



Decision and Reasons for Decision

Citation:	<i>Sunshine Coast Environment Council Inc and Department of National Parks, Sport and Racing; Springborg MP (Third Party) [2016] QICmr 10 (4 March 2016)</i>
Application Number:	312245
Applicant:	Sunshine Coast Environment Council Inc
Respondent:	Department of National Parks, Sport and Racing
Third Party:	Springborg MP
Decision Date:	4 March 2016
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - CABINET INFORMATION - Noise Assessment Report and Field Inspection Report relating to a proposed motorsports park - whether documents comprised exclusively of exempt information - whether information brought into existence for the consideration of Cabinet - whether information that would reveal or prejudice Cabinet considerations - whether exempt - sections 47(3)(a) and 48 and schedule 3, section 2 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - Noise Assessment Report and Field Inspection Report relating to a proposed motorsports park - accountability and transparency - positive and informed debate - background/contextual information - business affairs - deliberative processes of government - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. Sunshine Coast Environment Council Inc (**SCEC**) applied to the then Department of National Parks, Recreation, Sport and Racing (**Department**)¹ under the *Right to*

¹ Following a machinery of government change on 16 February 2015, the agency currently responsible for this external review is the Department of National Parks, Sport and Racing.

Information Act 2009 (Qld) (RTI Act) for access to the following documents relating to a proposed motorsports park in an area known as the Mooloolah Logging Area (MLA):²

- within the date range of 1 May 2013 to 6 May 2014³—
 - feasibility study for motorsport activities at the MLA within the Beerwah State Forest
 - noise assessment report/s; and
 - executive and project manager briefing notes and file notes; and
 - within the date range of 1 August 2012 to 6 May 2014—reports on alternative sites for the above.
2. The Department located 438 pages. After consultation with third parties—including the then current, but now former Minister for National Parks, Recreation, Sport and Racing (**Former Minister**)—the Department decided to:
- release 7 pages in full and 12 pages in part; and
 - refuse access to the remainder of 12 pages and 419 pages in full, on the basis that they either contained exempt information,⁴ or information the disclosure of which would, on balance, be contrary to the public interest.⁵
3. SCEC sought internal review of the Department's decision to refuse access to information.
4. On internal review, the Department consulted with the Former Minister, and decided to:
- release 22 pages in full and 22 pages in part; and
 - refuse access to the remainder of 22 pages and 394 pages in full, on the basis that they either contained exempt information,⁶ or information the disclosure of which would, on balance, be contrary to the public interest.⁷
5. Both SCEC and the Former Minister sought external review of the Department's internal review decision.
6. After the change of government following the Queensland State General Election on 31 January 2015, OIC finalised the Former Minister's external review on the basis that there was no applicant for the purpose of the external review, as he no longer held the office of Minister. On closure of the Former Minister's external review, OIC wrote to Mr Lawrence Springborg MP, the Leader of the Opposition,⁸ in order to:
- note that, given these circumstances, OIC considered that the Leader of the Opposition, on behalf of the Former Minister, should be afforded the opportunity to maintain and prosecute the Former Minister's objections to disclosure of the information in issue
 - ask if the Leader of the Opposition wished to do so; and

² The Department and SCEC agreed upon a revised scope for the application in emails on 9 May 2014, 13 May 2014, 14 May 2014 and 15 May 2014.

³ In the Department's decisions, the date ranges of the scope were listed as ending on dates after 6 May 2014. However, as section 27 of the RTI Act provides that an access application is taken only to apply to documents that are, or may be, in existence on the day the application is received, the date ranges cannot extend beyond 6 May 2014. I have adjusted the date ranges to reflect this.

⁴ Under sections 47(3)(a) and 48 and schedule 3, sections 2 and 8 of the RTI Act.

⁵ Under sections 47(3)(b) and 49 of the RTI Act.

⁶ Under sections 47(3)(a) and 48 and schedule 3, sections 2 and 8 of the RTI Act.

⁷ Under sections 47(3)(b) and 49 of the RTI Act.

⁸ Letters dated 5 March 2015 and 25 March 2015.

- advise that, if this was the case, the Leader of the Opposition could apply under section 89(2) of the RTI Act to participate in the external review arising out of the external review application submitted by SCEC.
7. OIC did not receive a reply to this correspondence. After the Department notified OIC that it withdrew its objections to disclosure regarding certain documents, OIC again wrote to the Leader of the Opposition,⁹ seeking clarification regarding whether he wished to object to disclosure of relevant information. The Leader of the Opposition responded with objections to disclosure, and OIC added him as a participant to the review.¹⁰
 8. During the course of the review, informal resolution processes resulted in SCEC's agreement that some information could not be accessed or did not need to be considered, and the Leader of the Opposition's agreement that some information could be released.
 9. For the reasons set out below, I find that access to the remaining Documents in Issue¹¹ cannot be refused on the ground that they are exempt information under schedule 3, section 2(1) of the RTI Act, nor on the ground that their disclosure would, on balance, be contrary to the public interest. In these circumstances, I set aside the decision under review and find that there is no basis to refuse access to the Documents in Issue under the RTI Act.

Background

10. Significant procedural steps relating to the application and the external review process are set out in the Appendix.

Reviewable decision

11. The decision under review is the Department's internal review decision dated 13 October 2014.

Evidence considered

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

Documents in issue

13. The 438 pages located by the Department comprised the following:
 - **File A**—a 69 page Feasibility Study
 - **File B**—a 37 page Noise Impact Assessment
 - **File C**—191 pages of Briefing Notes, file notes and their attachments; and
 - **File D**—141 pages, comprising a 76 page Field Inspection Report (including attachments), and other documents.
14. On external review, the Department withdrew¹² its claim that Files B, C and D were exempt under schedule 3, section 2 of the RTI Act. The Department subsequently

⁹ Letter dated 2 October 2015.

¹⁰ Under section 89(3) of the RTI Act.

¹¹ Defined at paragraph 16.

¹² Submission dated 22 July 2015.

confirmed¹³ that, within Files B, C and D, it only objected to the disclosure of certain personal information.

15. As a result of informal resolution processes on external review, SCEC accepted¹⁴ that some information in issue could be refused or deleted, and confirmed that it no longer sought access to other information in issue.¹⁵ Further, the Leader of the Opposition agreed¹⁶ to disclosure of some of the information,¹⁷ and the Department released this information to SCEC.¹⁸
16. Accordingly, the remaining **Documents in Issue** to be addressed in this decision comprise the following 56 pages only:
 - all 37 pages of File B (a Noise Impact Assessment)—apart from the part pages to which SCEC no longer seeks access;¹⁹ and
 - pages 1-15 and 71-74 of File D (a Field Inspection Report and one of its attachments)—apart from the part page to which SCEC no longer seeks access.²⁰

Onus

17. In its decision, the Department refused access to the Documents in Issue on the ground that disclosure would reveal Cabinet considerations.
18. As the Department no longer objects to disclosure of the Documents in Issue, there is a practical onus on the Leader of the Opposition to establish that access to them can be refused under the RTI Act.²¹

Issues for determination

19. In the Leader of the Opposition's submissions to OIC,²² the only grounds for refusal relied on were the exemption relating to Cabinet information, and public interest grounds. Accordingly, the issues for determination in this review are whether:
 - the Documents in Issue comprise exempt information under schedule 3, section 2 of the RTI Act (the **Cabinet exemption**); or
 - disclosing the Documents in Issue would, on balance, be contrary to the public interest under the RTI Act.

¹³ Email dated 7 September 2015.

¹⁴ Emails dated 23 October 2015 and 18 December 2015, telephone discussion on 22 January 2016, and OIC's letter dated 22 January 2016.

¹⁵ This information is identified in the Appendix to this decision.

¹⁶ OIC's letters dated 6 November 2015, 7 December 2015 and 22 January 2016, the Leader of the Opposition's letter dated 26 November 2015 and a telephone discussion on 22 January 2016.

¹⁷ Again, this information is identified in the Appendix to this decision.

¹⁸ As confirmed in the Department's emails to OIC on 8 December 2015 and 29 January 2016.

¹⁹ That is, parts of pages 2 and 15-16, being signatures and addresses.

²⁰ That is, part of page 4, being an image of an individual.

²¹ *Queensland Newspapers Pty Ltd and Queensland Police Service; Third Parties* [2014] QICmr 27 (12 June 2014) at [14]. See also *Brisbane City Council v Albietz* [2001] QSC 160 (17 May 2001) at [14]; citing *Re Cairns Port Authority and Department of Lands* (1994) 1 QAR 663 at [31] with approval. Although the latter two decisions were made under the now repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**), they are relevant given that section 81 of the FOI Act at the time of those decisions only cast a formal legal onus on the agency which or Minister who made the decision under review.

²² Dated 29 October 2015, 4 November 2015, 26 November 2015 and 18 December 2015.

Cabinet exemption

Relevant law

20. Under the RTI Act, a person has a right to be given access to documents of an agency.²³ However, this right is subject to other provisions of the RTI Act, including the grounds on which access may be refused to documents. Relevantly, the RTI Act provides that access may be refused to documents to the extent that they comprise exempt information.²⁴ Schedule 3 of the RTI Act sets out categories of information the disclosure of which Queensland's Parliament has considered would, on balance, be contrary to the public interest, and therefore exempt from disclosure.²⁵
21. Relevantly for this review, the Cabinet exemption in the RTI Act provides that information is exempt information for 10 years after its relevant date if:
 - it has been brought into existence for the consideration of Cabinet;²⁶ or
 - its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations.²⁷
22. The following types of documents are taken to be comprised exclusively of exempt information:²⁸
 - (a) Cabinet submissions
 - (b) Cabinet briefing notes
 - (c) Cabinet agendas
 - (d) notes of discussions in Cabinet
 - (e) Cabinet minutes
 - (f) Cabinet decisions; and
 - (g) drafts of documents mentioned in any of (a) to (f) above.
23. The term '*consideration*' is defined²⁹ as including:
 - discussion, deliberation, noting (with or without discussion) or decision; and
 - consideration for any purpose, including, for example, for information or to make a decision.
24. However, there are three exceptions to the Cabinet exemption:
 - if it is more than 10 years after the information's relevant date³⁰
 - if the information was brought into existence before 1 July 2009;³¹ and
 - if the information has been officially published by decision of Cabinet.³²

²³ Section 23(1)(a) of the RTI Act.

²⁴ Sections 47(3)(a) and 48 of the RTI Act.

²⁵ Section 48(2) of the RTI Act.

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

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

²⁸ Schedule 3, section 2(3) of the RTI Act. However, for attachments containing reports of factual or statistical information, schedule 3, section 2(4) of the RTI Act applies.

²⁹ Schedule 3, section 2(5) of the RTI Act.

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

³¹ The date on which schedule 3, section 2 of the RTI Act commenced—schedule 3, section 2(2)(a) of the RTI Act.

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

Submissions

25. The Department submitted³³ as follows when withdrawing its claim that the Documents in Issue were exempt under schedule 3, section 2 of the RTI Act:

At the time of the previous assessment of Files B ... and D [ie, at the time of the initial and internal review decisions], submissions were being prepared to go to Cabinet in relation to the MLA and therefore were considered exempt matter under schedule 3 - 'its disclosure would reveal the consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations'. However, the proposed submissions did not go to Cabinet, hence the change in status for Files B ... and D.

26. The Department further added that:³⁴

... the Department now considers that through the passage of time, events (eg ... meetings etc) that were clearly in progress at the time of the original application, and internal review, are no longer in progress at the current time; therefore the relationship these documents had with these events no longer exist. On the basis that the status of the documents have changed, and it is considered that the documents identified above are no longer exempt matter under the RTI Act.

27. I have carefully considered the entirety of the submissions and supporting evidence provided by the Leader of the Opposition to OIC regarding the Cabinet exemption.³⁵ Most of the Leader of the Opposition's submissions discuss and rely on particular Cabinet considerations, and documentation relating to those considerations. However, I am constrained in the extent to which I can refer to such submissions in this decision, given section 108(3) of the RTI Act³⁶ prevents me from providing detail that amounts to disclosure of exempt information in order to address whether other information (that is, the Documents in Issue) is exempt information.

28. Broadly, the Leader of the Opposition's submissions may be summarised as follows:

- the Documents in Issue have not been provided to Cabinet³⁷
- the Documents in Issue fall under the definition of Cabinet document in section 1.7 of the *Queensland Cabinet Handbook*³⁸
- the Documents in Issue were prepared as part of forming advice for Cabinet regarding the project in its entirety³⁹—in particular:
 - specific Cabinet considerations that occurred regarding certain matters⁴⁰ would have included consideration of the information contained in the Documents in Issue⁴¹

³³ Submission dated 22 July 2015.

³⁴ Submission dated 4 September 2015.

³⁵ Submissions dated 29 October 2015, 4 November 2015, 26 November 2015 and 18 December 2015.

³⁶ Section 108(3) of the RTI Act provides that the Information Commissioner must not, in a decision on an external review or in reasons for a decision on an external review, include information that is claimed to be exempt information or contrary to public interest information.

³⁷ Paragraph under heading 3a. in submission dated submission dated 18 December 2015.

³⁸ Second and third paragraphs on page 2 of submission dated 4 November 2015; first paragraph on page 2 of submission dated 26 November 2015; and paragraph under heading 3a. in submission dated 18 December 2015.

³⁹ Second last paragraph on page 1 of submission dated 29 October 2015; last paragraph on page 1 of submission dated 4 November 2015; second last paragraph on page 3 of submission dated 26 November 2015; and last three paragraphs under heading 3b. in submission dated 18 December 2015.

⁴⁰ Regarding which the Leader of the Opposition provided supporting documentation.

⁴¹ First paragraph on page 2 of submission dated 4 November 2015; and second last paragraph on page 3 and paragraph 4) on page 5 of submission dated 26 November 2015.

- also, it was intended that Cabinet was to be briefed in future about the project,⁴² and the Documents in Issue would have been provided to Cabinet during such briefing/s;⁴³ however, the change of government following the 2015 Queensland State General Election intervened;⁴⁴ and
- the 'benefit of the doubt' when determining the genealogy of documents (that is, whether they were brought into existence for the consideration of Cabinet) should fall on the side of Cabinet confidentiality, because that is fundamental to the processes of a functioning Cabinet government;⁴⁵ and
- disclosure of the Documents in Issue would prejudice the confidentiality of Cabinet considerations—in particular:
 - disclosure of the Documents in Issue would prejudice the confidentiality of specific Cabinet considerations that occurred regarding certain matters⁴⁶
 - further, in relation to the intention that Cabinet was to be briefed in future about the project, a decision about the project's viability and whether it will proceed has not been made,⁴⁷ and disclosure of the Documents in Issue would prejudice the confidentiality of Cabinet's future considerations, as Cabinet's future decision regarding the project could rely on information in the Documents in Issue;⁴⁸ however, the change of government following the 2015 Queensland State General Election intervened; and
 - finally, the Documents in Issue fall under the definition of Cabinet document in section 1.7 of the *Queensland Cabinet Handbook*, and disclosure of such information would prejudice the confidentiality of Cabinet considerations.⁴⁹

Analysis

Exceptions to the Cabinet exemption

29. The Documents in Issue were created within the period covered by the access application⁵⁰ and there is no evidence that the information within them has been officially published by decision of Cabinet. Accordingly, I am satisfied that no exceptions to the Cabinet exemption apply,⁵¹ and it is necessary to consider whether the Cabinet exemption applies to the Documents in Issue.

Documents comprised exclusively of exempt information

30. The Leader of the Opposition submits that the Documents in Issue satisfy the definition of Cabinet documents in section 1.7 of the *Queensland Cabinet Handbook*. However, in considering schedule 3, section 2(3) of the RTI Act, the question is whether the Documents in Issue comprise any of the types of documents set out in that provision which may be taken to be comprised exclusively of exempt information for the purpose of the Cabinet exemption.

⁴² Final paragraph on page 1 and first paragraph on page 2 of submission dated 29 October 2015; third last paragraph on page 1 of submission dated 4 November 2015; fourth and fifth last paragraphs on page 2, second paragraph on page 3 and paragraph 1) on page 4 of submission dated 26 November 2015; and second paragraph under heading 3. in submission dated 18 December 2015.

⁴³ Second last paragraph on page 3 and paragraph 4) on page 5 of submission dated 26 November 2015; and second last paragraph under heading 3b. in submission dated 18 December 2015.

⁴⁴ Third last paragraph on page 3 and paragraph 5) on page 5 of submission dated 26 November 2015.

⁴⁵ Last paragraph under heading 3b. in submission dated 18 December 2015.

⁴⁶ First and third paragraphs on page 2 of submission dated 4 November 2015; and second last paragraph on page 3 of submission dated 26 November 2015.

⁴⁷ Meeting with representative of the Leader of the Opposition on 2 November 2015; second and third last paragraphs on page 2, third and fourth paragraphs on page 3 and fourth paragraph on page 4 and paragraph 2) on page 5 of submission dated 26 November 2015; and final paragraph under heading 3. in submission dated 18 December 2015.

⁴⁸ First and second paragraphs on page 4 and paragraph 4) on page 5 of submission dated 26 November 2015.

⁴⁹ Second and third paragraphs on page 2 of submission dated 4 November 2015; and first paragraph on page 2 of submission dated 26 November 2015.

⁵⁰ Which ran, at its broadest, from 1 August 2012 to 6 May 2014: see paragraph 1 above.

⁵¹ The operation of these exceptions is outlined at paragraph 24 above.

31. I have carefully considered the Documents in Issue. Neither of them is a Cabinet submission, briefing note, agenda, note of discussions, minutes, decision or a draft thereof, and therefore neither is a type of document listed in schedule 3, section 2(3) of the RTI Act. Accordingly, I am satisfied that neither of the Documents in Issue can be taken to be comprised exclusively of exempt information in this review.
32. I have also considered schedule 3, section 2(4) of the RTI Act, which provides that a report of factual or statistical information attached to a document mentioned in schedule 3, section 2(3) of the RTI Act is exempt information under schedule 3, section 2(1) of the RTI Act, but only if:
- (a) its disclosure would have an effect mentioned schedule 3, section 2(1)(b) of the RTI Act; or
 - (b) it was brought into existence for the consideration of Cabinet.⁵²
33. However, there is no evidence before me to suggest that either Document in Issue was attached to a document mentioned in schedule 3, section 2(3) of the RTI Act. In these circumstances, I am satisfied that schedule 3, section 2(4) of the RTI Act is not relevant to considerations regarding the Documents in Issue.

Information brought into existence for the consideration of Cabinet

34. During this review, the Department did not specifically address schedule 3, section 2(1)(a) of the RTI Act when it informed OIC that it no longer considered that the Documents in Issue were exempt information.⁵³ Consequently, prior to finalising the review, OIC specifically asked the Department if it considered that either of the Documents in Issue had been brought into existence for the consideration of Cabinet.⁵⁴ In response, the Department confirmed that it did not consider that the Cabinet exemption applied to the Documents in Issue.⁵⁵
35. However, the Leader of the Opposition submits that '*[i]t is inconceivable not to conclude that noise impact assessment and field inspection reports were prepared as a part of forming advice for Cabinet to consider on the project in its entirety*'.⁵⁶
36. Under schedule 3, section 2(1)(a) of the RTI Act, information is exempt if it was brought into existence for the consideration of Cabinet. In determining whether information was brought into existence for the consideration of Cabinet, the following comments made by the Information Commissioner in *Hudson (as agent for Fencray Pty Limited) and Department of the Premier, Economic and Trade Development (Hudson)*⁵⁷ are relevant:⁵⁸

[A] document is not exempt merely because it has been submitted to Cabinet. Inquiries must be pursued into the "genealogy" of such a document, to establish the purpose for

⁵² Schedule 3, section 2(4)(b) of the RTI Act also relates to where information was brought into existence for the consideration of the State's budgetary processes, but that has not been raised by any party in this external review.

⁵³ Submissions dated 22 July 2015 and 4 September 2015.

⁵⁴ Enquiries made on 1 March 2016 and 3 March 2016.

⁵⁵ Submission dated 4 March 2016.

⁵⁶ Last paragraph on page 1 of submission dated 4 November 2015.

⁵⁷ (1993) 1 QAR 123.

⁵⁸ *Hudson* at [26], in relation to section 36(1) of the now repealed FOI Act. The form of section 36(1) of the FOI Act under consideration in *Hudson* had similar requirements to schedule 3, section 2(1)(a) of the RTI Act, as it also contemplated that the relevant information was brought into existence for Cabinet consideration: see the discussion of the similarity of these provisions in *Office of the Leader of the Opposition and Treasury Department* (Unreported, Queensland Information Commissioner, 7 July 2010), in which the Information Commissioner noted (at [31]) that the '*approach in Hudson ... is apt to apply ...*' in considering the application of schedule 3, section 2 of the RTI Act.

which it was brought into existence. The time of the creation of the document is the time at which the purpose for its creation is to be ascertained. The fact that it was subsequently decided to annex to a Cabinet submission, a document that was brought into existence for a purpose other than submission to Cabinet for Cabinet consideration, will not bring the document within s.36(1)(a) [of the FOI Act]. A document which is created for the purpose of assisting in the preparation of a draft or final Cabinet submission (or some other kind of document that is being created for the purpose of submission to Cabinet) would not itself have been brought into existence for the purpose of submission for consideration by Cabinet.

37. The Leader of the Opposition submits that the Documents in Issue were prepared as part of forming advice to Cabinet on the project in its entirety. I have carefully considered the Documents in Issue and can identify nothing on the face of either of them to indicate that they were brought into existence for the consideration of Cabinet. I have also carefully considered the supporting documentation referred to by the Leader of the Opposition, and a document no longer in issue in this review which the Department considered, and SCEC accepted, was subject to the Cabinet exemption.⁵⁹ Again, I was unable to identify any information in these documents to indicate that the Documents in Issue were brought into existence for the consideration of Cabinet.
38. I note that the Documents in Issue were in existence at the time of specific Cabinet considerations regarding certain matters raised and relied upon by the Leader of the Opposition. The Leader of the Opposition acknowledges that the Documents in Issue themselves were not provided to Cabinet when these particular Cabinet considerations occurred. However, the Leader of the Opposition submits that '*[i]t is ... inconceivable not to conclude that the consideration of [the matters] would have included the information **contained in** [the Documents in Issue]*⁶⁰ and '*[i]t is not inconceivable to suggest that the information **contained in** the Documents in issue specifically relates to the issues identified in [the supporting documentation referred to by the Leader of the Opposition]*⁶¹ [emphasis added].
39. The Leader of the Opposition's reference to information **contained in** the Documents in Issue raises the question of 'source' documents. It is conceivable that content from the Documents in Issue was used as source information when the supporting documentation referred to by the Leader of the Opposition was drafted, or during any Cabinet discussions that occurred when Cabinet noted that documentation. However, I am not satisfied that 'source' documents of this kind can be said to comprise information brought into existence for the consideration of Cabinet. In this regard, I note the last sentence in the extract from *Hudson* referred to above:⁶²

A document which is created for the purpose of assisting in the preparation of a draft or final Cabinet submission (or some other kind of document that is being created for the purpose of submission to Cabinet) would not itself have been brought into existence for the purpose of submission for consideration by Cabinet.

40. The Leader of the Opposition also submits that there was an intention that Cabinet was to be briefed in future about the project, and that the Documents in Issue would have been provided to Cabinet in such briefing/s. It is my understanding that the Leader of the Opposition contends that:

⁵⁹ That is, the entirety of the 69 pages comprising File A.

⁶⁰ First paragraph on page 2 of submission dated 4 November 2015.

⁶¹ Paragraph 4) on page 5 of submission dated 26 November 2015.

⁶² Cited also in *Quandamooka Yoolooburrabee Aboriginal Corporation and Department of Natural Resources and Mines; Sibelco Australia Ltd (Third Party)* (Unreported, Queensland Information Commissioner, 19 November 2014) (**QYAC**) at [55] regarding a similar conclusion.

- this would have occurred, but for the change of government following the 2015 Queensland State General Election
 - the provision of the Documents in Issue to Cabinet at this time would have demonstrated that the Documents in Issue were brought into existence for the consideration of Cabinet; and
 - OIC should not conclude otherwise simply because the opportunity for the future briefing/s did not eventuate.
41. These submissions are speculation about what may occur in future; however, I can only consider the facts as at the time of this decision. I am unable to identify any evidence of an intention that reports such as the Documents in Issue were prepared for the consideration of Cabinet in the future briefing/s. Certain documentation relied on by the Leader of the Opposition states only that the **results** of certain work would be reported to Cabinet; there is nothing before me to suggest that copies of assessments and reports **themselves**, such as the Documents in Issue, would be provided along with the results. In the absence of evidence in the information currently before me of an intention that the Documents in Issue were prepared for Cabinet's consideration in future briefing/s,⁶³ the Leader of the Opposition's submission regarding the fact that a change of government intervened before the briefing/s could occur need not be considered.
42. I note the Leader of the Opposition's submission that, when determining a document's genealogy, the 'benefit of the doubt' should fall on the side of Cabinet confidentiality, because that is fundamental to the processes of a functioning Cabinet government.⁶⁴ While I recognise the importance of Cabinet confidentiality to Queensland's system of government, I consider that such an approach would, in effect, be likely to broaden the application of the Cabinet exemption to documents brought into existence for purposes other than Cabinet consideration, that were subsequently annexed to a Cabinet submission, or that were subsequently used as 'source' documents—which would, in my view, be inconsistent with the pro-disclosure bias of the RTI Act.⁶⁵ In any event, as noted at paragraph 37 above, in the present circumstances, I am unable to identify any information to indicate that the Documents in Issue were brought into existence for the consideration of Cabinet.
43. For these reasons, I am satisfied that the Documents in Issue were not brought into existence for the consideration of Cabinet. Accordingly, I find that they are not exempt under schedule 3, section 2(1)(a) of the RTI Act.

Information that would reveal or prejudice Cabinet considerations

44. In considering the application of schedule 3, section 2(1)(b) of the RTI Act, the relevant question is whether it can be said that disclosure of the Documents in Issue themselves would reveal a consideration⁶⁶ of Cabinet or otherwise prejudice the confidentiality of Cabinet considerations or operations. It must be shown that any person viewing the Documents in Issue would have a consideration of Cabinet revealed to them, or that relevant disclosure would otherwise prejudice Cabinet confidentiality.⁶⁷
45. In relation to this aspect of the Cabinet exemption, the Leader of the Opposition submits that disclosure of the Documents in Issue would prejudice the confidentiality of

⁶³ And also in reliance on the Department's submission summarised at paragraph 34.

⁶⁴ Last paragraph under heading 3b. in submission dated 18 December 2015.

⁶⁵ Section 44(4) of the RTI Act.

⁶⁶ This term is defined in schedule 3, section 2(5) of the RTI Act, and is summarised at paragraph 23.

⁶⁷ QYAC at [57]-[59]; *F60XCX and Department of Natural Resources and Mines* [2015] QICmr 17 (27 July 2015) at [25].

specific Cabinet considerations that occurred regarding certain matters,⁶⁸ as '*[i]t is ... inconceivable not to conclude that the consideration of [the matters] would have included the information contained in [the Documents in Issue]*'⁶⁹.

46. The Leader of the Opposition further submits that it was intended that, during future Cabinet briefing/s about the project, a decision about its viability would be made, and disclosure of the Documents in Issue would prejudice the confidentiality of Cabinet's future considerations, as '*[i]t is not inconceivable to conclude that the basis for Cabinet's decision on the issue (which has not yet been made) would rely heavily on the information contained in the Documents in issue*'.⁷⁰
47. A recent OIC decision which considered similar types of submissions regarding this aspect of the Cabinet exemption made the following observations:⁷¹

63. *I note the previous comments of the Information Commissioner in Ryman [Ryman and Department of Main Roads⁷²] that:*⁷³

I am not prepared to find that the test for exemption under the [FOI Act predecessor of schedule 3, section 2(1)(b)] is established because the Department, through its own disclosures of information extraneous to the matter in issue, claims that disclosure of the matter in issue, in connection with that extraneous information, would involve the disclosure of information noted by Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations.

The test for exemption under [the FOI Act predecessor of schedule 3, section 2(1)(b)] is to be evaluated by reference to the effects of disclosure of the matter in issue itself.

64. *In Ryman, the extraneous information was the Department's submission that it had verified that maps in issue were similar to, but not the same as, a map attached to the Cabinet submission. Employing the same reasoning, I am not prepared to accept Sibelco's assertion that the Sibelco Discussion Paper, Sibelco Commercial Imperative Document, Sibelco Email and Sibelco/Ashurst Correspondence were submitted to Cabinet, or contained information that was submitted to Cabinet, and that disclosure would therefore reveal or prejudice Cabinet considerations. ... I cannot accept that legislative amendments related to issues discussed in the Sibelco documents, or ensuing media commentary about those amendments, combined with the Sibelco documents themselves, render those documents capable of revealing or prejudicing Cabinet considerations. I am satisfied that such extraneous information cannot be used to re-cast the Sibelco documents as indicative of Cabinet considerations.*

48. In applying this reasoning to the current review, while I note the Leader of the Opposition's contention that specific Cabinet considerations that occurred regarding certain matters would have included consideration of the information **contained in** the Documents in Issue, I am satisfied there is no evidence on the face of the Documents in Issue which reveals they were **themselves** considered by Cabinet or which otherwise connects them to any Cabinet consideration.
49. Further, I note the Leader of the Opposition's submissions that disclosure of the Documents in Issue would reveal future Cabinet considerations about the project's viability that would have occurred, but for the change of government following the 2015 Queensland State General Election, and may yet occur, if there is a further change of

⁶⁸ Regarding which the Leader of the Opposition provided supporting documentation.

⁶⁹ First paragraph on page 2 of submission dated 4 November 2015.

⁷⁰ First paragraph on page 4 of submission dated 26 November 2015.

⁷¹ QYAC at [63]-[64].

⁷² (1996) QAR 416 (*Ryman*).

⁷³ *Ryman* at [43]-[44].

government. These submissions are speculation about what may occur in future; however, I am required to consider the facts as at the time of this decision.⁷⁴ In this regard, I again note that there is no evidence on the face of the Documents in Issue which connects them to any Cabinet consideration.⁷⁵ This finding covers both Cabinet considerations of the current government,⁷⁶ and Cabinet considerations that the Leader of the Opposition contends would have occurred but for the change of government, or that may occur following a further change of government. In any event, on consideration of schedule 3, section 2(1)(b) of the RTI Act, I am unable to envisage how this provision could apply to hypothetical Cabinet considerations as raised by the Leader of the Opposition.

50. In these circumstances, I am unable to see how anyone viewing the Documents in Issue would have any consideration of Cabinet revealed to them, or how disclosure of these documents could prejudice the confidentiality of Cabinet considerations or operations.
51. In relation to this aspect of the Cabinet exemption, the Leader of the Opposition's submissions make specific reference to section 1.7 of the *Queensland Cabinet Handbook*. The Leader of the Opposition considers that disclosure of the Documents in Issue would prejudice the confidentiality of Cabinet considerations, on the basis that the Documents in Issue fall under the definition of Cabinet document in section 1.7 of the *Queensland Cabinet Handbook*.
52. I note that the definition raised by the Leader of the Opposition states that '*Cabinet documents may include*' [emphasis added] the documents listed in the bullet points in that section, including the following:
 - reports and attachments to submissions that have been brought into existence for the purpose of submission to Cabinet; and
 - reports or studies within or for the Queensland Government that are intended to form the basis of a Cabinet document or an attachment to a Cabinet document.
53. I further note that the *Queensland Cabinet Handbook*⁷⁷ does not state that Cabinet documents will always include these categories of documents; rather, the word 'may' means that such documents may not always meet the requirements of a Cabinet document.
54. In any event, however, OIC's task is to assess whether the Documents in Issue meet the requirements of the Cabinet exemption in the RTI Act. Whether or not the Documents in Issue meet the definition in section 1.7 of the *Queensland Cabinet Handbook* does not, in my view, change my conclusion that disclosure of the Documents in Issue would not, for any person viewing them, reveal a Cabinet consideration or otherwise prejudice Cabinet confidentiality.⁷⁸
55. Given these considerations, I find that the Documents in Issue are not exempt under schedule 3, section 2(1)(b) of the RTI Act.

⁷⁴ As noted at paragraph 41.

⁷⁵ As noted at paragraph 48.

⁷⁶ In this regard, I note that the current government stated as follows in a May 2015 document titled *The Palaszczuk Government: The First Three Months – A Better Way for Queensland* (available at www.premier.qld.gov.au/newsroom/assets/Three-month-report.pdf):

The government has confirmed that the Mooloolah Logging Area in the Beerwah State Forest on the Sunshine Coast which had been earmarked by the former government for a trail bike facility, will be protected from future commercial or recreational motorised use in recognition of its significant natural resource values.

⁷⁷ Available at <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/cabinet-handbook.aspx>.

⁷⁸ Just as it does not, as noted at paragraph 31 above, change my conclusion that the Documents in Issue are not documents that can be taken to be comprised exclusively of exempt information.

Conclusion

56. For the reasons set out above, I am satisfied that the Cabinet exemption does not apply to the Documents in Issue.

Public interest

Relevant law

57. Under the RTI Act, access to a document may be refused if disclosing it would, on balance, be contrary to the public interest.⁷⁹
58. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁸⁰ and explains the steps that a decision-maker must take⁸¹ in deciding the public interest as follows:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information would, on balance, be contrary to the public interest.

Submissions

59. As noted at paragraph 14, the Department confirmed⁸² that, within the Documents in Issue, it only objected to the disclosure of certain personal information.
60. The Leader of the Opposition's submissions may be summarised as follows:⁸³
- the Documents in Issue do not comprise merely factual matter—rather, they relate to specific issues identified as being sensitive and go to the very issue as to whether the MLA would be an appropriate site for an off-road motorcycling facility⁸⁴
 - no decision has been made about the viability of the project⁸⁵
 - the former government did not have the opportunity to make a decision of this nature, given the change of government⁸⁶
 - it is clear that Cabinet is to be briefed in future about certain matters related to the project;⁸⁷ and

⁷⁹ Sections 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the wellbeing 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.

⁸⁰ 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.

⁸¹ Section 49(3) of the RTI Act.

⁸² Email dated 7 September 2015.

⁸³ As noted at paragraph 27, most of the Leader of the Opposition's submissions discuss and rely on particular Cabinet considerations, and documentation relating to those considerations. Accordingly, I am constrained in the extent to which I can refer to such submissions in this decision, given section 108(3) of the RTI Act.

⁸⁴ Final paragraph on page 3 of submission dated 26 November 2015.

⁸⁵ Both paragraphs under the heading 'Contrary to public interest information' on page 4 of submission dated 26 November 2015; and paragraphs i) and v) under heading 3b. in submission dated 18 December 2015.

⁸⁶ Second paragraph under the heading 'Contrary to public interest information' on page 4 of submission dated 26 November 2015; and paragraph vi) under heading 3b. in submission dated 18 December 2015.

⁸⁷ Paragraph ii) under heading 3b. in submission dated 18 December 2015.

- it is not inconceivable to suggest that the information contained in the Documents in Issue would be taken into consideration and assist Cabinet in their decision-making process about this project.⁸⁸

Analysis

61. No irrelevant factors arise in the circumstances of this case and I have not taken any into account. I will now consider the relevant factors favouring disclosure and nondisclosure of the Documents in Issue.

Factors favouring disclosure

62. In seeking internal review of the Department's decision, SCEC submitted:⁸⁹

It is relevant to understand for context, that the state government has publically [sic] identified the Mooloolah Logging Area site as the site it has selected for an 'off-road motorcycling facility' at its own discretion. That is, without public consultation, robust assessment, transparency or accountability. The proposal was subsequently put to an Expression of Interest tender process. This approach further excluded public access to information and opportunities for community engagement due to the instigation of 'commercial-in-confidence'.

63. Public interest factors in favour of disclosure will arise where disclosure of information could reasonably be expected to promote open discussion of public affairs and enhance government accountability, contribute to positive and informed debate on important issues or matters of serious interest, or reveal the reasons for a government decision and any background or contextual information that informed the decision.⁹⁰
64. To the extent that the Documents in Issue set out the Department's decision-making processes and supporting information in relation to the identification of the MLA site for an off-road motorcycling facility, I consider that the public interests in accountability, contributing to positive and informed debate, and providing background/contextual information regarding the decision-making process will be significantly advanced. Accordingly, I afford these factors in favour of disclosure significant weight, that is somewhat lessened given there was no decision by Cabinet before the change of government about whether or not the project would proceed.⁹¹

Factors favouring nondisclosure

65. File B comprises a report prepared by a private company. OIC asked the Department to consult with relevant third parties about some of the located documents, including this company, to obtain their views about disclosure of the relevant information. The Department confirmed to OIC⁹² that it had consulted the relevant company about File B, and the company had no concerns about disclosure.
66. Further, in relation to File D, which I note was prepared by a government agency, there is no information before me to suggest that any entity's business, commercial or financial affairs could be prejudiced by disclosure of File D. In these circumstances, I am satisfied that no factors in favour of nondisclosure relating to prejudice to the

⁸⁸ Paragraph iv) under heading 3b. in submission dated 18 December 2015.

⁸⁹ Internal review application dated 10 September 2014. I note that this application was made before the change of government following the 2015 Queensland State General Election.

⁹⁰ Schedule 4, part 2, items 1, 2 and 11 of the RTI Act.

⁹¹ In this regard, I note the current government's position regarding the project as set out at footnote 76.

⁹² In an email on 7 September 2015.

business, commercial or financial affairs of entities⁹³ arise in respect of the Documents in Issue.

67. The Leader of the Opposition made the following submissions regarding the balancing of the public interest:

- ‘Cabinet did not make a decision in relation to this project’⁹⁴
- ‘Cabinet was to be further briefed on the viability ... of the project with a view to making a decision’⁹⁵
- ‘it is clear that Cabinet is to be further briefed about [certain matters] relating to this project’⁹⁶
- ‘it is not inconceivable to suggest that the information contained in [the Documents in Issue] would not [sic] be taken into consideration and assist Cabinet in their decision making process about this project’;⁹⁷ and
- ‘the release of [the Documents in Issue] is not in the public interest because there has been no documented or recorded decision about the viability of the project’.⁹⁸

68. In view of these submissions, I have also considered factors in favour of nondisclosure relating to deliberative processes—namely:

- the **Prejudice Factor**—where disclosure could reasonably be expected to prejudice a deliberative process of government;⁹⁹ and
- the **Harm Factor**—where disclosure could reasonably be expected to cause a public interest harm through disclosure of an opinion, advice or recommendation that has been obtained, prepared or recorded, or a consultation or deliberation that has taken place, in the course of, or for, the deliberative processes involved in the functions of government.¹⁰⁰

69. Deliberative processes involved in the functions of government have been defined as ‘... thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action’.¹⁰¹

70. The Harm Factor applies in relation to information including an opinion, advice or recommendation that has been obtained, prepared or recorded in the course of, or for, the deliberative processes involved in the functions of government,¹⁰² unless certain exceptions apply.¹⁰³ I am satisfied that the Documents in Issue comprise information of this nature; however, I also note that certain exceptions to the Harm Factor¹⁰⁴ are arguably relevant, regarding at least some of the information in the Documents in Issue.

71. The relevant exceptions provide that the Harm Factor does not apply to information that consists of, amongst other things, factual or statistical information,¹⁰⁵ or expert

⁹³ Schedule 4, part 3, items 2 and 15 and schedule 4, part 4, item 7(1)(c) of the RTI Act.

⁹⁴ Second paragraph under heading ‘Contrary to public interest information’ on page 4 of submission dated 26 November 2015.

⁹⁵ First paragraph under heading ‘Contrary to public interest information’ on page 4 of submission dated 26 November 2015.

⁹⁶ Paragraph ii) under heading 3b. in submission dated 18 December 2015.

⁹⁷ Paragraph iv) under heading 3b. in submission dated 18 December 2015.

⁹⁸ Third last paragraph on page 3 of submission dated 18 December 2015.

⁹⁹ Schedule 4, part 3, item 20 of the RTI Act.

¹⁰⁰ Schedule 4, part 4, item 4(1) of the RTI Act. The Harm Factor is similar to the previous exemption in section 41(1) of the repealed FOI Act.

¹⁰¹ *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 (*Eccleston*) at [28]-[29] citing with approval the definition given in *Re Waterford and Department of Treasury (No. 2)* (1984) 5 ALD 588, 606.

¹⁰² Schedule 4, part 4, item 4(1)(a) of the RTI Act.

¹⁰³ Schedule 4, part 4, item 4(3) and (4) of the RTI Act.

¹⁰⁴ Contained in schedule 4, part 4, item 4(3)(b) and (c) of the RTI Act.

¹⁰⁵ Schedule 4, part 4, item 4(3)(b) of the RTI Act.

opinion or analysis **other than** expert opinion or analysis commissioned in the course of or for deliberative processes.¹⁰⁶ Given that the Documents in Issue generally comprise factual information and discussion of such information,¹⁰⁷ it is arguable that these exceptions may preclude the Harm Factor from applying to at least some information in the Documents in Issue.

72. However, the Leader of the Opposition submits that the Documents in Issue are not simply factual.¹⁰⁸ I also note that File B, being a report prepared by a private company, could arguably be construed as expert opinion or analysis that **was** commissioned by the Department in the course of or for the deliberative processes related to the project. Such expert opinion or analysis is excluded from the relevant exception to the Harm Factor, and therefore remains subject to the Harm Factor.¹⁰⁹
73. In any event, in view of my conclusion about the low reasonable expectation of harm, should the Harm Factor apply (see paragraph 78), I do not consider it necessary to make a final determination regarding the application of schedule 4, part 4, item 4(1) or (3) of the RTI Act to the Documents in Issue.
74. If the Harm Factor applies, it is relevant to consider the nature and extent of the public interest harm that may result through disclosure. For the Prejudice Factor to apply, a reasonable expectation of prejudice to the relevant deliberative process must be established.
75. In *Eccleston*,¹¹⁰ the Information Commissioner considered whether disclosure would inhibit candour and frankness in future deliberations and found that:
- such claims should be disregarded unless a very particular factual basis is laid for the claim, and tangible harm to the public interest will result from that inhibition;¹¹¹ and
 - even if some diminution in candour and frankness caused by the prospect of disclosure is conceded, the real issue is whether the efficiency and quality of a deliberative process is thereby likely to suffer to an extent which is contrary to the public interest.¹¹²
76. Having carefully considered the Leader of the Opposition's submissions, I am satisfied that they do not enunciate how disclosure of the Documents in Issue could reasonably be expected to harm or prejudice the deliberative processes of government. It is my understanding that there was no decision about whether or not the project would proceed before the change of government. Given the project did not proceed, I am unable to identify any existing risk of prejudice to the government's ability to reach considered decisions about the matters referred to in the Documents in Issue. Also, it appears unlikely that disclosure of the Documents in Issue would engender a large

¹⁰⁶ Schedule 4, part 4, item 4(3)(c) of the RTI Act.

¹⁰⁷ Which I am prevented from discussing in this decision, given section 108(3) of the RTI Act.

¹⁰⁸ In the Leader of the Opposition's submission dated 26 November 2015 regarding the Cabinet exemption, the Leader of the Opposition states:

In this case [Hudson], access was given because it was determined that the matter in question was "merely a factual matter" contained in a Cabinet decision, whereas the Documents in issue relate to specific issues identified as being sensitive and go to the very issue as to whether the MLA would be an appropriate site for an off-road motorcycling facility ...

¹⁰⁹ Schedule 4, part 4, item 4(3)(c) of the RTI Act.

¹¹⁰ *Eccleston* considered the application of the *deliberative process* exemption in section 41(1) of the repealed FOI Act and ultimately found that the exemption did not apply as disclosure would not be contrary to the public interest – at [185]. The Information Commissioner's reasoning in *Eccleston* was later followed in *Hewitt and Queensland Law Society Inc* (1998) 4 QAR 328 at [139] where the Information Commissioner stated that he was not satisfied that 'the substance or quality of advice prepared by staff ... would be materially altered for the worse, by the threat of disclosure under the FOI Act'.

¹¹¹ *Eccleston* at [132].

¹¹² *Eccleston* at [134].

amount of disruptive public debate, or necessitate the reallocation of departmental resources to deal with that debate.¹¹³

77. I acknowledge the Leader of the Opposition's submissions appear to contemplate the possibility of further deliberations and Cabinet considerations following a future change of government. As noted above,¹¹⁴ these submissions are speculation about what may occur in future, but I can only consider the facts as at the time of the decision. In any event, to the extent that this possibility may eventuate, on the information before me, I remain unable to discern any connection or nexus between disclosure of the Documents in Issue pursuant to this decision and prejudice to such future deliberations.
78. Given these circumstances, and on careful examination of the nature of the Documents in Issue themselves, I consider that:
- the Prejudice Factor does not apply, as disclosure of the Documents in Issue could not reasonably be expected to prejudice the deliberative processes of government; and
 - it is arguable that the Harm Factor may not apply to at least some of the Documents in Issue; however, to the extent that the Harm Factor applies to the Documents in Issue, there is no specific or tangible harm to deliberative processes that could reasonably be expected to be caused by disclosure of the Documents in Issue and, therefore, this factor carries only low weight in favour of nondisclosure.

Balancing the public interest

79. On careful consideration of the factors set out above, I am satisfied that the weight to be given to the factors in favour of disclosure is relatively significant, and this outweighs the low weight afforded to the one factor I have identified in favour of nondisclosure.

Conclusion

80. Accordingly, I consider that disclosure of the Documents in Issue would not, on balance, be contrary to the public interest, and access cannot be refused under section 47(3)(b) of the RTI Act.

DECISION

81. For the reasons set out above, I find that the Documents in Issue cannot be refused under the Cabinet exemption, nor on the ground that their disclosure would, on balance, be contrary to the public interest. Accordingly, I set aside the Department's decision and find that there is no basis to refuse access to the Documents in Issue under the RTI Act.

¹¹³ Compare *Johnston and Brisbane City Council* (Unreported, Queensland Information Commissioner, 6 December 2013) at [39].

¹¹⁴ At paragraphs 41 and 49.

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

A Rickard
Acting Assistant Information Commissioner

Date: 4 March 2016

APPENDIX

Significant procedural steps

Date	Event
6 May 2014	The Department received SCEC's access application under the RTI Act.
8 July 2014	The Department consulted with the Former Minister. ¹¹⁵
30 July 2014	The Former Minister responded to the Department's consultation.
12 August 2014	The Department issued decisions on the access application to SCEC and to the Former Minister.
12 September 2014	SCEC applied to the Department for internal review.
9 October 2014	The Department consulted with the Former Minister.
10 October 2014	The Former Minister responded to the Department's consultation.
13 October 2014	The Department issued its decision on SCEC's internal review application to SCEC.
30 October 2014	The Department issued its decision on SCEC's internal review application to the Former Minister.
7 November 2014	OIC received SCEC's external review application.
10 November 2014	OIC notified the Department of the external review application and requested procedural documents in relation to the application.
17 November 2014	The Department provided OIC with the requested procedural documents.
20 November 2014	OIC received the Former Minister's external review application.
9 December 2014	OIC notified SCEC and the Department that OIC had accepted SCEC's application for external review. OIC asked the Department to provide the documents located in response to the access application and its records regarding third party consultation.
10 December 2014	OIC notified the Former Minister and the Department that OIC had accepted the Former Minister's application for external review.
19 December 2014	OIC received the requested documents from the Department.
20 January 2015	OIC provided an update to SCEC.
5 March 2015	<p>OIC wrote to the Former Minister to notify him that OIC had finalised his external review on the basis that, as he no longer held the office of Minister following the 2015 Queensland State General Election, there was no applicant for the purpose of that external review.</p> <p>OIC wrote to the Leader of the Opposition to provide a copy of OIC's correspondence to the Former Minister, and to notify the Leader of the Opposition that he could apply to participate in SCEC's external review.</p> <p>OIC wrote to the Department to confirm the closure of the Former Minister's external review and the continuation of SCEC's external review.</p> <p>OIC provided a written update to SCEC.</p>
20 March 2015	A representative of SCEC spoke with an OIC staff member about the external review.
25 March 2015	OIC wrote again to the Leader of the Opposition, reiterating that he could apply to participate in the external review.

¹¹⁵ The term 'Former Minister' is defined at paragraph 2.

Date	Event
5 May 2015	SCEC requested an update from OIC.
6 May 2015	OIC asked the Department to provide information regarding the grounds of refusal relied upon. OIC provided an update to SCEC.
26 May 2015	OIC received a response from the Department regarding the grounds of refusal relied upon.
1 July 2015	OIC provided the Department with a preliminary view regarding the application of the Cabinet exemption. OIC provided an update to SCEC.
14 July 2015	A representative of SCEC confirmed to an OIC staff member that SCEC wished to continue with the external review.
22 July 2015	OIC received a submission from the Department, in which it: <ul style="list-style-type: none"> • maintained that File A was exempt under the Cabinet exemption; and • withdrew its claims that Files B, C and D were exempt under the Cabinet exemption.
7 August 2015	OIC asked the Department to provide a further submission about any other grounds of refusal regarding Files B, C and D, and undertake any necessary third party consultation. OIC provided an update to SCEC.
4 September 2015	OIC received a response from the Department regarding its position on Files B, C and D.
7 September 2015	OIC received submissions from the Department, in which it confirmed that: <ul style="list-style-type: none"> • within Files B, C and D, it only objected to the disclosure of certain personal information; and • consultation with two third parties had confirmed that neither of these parties objected to disclosure of information relating to them.
16 September 2015	An OIC staff member spoke with a Department officer about the extent of the personal information the Department considered should not be disclosed.
28 September 2015	An OIC staff member left a telephone message with a representative of the Leader of the Opposition.
2 October 2015	An OIC staff member left a telephone message with a representative of the Leader of the Opposition. OIC wrote to the Leader of the Opposition, seeking clarification regarding whether he wished to object to disclosure of relevant information.
7 October 2015	An OIC staff member spoke with a representative of the Leader of the Opposition and the Former Minister about the external review.
8 October 2015	A representative of the Leader of the Opposition viewed the located documents in the presence of OIC staff members. OIC wrote to the Department, asking it to provide a marked-up copy of File C to the Leader of the Opposition. OIC wrote to the Leader of the Opposition, confirming the Department would provide him with a marked-up copy of File C, and asking for submissions if he wished to object to disclosure of relevant information.

Date	Event
9 October 2015	An OIC staff member spoke with a representative of the Leader of the Opposition about the external review. OIC provided an update to SCEC.
12 October 2015	An OIC staff member spoke with a representative of the Leader of the Opposition about the external review.
14 October 2015	A representative of the Leader of the Opposition and the Former Minister viewed the located documents in the presence of OIC staff members.
18 October 2015	A representative of the Leader of the Opposition wrote to OIC about the external review.
19 October 2015	OIC conveyed a preliminary view to SCEC. OIC conveyed a preliminary view to the Leader of the Opposition.
23 October 2015	In a telephone discussion with an OIC staff member and a subsequent email to OIC, SCEC confirmed that it accepted OIC's preliminary view that: <ul style="list-style-type: none"> • 69 pages in full¹¹⁶ are exempt under the Cabinet exemption • 66 pages in full¹¹⁷ are exempt in full under the breach of confidence exemption¹¹⁸ • disclosure of seven full pages¹¹⁹ and 20 part pages¹²⁰ would, on balance, be contrary to the public interest; and • parts of two pages¹²¹ are irrelevant to the terms of the access application and therefore could be deleted.¹²² <p>OIC wrote to the Leader of the Opposition, granting an extension request, and noting SCEC's acceptance of OIC's preliminary view.</p>
29 October 2015	OIC received a submission from the Leader of the Opposition.
30 October 2015	An OIC staff member spoke with a representative of the Leader of the Opposition about the external review.
2 November 2015	An OIC staff member spoke with representatives of the Leader of the Opposition about the external review. An OIC staff member viewed the Cabinet Note in the presence of a representative of the Leader of the Opposition. OIC conveyed a preliminary view to the Leader of the Opposition.
3 November 2015	An OIC staff member spoke with a representative of the Leader of the Opposition about the external review.
4 November 2015	OIC received a submission from the Leader of the Opposition.
5 November 2015	OIC wrote to the Leader of the Opposition about the external review.

¹¹⁶ The entirety of File A.

¹¹⁷ Pages 126-191 of File C.

¹¹⁸ Schedule 3, section 8 of the RTI Act.

¹¹⁹ Pages 43-49 of File C.

¹²⁰ Parts of pages 2 and 15-16 of File B; parts of pages 33, 39-40, 71, 78, 97-98, 112, 119-120, 122 and 124 of File C; and parts of pages 4, 78-79, 98 and 105 of File D.

¹²¹ Pages 40-41 of File C.

¹²² Under section 73 of the RTI Act.

Date	Event
6 November 2015	OIC conveyed a preliminary view to the Leader of the Opposition, and noted that, in view of the lack of submissions from the Leader of the Opposition regarding the 191 pages comprising File C, OIC proposed to ask the Department to release to SCEC all of File C, apart from the pages and part pages to which SCEC no longer sought access. ¹²³
20 November 2015	OIC provided an update to SCEC.
26 November 2015	OIC received a submission from the Leader of the Opposition, and the Leader of the Opposition also confirmed his agreement to the part release of File C to SCEC.
7 December 2015	<p>OIC wrote to SCEC, the Leader of the Opposition and the Department to:</p> <ul style="list-style-type: none"> • confirm the part release of File C by the Department to SCEC • identify documents which, in OIC's view, did not need to be considered further in the external review; and • confirm the documents still in issue at that stage. <p>In the correspondence to the Leader of the Opposition, OIC conveyed a preliminary view and asked the Leader of the Opposition to clarify his previous submissions.</p>
8 December 2015	The Department wrote to OIC, confirming the part release of File C to SCEC, and clarifying the content of File D.
9 December 2015	<p>OIC wrote to the Department, asking it to provide certain pages from File D to the Leader of the Opposition.</p> <p>OIC wrote to the Leader of the Opposition about certain pages in File D.</p>
18 December 2015	<p>OIC received a submission from the Leader of the Opposition.</p> <p>An OIC staff member left a telephone message with a representative of the Leader of the Opposition.</p> <p>In a telephone discussion with an OIC staff member and a subsequent email to OIC, SCEC confirmed that it accepted that 58 pages¹²⁴ did not need to be further considered in the external review.</p>
7 January 2016	<p>An OIC staff member spoke with a Department officer about the external review. In a subsequent email, OIC asked for the Department's agreement for OIC to provide a copy of File B and part of File D to the Leader of the Opposition on behalf of the Department. By email later that day, the Department agreed to this.</p> <p>An OIC staff member left a telephone message with a representative of the Leader of the Opposition.</p>
11 January 2016	An OIC staff member left a telephone message with a representative of the Leader of the Opposition.
12 January 2016	<p>A representative of SCEC spoke with an OIC staff member about the external review.</p> <p>An OIC staff member spoke with a representative of the Leader of the Opposition about the external review.</p>

¹²³ Parts of pages 33, 39-41, 71, 78, 97-98, 112, 119-120, 122 and 124; and pages 43-49 and 126-191.

¹²⁴ Pages 84-141 of File D.

Date	Event
14 January 2016	<p>A representative of the Leader of the Opposition collected a marked-up copy of File B and part of File D from OIC, and an OIC staff member discussed the documents still in issue at that stage. OIC subsequently wrote to the Leader of the Opposition to:</p> <ul style="list-style-type: none"> • confirm the context of certain documents within File D; and • convey a preliminary view.
22 January 2016	<p>A representative of the Leader of the Opposition confirmed to an OIC staff member that the Leader of the Opposition:</p> <ul style="list-style-type: none"> • agreed to the release of seven pages,¹²⁵ apart from the part pages to which SCEC no longer sought access;¹²⁶ and • continued to object to OIC's preliminary view regarding the Documents in Issue. <p>In a telephone discussion with an OIC staff member, OIC advised SCEC about the part release of the seven pages and SCEC confirmed that it accepted that 57 pages¹²⁷ did not need to be further considered in this review.</p> <p>An OIC staff member spoke with a Department officer about these developments.</p> <p>OIC subsequently wrote to SCEC, the Leader of the Opposition and the Department to confirm these discussions, and to confirm the final composition of the Documents in Issue.</p>
29 January 2016	The Department confirmed the part release of the seven pages to SCEC.
1 March 2016	An OIC staff member made enquiries with a Department officer about whether the Documents in Issue had been brought into existence for the consideration of Cabinet.
3 March 2016	OIC made further enquiries with the Department about whether the Documents in Issue had been brought into existence for the consideration of Cabinet.
4 March 2016	The Department confirmed that it did not consider that the Cabinet exemption applied to the Documents in Issue.

¹²⁵ Pages 77-83 of File D.

¹²⁶ Parts of pages 78-79 of File D.

¹²⁷ Pages 16-70 and 75-76 of File D.