

Decision and Reasons for Decision

Citation: *RTI Consultants Pty Ltd and Department of Transport and Main Roads & Other [2026] QICmr 70 (6 May 2026)*

Application Number: 318690

Applicant: RTI Consultants Pty Ltd - ACN 628 592 076

Respondent: Department of Transport and Main Roads

Third Party: Watco East West Pty Ltd - ACN 634 779 730

Decision Date: 6 May 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - BREACH OF CONFIDENCE - seeking access to contracts relating to livestock transport services - whether disclosure would found an action for breach of confidence - sections 47(3)(a) and 48 and schedule 3, section 8(1) of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OUTSIDE OF SCOPE DOCUMENTS some documents located fall outside the scope of the applicant's request

DECISION

1. For the below reasons, I set aside¹ the reviewable decision of Department of Transport and Main Roads (**Department**). I make a decision in substitution for that decision as follows:²

- some of the documents sought by the applicant are outside the scope of the access application
- some of the information in the Contracts – that is the Confidential Information³ – comprises exempt information under section 48 of the RTI Act and schedule 3,

¹ Under section 110(1) (c) of the *Right to Information Act 2009 (Qld)* (RTI Act).

² I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act. On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (IPOLA Act) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009 (Qld)* (IP Act). As the applicant's application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in chapter 7, part 9 of the RTI Act and chapter 8, part 3 of the IP Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts.

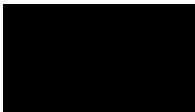
³ As defined at paragraph 295 below.

section 8 of the RTI Act and access to it may be refused under section 47(3)(a) of the RTI Act; however

- the remaining information in the Contracts – that is, the Identified Contract Information⁴ – does not comprise exempt information under section 48 of the RTI Act, nor would its disclosure, on balance, be contrary to the public interest under section 49 of the RTI Act. I therefore find that there are no grounds under the RTI Act to refuse access to the Identified Contract Information.

2. This means that further information is to be released to the applicant in accordance with the marked-up copy provided by the Office of the Information Commissioner (**OIC**) to the Department on 23 September 2025.

3. My reasons for the decision follow.



K Zaidiza
Manager Right to Information⁵

Date: 6 May 2026

⁴ As defined at paragraph 258 below.

⁵ As a delegate of the Information Commissioner under section 145 of the RTI Act.

REASONS FOR DECISION

Summary

4. The applicant applied⁶ to the Department for access under the RTI Act to:

A copy of the current contract titled or known as the "Livestock Transport Services Contract" between the Department and Watco East West; and

Documents that contain the terms and conditions, obligations, and responsibilities of each party under that contract, including but not limited to:

- *Service delivery requirements*
- *Performance standards or KPIs*
- *Payment arrangements*
- *Reporting or compliance obligations*
- *Duration and renewal provisions*

Time period for request: 1 July 2021 to 15 April 2025.

5. The Department located 279 pages relevant to the scope of the application - comprising a copy of the North Transport Service Contract and the Central and South Transport Services Contract (**the Contracts**) - and decided⁷ to refuse access to all 279 pages on the ground that it comprises information the disclosure of which would found action for breach of confidence under schedule 3, section 8 of the RTI Act.
6. The applicant applied to the OIC⁸ contesting the refusal of access of the Contracts and stating that the Department has failed to locate all documents requested in the second part of the access application, particularly in relation to the procurement and approval process of the Contracts.

Issues for determination

7. There are two issues for determination in this review:

- whether access to the further documents raised by the applicant may be refused because they fall outside the scope of the access application; and
- whether access to the Contracts may be refused on the ground that disclosure of them would found an action for breach of confidence and they are therefore exempt information.

8. In determining these issues I have considered evidence, submissions, legislation and other material as set out in these reasons.⁹ I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information,¹⁰ and in doing so, have acted in accordance with section 58(1) of the HR Act.¹¹

⁶ Access application dated 15 April 2025.

⁷ Decision dated 20 May 2025. This is the *reviewable* decision for the purposes of this review.

⁸ External review application dated 6 June 2025.

⁹ Including footnotes.

¹⁰ Section 21 of the HR Act.

¹¹ All participants in this review are corporations or an agency, such that at face value it may not appear necessary to consider the application of the HR Act, which only affords human rights to individuals in Queensland. However, Kingham J in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33 at [90] indicated that where section 58(1) of the HR Act applies, there need be no mover to raise human rights issues because that section requires the relevant public entity to properly consider engaged human rights and to not act or make a decision that is not compatible with human rights. In any event, in observing and applying the law prescribed in the RTI Act, an RTI decision maker will be '*respecting and acting compatibly with*' applicable human rights as stated in the HR Act (*XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]). This approach to the Victorian analogues of the HR Act and RTI Act has been considered and endorsed by the Queensland Civil and Administrative Tribunal

Documents outside the scope of an application

9. As noted in paragraph 4 above, the second part of the access application sought access to:

Documents that contain the terms and conditions, obligations, and responsibilities of each party under that contract, including but not limited to:

- *Service delivery requirements*
- *Performance standards or KPIs*
- *Payment arrangements*
- *Reporting or compliance obligations*
- *Duration and renewal provisions*

Time period for request: 1 July 2021 to 15 April 2025

10. On external review, the applicant contended that the Department failed to identify and locate all documents requested in the application, particularly:

...[I]n its decision, the Department advised that it located two contracts in response to our request, comprising 279 pages. While we did request access to a contract, our application also extended to other documents that may contain the terms and conditions of that contract—such as briefing notes, internal memos, and related correspondence. Given the significance of the contract, it is reasonable to expect that it would have been subject to a detailed procurement process and subsequent executive approvals, potentially involving the Director-General or Minister. In this context, identifying only two contracts appears incomplete.

11. In response, the Department advised:¹²

...[N]oting that the applicant did not specify in their scope of application the type of documents that may contain the terms and conditions of the contract, it is the department's view that the located/responsive documents (2 contracts) also contained information responsive to part two of the scope of request (terms and conditions, obligations and responsibilities of each party to the contract).

12. OIC conveyed a view to the applicant¹³ that, given the terms of the application were limited to conditions, terms, obligations and responsibilities under the Contracts, procurement and approval documents would be outside the scope of the application as these would predate the Contracts.

13. The applicant contested this view and submitted:¹⁴

...[E]xpecting applicants to identify specific "types" of documents in a scope places an unreasonable burden on the applicant and contradicts the pro-disclosure purpose of the RTI Act and the government's commitment to transparency.

...[S]uch a scope could encompass both documents created before and after the contract was completed. Procurement documents for the contract could contain the terms and obligations of the proposed contract. The responsibilities of each party under the contract could be transcribed in file notes, emails or briefing notes to senior executives about the proposed option to enter into the contract.

(QCAT) in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23]. Having taken this approach in this review, I have observed relevant rights under section 58(1) of the HR Act to the extent then that it is necessary to do so.

¹² Correspondence dated 26 September 2025.

¹³ Letter dated 4 November 2025.

¹⁴ Submissions dated 18 November 2025.

...[T]he applicant has not attempted to broaden the scope in any way, the issue arises solely from how the original request has been interpreted. In this case, the scope has been read so narrowly that it disadvantages my client.¹⁵ This is particularly so given that the Department made no attempt to clarify or refine the scope before reaching its decision.

14. In response, the Department further submitted:¹⁶

The department disagrees that it has taken an extremely narrow interpretation of the scope of the application. If the application is considered very broadly, the scope may include the following types of documents:

- a) *documents which include references to, or set out, the clauses of the Contracts, which govern the commercial relationship between the department and [Watco] (**Terms Documents**); and*
- b) *documents which relate to the specific performance by the parties of each of the obligations under the Contracts (**Performance Documents**).*

Any Performance Documents, when read as a whole with each other, will naturally reveal the terms and conditions, obligations and responsibilities of the Contracts. However, as the scope of the application is written in general terms, the department interpreted the application that the scope includes the Terms Documents only and does not include Performance Documents.

On the basis of the department's interpretation that the scope is limited to the Terms Documents, the Contracts provide the information the applicant seeks.

15. The Information Commissioner has previously expressed the view that the scope of an application sets the parameters for the agency's searches.¹⁷
16. The terms of the second part of the access application seek access to documents containing "*the terms and conditions, obligations, and responsibilities of each party under that contract*". The Department considered such scope valid. In interpreting the scope, the Department adopted a reasonable and objective understanding of the terms used by the applicant, having regard to the ordinary meaning of the words and contextual reference to the Contracts in question.
17. I have considered the applicant's detailed submissions about the intended scope of the second part of its access application; however, I maintain the view expressed to the applicant during the course of the review, to the extent the second part of the access application was limited to '*documents that contain the terms and conditions, obligations, and responsibilities of each party under that contract*', I do not accept that this part of the scope extended to documents relating to the tender, procurement or approval processes.
18. In terms of the applicant's assertion that OIC should take a less restrictive view, the words '*that contract*' in the scope prevent this. A document does not become a contract until it is executed; prior to that it is a draft document. The '*file notes, emails or briefing notes to senior executives about the proposed option to enter into the contract*' and '*procurement documents, meeting records, briefs, emails etc. discussing the terms of the contract*' raised in the applicant's submissions relate to pre-contract discussions and negotiations. Given the Contracts did not exist at that point, such documents cannot

¹⁵ Under section 24(1) of the RTI Act, a person may make an access application. In this matter, the person identified as the applicant in the access application dated 15 April 2025 was the named applicant. Accordingly, although this submission and the submission at paragraph 32 below refer to a client, the named applicant is the applicant for the purpose of the external review and this decision.

¹⁶ Submissions dated 13 February 2026.

¹⁷ Cannon and Australian Quality Egg Farms Ltd (1994) 1 QAR 491 at [8]; O80PCE and Department of Education and Training (Unreported, Queensland Information Commissioner, 15 February 2010) at [33]; Van Veenendaal and Queensland Police Service [2017] QICmr 36 (28 August 2017) at [15].

relate to the *'the terms and conditions, obligations, and responsibilities of each party under [each] contract'*.

19. An interpretation that extends the scope to include documents predating the contract is not supported by the wording of the application and would constitute an expansion beyond its reasonable meaning. On this basis, the Department reasonably interpreted such scope as documents that contain the terms and conditions of the contract. Taking into consideration that the Contracts included such terms and conditions, the located documents sufficiently addressed the second part of the access application.
20. I am satisfied that the documents the applicant contends the Department failed to locate in response to the second part of the access application are not captured by the scope of the request. As such, there was no requirement that the Department conduct searches to locate these further documents in response to the access application.

Breach of Confidence

Relevant law

21. The RTI Act confers a right of access to documents of government agencies.¹⁸ However, this access right is subject to other provisions of the RTI Act, including grounds on which access may be refused.¹⁹ Section 47(3)(a) of the RTI Act permits an agency to refuse access to documents to the extent they comprise exempt information.²⁰ Under schedule 3, section 8(1) of the RTI Act, information will be exempt information where its disclosure would found an action for breach of confidence. The cause of action referred to in schedule 3, section 8(1) of the RTI Act can arise in either *contract* or *equity*.²¹
22. The test for exemption under schedule 3, section 8(1) of the RTI Act must be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, with appropriate standing to bring an action to enforce an obligation of confidence said to be owed to that plaintiff by an agency such as the Department.²² In the circumstances of this case, the hypothetical plaintiff is the Third Party.

Findings

23. To found an action in *contract* for breach of confidence, it is necessary to be satisfied that the information in question is subject to an express contractual clause that binds the parties to keep the information confidential, supported by consideration.
24. As part of this external review, OIC contacted the Third Party,²³ Watco East West Pty Ltd (**Watco**) in order to ascertain whether it objected to disclosure of the Contracts (or parts thereof), and if so, whether it wished to become a participant in OIC's review.²⁴
25. Watco responded by advising that it objected to disclosure and wished to become a participant.²⁵ In its response, Watco submitted that specific sensitive commercial information contained in the Contracts should remain confidential as it was subject to an obligation of confidence (**Confidential Information**).

¹⁸ Section 23 of the RTI Act.

¹⁹ Section 47 of the RTI Act. In reaching my view, I have also taken into account that the refusal grounds are to be interpreted narrowly (section 47(2)(a) of the RTI Act) and the RTI Act be administered with a pro-disclosure bias (section 44 of the RTI Act).

²⁰ The types of exempt information are set out in schedule 3 of the RTI Act.

²¹ *Ramsay Health Care v Office of the Information Commissioner & Anor* [2019] QCATA 66 (**Ramsay**)

²² *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (**B and BNRHA**) at [44].

²³ Letter dated 21 August 2025.

²⁴ Section 89 of the RTI Act.

²⁵ Correspondence dated 4 September 2025.

26. OIC then conveyed a view to the Department that it had not satisfied the onus it bears of demonstrating that access to the Contracts may be refused on the basis that disclosure would found an action for breach of confidence.²⁶ In this view, OIC noted that whilst the Department had correctly identified in its decision that there is a confidentiality obligation that applies to confidential information by virtue of an express confidentiality provision in the Contracts, and the definition of confidential information in the two contracts included commercially sensitive information of a party, that definition did not expressly and clearly extend to the Contracts themselves. OIC also observed that the definition did, however, appear to apply to the Confidential Information in the Contracts identified by Watco.

27. The Department contested OIC's view and submitted:²⁷

...[O]n the basis of the obligations of confidentiality during the procurement process, the circumstances around negotiation and execution of the Contracts, the confidentiality clause in the Contracts, and the conduct of both parties in the administration of the Contracts, the Contracts themselves have been treated as confidential by both the department and [Watco]. Accordingly, the obligation of confidentiality extends to the Contracts themselves.

28. In an effort to informally resolve this matter, OIC invited the Department and Watco to reconsider release of versions of the Contracts with the Confidential Information redacted, but all other information (**Identified Contract Information**) visible.

29. Watco agreed²⁸ to this proposed release of the Identified Contract Information in the Contracts.

30. The Department maintained its objection to disclosure²⁹ of the entirety of the two Contracts, including the Identified Contract Information, on the basis that:

- disclosing the Contracts themselves would found an action for breach of confidence; and
- redacting the commercially sensitive information would '[r]ender the Contracts meaningless and the remaining information would be of no value the applicant.'

The Confidential Information

31. In relation to the Confidential Information, having considered the Contracts, I noted that:

- the Contracts contain an express confidentiality clause that binds both parties, being the Department and Watco to keep certain information confidential
- while I am prevented from revealing or discussing the operation of the confidentiality clause in any detail,³⁰ the confidentiality clause in the Contracts cover sensitive financial and commercial information; and
- the confidentiality clause continues to bind the Department.

32. OIC conveyed this view to the applicant. In response, the applicant submitted:³¹

The preliminary view also notes that each contract contains an express confidentiality clause obliging the Department to maintain the confidentiality of certain information. Given that OIC is constrained from disclosing the precise content of these clauses, it follows that there is a substantial onus placed on it to provide full reasons supporting the claim of contractual breach

²⁶ Sections 47(3)(a), 87(1) and schedule 3, section 8 of the *Right to Information Act 2009* (Qld).

²⁷ Email correspondence dated 2 September 2025.

²⁸ Letter dated 16 September 2025.

²⁹ Email correspondence dated 2 September and 26 September 2025.

³⁰ Section 108 of the RTI Act.

³¹ Submission dated 18 November 2025.

of confidence so my client can adequately assess their position. However, this has not occurred. The preliminary view does not address two key considerations:

- a) whether the relevant clause includes a carve-out for disclosure under the RTI Act, which is common in such contracts; and*
- b) whether the relevant clause is negated when a party consents to the release of information, as Watco has done in this matter.*

These factors are directly relevant to assessing the applicability of the breach of confidence exemption and must be explicitly considered in the OIC's analysis. Given the public interest and significant use of public monies in this contract, we submit that it would be extraordinary for the Department not to include the above clauses.

33. In terms of query a), while the obligation of confidence created in the Contracts does provide for disclosure in certain circumstances, I am satisfied that none of those circumstances arise in the present case specifically in relation to the Confidential Information.
34. In terms of query b), as explained in the next section of these reasons below, I consider that certain information that Watco has agreed to release, including the confidentiality provisions in the Contracts, does not form part of the Confidential Information and disclosure is suitable under the circumstances.
35. However, in relation to the Confidential Information Watco has *not* agreed to release, I am satisfied that, if the Department were to disclose this Information under the RTI Act, Watco would have standing to bring an action for breach of confidence against the Department.
36. In supporting its view that the Confidential Information should be disclosed, the applicant raised a number of public interest considerations.³²
37. QCAT confirmed in its decision in *Adani Mining Pty Ltd v Office of the Information Commissioner & Ors*³³ that, apart from the possibility of disclosure arising from the nature of 'responsible government', there is no public interest exception in respect of a contractual obligation of confidence. In any event, there is nothing in the material before me that would raise an issue about the genuineness of the obligations of confidentiality imposed by the Contracts, or that would suggest that the parties entered into the Contracts for a collateral or improper purpose sufficient to render the clauses unenforceable.³⁴ Accordingly, while I acknowledge the public interest considerations raised by the applicant, it is not necessary, nor appropriate, for me to take them into account in this review, in circumstances where it is established that a contractual obligation of confidence applies.
38. Based on the information before me, I find that the Confidential Information is subject to a binding contractual obligation of confidence arising from the Contracts and that its disclosure would therefore found an action in contract for breach of confidence under schedule 3, section 8(1) of the RTI Act. Accordingly, I find that the Confidential Information comprises exempt information which may be refused.³⁵

³² Letter to OIC dated 18 November 2025.

³³ [2020] QCATA 52 (*Adani*) at [32] to [39].

³⁴ These being the only such matters which may prevent a contractual confidentiality clause from imposing an obligation of contractual confidence under the schedule 3, section 8(1) exemption: *Adani* at [32]-[39].

³⁵ Sections 47(3)(a) and 48 of the RTI Act.

The Identified Contract Information

39. Watco's initial position was that the entirety of the Contracts were subject to their own confidentiality clauses.
40. However, as indicated in paragraph 29 above, Watco later agreed to the release of some information in the Contracts – i.e. the Identified Contract Information.³⁶
41. Given the Department claims that the entirety of the two Contracts, including their confidentiality clauses, comprise exempt information, I cannot set out the contents of those confidentiality clauses in these reasons.³⁷ I can, however, confirm in broad terms that the confidentiality clauses apply in circumstances when a party has not obtained prior written approval of the other party.
42. I noted that Watco's agreement to release the Identified Contract Information could be understood as prior written approval, which would exclude that information from obligations in the confidentiality clauses, and enable the Department to disclose that information. On seeking Watco's response to this understanding, Watco confirmed:³⁸

The information which Watco has agreed to release was not, in Watco's view, "confidential information" within the meaning given in the contracts at the time when Watco agreed to release the information. Accordingly, Watco did not obtain the prior written approval of the other party to the contracts before agreeing to release that information.

Watco confirms that it would not bring an action for breach of confidence against the Department if the Department releases the Identified Contract Information. However Watco cannot, speak for the other party to the contracts.

43. In this regard the applicant also submitted:³⁹

... the exemption is only engaged where a party with enforceable rights could realistically bring a claim in respect of the information held by the agency.

However, Watco ..., the entity who would be the "identifiable plaintiff" has agreed to the release of some of the information. This undermines the premise that there is a plaintiff with standing to enforce the obligation, as consent or acquiescence to disclosure negates the ability to claim actionable breach.

44. The Department disagreed with the applicant's position that Watco agreeing to release a heavily redacted version of the contracts '*undermines the premise that there is a plaintiff with standing to enforce the obligation, as consent or acquiescence to disclosure negates the ability to claim actionable breach*'. In this regard, the Department stated:⁴⁰

The department reiterates its view ... that [Watco]'s in principle agreement to provide a redacted version of the Contracts in the circumstances of an informal resolution, which may remain confidential, does not indicate that:

- a) [Watco] does not consider the Contracts themselves to be confidential; or
- b) that [Watco] consents to the department disclosing the Contracts, being Confidential Information under the Contracts.

³⁶ As stated in Watco's letter dated 16 September 2025.

³⁷ Section 108(3) of the RTI Act.

³⁸ By email correspondence dated 25 March 2026.

³⁹ Submissions dated 18 November 2025.

⁴⁰ Email correspondence dated 15 October 2025 and 13 February 2026.

45. Having considered the Department's, the applicant's and Watco's submissions, I am satisfied:
- Watco has agreed to release the Identified Contract Information – and in doing so has provided prior written approval for the purpose of the confidentiality clauses, so an exclusion to those clauses' prohibition on disclosure applies
 - further, Watco has confirmed to OIC that the Identified Contract Information is not confidential information within the meaning given in the Contracts; and
 - Watco has confirmed it would not bring an action for breach of confidence against the Department if the Department released the Identified Contract Information.
46. In these circumstances, it is unclear how Watco could be considered to be entitled to the contractual obligation of confidence, and to have it respected – and thus unclear how Watco could be considered a proponent for a hypothetical action. In these circumstances, I find that disclosure of the Identified Contract Information would not found an action for breach of a **contractual** obligation of confidence.
47. The Department also submitted that an equitable obligation of confidence arises and submitted:⁴¹

Since execution of the Contracts, the parties have continued to treat the Contracts as confidential. The department has not provided a copy of the Contracts to third parties or released them to the public.

The department is not aware that [Watco] has provided a copy of the Contracts to third parties in breach of any duty of confidentiality or in a way which is contrary to the treatment of the Contracts themselves as confidential.

The confidentiality clause in the Contracts outlines the obligations of confidentiality for both the department and [Watco] with regards to the disclosure of the Contracts... Under the confidentiality clause in the Contracts, the parties must not disclose or give to any person confidential information, which includes commercially sensitive information.

On the basis that the Contracts are not required to be disclosed under the RTI Act on the basis of the exemption in section 47(3)(a) and Schedule 3 of the RTI Act, disclosure to the applicant constitutes an unauthorised use of the Contracts.

48. A series of decisions made by QCAT have considered disclosure founding an action for breach of an equitable obligation of confidence.⁴² Having considered the Department's submissions, I consider that the Identified Contract Information does not satisfy the four cumulative elements necessary to give rise to an equitable obligation of confidence.
49. Whilst the information in question can be identified with specificity, has the necessary quality of confidence, and has been given by the third party and received by the

⁴¹ Submissions received by email dated 2 September 2025 and 15 October 2025.

⁴² *CPB Contractors Pty Ltd & Ors v Cole & Anor* [2026] QCATA 40 (*CPB Contractors*); *Ramsay*; *Screen Queensland Pty Ltd v Information Commissioner* [2019] QCATA 122 (*Screen Queensland*); *Adani Mining Pty Ltd v Office of the Information Commissioner & Ors* [2020] QCATA 52 (*Adani*); *Walker Group Holdings Pty Ltd v Queensland Information Commissioner* [2021] QCATA 30; *NBN Co Limited v Information Commissioner & Ors* [2021] QCATA 40 and *Park v Information Commissioner* [2021] QCATA 109. The public interest cannot be taken into account when determining the existence of an equitable obligation (*Ramsay* at [81]-[82], *Screen Queensland* at [46]-[50], *Adani* at [42]-[45]). Whilst some public interest considerations can be generally relevant, a public interest balancing test is not required (*CPB Contractors* at [124]). Also, it appears that equitable considerations (such as clean hands and iniquity) which may generally provide a basis for refusing an equitable remedy either cannot be considered in the FOI/FTI context (*Screen Queensland* at [48] citing *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic) and Another* (1987) 14 FCR 434 at 437) or require proof of the collateral or improper purpose outside of the documents in issue when those documents are regular on their face (as is the case here) (*BGC (Australia) Pty Ltd v Fremantle Port Authority & Anor* [2003] WASCA 250 at [33]-[35]).

Department in circumstances importing an obligation of confidence, I consider that disclosure of it would not constitute an unauthorised use of the information.

50. An obligation of confidence may effectively be waived by the express or implied consent of the confider, and in the circumstances of this case, express consent to disclosure has been provided.⁴³ Accordingly, Watco's position precludes satisfaction of the fourth of the four elements – that is actual or threatened misuse of the confidential information. I therefore find that disclosure of the Identified Contract Information would not found an action for breach of an **equitable** obligation of confidence.
51. Given I do not consider that contractual or equitable grounds for a breach of confidence apply to the Identified Contract Information and render it exempt information, I have also considered whether the contrary to public interest ground of refusal applies.
52. In this regard, the Department has considered the following factors apply favouring disclosure and nondisclosure of the Contract Identified Information:⁴⁴

For the purpose of section 49 of the RTI Act:

- (a) there are no factors identified as irrelevant to decision whether, on balance, disclosure of the Contracts would be contrary to the public interest;*
- (b) the following factors favour disclosure:*
 - disclosure could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability;*
 - disclosure could reasonably be expected to contribute to positive and informed debate, for example about the transportation of cattle by rail;*
 - disclosure could be expected to ensure effective oversight of expenditure of public funds; and*
 - disclosure could reasonably be expected to reveal the reason for a government decision, and any background or contextual information that informed the decision;*
- (c) the following factors favour non-disclosure:*
 - disclosure could reasonably be expected to prejudice business affairs of a person, ie [Watco];*
 - disclosure could reasonably be expected to prejudice the competitive commercial activities of an agency, particularly in relation to TMR's procurement of future contracts;*
 - disclosure could reasonably be expected to cause a public interest harm because disclosure would:*
 - (i) disclose information... concerning the business, professional, commercial or financial affairs of an agency or other person; consist of information of a confidential nature that (for the reasons set out above) was communicated in confidence; and*
 - (ii) reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government. In particular, disclosure may restrict the entities who agree to engage with TMR, or the information provided by those entities, to negotiate future contracts; and*
- (d) on balance the weight attributed to the factors favouring disclosure do not outweigh the factors favouring non-disclosure*

53. I accept and agree that the factors favouring disclosure and nondisclosure raised by the Department are relevant.
54. While I acknowledge that disclosure of the Identified Contract Information may be expected to prejudice the business and commercial affairs to the parties, prejudice the competitive commercial activities of an agency or affect confidential communications, these factors favouring nondisclosure warrant relatively little weight in circumstances

⁴³ *B and BNRHA* at [105]-[106].

⁴⁴ Submissions received by email dated 2 September 2025 and 15 October 2025.

where the party to the contract has agreed to disclosure of the information. Taking note of the RTI Act's pro-disclosure bias and also considering the relatively greater weight of accountability and transparency factors favouring disclosure, I consider that such factors are determinative in the circumstances of this case. I therefore find that disclosure of the Identified Contract Information would not, on balance, be contrary to the public interest.

55. Based on the above, I am satisfied that the Identified Contract Information does not comprise exempt information under section 48 of the RTI Act and nor would its disclosure, on balance, be contrary to the public interest under section 49 of the RTI Act. I therefore find that there are no grounds under the RTI Act to refuse access to the Identified Contract Information.

Conclusion

56. The above are the reasons for my decision set out at paragraph 1.
57. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner under section 145 of the RTI Act.