



Decision and Reasons for Decision

Citation: *McCrystal and Queensland Building and Construction Commission [2017] QICmr 32 (10 August 2017)*

Application Number: 312924

Applicant: McCrystal

Respondent: Queensland Building and Construction Commission

Decision Date: 10 August 2017

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - application for information about an investigation of the applicant's complaint concerning an alleged regulatory breach - whether disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law - whether exempt information - sections 47(3)(a) and 48 and schedule 3, section 10(1)(f) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application for information about an investigation of the applicant's complaint concerning an alleged regulatory breach - 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 *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - IRRELEVANT INFORMATION - application for information about an investigation of the applicant's complaint concerning an alleged regulatory breach - whether deleted information was irrelevant to the terms of the access application - section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT OR UNLOCATABLE DOCUMENTS - application for information about an investigation of the applicant's complaint concerning an alleged regulatory breach - whether agency has taken all reasonable steps to locate documents but the documents

cannot be found or do not exist - sections 47(3)(e) and 52 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Building and Construction Commission (**QBCC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents,¹ covering the period from 30 October 2015 to 21 April 2016, relating to:

THE QBCC investigation into a complaint made by Dr McCrystal against LJ Technical Control Construction Pty Ltd (QBCC Licence No. 1263834) concerning unlicensed contracting at [Property A]. On 30 October 2015, Dr McCrystal lodged a complain[t] with the QBCC concerning unlicensed contracting at [Property A]. On 20 January 2016, the QBCC wrote to Dr McCrystal noting that breaches of the legislation had been detected and that the QBCC had issued a warning to LJ Technical Construction Control Pty Ltd for the offence.

2. QBCC located responsive documents and decided² to disclose 1276 pages, 4 audio recordings and parts of 120 pages. QBCC refused access to 41 pages, 7 audio recordings and parts of 120 pages on the grounds that other access was available, it was exempt information or it was information the disclosure of which would, on balance, be contrary to the public interest. QBCC also deleted information from the documents released to the applicant on the basis that it was not relevant to the access application.
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of QBCC's decision, seeking access to all information not disclosed by QBCC. The applicant also raised general concerns that QBCC had not located all relevant recordings of telephone conversations.
4. On external review, QBCC released some of the information to which access had been refused.
5. For the reasons set out below, I vary QBCC's decision and find that access to the information remaining in issue in this review may be refused or deleted on the grounds that:
 - it is exempt information
 - its disclosure would, on balance, be contrary to the public interest
 - it is not relevant to the access application; or
 - it is nonexistent or unlocatable.

Background

6. QBCC regulates the building industry throughout Queensland. A range of legislation falls within QBCC's regulatory responsibilities.⁴

¹ The applicant identified the types of documents he sought as: 'Reasons for the decision, all material considered by the decision maker, case notes, internal and external correspondence and memos, details of interviews or meetings with any person, inspectors' or other reports, any documents provided by LJ Technical Construction Control Pty Ltd, any other documents in relation to [Property A]'.
² On 14 July 2016.

³ On 11 August 2016.

⁴ Refer to <http://www.qbcc.qld.gov.au/about-us/overview> and <http://www.qbcc.qld.gov.au/about-us/legislation>.

7. As part of its regulatory responsibilities, QBCC provides services⁵ which include encouraging and enforcing compliance with the laws the QBCC is responsible for administering.⁶ Under QBCC's policy documents, and as noted on its website,⁷ QBCC will not investigate all complaints that it receives and it will '*make effective use of limited resources by targeting issues and licensees in line with risks, new and emerging issues and enforcement priorities*'.⁸ QBCC also has a range of administrative, civil and criminal enforcement remedies available to it under the legislation that it administers.⁹
8. The applicant has made a number of complaints to QBCC relating to residential building works, including:
 - unlicensed contracting by LJ Technical Control Construction Pty Ltd (**LJ Technical**) at Property B¹⁰
 - certifier complaints concerning Property B;¹¹ and
 - unlicensed contracting by LJ Technical at Property A (the **Complaint**).¹²
9. The *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) relevantly provides that:
 - an excluded individual includes an individual who becomes bankrupt and three years have not elapsed since the relevant bankruptcy event¹³
 - a company is an excluded company if an individual who is a director or secretary of, or an influential person for, the construction company is an excluded individual;¹⁴ and
 - QBCC must cancel the company's licence if, within 28 days of being notified about the excluded individual, the relevant individual does not stop being a director or secretary of, or an influential person for, the company.¹⁵
10. A QBCC license search of LJ Technical¹⁶ confirms that:
 - its licensed classes are currently cancelled
 - it is an excluded company by reason of a listed influential person, Mr Jie Lin (**Excluded Individual**), who is excluded from holding a contractor or nominee supervisor licence or from running a licensed company due to an insolvency event; and
 - it has one listed director and secretary, Ms Chao Ren Liu.

⁵ Which are broadly identified on its website as licensing service, dispute prevention and resolution service, home warranty insurance and information and education.

⁶ Refer to QBCC's Compliance and Enforcement Policy 2014, which is available at <http://www.qbcc.qld.gov.au/about-us/our-policies>.

⁷ Refer to section 2.1 of QBCC's Compliance and Enforcement Policy 2014. QBCC's website also states: '*Also, be aware that we can't investigate every complaint. To make the best use of our resources, we focus on areas where there is evidence and where consumers will be most at risk*'. Refer to <http://www.qbcc.qld.gov.au/contractor-offences/make-complaint-against-contractor>.

⁸ Section 2.3 of QBCC's Compliance and Enforcement Policy 2014.

⁹ The QBCC 'Compliance and Enforcement Policy 2014' relevantly states: '*Where breaches are blatant, repeated and/or cause significant detriment, the QBCC will target those licensees or unlicensed individuals for prosecution. The QBCC has a range of other tools available, which may be used as an alternative to prosecution.*'

¹⁰ Complaint dated 10 July 2014. QBCC investigated the complaint and, on 24 July 2014, QBCC issued a stop work order and an infringement notice. However, the infringement notice was subsequently withdrawn by QBCC on 8 August 2014 and construction was permitted to continue.

¹¹ Complaints dated 30 March 2015 and 11 August 2015. QBCC investigated both complaints.

¹² Complaint dated 26 October 2015. QBCC investigated the complaint and, on 18 January 2016, issued a warning letter to LJ Technical. The access application seeks information about QBCC's investigation of this complaint.

¹³ Section 56AC(3) of the QBCC Act.

¹⁴ Section 56AC(6) of the QBCC Act.

¹⁵ Section 56AG(3) of the QBCC Act.

¹⁶ Search conducted 28 July 2017, via QBCC's website.

11. On external review, the applicant has expressed his concern that the outcomes of QBCC's investigations of the Complaint and a similar complaint concerning Property B were not the same. The applicant also believes that disclosure of the refused or deleted information in this review will confirm that the building works at Property A have been 'covertly' carried out by the Excluded Individual.¹⁷
12. The significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

13. The decision under review is QBCC's decision dated 14 July 2016.

Information in issue

14. During the review:
 - QBCC withdrew its claim for exemption in respect of information that it had decided to refuse on 15 pages¹⁸ and released that information to the applicant
 - the applicant confirmed that he did not seek access to certain categories of information;¹⁹ and
 - QBCC accepted OIC's view that there was no basis under the RTI Act to refuse or delete 1 page²⁰ and small portions of information on 37 pages²¹ and released that information to the applicant.
15. The **Information in Issue** remaining for consideration in this decision comprises:
 - information refused in 18 full pages²²
 - small portions of information refused or deleted on 85 pages;²³ and
 - 7 audio recordings.²⁴

Issues to be determined

16. Taking into consideration the matters resolved informally during the review process,²⁵ the remaining issues to be determined are whether the:
 - Information in Issue may be refused or deleted on the grounds that it is exempt information, its disclosure would, on balance, be contrary to the public interest or it is not relevant to the access application; and
 - additional information raised by the applicant should have been located by QBCC.

¹⁷ Submissions dated 12 July 2017.

¹⁸ Being the information refused on the ground that it was subject to legal professional privilege on page 11 in File *1263834_6 Case Notes* and pages 340, 343-344, 346, 349-350, 353, 360, 365, 371, 433, 437, 442 and 446 in File *Compliance EDRMS*.

¹⁹ As confirmed in OIC's letters dated 14 June 2017 and 19 July 2017, the applicant does not seek access to information which is commercially available, such as RP Data and ASIC extracts, mobile telephone numbers of QBCC employees, duplicate documents, email greetings and pleasantries in emails between government agency employees, the information refused by QBCC on page 142 in File *92089 Ministerials* and certifier mobile telephone numbers.

²⁰ Page 431 in File *1263834 Compliance EDRMS*.

²¹ Pages 2 and 10 in File *1263834_6 Case Notes* and pages 117, 190, 212, 216, 218, 220, 227, 231, 261, 269, 274, 289, 297, 374-376, 378, 380, 381, 384-385, 390, 391, 397-398, 404, 405, 411-412, 420-421, 428-429, 433 and 442 in File *1263834 Compliance EDRMS*.

²² Pages 214, 276-286, 290-293, 382 and 430 in File *1263834 Compliance EDRMS*.

²³ Pages 2, 3, 5 and 10 in File *1263834_6 Case Notes* and pages 66-67, 190, 200, 202-206, 208-213, 216, 220, 226, 228, 258, 261, 267, 270, 273-274, 341, 347, 354, 361, 366, 372, 374-376, 378, 379-381, 384-385, 387-392, 394-398, 400-405, 408-412, 415-421, 424-429, 433-434, 438, 442, 447 and 669 in File *1263834 Compliance EDRMS*.

²⁴ Audio recordings 4-10.

²⁵ As set out at paragraph 14 above.

Evidence considered

17. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).
18. The applicant provided OIC with extensive submissions.²⁶ To the extent the applicant's submissions are relevant to the issues for determination in this review, I have addressed them below.
19. OIC's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies. The applicant's submissions²⁷ raise a number of concerns that OIC is unable to consider or address on external review, and which are not relevant to the issues for determination in this review. Such concerns generally relate to:
 - perceived delays in QBCC's processing of the access application
 - the applicant's belief that QBCC has improperly imposed limitations on its own ability to meet its obligations under the QBCC Act, by indicating it cannot investigate all complaints that it receives
 - the appropriateness of the action QBCC took against LJ Technical in respect of the Complaint
 - the applicant's concerns about what he considers to be illegal license-lending and financial arrangements
 - ASIC deciding not to take further action against the Excluded Individual
 - a refusal by QBCC to refer evidence of various offences (some of which are unrelated to the Complaint) to *'the appropriate authority by refusal to investigate the offence, refusal to release its determination on the authenticity of relevant documents, or refusal to release the information pursuant to RTI request'*
 - his concerns about an individual's ability to secure credit and act as an officer of various companies (which do not include the company that is the subject of the Complaint); and
 - the applicant's belief that certain documents provided to QBCC's investigation may have been *'hastily rewritten'*.
20. Further, the applicant's submissions also refer to the subject matter of, and the issues being considered in, the applicant's four other external reviews, concerning separate decisions issued by QBCC. Those matters are not relevant to the issues for determination in this review and are not addressed in this decision.

Preliminary issues – scope and third party consultation

21. Before considering the Information in Issue, it is necessary to deal with a number of procedural issues raised by the applicant.
22. Section 24(2) of the RTI Act sets out the criteria that an applicant must meet in order to have a valid RTI application. Of relevance here is the requirement that the applicant give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents.
23. The applicant contends that:

²⁶ As set out in the Appendix.

²⁷ External review application and submissions dated 12 July 2017.

- information relating to Property B provides background and contextual information about why QBCC acted in particular way at Property A²⁸
 - ‘any document, discussion or correspondence relating to [Property B]’ and any information located in this review which relates to Property B is relevant to the ‘Reasons for the decision’ at Property A and should be released;²⁹ and
 - QBCC’s decision regarding the Complaint is in direct conflict with ‘what QBCC allowed to transpire at [Property B]’ and in order to understand the Complaint decision, ‘the decisions, and iniquity, at [Property B] must also be understood’.³⁰
24. Previous decisions of the Information Commissioner specify that the terms of an application will set the parameters for an agency’s search efforts and that it is not open for an access applicant to unilaterally expand the scope of an access application on external review.³¹ In *Robbins*, the Information Commissioner noted that where there is ambiguity in the terms of an application, it is rarely appropriate to apply legal construction techniques in preference to consulting with the applicant for clarification.³²
25. In this review, the terms of the access application are clear. The applicant has sought information about QBCC’s investigation of his complaint about unlicensed contracting at Property A. The access application does **not** seek access to information about QBCC’s separate investigation of the applicant’s complaint about unlicensed contracting at Property B.³³
26. Based on the terms of the access application which is the subject of this external review, I am satisfied that the scope of the application does **not** extend to information about QBCC’s separate investigation of the applicant’s unlicensed contracting complaint concerning Property B. Unless it is clear on the face of a document that information concerning Property B has been used to inform the investigation of the complaint about unlicensed contracting at Property A, the information concerning Property B is not relevant to the terms of the access application. I have dealt with this issue later in this decision.
27. The applicant’s submissions³⁴ question why the QBCC decision-maker refused access to the personal information of third parties when, in undertaking consultation with relevant third parties, the decision-maker has:
- either not sought authorisation from third parties to release such personal information or sought release authorisation from third parties and those third parties objected ‘*but did not lodge a subsequent submission*’; and
 - contemplated release of personal information but then proceeded to redact the information ‘*without authorisation to refuse access*’.
28. The applicant also submits³⁵ that the Information Commissioner should conduct consultation with relevant third parties regarding the personal information to which access has been refused, as he believes such consultation would reveal:

²⁸ External review application.

²⁹ External review application.

³⁰ Submissions dated 12 July 2017.

³¹ *Arnold and Redland City Council* (Unreported, Queensland Information Commissioner, 17 October 2013) at [21], citing *Robbins and Brisbane North Regional Health Authority* (1994) QAR 30 (**Robbins**) at [17]. See also *8RS6ZB and Metro North Hospital and Health Service* [2015] QICmr 3 at [14].

³² While this decision considered the issue in the context of the *Freedom of Information Act 1992 (FOI Act)*, the principles have equal application to a consideration of the issue in the context of the RTI Act.

³³ I note that some of the applicant’s other external reviews relate to applications seeking access to information about QBCC’s investigation of his other complaints, including his unlicensed contracting complaint concerning Property B.

³⁴ Submissions dated 12 July 2017.

³⁵ Submissions dated 12 July 2017.

- ‘iniquity’; and
 - whether the QBCC decision-maker engaged with the Excluded Individual and knew that the consulted third parties existed and/or engaged in the communications recorded in the documents.
29. The applicant’s submissions in this regard appear to stem from his belief that disclosure of the Information in Issue will confirm that the Excluded Individual was in some way involved in QBCC’s investigation of the Complaint. They also point to a misunderstanding on the part of the applicant about the process for consulting with relevant third parties about the proposed disclosure of information under the RTI Act and the steps a decision-maker is required to take under section 49 of the RTI Act in determining whether disclosure of information would, on balance, be contrary to the public interest.
30. Section 37(1) of the RTI Act provides that an agency may give access to a document that contains information, the disclosure of which may reasonably be expected to be of concern to a government, agency or person (**relevant third party**) only if the agency has taken steps to obtain the relevant third party’s **views** about whether the document is a document to which the RTI Act does not apply or the information is exempt information or contrary to the public interest information. Where an agency obtains such relevant third party views but decides to release information contrary to such view, the agency is required to provide written notice of its decision to the relevant third party.³⁶
31. In the present case, I have reviewed the steps taken by QBCC’s decision-maker and it is evident from the information before me that the QBCC decision-maker sought the views of various third parties about proposed disclosure of certain information (**consultation information**) and considered the views received from those parties when determining if disclosure of the consultation information would, on balance, be contrary to the public interest.
32. As set out in the subsequent sections of this decision, I am satisfied that grounds exist for refusing or deleting the Information in Issue. Accordingly, the requirement to take steps to obtain the views of the relevant third parties about disclosure of the Information in Issue does not arise. In these circumstances, I am not required to consult with any third parties, and have not done so.
33. I will now turn to consideration of the substantive issues to be determined in this review.

Exempt Information

34. QBCC refused access to portions of information appearing in 2 pages of the Information in Issue³⁷ on the ground that it is exempt information (**Points Information**).
35. The Points Information appears in an internal QBCC checklist, which is used by QBCC in dealing with a received complaint.³⁸ In this case, it is clear from the access application that QBCC dealt with the Complaint by conducting an investigation. I also note that, apart from the Points Information, QBCC released the checklist to the applicant and the released checklist information confirms that the QBCC offence points allocated to the Complaint totalled 50 points and, as a result, the Complaint was dealt with by referring it to an investigation.

³⁶ Section 37(3) of the RTI Act.

³⁷ Being pages 66 and 67 in File 1263834 *Compliance* EDRMS.

³⁸ That is, the checklist is used to determine whether QBCC issues a warning notice or refers the complaint for investigation by QBCC’s investigation unit or its regulatory services unit.

36. While I am constrained as to the level of detail that I can provide regarding the Point Information,³⁹ QBCC describes the Points Information as information which ‘reveals a lawful and identifiable method or procedure used by QBCC’.⁴⁰

Relevant law

37. Under the RTI Act, a person has a right to be given access to documents of an agency.⁴¹ The RTI Act is administered with a pro-disclosure bias, meaning that access should be given to a document unless giving access would, on balance, be contrary to the public interest.⁴² The RTI Act sets out certain grounds on which access to information may be refused.⁴³ It is Parliament’s intention that these grounds are to be interpreted narrowly.⁴⁴
38. An agency may refuse access to documents to the extent they comprise exempt information.⁴⁵ Relevantly in this review, information will qualify as exempt information⁴⁶ if its disclosure could reasonably be expected to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.⁴⁷
39. To enliven this exemption, the following requirements must be met:⁴⁸
- a) there exists an identifiable method or procedure
 - b) it is a method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; and
 - c) disclosure of the information could reasonably be expected to prejudice the effectiveness of that method or procedure.
40. The requirements of the phrase ‘could reasonably be expected to’ in the particular context of the exemptions in schedule 3, section 10(1) were discussed by the Information Commissioner in *Gold Coast Bulletin and Queensland Police Service (Gold Coast Bulletin)*.⁴⁹ That phrase requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,⁵⁰ nor merely a possibility.⁵¹ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.⁵² It is not necessary for a decision-maker ‘to be satisfied upon a balance of probabilities’ that disclosing the document will produce the anticipated prejudice.⁵³
41. There are exceptions to the exemption and they are set out in schedule 3, section 10(2) of the RTI Act.

³⁹ Section 108(1) of the RTI Act.

⁴⁰ QPS decision dated 28 July 2016.

⁴¹ Section 23 of the RTI Act.

⁴² Section 44(1) of the RTI Act.

⁴³ Section 47(3) of the RTI Act.

⁴⁴ Section 47(2)(a) of the RTI Act.

⁴⁵ Section 47(3)(a) of the RTI Act. Schedule 3 of the RTI Act sets out the types of information that comprise exempt information: section 48 of the RTI Act.

⁴⁶ Schedule 3 of the RTI Act contains a number of exemption provisions and this one is relevant in this review.

⁴⁷ Schedule 3, section 10(1)(f) of the RTI Act.

⁴⁸ *Harris and Queensland Police Service* [2014] QICmr 10 (18 March 2014) (*Harris*) at [11].

⁴⁹ (Unreported, Queensland Information Commissioner, 23 December 2010) at [20]-[21].

⁵⁰ *Attorney-General v Cockcroft* (1986) 64 ALR 97 (*Cockcroft*) at 106.

⁵¹ *Murphy and Treasury Department* (1995) 2 QAR 744 (*Murphy*) at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

⁵² *Murphy* at [45]-[47].

⁵³ *Cockcroft* at 106, cited in *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) at [192].

Findings

Requirement a) – Is there an identifiable method or procedure?

42. I have carefully reviewed the Points Information. Taking into consideration the context in which the Points Information appears, I am satisfied that it reveals an identifiable method or procedure.
43. I note that the applicant has accepted that requirement a) has been met.⁵⁴

Requirement b) – Is it a method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law?

44. The Points Information is a methodology used by QBCC, as noted in paragraph 35 above, to determine how it will deal with received complaints concerning legislation which QBCC administers. Given the nature of the Points Information and the context in which it appears, I am satisfied that it is an identifiable method or procedure used by QBCC for dealing with a contravention or possible contravention of the laws which QBCC administers.
45. The applicant submits⁵⁵ that, in order to meet requirement c), it must be demonstrated under requirement b) that the Points Information is *effective* for preventing, detecting, investigating or dealing with contravention or possible contravention of the law. I have carefully considered the applicant's submissions and the caselaw to which he refers in support of his submissions⁵⁶ and I am satisfied that such an interpretation of requirement b) is not supported by the Information Commissioner's decisions and I do not accept that section 10(1)(f) should be interpreted as the applicant contends.⁵⁷ I consider the question that I must address is whether the effectiveness of the method or procedure will be prejudiced **not** whether the method or procedure is effective.

Requirement c) – Could disclosure of the Points Information reasonably be expected to prejudice the effectiveness of that method or procedure?

46. The Points Information is not publicly available and it cannot be deduced from publicly available information. Although the Point Information may appear innocuous, on its face, or when read in isolation, I consider that its disclosure would inform persons who are regulated by the legislation which QBCC administers, about how QBCC deals with various offences under that legislation. This, in turn, has the potential to result in such regulated persons making decisions to commit a numbers of offences, with knowledge that they would only receive a warning letter (on the basis that such offences would not cumulatively reach the 50 point threshold for referral to an investigation).
47. As to whether this expectation of prejudice is reasonable, I am satisfied that revealing the Points Information under the RTI Act, where there can be no restriction on its use, dissemination or republication, could reasonably be expected to alert such regulated persons to this method for dealing with received complaints and potentially enable them to subvert QBCC's points method.

⁵⁴ Submissions dated 12 July 2017.

⁵⁵ Submission dated 12 July 2017.

⁵⁶ In support of this submission, the applicant refers to the Information Commissioner's decision in *Gold Coast Bulletin*. I have carefully considered that decision and do not consider that it supports the applicant's contention for a more limited reading of requirement (b).

⁵⁷ The applicant has made additional submissions about how he considers the points in the checklist may be awarded. Under section 108(3) of the RTI Act, I am unable to disclose information claimed to be exempt information in these reasons for decision. I am therefore, constrained in the extent to which I can respond to how the applicant considers the Points Information is used by QBCC in support of his submissions about the application of this exemption.

48. The applicant submits⁵⁸ that requirement c) is not met as *'the RTI Act requires that disclosure could reasonably be expected to cause a relevant harm'*. More particularly, the applicant submits that:
- for requirement c) to be met, the decision-maker must be satisfied that disclosing the Points Information would prejudice the *effectiveness* of the relevant method or procedure **and** cause a relevant harm
 - there is no relevant harm in disclosure of the Points Information;⁵⁹ and
 - warning letters provide the same information to regulated persons, who would use that information to further unlawful activity and subvert QBCC's investigation processes.
49. As set out above, I am required, as a decision-maker conducting a merits review, to consider whether disclosure of the Points Information could reasonably be expected to prejudice the effectiveness of QBCC's method for dealing with a contravention or possible contravention of the law. For the reasons set out in paragraphs 46-47 above, I am satisfied that such a reasonable expectation exists.
50. The information from the checklist that has been released to the applicant indicates that, if the 50 point threshold for a complaint is not reached and there are no other offences for referral, a warning letter is to be issued. On the information before me, I am not satisfied that a warning letter provides *'the same information'* as the Points Information and I therefore do not accept the applicant's contention that a warning letter *'has the same potential to inform persons who are regulated by the legislation which QBCC administers about how QBCC ranks various offences under that legislation'*⁶⁰ and deals with contraventions or possible contraventions of the law.
51. There is no evidence before me that any exception to the exemption contained in schedule 3, section 10(2) applies to the Points Information.⁶¹
52. The applicant also submits that:
- disclosure of the Points Information would be reasonably expected to reveal the reason for a Government decision (to investigate) since it provides background or contextual information that informed the decision;⁶² and
 - under a public interest balancing exercise, factors under schedule 4 of the RTI Act ought to be afforded significant weight and outweigh those factors under schedule 3 that are contrary to the public interest.⁶³
53. These submissions raise issues relative to public interest factors that may favour disclosure of the Points Information in the context of assessing under the RTI Act whether or not disclosure would, on balance, be contrary to the public interest. However, when information qualifies as exempt information—as is the case in relation to the Points Information—the arguments for disclosure that the applicant has raised cannot be taken

⁵⁸ Submissions dated 12 July 2017.

⁵⁹ In this regard the applicant submits: *'A warning letter has the potential to inform persons who are regulated by the legislation which QBCC administers about how QBCC ranks various offences under that legislation'*.

⁶⁰ Submissions dated 12 July 2017.

⁶¹ The applicant has made submissions regarding the application of what he describes as 'the Iniquity Principle' in respect of information that has been refused as contrary to the public interest information, however, the applicant has not contended that such a principle applies as an exception to the exemption in respect of the Points Information. I have therefore dealt with the applicant's submissions concerning Iniquity in my consideration of the Information in Issue refused as contrary to the public interest information.

⁶² External review application.

⁶³ Submissions dated 12 July 2017.

into consideration. This is because Parliament has determined that disclosure of exempt information would, on balance, be contrary to the public interest in all instances.⁶⁴ Further, while agencies may decide to exercise discretion to release exempt information, OIC cannot.⁶⁵

54. In any event, I am satisfied that disclosure of the Points Information is not required to reveal the reason for QBCC's decision to refer the Complaint for investigation. The information that has been released to the applicant from the checklist confirms that the 50 point threshold for dealing with the Complaint by referral to an investigation was reached and, therefore, the Complaint was investigated.

Conclusion

55. For the reasons set out above, I find that that:

- the Points Information comprises exempt information under section 48 and schedule 3, section 10(1)(f) of the RTI Act; and
- access to the Points Information may be refused under section 47(3)(a) of the RTI Act on that basis.

Contrary to the public interest information

56. QBCC refused access to 18 full pages, small portions of information on 82 pages and 7 audio recordings in the Information in Issue, on the basis that its disclosure would, on balance, be contrary to the public interest.⁶⁶ While the RTI Act prevents me from disclosing the content of this refused information,⁶⁷ I generally categorise it as:

- small portions of information appearing on 57 pages which comprise names of individuals and individuals' contact details (**Category A Information**)⁶⁸
- 7 audio recordings, 7 pages and portions of information appearing on 29 pages, which QBCC obtained, including from individuals who were contacted by QBCC in the course of conducting the investigation, or information which QBCC recorded⁶⁹ about its interactions with those individuals, some of which also includes Category A Information (**Category B Information**)⁷⁰
- numbers appearing against a box titled '*BSA licence number or owner-builder number*' on two pages of information provided to the QBCC investigation (**Category C Information**)⁷¹
- 11 pages⁷² of building contract information provided to the QBCC investigation and small portions of information which refer to the value of the building contract on 22 pages⁷³ (**Category D Information**)

⁶⁴ Section 48(2) of the RTI Act.

⁶⁵ Section 105(2) of the RTI Act.

⁶⁶ QBCC also refused access to portions of information appearing on page 669 in File 1263834 Compliance EDRMS, however, for the reasons set out in this decision, I consider that this information may be deleted on the basis that it is irrelevant to the access application.

⁶⁷ Section 108(3) of the RTI Act which requires that the Information Commissioner must not, in a decision, include information that is claimed to be contrary to the public interest information.

⁶⁸ Appearing on page 10 in File 1263834_6 Case Notes; pages 204, 208, 212, 216, 220, 228, 261, 270, 273, 274, 374-376, 378-381, 384-385, 387-392, 394-398, 400-405, 408-412, 415-421, 424-429, 433 and 442 in File 1263834 Compliance EDRMS.

⁶⁹ Including by audio recording.

⁷⁰ Appearing on pages 2, 3, 5 and 10 in File 1263834_6 Case Notes; pages 205, 214, 226, 267, 290-293, 375, 379, 380, 382, 384-385, 388-390, 395, 396, 397, 402, 404, 410-411, 418-420, 424, 427, 430, 434 and 442 in File 1263834 Compliance EDRMS and audio recordings 4-10.

⁷¹ Pages 228 and 270 in File 1263834 Compliance EDRMS.

⁷² Pages 276-286 in File 1263834 Compliance EDRMS.

⁷³ Page 3 in File 1263834_6 Case Notes and pages 200, 202-203, 204-206, 208-213, 258, 341, 347, 354, 361, 366, 372, 438 and 447 in File 1263834 Compliance EDRMS. On pages 200, 202, 203, 206, 209, 210, 213, 258, 341, 347, 354, 361, 366, 372, 438 and 447 in File 1263834 Compliance EDRMS, the contract value reference is the only information that has been refused.

- three portions of information appearing on two pages comprising QBCC's summary of information it obtained from RP Data and ASIC searches (**Category E Information**);⁷⁴ and
- portions of fee information appearing on two pages, which are screen shots of QBCC's CMS system (**Fee Information**).⁷⁵

Relevant law

57. Agencies may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁷⁶
58. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁷⁷
- identify factors irrelevant to the public interest and disregard them⁷⁸
 - 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.
59. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

Applicant's submissions

60. Generally, the applicant submits⁷⁹ that the factors favouring disclosure of the refused information outweigh the nondisclosure factors. The applicant's submissions identify the factors favouring disclosure of the refused information that he considers relevant, namely, where disclosure of the refused information could reasonably be expected to:
- enhance the government's accountability⁸⁰
 - 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 community⁸¹
 - allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official⁸²
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct⁸³
 - advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.⁸⁴

⁷⁴ Page 2 in File 1263834_6 Case Notes and page 190 in File 1263834 Compliance EDRMS.

⁷⁵ Pages 211 and 212 in File 1263834 Compliance EDRMS.

⁷⁶ Sections 47(3)(b) and 49 of the RTI Act.

⁷⁷ Section 49(3) of the RTI Act.

⁷⁸ I have not taken any irrelevant factors into account in this review.

⁷⁹ Submission dated 12 July 2017.

⁸⁰ Schedule 4, part 2, item 1 of the RTI Act.

⁸¹ Schedule 4, part 2, item 3 of the RTI Act.

⁸² Schedule 4, part 2, item 5 of the RTI Act.

⁸³ Schedule 4, part 2, item 6 of the RTI Act.

⁸⁴ Schedule 4, part 2, item 10 of the RTI Act.

- reveal the reason for a government decision and any background or contextual information that informed the decision⁸⁵
- reveal the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant⁸⁶
- reveal environmental or health risks or measures relating to public health and safety⁸⁷
- contribute to the administration of justice generally, including procedural fairness⁸⁸
- contribute to the administration of justice for a person;⁸⁹ and
- disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law.⁹⁰

Findings - Category A and B Information

61. While the Category A Information appears on 57 pages, most of it appears in email chains, resulting in a significant level of duplication in the portions of information which comprise the Category A Information. By way of example, the two occurrences of Category A Information appearing on page 216 in File *1263834 Compliance EDRMS* are duplicated on pages 274, 376, 381, 385, 391-392, 397-398, 405, 412, 421 and 429 in File *1263834 Compliance EDRMS*.
62. Similarly, there is a level of duplication in the portions of information which comprise the Category B Information, for example:
- the portion of information refused on page 226 in File *1263834 Compliance EDRMS* is duplicated on page 267 in File *1263834 Compliance EDRMS*; and
 - the portion of information refused on page 375 in File *1263834 Compliance EDRMS* is duplicated on pages 380, 384-385, 390, 397, 404, 411 and 420 in File *1263834 Compliance EDRMS*.

Irrelevant factors

63. The applicant submits⁹¹ that the reasons why additional audio recordings he believes exist have not been located by QBCC *'are relevant under Schedule 4 of the RTI Act'*. The issue of why additional audio recordings sought by the applicant do not exist is not, as the applicant contends, relevant to my determination of whether access to Information in Issue may be refused on the basis that its disclosure is contrary to the public interest. The existence or nonexistence of documents is a separate consideration under sections 47(3)(e) and 52 of the RTI Act and I have considered it separately in this decision.
64. I have not taken this submission, or any other irrelevant factors, into account in making my decision.

Factors favouring disclosure

Accountability, transparency and informing the community

65. The RTI Act recognises the following factors favouring disclosure will arise where disclosing information could reasonably be expected to:

⁸⁵ Schedule 4, part 2, item 11 of the RTI Act.

⁸⁶ Schedule 4, part 2, item 12 of the RTI Act.

⁸⁷ Schedule 4, part 2, item 14 of the RTI Act.

⁸⁸ Schedule 4, part 2, item 16 of the RTI Act.

⁸⁹ Schedule 4, part 2, item 17 of the RTI Act.

⁹⁰ Schedule 4, part 2, item 18 of the RTI Act.

⁹¹ Submission dated 31 July 2017.

- enhance the government's accountability;⁹² and
 - 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;⁹³ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁹⁴
66. The applicant submits that it is not contrary to the public interest to release '*correspondence (external or internal) between parties who are not legal counsel and are engaged in a deliberative process, where that information reveals the reason for a Government decision*'.⁹⁵
67. As noted in paragraph 58 above, section 49(3) of the RTI Act requires that I consider relevant factors in determining whether disclosure would, on balance, be contrary to the public interest. Where disclosure of information may reveal the reason for a Government decision is just one factor to be taken into account in deciding whether it would be contrary to the public interest to release information and the weight afforded to this factor favouring disclosure may not necessarily be determinative of the public interest.
68. QBCC must be transparent and accountable in how it deals with investigations of complaints it receives about potential breaches of the legislation which it administers. I accept that disclosing the Category A and B Information would provide the applicant with the minutiae of how QBCC handled its investigation into the Complaint and give him an augmented picture of the information that was available to QBCC, including the identity of all individuals who were contacted by QBCC during its investigation and further details of the information provided to or obtained for the investigation.
69. However, I note that QBCC has released a substantial amount of information to the applicant about the handling of its investigation and the investigation outcome. I consider this has afforded the applicant significant understanding of how the investigation was conducted and provided background and contextual information about QBCC's investigation of and decision concerning the Complaint. Given the nature of the Category A and B Information, I do not consider that its disclosure would provide greater transparency about QBCC's investigation or enhance QBCC's accountability, nor do I consider that disclosure of the Category A and B Information would inform the community any further about QBCC's investigative processes.
70. Taking into consideration the nature of the Category A and B Information and the content of the information that has already been released to the applicant, I afford moderate weight to the factors favouring disclosure which relate to QBCC's accountability and transparency and informing the community about QBCC's investigation processes.⁹⁶

Advance fair treatment and procedural fairness

71. 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

⁹² Schedule 4, part 2, item 1 of the RTI Act.

⁹³ Schedule 4, part 2, item 3 of the RTI Act.

⁹⁴ Schedule 4, part 2, item 11 of the RTI Act.

⁹⁵ External review application.

⁹⁶ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

accordance with the law in their dealings with agencies⁹⁷ and contribute to the administration of justice generally, including procedural fairness.⁹⁸

72. Natural justice refers to the common law requirement to act fairly in the making of administrative decisions which affect a person's rights, interests or legitimate expectations. The fundamental requirements of procedural fairness (that is, a fair hearing and a decision-maker free from bias) should be afforded to the person who is the subject of a decision. Here, the applicant is complainant, not the person or entity the subject of the decision. While the applicant may consider that the action taken by QBCC at the conclusion of its investigation of the Complaint was either inconsistent with its prior decisions or insufficient, there is no evidence before me that suggests the Complaint, and the evidence the applicant provided to QBCC's investigation, was disregarded or not properly considered by QBCC. Further, it is unclear how disclosure of the Category A and B Information would contribute to procedural fairness for any other individual or entity.
73. The investigation of the Complaint has been finalised and QBCC has issued a warning letter to LJ Technical as the outcome of its investigation findings. The investigation outcome and the action taken by QBCC was also notified to the applicant.⁹⁹ Given this, I am unable to determine how disclosure of the Category A and B Information will advance the applicant's fair treatment in his dealings with QBCC.
74. For these reasons, I consider that the factors favouring disclosure relating to fair treatment and the administration of justice generally, including procedural fairness¹⁰⁰ do not arise in respect of Category A and B Information. However, for the sake of completeness, I note that even if I were incorrect in this regard, and these factors could be said to apply, they nonetheless warrant low to no weight in favour of disclosing the Category A and B information.
75. A public interest factor favouring disclosure will also arise if disclosing information could reasonably be expected to contribute to the administration of justice for a person,¹⁰¹ for example, by allowing a person subject to adverse findings to access information that may assist them in legal proceedings.
76. The applicant's submissions do not elaborate on how disclosure of the Category A and B Information would contribute to administration of justice for him. He has not, for example, indicated that disclosure of the information is required in connection with a further legal remedy he wishes to pursue.¹⁰² 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

⁹⁷ Schedule 4, part 2, item 10 of the RTI Act.

⁹⁸ Schedule 4, part 2, item 16 of the RTI Act.

⁹⁹ I am also aware, from material considered in the applicant's separate external reviews, that the applicant has received information about QBCC's investigations, and outcomes of such investigations, regarding certain of the applicant's other complaints to QBCC.

¹⁰⁰ Schedule 4, part 2, items 10 and 16 of the RTI Act.

¹⁰¹ Schedule 4, part 2, item 17 of the RTI Act.

¹⁰² I am, however, aware from material considered in the applicant's separate external reviews that there has been some reference to legal action or potential legal action concerning a boundary dispute.

- disclosing the requested information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.¹⁰³

77. As noted above, in this case, the investigation of the Complaint is complete and the adverse findings were made against LJ Technical, not the applicant. While I understand the applicant does not consider the action taken by QBCC in respect of the Complaint is sufficient and that he has concerns:

- that the QBCC decision about the Complaint is not the same as a decision about a similar complaint concerning Property B; and
- about the outcomes of other complaints that he has made to QBCC,

I am satisfied that he has not been 'adversely affected' by the QBCC decision regarding the Complaint in the sense relevant to natural justice and procedural fairness. As the applicant already has access to a substantial amount of information concerning QBCC's handling of its investigation and the investigation outcome, I also consider that he does not require the Category A and B Information to seek a legal remedy or take his concerns about QBCC's decisions to relevant complaint handling bodies. In these circumstances, I am satisfied that the release of Category A and B Information is not required to enable the applicant to evaluate whether a further legal remedy against any individual, entity or agency is available and worth pursuing or to pursue such legal remedy.

78. For these reasons, I afford low to no weight to this factor favouring disclosure¹⁰⁴ of the Category A and B Information.

Disclosure would reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant

79. 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.¹⁰⁵

80. The applicant submits that he believes disclosure of the Category A and B Information will reveal that:

- the Excluded Individual was involved in the QBCC investigation of his unlicensed contracting complaint;¹⁰⁶ and
- the contact details are in fact those of the Excluded Individual.¹⁰⁷

81. There is nothing on the face of the Category A and B Information, nor in any other information before me, to suggest that:

- the names and contact details recorded in the Category A Information are not correct

¹⁰³ *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)).

¹⁰⁴ Schedule 4, part 2, item 17 of the RTI Act.

¹⁰⁵ Schedule 4, part 2, item 12 of the RTI Act.

¹⁰⁶ Submission dated 31 July 2017. In support of this submission, the applicant refers specifically to the name of an individual refused in a 4 December 2015 email, which appears on pages 216, 274, 376, 381, 385, 392, 398, 405, 412, 421 and 429 in File 1263834 Compliance EDRMS. Section 108(3) of the RTI Act prevents me from revealing the identity of the individuals whose names have been refused in the Information in Issue.

¹⁰⁷ Submission dated 31 July 2017. In support of this submission, the applicant has referred to the disclosed email address, ljtechnicalcontrol@hotmail.com, as being an address 'known to be used' by the Excluded Individual. There is nothing on the evidence before me which supports this contention and I note that this referenced email address appears, on its face, to be the email address of LJ Technical.

- the information provided or obtained for the investigation which comprises the Category B Information is not correct; or
- disclosure of the Category A and B Information will reveal that the Excluded Individual was involved in the QBCC investigation.

82. I also confirm that, where the name of an email addressee has been released and an email address has been redacted, the email address, on its face, corresponds to the person whose name has been released.¹⁰⁸

83. For these reasons, I do not consider this factor arises to be considered in respect of the Category A and B Information. 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 Category A and B Information.

Deficiencies in the conduct or administration of an agency or official

84. Public interest factors in favour of disclosure also arise where disclosure of information could reasonably be expected to:

- allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official;¹⁰⁹ and
- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.¹¹⁰

85. The applicant submits¹¹¹ that an important factor that '*allows or assists inquiry into the deficiencies of the QBCC*' is the omission of specific information from QBCC's publicly searchable registers.¹¹² The appropriateness of what is recorded or not recorded in QBCC's publicly searchable registers is not a matter which OIC has any jurisdiction to consider on external review. Nor is it necessarily evidence of possible deficiencies in the conduct or administration of an agency or official or that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.

86. For these factors to be relevant, there must be a reasonable expectation that disclosing the Category A and B Information would allow or assist enquiry into, reveal or substantiate, agency or official conduct deficiencies. I have carefully considered the Category A and B Information, together with the information which has been released to the applicant, and I am satisfied that there is nothing in that information which gives rise to such an expectation.

87. The applicant has not specifically identified how he considers disclosure of the Category A and B Information would allow or assist inquiry into, or substantiate claims about, agency or official conduct deficiencies. The applicant's submissions do, however, extensively detail:

- the various complaints that he has lodged with QBCC; and
- the manner in which QBCC has addressed or investigated those complaints.

¹⁰⁸ For example, on pages 216, 274, 375, 376, 380, 381, 384, 385, 390, 391, 397, 404, 405, 411, 412, 420, 421, 428 and 429 in File 1263834 Compliance EDRMS.

¹⁰⁹ Schedule 4, part 2, item 5 of the RTI Act.

¹¹⁰ Schedule 4, part 2, item 6 of the RTI Act.

¹¹¹ Submissions dated 12 July 2017.

¹¹² Specifically being the failure to record QBCC's determination in respect of the Complaint and detailed information about the Excluded Individual and his offences. I note that the applicant's submissions set out in detail the reasons why the Excluded Individual was excluded under section 56AC(3) of the QBCC Act.

88. I have carefully considered the applicant's submissions and it is clear that he considers disclosure of the Information in Issue will substantiate his concerns about the inconsistency in how QBCC has dealt with his various complaints and reveal that the Excluded Individual played some role in the investigation of his complaint which is the subject of this review and reveal 'iniquity'. In this regard, I have again noted the applicant's concerns about QBCC decisions in respect of his various complaints and his belief that the action taken against LJ Technical in respect of the Complaint was not consistent with the legislation QBCC administers or adequate for an offender he considers has knowingly engaged in a contravention of the law.
89. Generally, there is a public interest in investigations being conducted with as sufficient a degree of transparency and accountability as to afford the parties to such an investigation (and the public generally) with an understanding of the outcome and conclusions of the investigation. This does not, however, extend to affording complainants a right to second-guess or reinvestigate such investigations, particularly in circumstances where other avenues of redress for perceived investigative inadequacy are available.
90. To the extent that the applicant has raised 'iniquity' arguments, I have dealt with these later in this decision.
91. As noted above:
- a substantial amount of information concerning QBCC's handling of its investigation of the Complaint and the outcome of that investigation has been released to the applicant; and
 - there is nothing in the information before me which indicates that disclosure of the Category A and B Information will reveal that the Excluded Individual was involved in the QBCC investigation.
92. In these circumstances, I afford no weight to the factors favouring disclosure of the Category A and B Information which relate to allowing or assisting inquiry into, or substantiating claims about, agency of official conduct deficiencies.¹¹³

Reveal environmental or health risks

93. The applicant asserts that this factor favouring disclosure is relevant. However, he has not identified or addressed how disclosure of the Category A Information (names of individuals and their contact details) and Category B Information (information provided by or obtained about other individuals, including audio recordings) could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.¹¹⁴
94. As noted above, the Category A and B Information comprises name and contact details and information of a personal nature provided to or obtained for QBCC's regulatory investigation of the Complaint. By its nature, this information relates to those other individuals, rather than environmental or health risks or measures relating to public health and safety.
95. In these circumstances, I am satisfied there is no reasonable expectation that disclosing the Category A and B Information could reveal environmental or health risks or measures relating to public health and safety. Accordingly, I do not consider that this factor¹¹⁵

¹¹³ Schedule 4, part 2, items 5 and 6 of the RTI Act.

¹¹⁴ Schedule 4, part 2, item 14 of the RTI Act.

¹¹⁵ Schedule 4, part 2, item 14 of the RTI Act.

favouring disclosure of the Category A and B Information arises for consideration in balancing the public interest. 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 Category A and B Information.

Contribute to enforcement of the criminal law

96. 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.¹¹⁶
97. The Complaint relates to potential breaches of legislation administered by QBCC. QBCC investigated the Complaint and issued a warning letter to LJ Technical. The action taken by QBCC constitutes QBCC's enforcement of the legislation which it administers, as it relates to the Complaint. Further, as noted above, LJ Technical's previously licensed classes are currently cancelled.
98. Apart from the applicant's submissions, there is no evidence before me that the potential fraud and impersonation raised by the applicant has occurred or that any criminal investigation is currently being undertaken regarding those matters that might necessitate disclosure of the Category A and B Information. I also note that the applicant has raised concerns about such potential fraud and impersonation based on the information that has been disclosed to him relating to QBCC's investigation of the Complaint. In these circumstances, I am satisfied that he does not require disclosure of the Category A and B Information to refer his concerns, should he wish to do so, to other law enforcement and investigative bodies, such as the Queensland Police Service.
99. Given the enforcement action that has been taken by QBCC in respect of the Complaint, the nature of the Category A and B Information and the context in which it appears, I am satisfied there is no reasonable expectation that disclosing the Category A and B Information would contribute to the enforcement of the criminal law. Accordingly, I do not consider that this factor¹¹⁷ favouring disclosure of the Category A and B Information arises for consideration in balancing the public interest.

Iniquity

100. The applicant's submissions¹¹⁸ also raise what the applicant describes as the '*Iniquity Principle*'. The applicant describes this principle as follows:¹¹⁹

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.

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.

101. For ease of reference in this decision, I have adopted the applicant's wording and simply refer to this concept as **Iniquity**.

¹¹⁶ Schedule 4, part 2, item 18 of the RTI Act.

¹¹⁷ Schedule 4, part 2, item 18 of the RTI Act.

¹¹⁸ Submissions dated 12 July 2017.

¹¹⁹ Submissions dated 12 July 2017. The applicant provided 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.

102. The applicant submits¹²⁰ that:

- ‘If it can be demonstrated that an exception to exempt information could be raised for the Information in Issue (if it were deemed exempt), then the weight in favour of disclosure of that information is significant and will outweigh non-disclosure factors in a public interest balancing exercise’
- the relevant factors under schedule 4 favouring disclosure of the information in this context particularly include schedule 4, part 2, items 12, 16, 17 and 18
- to establish Iniquity ‘a prima facie case of illegal activity or improper purpose must first be brought, rather than merely the suggestion of the activity’ and ‘by virtue of the QBCC’s own findings of illegal activity, a prima facie case is already made out since it is already established that disclosure of the Information in Issue **will in fact disclose the existence of an iniquity that is a crime, civil wrong or serious misdeed of public importance**’ (applicant’s emphasis)
- the requirements to favour disclosure have been made out¹²¹
- the refusal of access to the Information in Issue has made QBCC ‘the confidant of a crime or a fraud’ and is elevating the private right to confidentiality above the interest of the community; and
- ‘In order to ensure that the breadth of the existence of an iniquity that is a crime, civil wrong or serious misdeed of public importance is known in the public interest, and referred to appropriate agencies, full disclosure of the information in issue is favoured’.

103. I understand the applicant’s submission 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.

104. In support of his submissions about Iniquity as an overarching exception to public interest, the applicant has referred to the Information Commissioner’s decisions in *Grant and Pine Rivers Shire Council*; *Chapman (Third Parties) (Grant)*¹²² and *Boulton and Whitsunday Regional Council (Boulton)*.¹²³ I note that:

- these decisions considered Iniquity in the context of it being an exception or defence to the application of the breach of confidence exemption contained in section 46(1)(a) of the FOI Act;¹²⁴ and
- unlike the RTI Act, the now repealed FOI Act set out various exemptions to disclosure and did not contain a provision similar to the public interest balancing test set out in section 49 of the RTI Act.

105. In *Grant*, the Information Commissioner relevantly noted:

¹²⁰ Submissions dated 12 July 2017.

¹²¹ The applicant more specifically submits that the offences of unlicensed contracting, excluded company and influential person are not trivial; he submits that the excluded individual was permitted to construct a class of buildings outside a licence class and those buildings represent an unacceptable risk to the community and the excluded person has been allowed to continue to engage in building construction activities; he submits that both the third parties and QBCC are seeking to protect the information and doing so in order to prevent disclosure to a third party who has a real and direct interest in redressing the crimes and wrongdoings or misdeeds.

¹²² (Unreported, Queensland Information Commissioner, 30 April 2007).

¹²³ (Unreported, Queensland Information Commissioner, 30 June 2008).

¹²⁴ A similar breach of confidence exemption appears in schedule 3, section 8(1) of the RTI Act, however, that exemption is not relevant to the issues for determination in this review. The applicant’s submissions also refer to the decision in *Godwin and Department of Police* (Unreported, Queensland Information Commissioner, 7 November 1997) which also considered the application of the breach of confidence exemption under the FOI Act.

... to succeed with such a defence release of the matter in issue would need to have the effect of disclosing the existence of or the real likelihood of, the existence of an iniquity that is a crime, civil wrong or serious misdeed of public importance.

106. Following the decision in *Callejo and Department of Immigration and Citizenship (Callejo)*,¹²⁵ the Information Commissioner considered the application of Iniquity under the RTI Act in *TSO08G and Department of Health (TSO08G)*.¹²⁶ Iniquity in *TSO08G* was considered in the context of exceptions to the breach of confidence exemption contained in schedule 3, section 8(1) of the RTI Act and the Information Commissioner relevantly commented¹²⁷ at [15-16]:

The issue of whether defences to a breach of confidence action should be considered in applying the exemption is also subject to different views. Recently, in Callejo the Administrative Appeals Tribunal of Australia decided it was not necessary to consider defences on the basis that the section only requires that disclosure would “found” an action for breach of confidence. While the Information Commissioner has previously considered defences to be relevant in applying the breach of confidence exemption, the Information Commissioner has acknowledged that if defences cannot be considered, evidence of an iniquity may still be relevant in determining whether information has the necessary quality of confidence. Having considered the relevant authorities, I am satisfied that the availability of defences is not a separate requirement when applying the breach of confidence exemption in schedule 3, section 8 of the RTI Act. In the particular circumstances of this case, I have assessed whether evidence of an iniquity is present in the context of requirement (b), that is, whether the Information in Issue has the necessary quality of confidence. (footnotes omitted).

107. In each of *Grant, Boulton* and *TSO08G*, Iniquity was considered in the context of a defence or exception to disclosure exemptions. The applicant has not referred to any decision under the RTI Act which supports his contention that Iniquity may also apply as an exception to the contrary to the public interest ground of refusal and I am not aware of any such decision.
108. As noted in paragraph 58 above, in assessing whether disclosure of information would, on balance, be contrary to the public interest, I must apply the balancing test specified in section 49(3) of the RTI Act. Those requirements do not import any overriding exception to the application of the balancing test.
109. I have carefully considered the applicant's extensive submissions concerning the application of Iniquity to the Information in Issue and, while I acknowledge the applicant's dissatisfaction with and concerns about the different outcomes of QBCC's investigations into his various complaints, 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 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. My consideration of these factors is set out above.
110. 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 of the Category A and B Information.

¹²⁵ [2010] AATA 244.

¹²⁶ (Unreported, Queensland Information Commissioner, 13 December 2011).

¹²⁷ At [15]-[16].

111. I agree with the applicant's submissions that LJ Technical is an excluded company, which is no longer licensed by QBCC to undertake building works and I note the provisions of the QBCC Act¹²⁸ relating to requirements for an excluded individual to stop being a director, secretary or influential person. These matters are not in dispute. However, the applicant submits that disclosing the Information in Issue '*will further demonstrate evidence of falsified records and misleading information; and that an individual managing a company whilst disqualified (as an undischarged bankrupt), engaged in fraud, and committed impersonation*'.¹²⁹ More particularly, the applicant submits¹³⁰ that:

- personal information which reveals any communications by the Excluded Individual for, or on behalf of, LJ Technical and the relevant method of that communication, is activity that is illegal or for an improper purpose and must be released pursuant to Iniquity
- the 'clustering' of refused personal information is relevant to the consideration of Iniquity, as he believes an email may come from an address attributed to and be written in the name of a third party, but an accompanying mobile number might belong to the Excluded Individual and, therefore, he expects that such communications have been made by the Excluded Individual
- the only time in which QBCC truly communicated with a third party who is not the Excluded Individual is recorded telephone conversations or documented conversations that were held in person, however, he considers such records are also '*subject to iniquity*' as the communications were made under the instruction of the Excluded Individual; on behalf of or to further the interests of an excluded company; or such third parties were either 'complicit' in the delivery of representations known to be false or made such representation to gain benefit or advantage or cause detriment; and
- '*Since LJ Technical Control Construction Pty Ltd was an illegal entity (as an Excluded Company) and its building and construction activity was also illegal (through Unlicensed Contracting) ... communications between the company and the QBCC when it was investigated can be considered in furtherance of the interests of the illegal company or the illegal activity*'.

112. On the information before me, there is nothing to suggest, as the applicant contends, that QBCC has, in its investigation of the Complaint, communicated directly with the Excluded Individual or made agreements for the Excluded Individual to provide information to the investigation. There is also nothing before me, apart from the applicant's submissions, which suggests that disclosing the Category A and B Information would reveal a crime, civil wrong or serious misdeed of public importance.

113. Given the enforcement action that has been taken by QBCC in respect of the Complaint, the nature of the Category A and B 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 Category A and B 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 Category A and B Information.

¹²⁸ Section 56AG of the QBCC Act.

¹²⁹ The applicant submits that evidence in the Information in Issue supports that contraventions of the *Criminal Code Act 1899* (Qld) have occurred in this regard.

¹³⁰ Submissions dated 12 July 2017.

Factors favouring nondisclosure

Personal information 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;¹³¹ and
 - cause a public interest harm if it would disclose personal information of a person, whether living or dead.¹³²
115. QBCC identified¹³³ that the personal information contained in the Category A and B Information includes third parties' names, individuals' mobile and other phone numbers, individuals' email addresses, personal opinions, other personal information and QLeave information for an individual.¹³⁴
116. Whilst the applicant submits¹³⁵ that *'it is not disputed'* that part of the Information in Issue comprises the personal information of individuals related to LJ Technical and these nondisclosure factors are relevant, those submissions also argue that *'relevant information is not personal information but rather information that is in the public domain and/or belonging to an ASIC registered and QBCC-licensed company'*.
117. I have carefully considered the Category A and B Information and I am satisfied that it comprises the personal information of other individuals, such as their identifying information, including their names and contact details (such as their mobile telephone numbers and email addresses), information about their personal circumstances and their recollections and opinions. I also note that, in some instances, it is quite clear from the information that has been released to the applicant whose personal information has been refused.
118. It is relevant to consider the extent of the harm that could result from disclosing the personal information of these other individuals under the RTI Act.
119. The applicant submits that:
- *'it is not contrary to the public interest, an individual's right to privacy, or legal professional privilege'* to release contact information that is used by an ASIC registered or QBCC licensed company, including names of employees or agents, telephone numbers, email addresses and postal or place of business addresses that are provided as company information¹³⁶
 - to the extent that the Category A and B Information comprises names and position titles of LJ Technical employees, it should be disclosed¹³⁷
 - any person using what might be considered a 'private email', 'private telephone number' or 'private address' for work related purposes must be prepared to have their use of that information scrutinised, particularly if these private mediums are used in contravention of the law¹³⁸

¹³¹ Schedule 4, part 3, item 3 of the RTI Act.

¹³² Schedule 4, part 4, section 6(1) of the RTI Act.

¹³³ Decision dated 14 July 2016.

¹³⁴ Section 108(3) of the RTI Act prevents me from providing any further description of the Category A and B Information.

¹³⁵ Submissions dated 12 July 2017.

¹³⁶ External review application.

¹³⁷ Submissions dated 12 July 2017. The applicant refers to *The Barlow Group Pty Ltd and Department of Housing and Public Works; JM Kelly (Project Builders) Pty Ltd (Third Party)* [2014] QICmr 12 (**Barlow**) in support of this submission.

¹³⁸ Submissions dated 12 July 2017.

- it is in the public interest for individuals who are engaged in contraventions of the law to be identified and referred to appropriate authorities¹³⁹ and the relevant parties remain in positions to continue to engage in contravention of the law; and
 - references 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.¹⁴⁰
120. In respect of the applicant's reliance on the Information Commissioner's comments in *Barlow*, the factual circumstances and the information in issue in that decision are different to those in this matter. The *Barlow* decision concerned the refusal of access to names and position titles of employees in statutory declarations, where the substance of the statutory declarations was not in issue. In those circumstances, the Information Commissioner considered that disclosing the names and position titles would merely reveal that the individuals were employees and, due to their role in the company, they have signed statutory declarations that certain information relevant to a contract was true.
121. In contrast, the Category A and B Information is not limited to names and position titles appearing in a documents which are otherwise not in issue. The Category A and B Information appears in information provided to or obtained by QBCC in respect of its investigation of alleged regulatory breaches and it includes names, contact details, personal opinions and other personal information, including information in audio recordings. I am satisfied that the nature of the Category A and B Information and the context in which it appears demands a higher level of privacy than was afforded to the quite different information that was the subject of the decision in *Barlow*. I am therefore not persuaded that the Information Commissioner's findings in *Barlow* support the applicant's contention that no weight should be afforded to the factors favouring nondisclosure of the Category A and B Information which relate to personal information and privacy.
122. While some of this information appears against business contact details in the screen shots of QBCC's CMS system, I am satisfied, on the material before me, that:
- the names are of individuals who are not officers of a QBCC licensed company or they are not the publicly available names of officers of a QBCC licensed company
 - the email addresses are private email addresses of individuals, not the email addresses of a QBCC licenced company, and such email addresses are not publicly available
 - an address on page 205 in File 1263834 *Compliance EDRMS* is a residential address of an individual and not a business address; and
 - the telephone numbers (including mobile telephone numbers) are the contact numbers of individuals and are not publicly available information.
123. In respect of the other Category B Information, I consider the individuals who provided this information or about whom this information relates would have expected 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, where there can be no restriction on its use, dissemination or republication.

¹³⁹ Which the applicant has identified as including, but not limited to, the Queensland Ombudsman, the Attorney-General, the Queensland Police Service, ASIC, Queensland Fire and Emergency Services and the Queensland Crime and Corruption Commission. In this regard, I note that most of these bodies have formal powers to obtain information and can therefore use those powers to obtain information to which access may be refused under the RTI Act. Refer for example to the Queensland Ombudsman's powers described at <https://www.ombudsman.qld.gov.au/what-we-do/investigations>.

¹⁴⁰ Submissions dated 31 July 2017.

124. The publicly available names of directors of QBCC licensed companies which appear in the documents located by QBCC have been released to the applicant. The applicant submits¹⁴¹ that the "Western" or "English" name of directors of QBCC licensed companies, or any nickname or known alias of such individuals, should also be released.
125. While I consider that the privacy of the names¹⁴² of such directors is diminished by reason of those names being publicly available, including on QBCC's website and on signage at the relevant construction site, I do not consider that westernised names of any such individuals are so publicly available. While the applicant may be aware that certain individuals may at times refer to themselves by such westernised versions of their names, such references are not reflected in the publicly available information identifying directors of QBCC licensed companies.
126. The applicant has made extensive submissions that it is relevant to consider '*who might be considered the "public face" of LJ Technical and who controlled relevant contact mediums, as he believes the Excluded Individual has made many (if not all) representations to QBCC on behalf of LJ Technical. As discussed in paragraph 19 above, OIC's jurisdiction under the RTI Act relates to decisions about access to and, where relevant, amendment of, documents held by agencies and does not extend to investigating or confirming the applicant's concerns about who may have 'controlled' the contact details of individuals or provided the information to QBCC's investigation which appears within the category A and B Information.*
127. Having carefully considered the applicant's submissions, the Category A and B Information and the context in which it appears, I consider that disclosing Category A and B 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, and the extent of the public interest harm that could be anticipated from disclosure is significant. For these reasons, I afford significant weight to the public interest factors relating to the protection of personal information and privacy¹⁴³ for the Category A and B Information.

Flow of information

128. 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.¹⁴⁴
129. The efficacy of QBCC's investigation of received complaints is facilitated by QBCC being able to seek and obtain information from a range of individuals (including complainants and representatives of and advisers to entities which are the subject of complaints) with as much cooperation as possible. Agencies such as QBCC rely significantly on information from those individuals to pursue investigations into potential breaches of the legislation which QBCC administers, and there is a very strong public interest in protecting the free flow of information to QBCC for that purpose.¹⁴⁵ Routinely disclosing all information provided by such individuals to QBCC's investigations, including information such as witness statements, would tend to discourage individuals from coming forward with relevant information and cooperating with future QBCC

¹⁴¹ Submission dated 31 July 2017.

¹⁴² That is, the given names of individuals, as listed in QBCC's publicly available records.

¹⁴³ Schedule 4, part 3, item 3 and schedule 4, part 4, section 7(1) of the RTI Act.

¹⁴⁴ Schedule 4, part 3, item 13 of the RTI Act.

¹⁴⁵ *Gregory and Queensland Police Service* [2014] QICmr 48 at [25].

investigations.¹⁴⁶ This, in turn, would significantly prejudice QBCC's ability to effectively investigate the complaints that it receives.

130. In this case, some but not all of the information provided by other individuals to the investigation has been released by QBCC. I do not consider that there would be any implicit understanding on the part of these other individuals that the applicant (as the complainant) would receive the information they provided to QBCC for the investigation or records of their interactions with QBCC during the investigation. Further, as noted in paragraph 123 above, I consider these individuals would not have anticipated disclosure of the Category B Information under the RTI Act, where there can be no restriction on its use, dissemination or republication. For these reasons, I am satisfied that routinely disclosing the Category B Information would tend to discourage individuals from cooperating with future QBCC investigations.
131. The applicant submits¹⁴⁷ that individuals who provide information to an investigating agency are required to answer truthfully. I note, however, that the legislation which QBCC administers does not contain provisions which enable QBCC to compel the provision of information or the answering of questions in a complaint investigation.
132. The applicant also submits¹⁴⁸ that:
- an individual cannot reasonably believe that, if they engage in contravention of the law, crime or fraud, their personal information will be protected; and
 - any contravention of the law is subject to prosecution under relevant Acts and an offender's personal information can and will be disclosed.
133. As noted above, there is nothing before me, apart from the applicant's submissions, to suggest that the potential fraud and impersonation has occurred or that any criminal investigation in that regard is being undertaken.
134. Evidence gathered by QBCC in the investigation was obtained to prove or disprove the allegations against LJ Technical, as the entity which was the subject of the Complaint. In this case, while the applicant may consider that QBCC should have prosecuted LJ Technical, it did not take such action, but rather issued a warning letter to LJ Technical as the outcome of its investigation of the Complaint. As noted above, the public interest does not extend to affording complainants a right to second-guess or reinvestigate such investigations.
135. For these reasons, I afford the public interest factor relating to protecting the flow of information to QBCC¹⁴⁹ significant weight in respect of the Category A and B Information.

Balancing the public interest

136. I consider the factors relating to the need to protect the personal information and privacy of individuals and the flow of information to QBCC in its investigations outweigh the relevant factors favouring disclosure of the Category A and B Information and disclosing that information would, on balance, be contrary to the public interest. Accordingly, I find that the Category A and B Information may be refused on this basis.¹⁵⁰

¹⁴⁶ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [29].

¹⁴⁷ Submission dated 12 July 2017.

¹⁴⁸ Submissions dated 12 July 2017.

¹⁴⁹ Schedule 4, part 3, item 13 of the RTI Act.

¹⁵⁰ Under section 47(3)(b) of the RTI Act.

Findings - Category C Information

137. The Category C Information appears on the second page of an IDAS form, which was provided to QBCC for the investigation.¹⁵¹ Almost all of the remaining information in the IDAS form has been released to the applicant.
138. The licence numbers of QBCC licenced entities may be searched on QBCC's website.¹⁵² While the Category C Information appears in a text box titled '*BSA licence number or owner-builder number*', it is not a licence number but is in fact a mobile telephone number of an individual, which appears elsewhere in the Information in Issue and forms part of the Category A Information.
139. The applicant submits¹⁵³ that this information '*demonstrates the iniquity by the building contractor, the Certifier, and the QBCC*' and numerous factors favouring disclosure of this information are relevant. Further, the applicant submits:¹⁵⁴

Irrespective of what information has been inserted into the BSA licence number or owner builder number on the IDAS document, unless it is the Licence Number belonging to the named Applicant – LJ Technical Control Construction Pty Ltd – then the information is not correct as a matter of fact and law.

Irrelevant factors

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

Factors favouring disclosure

141. The applicant submits¹⁵⁵ that the '*transparency and accountability of QBCC is in issue*'. More specifically, the applicant submits¹⁵⁶ that it is '*deeply concerning*' that the certifier and QBCC '*accepted a building contractors IDAS application form as true and correct, when the property owner's details are incorrect and the building contractor in fact does not provide a current QBCC-license number (a requirement by law)*'.
142. Taking into consideration the nature of the Category C Information and that most of the IDAS form in which the Category C Information appears has been disclosed to the applicant, I consider that disclosure of the Category C Information will not further advance QBCC's accountability and transparency or inform the community about QBCC's investigation processes. Accordingly, I afford low to no weight to the factors favouring disclosure of the Category C Information which relate to QBCC's accountability, transparency and informing the community about QBCC's investigation processes.¹⁵⁷
143. I consider that disclosing the Category C Information would reveal that the information is incorrect, which raises a factor favouring disclosure.¹⁵⁸ However, the Category C Information appears within a regulatory document that was lodged with council and which was provided to QBCC only for the purpose of its investigation of the Complaint. On the information before me, I do not accept the applicant's suggestion that, in conducting its

¹⁵¹ Page 270 duplicates page 228 and the Category C Information is the same on both pages.

¹⁵² Refer to <http://www.qbcc.qld.gov.au/>.

¹⁵³ Submission dated 12 July 2017.

¹⁵⁴ Submission dated 12 July 2017.

¹⁵⁵ Submissions dated 12 July 2017.

¹⁵⁶ Submissions dated 12 July 2017.

¹⁵⁷ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁵⁸ Schedule 4, part 2, item 12 of the RTI Act.

investigation, QBCC made any determination concerning the correctness or otherwise of the IDAS form in which the Category C Information appears. In these circumstances, I afford this factor¹⁵⁹ moderate to low weight.

144. For the reasons set out in paragraphs 71-78 and 84-113 above, I find that:

- low to no weight is afforded to the factors favouring disclosure relating to administration of justice and fair treatment¹⁶⁰
- no weight is afforded to the factors relating to allowing or assisting inquiry into, or substantiating claims about, agency or official conduct deficiencies¹⁶¹ and Iniquity; and
- the factor relating to revealing environmental health risks¹⁶² and contributing to enforcement of the criminal law¹⁶³ does not arise for consideration in balancing the public interest in respect of disclosing the Category C Information.

Factors favouring nondisclosure

145. I am satisfied that the telephone number which comprises the Category C Information is the personal information of an individual which is not publicly available information. I consider that disclosing Category C Information under the RTI Act would be a significant intrusion into the privacy of this individual and the extent of the public interest harm that could be anticipated from disclosure is significant. For these reasons, I afford significant weight to the public interest factors relating to the protection of personal information and privacy¹⁶⁴ for the Category C Information.

146. As the Category C Information appears in information that was provided to QBCC for the purpose of the investigation, I afford significant weight to the public interest factor relating to protecting the flow of information to QBCC¹⁶⁵ for the reasons set out in paragraphs 129-135 above.

Balancing the public interest

147. For the reasons set out above, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Category C Information and its disclosure would, on balance, be contrary to the public interest. Accordingly, the Category C Information may be refused on this basis.¹⁶⁶

Findings - Category D Information

Irrelevant factors

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

Factors favouring disclosure

149. The applicant submits¹⁶⁷ that:

¹⁵⁹ Schedule 4, part 2, item 12 of the RTI Act.

¹⁶⁰ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

¹⁶¹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

¹⁶² Schedule 4, part 2, item 14 of the RTI Act.

¹⁶³ Schedule 4, part 2, item 18 of the RTI Act.

¹⁶⁴ Schedule 4, part 3, item 3 and schedule 4, part 4, section 7(1) of the RTI Act.

¹⁶⁵ Schedule 4, part 3, item 13 of the RTI Act.

¹⁶⁶ Under section 47(3)(b) of the RTI Act.

¹⁶⁷ Submissions dated 12 July 2017.

- accountability and transparency factors are relevant as *'Although it was submitted in the complaint it investigated, and was obviously substantiated, the QBCC never took action for LJ Technical Control Construction Pty Ltd attempting to exceed its Maximum Financial Revenue'*
- as he expects the value of the building contract is based on a building of 2 storeys instead of 3 storeys, disclosure of the Category D Information will show it is incorrect, inaccurate, or false and misleading, does not reflect the insurable amount taken out against the building and will be well below the reasonable price range another building contractor may have nominated for the building work
- disclosure of the Category D Information will confirm that LJ Technical actually exceeded its maximum financial revenue by *'a more significant amount'*.

150. QBCC's Minimum Financial Requirements Policy¹⁶⁸ sets out the financial requirements for QBCC licensed entities, including those related to maximum revenue. The Category D Information was provided to QBCC for the purpose of its investigation of the Complaint. It records the terms of one commercial arrangement for building works entered by LJ Technical and the value of that commercial arrangement. The applicant is not a party to the commercial arrangement. I note that the question of whether a QBCC licensed company has exceeded a relevant maximum financial revenue may require consideration of more than just one commercial arrangement. Accordingly, I consider that disclosing the Category D Information may not, of itself, show that LJ Technical has exceeded the maximum financial revenue, as the applicant contends.

151. While disclosing the Category D Information would provide the applicant with an augmented picture of the information that was available to QBCC, the significant amount of information that has been released to the applicant indicates what QBCC did, or did not do, in the investigation in respect of the applicant's concerns about LJ Technical's maximum financial revenue. This released information forms the basis of the applicant's contention that QBCC did not take action about his concern regarding LJ Technical's maximum financial revenue. In these circumstances, I consider that disclosure of the Category D Information would not further advance QBCC's accountability and transparency about its investigation of the Complaint to any significant degree or further inform the community about QBCC's investigative processes. Accordingly, I afford low weight to factors favouring disclosure of the Category D Information which relate to QBCC's accountability and transparency and informing the community about QBCC's investigation processes.¹⁶⁹

152. There is nothing on the face of the Category D Information, nor any other information before me, to suggest that the Category D Information is anything other than correct. It is, as noted above, a commercial arrangement for building works between two entities and the value of that commercial arrangement. While the applicant may consider the commercial arrangement, and the value of it, should have been arrived at on a particular commercial basis, he is not a party to the commercial arrangement and his belief about what the arrangement should record is not evidence that the Category D Information was incorrect, inaccurate, false or misleading or not reflective of other commercial arrangements and the insurable value of the building. For these reasons, I do not consider the factor favouring disclosure relating to revealing incorrect and misleading information¹⁷⁰ arises to be considered in respect of the Category D Information. For the sake of completeness, I note that even if I were incorrect in this regard, and the factor

¹⁶⁸ Refer to <http://www.qbcc.qld.gov.au/contractors/forms-fact-sheets-publications/publications>.

¹⁶⁹ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁷⁰ Schedule 4, part 2, item 12 of the RTI Act.

could be said to apply, it nonetheless warrants low to no weight in favour of disclosing the Category D Information.

153. As noted above, that the information that has been released to the applicant indicates what QBCC did, or did not, do in the investigation in respect of the applicant's concerns about LJ Technical's maximum financial revenue. Given this, I consider that the applicant does not require the Category D Information to seek a legal remedy or take his concerns about QBCC's decision to relevant complaint handling bodies. In these circumstances, I am satisfied that the release of the Category D Information is not required to enable the applicant to evaluate whether a further legal remedy against any individual, entity or agency is available and worth pursuing or to pursue such legal remedy and I afford low to no weight to this factor favouring disclosure¹⁷¹ of the Category D Information.
154. While I have no jurisdiction to make any finding about the applicant's concern that QBCC did not take action regarding his concern that LJ Technical exceeded its maximum financial revenue, the applicant already has information which indicates what QBCC did, or did not do, in respect of that concern. On consideration of the nature of the Category D Information, I afford low to no weight to the factors favouring disclosure which relate to assisting inquiry into, or revealing, possible deficiencies in conduct or administration by an agency of official.¹⁷²
155. For the reasons set out in paragraphs 71-74 and 100-113 above, I find that low to no weight is afforded to the factors favouring disclosure relating to administration of justice and fair treatment¹⁷³ and no weight is afforded to Iniquity.
156. The offences which were the subject of the Complaint were regulatory offences under the QBCC Act and the issue of a warning letter to LJ Technical was the outcome of QBCC's investigation. In these circumstances and given the nature of the Category D Information, I am unable to determine how disclosing the Category D Information could reasonably be expected to:
- reveal environmental or health risks or measures relating to public health and safety;¹⁷⁴ or
 - contribute to the enforcement of the criminal law.¹⁷⁵

Accordingly, I do not consider that these factors favouring disclosure arise for consideration in respect of the Category D Information.

Factors favouring nondisclosure

157. Nondisclosure factors arise under the RTI Act where disclosing information could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities¹⁷⁶
 - 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

¹⁷¹ Schedule 4, part 2, item 17 of the RTI Act.

¹⁷² Schedule 4, part 2, items 5 and 6 of the RTI Act.

¹⁷³ Schedule 4, part 2, items 10 and 16 of the RTI Act.

¹⁷⁴ Schedule 4, part 2, item 14 of the RTI Act.

¹⁷⁵ Schedule 4, part 2, items 14 and 18 of the RTI Act.

¹⁷⁶ Schedule 4, part 3, item 2 of the RTI Act.

affairs or to prejudice the future supply of information of this type to government;¹⁷⁷
and

- prejudice the flow of information to the police or another law enforcement or regulatory agency.¹⁷⁸

158. The applicant submits¹⁷⁹ that the factor relating to the protection of business and financial affairs is irrelevant and no weight should be afforded to it because:

- LJ Technical was found to be an Excluded Company
- therefore, the business and financial affairs of the company and individuals making representations on its behalf were illegal or for an improper purpose, in furtherance of an illegal or improper purpose or in frustration of justice or enforcement of the criminal law; and
- as LJ Technical's QBCC licence has been cancelled, protection of its business and financial interests is redundant.

159. As noted in paragraph 10 above, on QBCC's publicly available records, LJ Technical is an excluded company by reason of a listed influential person and it is not currently licensed by QBCC to undertake building works. However, this of itself is not evidence that LJ Technical's business and financial affairs, such as those recorded in the Category D Information, were illegal or for an improper purpose, in furtherance of an illegal or improper purpose or in frustration of justice or enforcement of the criminal law. Further, the fact that LJ Technical is no longer licensed by QBCC to undertake building works, does not of itself diminish the private, commercial, business and financial character of the commercial arrangements, including those recorded in the Category D Information, that it had previously entered, the details of which were provided to or obtained by QBCC for the purpose of QBCC's investigation of the Complaint.

160. In any event, the Category D Information relates not only to the business and financial affairs of LJ Technical – it also relates to the private, business, professional, commercial or financial affairs of the entity which contracted LJ Technical to undertake building works. I am satisfied that the Category D Information is the private, business, professional, commercial or financial affairs of both contracting entities. On the evidence before me, the Category D Information is information that is not publicly available. I also note that some of the Category D Information was provided to QBCC in the context of an investigation into the Complaint.

161. Given the nature of the Category D Information and the context in which it was provided or in which it appears, I afford the nondisclosure factors relating to protection of an entity's private, business, professional commercial and financial information significant weight.¹⁸⁰

162. For the reasons set out in paragraphs 128-135 above, I afford the public interest factor relating to protecting the flow of information to QBCC¹⁸¹ significant weight in respect of the Category D Information.

Balancing the public interest

163. For these reasons, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Category D Information and its disclosure would, on balance,

¹⁷⁷ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁷⁸ Schedule 4, part 3, item 13 of the RTI Act.

¹⁷⁹ Submissions dated 12 July 2017.

¹⁸⁰ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁸¹ Schedule 4, part 3, item 13 of the RTI Act.

be contrary to the public interest. Accordingly, the Category D Information may be refused on this basis.¹⁸²

Findings - Category E Information

164. The applicant does not seek access to information that QBCC obtained from RP Data and ASIC (**commercially available information**) for the purpose of the investigation. The portions of information comprising the Category E Information summarise certain aspects of such commercially available information and the information released to the applicant confirms the sources of such summaries.

Irrelevant factors

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

Factors favouring disclosure

166. While disclosing the Category E Information would provide the applicant with a marginally more complete picture of the information that was available to QBCC, I consider that the substantial amount of information that has been released to the applicant regarding QBCC's investigation of the Complaint, has significantly advanced the accountability and transparency of QBCC's investigation and informed the applicant about the types of enquiries QBCC undertook in its investigation of the Complaint. I also note that some of the information that has been released to the applicant specifically identifies what commercially available information was obtained by QBCC.¹⁸³ In these circumstances, I do not consider that disclosing the Category E Information will advance these factors favouring disclosure to any significant degree. Accordingly, I afford low to no weight the factors favouring disclosure of the Category E Information which relate to QBCC's accountability and transparency and informing the community about QBCC's investigation processes.¹⁸⁴

167. On the information available to me, including the commercially available information that the applicant did not seek access to, I am satisfied that the Category E Information accurately records information QBCC extracted from the commercially available information that it obtained during its investigation. In these circumstances, I do not consider the factor relating to revealing that the Category E Information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant¹⁸⁵ arises for consideration.

168. For the reasons set out in paragraphs 71-78 and 100-113 above, I find that low to no weight is afforded to the factors favouring disclosure relating to administration of justice and fair treatment¹⁸⁶ and no weight is afforded to Iniquity.

169. Taking into consideration the nature of the Category E Information, for reasons similar to those set out in paragraphs 93-99 above, I do not consider that the factors favouring disclosure which relate to revealing environmental or health risks or measures relating

¹⁸² Under section 47(3)(b) of the RTI Act.

¹⁸³ For example, some of the Category E Information appearing on page 2 in File 1263834_Case Notes identifies that it relates to an ASIC search of a particular company.

¹⁸⁴ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁸⁵ Schedule 4, part 2, item 12 of the RTI Act.

¹⁸⁶ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

to public health and safety;¹⁸⁷ or contributing to the enforcement of the criminal law¹⁸⁸ arise for consideration in respect of the Category E Information.

Factors favouring nondisclosure

170. The Category E Information, although extracted from commercially available information, includes the personal information of other individuals and the business and commercial information of entities. Accordingly, nondisclosure factors relating to protection of personal information and privacy¹⁸⁹ and the business and commercial affairs of entities¹⁹⁰ arise for consideration in balancing the public interest.
171. The applicant submits¹⁹¹ that the Category E Information should not be 'protected' under these factors.
172. To the extent the Category E Information includes the personal information of individuals other than the applicant, I am satisfied that it is personal in nature. Further, I am satisfied that disclosing that personal information under the RTI Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. While the applicant may obtain information, including this personal information, through commercial searches, I consider this reduces, but does not negate, the weight to be afforded to the factor favouring nondisclosure. For these reasons, to the extent the Category E Information includes personal information of individuals, I afford moderate weight to the public interest factors relating to the protection of personal information and privacy.¹⁹²
173. Similarly, a small amount of the Category E Information includes the business information of an entity. While the applicant may obtain information, including this business and commercial information, through commercial searches, I consider this reduces, but does not negate, the weight to be afforded to the factor favouring nondisclosure. For these reasons, to the extent the Category E Information includes business and commercial information of entities, I afford moderate weight to the public interest factors relating to the protection of business and commercial affairs of entities.¹⁹³

Balancing the public interest

174. For the reasons set out above, the factors favouring nondisclosure of the Category E Information outweigh the relevant factors favouring disclosure and, therefore, disclosing the Category E Information would, on balance, be contrary to the public interest and this information may be refused.¹⁹⁴

Findings - Fee Information

175. The Fee information appears in screen shots of QBCC's CMS system that were obtained for the purpose of QBCC's investigation of the Complaint.

¹⁸⁷ Schedule 4, part 2, item 14 of the RTI Act.

¹⁸⁸ Schedule 4, part 2, item 18 of the RTI Act.

¹⁸⁹ Schedule 4, part 2, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

¹⁹⁰ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁹¹ Submissions dated 12 July 2017.

¹⁹² Schedule 4, part 3, item 3 and schedule 4, part 4, section 7(1) of the RTI Act.

¹⁹³ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

¹⁹⁴ Under section 47(3)(b) of the RTI Act.

Irrelevant factors

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

Factors favouring disclosure

177. The Fee Information is costing information. Its disclosure would provide the applicant with a marginally more complete picture of the information that was available to QBCC. However, given the nature of the Fee Information and the significant amount of information that has been released to the applicant concerning QBCC's investigation of the Complaint, I consider that its disclosure would only marginally advance the factors favouring disclosure which relate to QBCC's accountability and transparency and the community's understanding about QBCC's investigation processes. Accordingly, I afford these factors favouring disclosure¹⁹⁵ low to no weight.

178. For the reasons set out in paragraphs 71-113 above, I find that:

- low to no weight is afforded to the factors favouring disclosure relating to administration of justice and fair treatment¹⁹⁶
- no weight is afforded to a factors favouring disclosure relating to allowing or assisting inquiry into, or substantiating claims about, agency or official conduct deficiencies¹⁹⁷ and Iniquity; and
- the factors relating to revealing information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant,¹⁹⁸ revealing environmental health risks or contributing to enforcement of the criminal law¹⁹⁹ do not arise for consideration in balancing the public interest in respect of disclosing the Fee Information.

Factors favouring nondisclosure

179. The applicant submits²⁰⁰ that disclosure of the Fee Information should not be protected under the factors favouring nondisclosure relating to the protection of business and financial affair²⁰¹ and flow of information²⁰² because:

The flow of monies through LJ Technical Control Construction Pty Ltd, where its income has been derived from mortgages taken out under the name of Mr Jie Ling's young son or company of which he is reportedly the director, and the use of that income has been directed by Mr Jie Lin (who is an undischarged bankrupt at the relevant time and QBCC permanently-excluded individual) who should not have held the position, responsibility or authority to use those monies, is relevant.

180. There is no evidence before me, apart from the applicant's submissions, to support these contentions.

181. I am satisfied that the Fee Information is commercial and financial information of an entity. There is no evidence before me which suggests that the Fee Information appears in a QBCC system that can be publicly accessed or that such information is routinely

¹⁹⁵ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁹⁶ Schedule 4, part 2, items 10, 16 and 17 of the RTI Act.

¹⁹⁷ Schedule 4, part 2, items 5 and 6 of the RTI Act.

¹⁹⁸ Schedule 4, part 2, item 12 of the RTI Act.

¹⁹⁹ Schedule 4, part 2, items 14 and 18 of the RTI Act.

²⁰⁰ Submissions dated 12 July 2017.

²⁰¹ Schedule 4, part 3, item 2 of the RTI Act.

²⁰² Schedule 4, part 3, item 13 of the RTI Act.

disclosed about QBCC licensed companies. It appears in information that was obtained by QBCC for the purpose of its investigation of the Complaint.

182. For these reasons, I afford the nondisclosure factor relating to protection of commercial and financial information of entities²⁰³ significant weight in respect of the Fee Information.

Balancing the public interest

183. For these reasons, I am satisfied that the nondisclosure factors outweigh the factors favouring disclosure of the Fee Information, and, therefore, disclosure of the Fee Information would, on balance, be contrary to the public interest. Accordingly, I find that the Fee Information may be refused on this basis.²⁰⁴

Irrelevant information

Relevant law

184. The RTI Act permits an agency to delete information that the agency reasonably considers is not relevant to the access application before giving access to a copy of a document.²⁰⁵ This is not a ground for refusal of access, but a mechanism to allow irrelevant information to be deleted from documents which are identified for release to an applicant.

Findings

185. QBCC deleted small portions of information from 14 pages²⁰⁶ on the basis that the information was not relevant to the access application. As QBCC agreed to release information that was deleted on 1 page,²⁰⁷ the deleted information remaining for consideration in this review appears on 13 pages (**Irrelevant Information**). There is a significant level of duplication in the portions of information which comprise the Irrelevant Information, as it appears in email chains. For example, the portions of Irrelevant Information appearing on pages 387 and 388 in File 1263834 Compliance EDRMS are duplicated on pages 394-395, 401-402, 409-410, 417-418 and 426-427 in File 1263834 Compliance EDRMS.
186. The access application seeks access to information about QBCC's investigation of the Complaint and the Complaint concerns Property A.
187. The applicant submits that the Property B information is '*sufficiently intertwined with the [Property A] information*', that it is not irrelevant to the access application.²⁰⁸
188. I have carefully considered the Irrelevant Information and can confirm that it concerns matters that are unrelated to the application which is the subject of this review. On its face, the Irrelevant Information has not been used to inform the investigation of the Complaint and it has not been dealt with by QBCC in its investigation of the Complaint. Based on the terms of the access application, and given that the Irrelevant Information

²⁰³ Schedule 4, part 3, item 2 of the RTI Act.

²⁰⁴ Section 47(3)(b) of the RTI Act.

²⁰⁵ Section 73 of the RTI Act.

²⁰⁶ On pages 117, 384, 387-388, 394-395, 401-402, 409-410, 417-418, 426-427 in File 1263834 Compliance EDRMS. I note however, that.

²⁰⁷ As noted in paragraph 14, QBCC agreed to release the information refused as irrelevant on page 117 in File 1263834 Compliance EDRMS.

²⁰⁸ Submissions dated 12 July 2017. The applicant's other submissions regarding irrelevant information have been addressed in the 'Preliminary issues' section of this decision.

clearly falls outside the scope of it, I am satisfied that the Irrelevant Information may be deleted on the basis that the information is irrelevant to the access application.²⁰⁹

189. QBCC also partially released information on page 669 in File 1263834 *Compliance EDRMS*, which relates to Property B. For the reasons outlined above, I consider that the balance of the information on this page (which was refused on the basis that its disclosure would, on balance, be contrary to the public interest) falls outside the scope of the access application. Accordingly, I am satisfied that this information may be deleted on the ground that it is irrelevant to the application.²¹⁰
190. For completeness, I also note that portions of the Irrelevant Information appearing in the first redaction box of the 12 January 2016 email appearing on pages 387, 394, 401, 409, 417 and 426 in File 1263834 *Compliance EDRMS* were considered relevant to an access application which is the subject of one of the applicant's other external reviews and that information has been released to the applicant in that other external review.

Nonexistent or unlocatable documents

Relevant law

191. Access to a document may be refused if the document is nonexistent or unlocatable.²¹¹ A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.²¹² 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.²¹³
192. To be satisfied that documents are *nonexistent*, a decision-maker must rely on their particular knowledge and experience and have regard to a number of key factors.²¹⁴ 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.
193. 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.²¹⁵

²⁰⁹ In accordance with the requirements of section 73 of the RTI Act.

²¹⁰ In accordance with the requirements of section 73 of the RTI Act.

²¹¹ Sections 47(3)(e) and 52 of the RTI Act.

²¹² Section 52(1)(a) of the RTI Act.

²¹³ Section 52(1)(b) of the RTI Act.

²¹⁴ *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). The key factors include: 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.

²¹⁵ *Pryor* at [21].

Findings

194. In processing the access application, QBCC located a number of audio recordings, some of which were released to the applicant.²¹⁶ The applicant queried²¹⁷ why the following audio recordings of telephone conversations or meetings have not been located by QBCC:
- a. telephone conversation Mr Townshend and Mr Bleakley on 29 November 2015
 - b. telephone conversation Mr Townshend and Mr Bartley on or around 26 November 2015
 - c. Mr Barnard and Mr Cregan on 3 December 2015
 - d. Mr Barnard and LJ Technical on 4 December 2015
 - e. telephone conversation Mr Barnard and Mr Bartley and/or Mr Cregan on 14 December 2015
 - f. telephone conversation between Mr Barnard and LJ Technical on 11 January 2016; and
 - g. meeting between Mr Barnard (and possibly others) and Ms Chao Ren Liu (and others) on 18 January 2016.
195. OIC requested that QBCC conduct further searches for additional audio recordings responsive to the access application, including the 7 audio recordings identified above.
196. QBCC did not locate any further audio recordings responsive to the access application.
197. The applicant submits²¹⁸ that:
- two audio recordings, being those identified as a. and b. in paragraph 194 above have not been located
 - other documentation located by QBCC demonstrates that Mr Townshend engaged in relevant conversations as part of QBCC's investigation of his complaint and recordings of those conversations should exist
 - any failure to record conversations that are part of a QBCC compliance investigation would appear to constitute a breach of QBCC policy and the *Public Records Act 2002* (Qld).²¹⁹
198. As QBCC conducted further searches on external review for information responsive to the applicant's sufficiency of search submissions, the question OIC must consider is whether QBCC has taken **all reasonable steps** to locate documents relevant to the access application. This does not require OIC 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 audio recordings the applicant believes exist.²²⁰
199. OIC sought information from QBCC about its audio recording policies and the searches it conducted for information requested in the access application. QBCC provided the following information:
- QBCC conducted searches of its Meridio system (which is QBCC's electronic document and records management system) and CMS system (which is QBCC's

²¹⁶ QBCC located 11 audio recordings and decided to release four audio recordings and refuse access to seven audio recordings.

²¹⁷ Submission dated 12 July 2017.

²¹⁸ Submissions dated 31 July 2017.

²¹⁹ The applicant also submitted that he considered Mr Townshend's involvement in the investigation of his complaint was 'superfluous' and that such involvement materially affected the outcome of QBCC's investigation of his unlicensed contracting complaint. OIC's jurisdiction does not extend to any consideration of these concerns.

²²⁰ Refer to *Goodman and Department of Justice and Attorney-General* [2014] QICmr 4 (6 February 2014) at [23].

contractor management system) and did not locate any additional audio recordings or file notes relevant to the conversations and meetings which are the subject of the applicant's sufficiency of search submissions

- the searches were conducted by a senior QBCC officer
- QBCC's compliance investigation unit routinely makes audio recordings of their telephone calls as part of their law enforcement obligations, however, it is not the standard practice of QBCC's certification section to record telephone conversations; and
- the conversations referred to in items a. and b. of paragraph 194 are conversations undertaken by Mr Townshend, who is the Manager of QBCC's certification section and the matters for which QBCC's certification section is responsible include investigating complaints against building certifiers.

200. Taking into consideration the applicant's submissions concerning the additional audio recordings he believes exist and QBCC's submissions regarding its administrative systems, telephone recording practices and searches, I consider that QBCC ensured that an appropriate officer undertook comprehensive, suitably targeted searches of possible locations where it was reasonable to expect that audio recordings responsive to the access application, including those raised in the applicant's sufficiency of search submissions, would be found.

201. In these circumstances, I am satisfied that:

- QBCC has taken all reasonable steps to locate documents responsive to the access application; and
- there are reasonable grounds to be satisfied that any additional audio recordings responsive to the access application are nonexistent or unlocatable, and such information may be refused on this basis.²²¹

DECISION

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

- access to the Points Information may be refused²²² on the ground that it is exempt information
- access to the Category A, B, C, D and E Information and the Fee Information may be refused²²³ on the ground that its disclosure would, on balance, be contrary to the public interest
- the Irrelevant Information and information refused in page 669 in File 1262824 *Compliance EDRMS* may be deleted²²⁴ on the ground that it is not relevant to the access application; and
- the additional information the applicant contends should have been located may be refused²²⁵ on the ground that it does not exist or is unlocatable.

²²¹ Under sections 47(3)(e) and 52 of the RTI Act.

²²² Under section 47(3)(a) of the RTI Act.

²²³ Under section 47(3)(b) of the RTI Act.

²²⁴ Under section 73 of the RTI Act.

²²⁵ Under sections 47(3)(e) and 52 of the RTI Act.

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

Assistant Information Commissioner Corby

Date: 10 August 2017

APPENDIX

Significant procedural steps

Date	Event
11 August 2016	OIC received the external review application.
30 August 2016	OIC notified applicant and QBCC that it had accepted the external review application and asked QBCC to provide information.
14 September 2016	OIC received the requested information from QBCC.
27 September 2016	OIC updated the applicant on the status of the review.
4 November 2016	An OIC staff member spoke with the applicant about the review and the applicant agreed he did not seek access to commercially available information.
25 January 2017	An OIC staff member spoke with the applicant and the applicant agreed that he did not seek access to mobile telephone numbers of QBCC employees.
3 March 2017	An OIC staff member spoke with the applicant and the applicant agreed that he did not seek access to duplicate documents and email greetings and pleasantries in emails between government agencies. OIC received the applicant's email confirming he did not seek access to information redacted with title 'sch. 3(10)(1)(b)' on page 142 in File 92089 Ministerials.
10 March 2017	OIC asked QBCC to provide further information and requested the applicant's confirmation as to whether he continued to seek access to certain categories of information.
16 March 2017	OIC received the applicant's email requesting additional information to respond to OIC's 10 March 2017 request.
17 March 2017	OIC received QBCC's confirmation that it withdrew its claim of exemption, on the basis of legal professional privilege, in relation to certain information.
24 March 2017	An OIC staff member spoke with the applicant about the review and OIC's 10 March 2017 request.
14 June 2017	OIC conveyed a preliminary view to the applicant that, apart from small portions of information, the information in issue in the review may be refused or deleted on the basis that it was exempt information, its disclosure would be contrary to the public interest or it was not relevant to the access application. OIC invited the applicant to provide submissions if he did not accept the preliminary view.
12 July 2017	OIC received the applicant's submissions.
19 July 2017	OIC requested that QBCC conduct further searches to address the applicant's sufficiency of search submissions.
20 July 2017	OIC conveyed a preliminary view to QBCC concerning the small portions of information that OIC considered may be disclosed to the applicant. OIC received QBCC's search response.
21 July 2017	OIC received QBCC's confirmation that it accepted the preliminary view.
24 July 2017	OIC conveyed a preliminary view to the applicant regarding the sufficiency of search issues in the review. OIC invited the applicant to provide submissions if he did not accept the preliminary view.
31 July 2017	OIC received the applicant's further submissions.