waratah Coal Pty Ltd and Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development* [2026] QICmr 66 (30 April 2026)

Application Number: 318375

Applicant: Waratah Coal Pty Ltd ACN 114 165 669

Respondent: Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development

Decision Date: 30 April 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - correspondence between agency and its legal advisors - legal professional privilege - exempt information - sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - personal information of individuals - contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - relevance of information to scope of application - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - reasonableness of searches - narrowed scope - nonexistent or unlocatable documents - sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Background

1. The applicant originally applied¹ to the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development (**Department**)² under the *Right to Information Act 2009* (Qld) (**RTI Act**)³ for access to:

¹ Application dated 24 May 2024 which became compliant on 4 June 2024.

² At the time of the application, the agency was known as the Department of Resources, however, following machinery of government changes, the name of the agency changed. For the purpose of this decision, the respondent agency is the Department as named in these reasons.

³ On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. As the access application was made prior to 1 July 2025, references in this decision are to the RTI Act as in force prior to 1 July 2025 in accordance with the transitional provisions in Chapter 7, Part 9 of the RTI Act.

All documents comprising the applicant's request for voluntary declaration in connection with the declaration of Declared Area 2022/001883 made under the Vegetation Management Act in or about September 2022.

2. The Department initially identified over 15,000 documents responsive to the scope of the application and sought to narrow the scope with the applicant.⁴ The applicant agreed⁵ to narrow the scope to documents located within the Department's 'Lands Division' only. The Department obtained the applicant's agreement to multiple extensions of time to the processing period but ultimately, did not make a decision on the application within the prescribed RTI Act timeframe⁶ and was therefore taken to have made a 'deemed decision' refusing access to all requested documents.⁷
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for an external review⁸ of the deemed decision. Following consultation with a relevant third party, the Department released over 1500 pages to the applicant⁹ in accordance with its views, and those advanced by the third party¹⁰, on disclosure. The Department also provided OIC with information outlining the searches it conducted.¹¹
4. For the reasons set out below, I vary the Department's deemed decision and find that:
 - a. access to certain information¹² may be refused under section 47(3)(a) of the RTI Act as it comprises exempt information under section 48 and schedule 3, section 7 of the RTI Act;
 - b. access to certain information¹³ may be refused under section 47(3)(b) of the RTI Act because its disclosure would on balance be contrary to the public interest;
 - c. certain information¹⁴ may be deleted from the located documents under section 73 of the RTI Act as it is irrelevant to the terms of the application; and
 - d. the Department has taken reasonable steps to locate documents responding to the application and access to further documents falling within the narrowed scope of the application may be refused under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis they do not exist.

Information in Issue

5. As outlined above, over 1500 pages were released to the applicant during the course of the review process. Following those disclosures, the information that remains in issue for the purpose of this decision appears in the documents listed in the table below:

File A	
CTPI Information (45 part pages)	1-3, 6-10, 13, 14, 18-21, 24, 25, 27-30, 34-42, 44-46, 48, 49, 81-84, 86, 87, 128-131, 134
LPP Information (49 full pages)	55-69, 78, 79, 92-116, 125, 126, 139-143

⁴ The Department issued a notice of intention to refuse to deal under section 42 of the RTI Act on 16 July 2024.

⁵ The applicant approved a revised scope on 2 August 2024.

⁶ A decision was due to be made on 1 November 2024.

⁷ Section 46 of the RTI Act. This is the *reviewable decision* for the purpose of this review.

⁸ External review application dated 13 December 2024.

⁹ Released to the applicant over three tranches on 21 November 2025, 9 December 2025 and 22 April 2026.

¹⁰ The views of the third party were accepted by OIC on external review and therefore, they did not become a participant in the review. Similarly, as there are no adverse findings against the third party, they are not named in these reasons for decision.

¹¹ Submission and search records received 6 March 2026.

¹² Referred to in these reasons as Legal Professional Privilege (**LPP**) Information.

¹³ Referred to in these reasons as Contrary to Public Interest (**CTPI**) Information.

¹⁴ Referred to in these reasons as Irrelevant Information.

File B¹⁵	
CTPI Information (15 part pages)	1-4, 6, 7, 17-19, 22, 24, 26, 237, 239, 241
LPP Information (5 full pages)	12-16
Irrelevant information (4 full; 2 part pages)	20, 25, 238, 240; 24, 237
File C¹⁶	
CTPI Information (27 part pages)	1, 2, 5-8, 10, 12, 14, 228, 231, 235-237, 238-241, 242, 243, 245, 246, 249, 250, 254, 255, 256
Irrelevant information (7 full; 3 part pages)	3, 9, 11, 244, 252, 253, 257; 10, 243, 256
File D¹⁷	
CTPI Information (16 part pages)	2, 4-6, 12,13, 18-20, 23, 25, 27, 238, 239, 241, 243
Irrelevant information (5 full; 2 part pages)	1, 3, 21, 26, 240; 2, 25
File E¹⁸	
CTPI Information (37 part pages)	139, 142, 146, 147-150, 152, 153, 155-160, 169-171, 173-175, 177-181, 183-186, 188, 191-195, 198
Irrelevant information (1 part page)	147
File F	
CTPI Information (27 part pages)	98-100, 104-106, 109, 111-118, 121-124, 128, 131-133, 139, 140, 145, 146
Irrelevant information (1 full page)	125

6. The relevant law, submissions from participants and my reasons and findings in relation to each category of information in issue are set out below.

LPP Information

7. The File A and B documents that fall into this category comprise communications between the Department and its legal advisors (Crown Law) in connection with the subject matter of the application.

Relevant law

8. A person has a right, under the RTI Act, to be given access to documents of an agency¹⁹ subject to certain limitations, including grounds for refusing access.²⁰ It is Parliament's intention that the RTI Act is to be administered with a pro-disclosure bias²¹ and that the grounds for refusing access are to be interpreted narrowly.²²

¹⁵ Pages 24 and 237 contain CTPI and irrelevant information. Page 239 was released twice (21 November and 9 December 2025).

¹⁶ Pages 10, 243 and 256 contain CTPI and irrelevant information. Page 2 was released twice (21 November and 9 December 2025).

¹⁷ Pages 2 and 25 contain CTPI and irrelevant information.

¹⁸ Page 147 contains CTPI and irrelevant information.

¹⁹ Section 23 of the RTI Act.

²⁰ Section 47(3) of the RTI Act.

²¹ Section 44 of the RTI Act.

²² Section 47(2)(a) of the RTI Act.

9. Access may be refused to exempt information.²³ Schedule 3 of the RTI Act sets out the categories of exempt information, the disclosure of which Parliament has deemed is always contrary to the public interest.²⁴ Information will be exempt if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (LPP).²⁵ This exemption reflects the requirements for establishing LPP at common law.²⁶ LPP is integral to the administration of justice and exists to uphold the right of a client to obtain confidential and independent advice about their legal circumstances.
10. Establishing whether LPP applies to information at common law requires that the information must comprise a communication made in the course of a lawyer-client relationship, that was and remains confidential; and that was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.²⁷
11. LPP will extend to any document which directly reveals, or which allows a reader to infer, the content or substance of a privileged communication.²⁸ Relevantly, advice privilege may extend, subject to satisfying the dominant purpose test, to notes and drafts provided by the client in the course of communicating information to the lawyer.²⁹
12. Qualifications and exceptions to privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to privilege.

Submissions

13. The Department submitted to OIC that the LPP documents were provided to Crown Law for the purpose of seeking legal advice, which was subsequently provided. For additional context to the nature of the legal advice requested, the Department provided further documents to OIC (which I note did not fall within the narrowed scope).³⁰
14. On external review, the applicant submitted:³¹

Having now considered the additional material provided, it is apparent that the documents previously withheld on the asserted basis of legal professional privilege (LPP) do not, on their face, satisfy the requirements for such a claim. In particular, the content, tone, and substance of the newly released documents indicate that they are administrative, operational, or policy-focused in nature, rather than confidential communications created for the dominant purpose of seeking or providing legal advice. The release of these documents materially undermines the Department's earlier characterisation of the document set and calls into question the reliability and consistency of its LPP claims more broadly.

In these circumstances, it is reasonable to infer that the remaining documents over which LPP is still claimed may have been similarly mischaracterised. The staged release of documents - initially withheld in full on LPP grounds and only subsequently disclosed - suggests that the Department's assessment has not been applied with the level of precision or rigour required when invoking a fundamental exemption of this nature. This raises a legitimate concern that

²³ Section 47(3)(a) of the RTI Act.

²⁴ Section 48(2) of the RTI Act.

²⁵ Schedule 3, section 7 of the RTI Act.

²⁶ *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commissioner* (2002) 213 CLR 543 (**Daniels**) at page 552 and see also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (**Esso**).

²⁷ *Esso and Daniels*.

²⁸ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at page 569; *AWB Ltd v Cole* (2006) 152 FCR 382 (*AWB v Cole No 1*) at page 417.

²⁹ *Saunders v Commissioner Australian Federal Police* (1998) 160 ALR 469 at pages 471-472.

³⁰ Submissions to OIC dated 1 April 2026.

³¹ Submission dated 24 April 2026.

the exemption has been asserted too broadly, and potentially in circumstances where it does not properly apply.

Further, the fact that documents have now been released without any apparent waiver concerns reinforces the conclusion that confidentiality, a necessary element of LPP, may not attach to the broader class of documents in issue. To the extent that any of the remaining documents contain mixed content, it is submitted that any genuinely privileged material could be redacted, with the balance disclosed in accordance with the pro-disclosure objectives of the Right to Information Act 2009 (Qld) (RTI Act).

Findings

15. I am satisfied that the LPP Information comprises communications between the Department's external legal advisors at Crown Law, and the Department's employees requesting or receiving legal advice.³²
16. Having considered the content as well as the context in which the LPP Information appears, I am satisfied the dominant purpose was for the Department to seek or receive legal advice on particular matters within the context of a lawyer-client relationship with its external legal advisors. I am further satisfied that the LPP Information was exchanged confidentially.
17. I agree with the applicant that certain documents, originally claimed as LPP, did not meet the requirements to satisfy the exemption. I note, however, that those documents have been released to the applicant on external review. The applicant further submitted³³ that as certain information was 'mischaracterised' as LPP that 'it is reasonable to infer that the remaining documents over which LPP is still claimed may have been similarly mischaracterised' and 'that documents have now been released without any apparent waiver concerns reinforces the conclusion that confidentiality, a necessary element of LPP, may not attach to the broader class of documents in issue'. In this regard, I confirm I have independently reviewed the remaining documents and am satisfied they comprise confidential communications between the Department and their legal advisors made for the dominant purpose of seeking or receiving legal advice or documents.
18. There is no evidence available to me to suggest the Department has waived privilege, nor have I identified any exceptions that apply to the communications, such as improper purpose or implied waiver.
19. Based on the information before me, I am satisfied the LPP Information meets the requirements for establishing LPP³⁴ and accordingly, comprise exempt information to which access may be refused under section 47(3)(a) of the RTI Act.

CTPI Information

20. The information in this category appears in 167 documents (primarily emails and other forms of correspondence) throughout Files A to F and comprises names, mobile phone numbers and email addresses of private sector employees, and mobile phone numbers and signatures of public sector employees.

³² I am limited in the extent to which I can describe the LPP Information due to the operation of section 108 of the RTI Act, however I have identified that this information appears in the pages as described under the 'Information in Issue' section of these reasons.

³³ Submission dated 24 April 2026.

³⁴ See paragraphs 9 – 12 of these reasons.

Relevant law

21. Access to information may also be refused where disclosure would, on balance, be contrary to the public interest.³⁵ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.
22. 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, generally, 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.
23. Schedule 4 of the RTI Act contains factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these,³⁶ together with all other relevant information, in reaching my decision. I have also applied the RTI Act's pro-disclosure bias³⁷ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.³⁸

Submissions

24. On external review, the applicant submitted:³⁹

First, the weight to be given to public interest factors is not reduced merely because some information has been disclosed. The correct question is whether the refused information could reasonably be expected to advance those interests. The Annexure does not identify how the redacted information fails to do so, instead relying on a generalised conclusion that prior disclosure has "significantly discharged" those factors. This is not a substitute for a document-specific analysis.

Secondly, the subject matter of the documents - namely, the Department's assessment of a voluntary declaration under the Vegetation Management Act 1999 (Qld) - concerns the exercise of statutory power with substantial public and environmental consequences. In that context, transparency as to how the assessment was conducted, what considerations were taken into account, and how third-party input influenced the outcome attracts elevated, not diminished, public interest weight.

Thirdly, privacy-based nondisclosure has been given determinative weight without adequate consideration of less restrictive alternatives. The refused information is said to include names and email addresses of third party employees. Such information is routinely amenable to redaction, and its presence does not justify withholding substantive content. The Right to Information Act 2009 (Qld) (RTI Act) requires the decisionmaker to consider partial access where practicable, not to allow incidental personal information to shield otherwise disclosable material.

³⁵ Section 47(3)(b) of the RTI Act.

³⁶ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning personal information of an applicant because here, the applicant is a corporation.

³⁷ Section 44 of the RTI Act.

³⁸ Section 47(2) of the RTI Act.

³⁹ Submission dated 9 February 2026.

Findings

25. In assessing the CTPI Information, I have not identified, nor taken into account, any irrelevant factors.
26. I acknowledge that disclosing information about how the Department assesses requests for voluntary declarations under the *Vegetation Management Act 1999* (Qld) would advance the Department's accountability and transparency.⁴⁰ I accept that this is a matter of public interest and that disclosure of such information would inform the community of Government operations and reveal further contextual information that was available to the Department in making its decisions. However, in determining the weight to be afforded to these factors, I have taken into account that the CTPI Information is of a very limited nature (ie. names, contact details and signatures) and also that a significant amount of the substantive assessment information showing the steps taken in the process has been released to the applicant. I am satisfied that, in the circumstances of this matter, the weight of the accountability and transparency factors is accordingly, low.
27. The RTI Act also recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.⁴¹ The threshold for this factor is relatively low as it requires only that disclosure could reasonably be expected to *allow or assist inquiry* into *possible* deficiencies. However, again, due to the limited nature of the CTPI Information, I consider this factor carries low weight.
28. I am satisfied the CTPI Information comprises the personal information⁴² of other individuals; primarily of employees of private sector entities involved in communications with the Department, and certain public sector employees. The RTI Act recognises that there is a public interest harm in disclosing an individual's personal information and also seeks to safeguard the right to privacy of individuals.⁴³ I am satisfied that protecting the personal information and privacy of private sector employees should be afforded significant weight and that the non routine personal work information of public sector employees in the form of mobile numbers and signatures attracts moderate weight against disclosure as that information is inherently private. In affording weight to these factors, I have also taken into account that under the RTI Act, where information is disclosed, there can be no limitation or control over further dissemination.⁴⁴
29. The applicant submitted that '*Such information is routinely amenable to redaction, and its presence does not justify withholding substantive content*'. In my view, the CTPI Information comprises only incidental third party personal information. It does not comprise '*substantive content*' nor have the redactions applied to the CTPI Information been used to '*shield otherwise disclosable material*'. I am satisfied the redactions have been applied to remove only personal and private information.
30. In balancing the public interest, I have afforded low weight to the public interest in enhancing accountability and transparency and allowing inquiry into possible agency deficiencies. Against this, there is significant weight applying to protect the right to privacy and personal information of private sector employees and moderate weight applying to the non routine personal work information of public sector employees. On

⁴⁰ Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

⁴¹ Schedule 4, part 2, item 5 of the RTI Act

⁴² As defined in schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld).

⁴³ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁴⁴ *FLK and Information Commissioner* [2021] QCATA 46 at [17].

balance the nondisclosure factors are determinative. Accordingly, I am satisfied that access to the CTPI Information may be refused on the ground that disclosure would be, on balance, contrary to the public interest.⁴⁵

Irrelevant Information

31. Section 73 of the RTI Act permits an agency to delete information that is not relevant to the access application from the document before giving access to a copy of the document. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.⁴⁶

32. The applicant submitted that:⁴⁷

The preliminary view adopts an unduly restrictive conception of relevance under section 73. Information is said to be irrelevant because it does not directly relate to the Department's assessment of the voluntary declaration. Such an approach is inconsistent with authority, which recognises that information is relevant where it bears upon, informs, contextualises, or evidences the decision-making process.

Internal communications, ancillary analysis, interactions with third parties, and background material may all be relevant to understanding how and why an assessment was undertaken, even if they do not themselves constitute the final assessment. Relevance under the RTI Act is not confined to documents that are outcome-determinative or expressly labelled as part of the assessment.

By excising information on the basis of a narrow, outcome-focused test, the Department and the preliminary view risk collapsing section 73 into a merits filter. This is not its function. Where there is a rational connection between the information and the subject matter of the application, deletion as "irrelevant" is not authorised.

33. Having independently considered the terms of the access application (narrowed) and the Irrelevant Information, I am satisfied that it is not relevant to the 'Department's assessment of a voluntary declaration in connection with the declaration of Declared Area 2022/001883'. Rather, the Irrelevant Information relates to the Department's considerations of other Declared Areas.

34. The applicant submits that '*Internal communications, ancillary analysis, interactions with third parties, and background material may all be relevant to understanding how and why an assessment was undertaken, even if they do not themselves constitute the final assessment. Relevance under the RTI Act is not confined to documents that are outcome-determinative or expressly labelled as part of the assessment*'. I acknowledge that such information may aid the applicant's understanding of the assessment process, however, it also must fall within the scope of the access application. As the Irrelevant Information relates to other Declared Areas, I am satisfied it does not fall within the terms of the application which were framed seeking information about a specific Declared Area.

35. Given the above, I am satisfied that section 73 of the RTI Act applies to the Irrelevant Information and that information has been validly deleted from the documents on that basis.

⁴⁵ Under sections 47(3)(b) and 49 of the RTI Act.

⁴⁶ *Van Vennendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

⁴⁷ Submission dated 9 February 2026.

Sufficiency of Search

Relevant law

36. Under the RTI Act, access to a document may be refused if there are reasonable grounds to be satisfied it is nonexistent.⁴⁸ To be satisfied that a document does not exist, the Information Commissioner has previously identified a number of key factors to consider, including the agency's structure, its recordkeeping practices and procedures and the nature and age of the requested documents.⁴⁹ By considering relevant key factors, a decision-maker may conclude that a particular document was not created because, for example, the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained.
37. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps (as opposed to all *possible* steps)⁵⁰ to identify and locate documents applied for by applicants.⁵¹ On an external review, the agency or Minister who 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.⁵² However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.⁵³ Suspicion and mere assertion will not satisfy this onus.⁵⁴

Submissions

38. The agreed, narrowed scope of the application processed by the Department, following consultation with the applicant, is set out below:

*Documents held by the **Lands Division** within the Department of Resources, as follows:*

I. All documents comprising the applicant's request for voluntary declaration in connection with the declaration of Declared Area 2022/001883 made under the Vegetation Management Act in or about September 2022; and

II. For the period 1 September 2021 to 30 September 2022 (inclusive):

a) correspondence (including electronic communications) and all attachments to any such correspondence, and

b) all diary entries (including any electronic calendar entries and meeting makers), file notes, and minutes of meetings, between

(i) the Department of Resources (formerly the Department of Natural Resources, Mines and Energy) (hereinafter "the Department"), or the then chief

⁴⁸ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

⁴⁹ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[39].

⁵⁰ *S55 and Queensland Police Service* [2023] QICmr 3 (30 January 2023) at [23]; *W55 and Brisbane City Council* [2024] QICmr 13 (17 April 2024) at [19].

⁵¹ Section 130 of the RTI Act. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 (*Webb*) at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

⁵² Section 87(1) of the RTI Act.

⁵³ See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

⁵⁴ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23].

*executive of the Department, or the Director-General of the Department, or any personnel of the Department, and any of
(ii) Adani Mining Pty Ltd, or Adani Mining & Resources, or Moray Downs, or Moray Downs Pastoral, or Bravus Mining & Resources; and*

c) any correspondence (including electronic communications) and all attachments to any such correspondence between any personnel of the Department, concerning the declaration of Declared Area 2022/001883 made under the Vegetation Management Act in or about September 2022.

Time period: 1 September 2021 to 30 September 2022 (inclusive).

39. The Department located some approximately 1600 pages in response to the narrowed scope, and, as outlined earlier in these reasons, a significant proportion of the information has been released to the applicant.⁵⁵ The nature of the located documents included:

- Departmental correspondence with external parties in connection with assessment of the voluntary declaration
- Internal Departmental communications regarding the voluntary declaration; and
- Supporting reports and materials relevant to assessment of the voluntary declaration.

40. The applicant submitted⁵⁶ that further documents should have been located, as follows:

The Department initially identified approximately 15,440 documents as responsive to the original scope, and approximately 1,532 documents within the narrowed scope. This volume, combined with the nature of the decision under review, gives rise to a reasonable inference that further responsive material exists - particularly drafts, internal deliberative communications, and inter-divisional correspondence.

...

The Department's search evidence, as summarised, remains high-level. It does not adequately address:

- (a) why no further drafts or internal communications exist within the Land Division;*
- (b) whether searches were conducted across shared drives, personal drives, email archives, and messaging systems used contemporaneously; or*
- (c) whether key officers involved in the assessment were individually consulted regarding record locations.*

41. During the external review, the Department provided OIC with a submission and search declaration explaining its searches and confirming it undertook a combined 38 hours of searches using a number of search terms including 'Moray Downs, Moray, Moray Downs West, 2019/004349, 2019/005175, 2022/001883, 2022/002027, names of relevant third party organisations, names of relevant third party employees and Declared area 2022/001883' locating 234 files comprising 15,724 pages.

42. The Department also explained that it undertook searches of its recordkeeping systems with relevance to the terms of the application, including:

- Network drives
- Electronic Land and Vegetation Administration System (eLVAS)
- Compliance Information Register and Management System (CIRaM)
- MS Outlook (including ex-employees)

⁵⁵ Subject to the redaction of LPP information, CTPI information and Irrelevant information.

⁵⁶ Submission dated 9 February 2026.

- MS Teams
- Hard copy diaries.

43. The Department further explained the following officers undertook searches:

- Executive Officer
- Natural Resource Officer
- Natural Resource Management Officer
- Principal Natural Resource Management Officer
- Senior Project Officer
- Relevant unit managers
- Director
- Relevant business unit Executive Directors.

Findings

44. I have examined the located documents and search records provided by the Department. I am satisfied that in undertaking searches in response to the access application, the Department contacted officers with relevant knowledge and expertise and asked them to undertake searches in areas where it would be reasonable to expect documents responding to the terms of the access application would be found.
45. The Department's search records and submissions confirm that search terms used in searching those systems included the declared area reference number provided in the application. I consider that was an appropriate search term to use to identify responsive documents. Having examined the documents that were located by the Department, I am satisfied that the locations searched represent the key recordkeeping systems that the Department maintains in relation to declared areas. I am further satisfied that the reasonableness of those searches is demonstrated by the significant number of relevant documents that were located through searches of those locations.
46. I acknowledge that the applicant has ongoing concerns about the volume and nature of the documents identified as responsive to the narrowed scope, taking into account that the original document count was approximately 15,000 pages. However, the question for me to determine under the RTI Act is whether the Department has taken all reasonable steps to locate relevant documents; the test is not whether the Department has taken all *possible* steps. While I recognise that the released documents have not addressed all the applicant's concerns, I am satisfied that in identifying over 1600 documents responsive to the narrowed scope, it was reasonable for the Department to identify documents within the Lands Division only, as this was the focus of the narrowed scope. I am unable to identify any further steps that it would be reasonable for the Department to take to locate further relevant documents responding to the narrowed scope.
47. Taking into account the narrowed scope of the application, the nature of the documents the Department has located, the various locations searched, search terms used, and the Department's recordkeeping practices, I am satisfied that the Department has undertaken reasonable searches on the application, and that access to further documents may be refused on the basis they do not exist, in accordance with section 47(3)(e) and 52(1)(a) of the RTI Act.⁵⁷

⁵⁷ Based on the information available to me, I do not consider the requirement for the Department to conduct back up searches under section 52(2) of the RTI Act is enlivened.

DECISION

48. For the reasons set out above, I vary the reviewable (deemed) decision⁵⁸ and find that:
- a. access to the LPP Information may be refused under section 47(3)(a) of the RTI Act as the documents comprise exempt information under section 48 and schedule 3, section 7 of the RTI Act due to legal professional privilege
 - b. access to the CTPI Information may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure of that information would on balance, be contrary to the public interest under section 49 of the RTI Act
 - c. section 73 of the RTI Act applies to the Irrelevant information and it can be validly deleted on the basis that it is not relevant to the scope of the application; and
 - d. access may be refused to any further documents responding to the terms of the narrowed application under section 47(3)(e) of the RTI Act on the basis that they are nonexistent under section 52(1)(a) of the RTI Act.
49. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Katie Shepherd
Assistant Information Commissioner

Date: 30 April 2026

⁵⁸ Under section 110(1)(b) of the RTI Act.