



Decision and Reasons for Decision

Citation:	F60XCX and Department of Natural Resources and Mines [2017] QICmr 19 (9 June 2017)
Application Number:	312854
Applicant:	F60XCX
Respondent:	Department of Natural Resources and Mines
Decision Date:	9 June 2017
Catchwords:	ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE – whether in-house legal advice was independent – whether legal professional privilege has been waived – relevance of <i>Freedom of Information Act 1982 (Cth)</i> – Schedule 3, section 7 of the <i>Right to Information Act 2009 (Qld)</i> and section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> ADMINISTRATIVE LAW – INFORMATION PRIVACY ACT – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – information related to workplace investigation arising from applicant’s complaint – procedural fairness considerations for a complainant in a workplace investigation – personal information of other individuals – 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 (Qld)</i> and section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied to the Department of Natural Resources and Mines (**the Department**) under the *Information Privacy Act 2009 (Qld)* (**IP Act**) for documents relating to a complaint he lodged with the Department.
2. The Department located 542 pages of information and 6 audio recordings relevant to the information access application. In relation to these documents, the Department decided¹ to:

¹ Department’s original decision dated 18 March 2016.

- grant access to 251 pages
 - grant partial access to 17 pages, subject to the deletion of material pursuant to section 49(1) of the *Right to Information Act 2009 (Qld)* (**RTI Act**)²
 - grant partial access to 1 page with the deletion of material pursuant to section 49(1) and Schedule 3, section 7 of the RTI Act
 - refuse access to 233 pages pursuant to section 49(1) of the RTI Act; and
 - refuse access to 40 pages pursuant to Schedule 3, section 7 of the RTI Act.
3. On internal review, the Department decided to uphold its original decision.³
 4. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of this decision.⁴
 5. For the reasons set out below, I vary the Department's internal review decision and find that parts of the information in issue⁵ are subject to legal professional privilege and therefore exempt from disclosure and it would be, on balance, contrary to the public interest to disclose⁶ other parts of the information in issue.

Background

6. The applicant made a complaint to the Department about the conduct of a particular officer (**Officer X**). The complaint relates to the appropriateness of feedback provided by Officer X about the applicant's professional performance.
7. The Department engaged a specialist workplace investigator (**Workplace Investigator**), independent of the Department, to conduct an investigation into the conduct of Officer X. The Workplace Investigator interviewed the applicant as part of the investigation process, as well as, a number of other relevant individuals.
8. The outcome of the investigation was that the allegations against Officer X were not substantiated. The Department took no further action against Officer X regarding the applicant's complaint.
9. The Department provided the applicant with a summary of the Workplace Investigator's findings and the outcome of the investigation into Officer X.⁷ The applicant is not satisfied with the outcome of the investigation nor is he satisfied that the investigation was conducted in a transparent and proper manner.⁸
10. Appendix 1 to these reasons for decision sets out the significant procedural steps taken during the external review.

Reviewable decision

11. The decision under review is the Department's internal review decision dated 17 May 2016.

² Section 67 of the IP Act provides that access to information may be refused on the same grounds as under section 47 of the RTI Act. This decision will refer to the relevant RTI Act grounds for refusal.

³ Internal review decision dated 17 May 2016.

⁴ External review application dated 12 June 2016.

⁵ See paragraph 14 for definition of 'information in issue'.

⁶ Sections 47(3)(b) and 49 of the RTI Act.

⁷ In a letter dated 27 November 2015.

⁸ Addendum to information access application dated 14 November 2015.

Evidence considered

12. I have disclosed the evidence, submissions, legislation and other material I have considered in reaching this decision in these reasons (including footnotes and appendices).

Information in Issue

13. On external review, OIC facilitated the release of additional documentation, to which the Department had previously refused access.⁹ This information consisted of 101 pages (3 full pages, and 98 part pages).
14. The information that remains in issue in this review and is the subject of this decision is contained in 288 pages. This information consists of the entire content of 190 of those pages and 6 audio recordings and some information on 98 pages (**Information in Issue**).¹⁰

Issues for determination

15. The issues for determination in this review are whether:
- access to 40 pages of the information in issue should be refused on the basis that it would be privileged from production in a legal proceeding on the ground of legal professional privilege; (**Category A Information**);¹¹ and
 - access to 150 full pages, 98 part pages and 6 audio recordings of the information in issue should be refused on the basis that, on balance, disclosure would be contrary to the public interest (**Category B Information**).¹²

Category A Information

Relevant law

16. The IP Act confers on an individual a right to access documents of an agency, to the extent they contain the individual's personal information.¹³ This right of access is subject to limitations, including grounds for refusal of access.¹⁴
17. The RTI Act provides that information is 'exempt information' if it would be privileged from production in a legal proceeding on the ground of legal professional privilege (**LPP**).¹⁵
18. It is well settled that LPP attaches to confidential communications between a lawyer and client (including communications through their respective servants or agents) made for the dominant purpose of seeking or giving legal advice or professional legal assistance

⁹ The information in issue includes interview transcripts, precis of interviews, and the personal details and witness statements of other individuals who provided evidence regarding the workplace investigation into Officer X.

¹⁰ Appendix 2 sets out the partially nondisclosed information and fully nondisclosed information, together with the basis for the nondisclosure.

¹¹ See Appendix 2, Table 1.

¹² See Appendix 2, Table 2.

¹³ Section 40(1)(a) of the IP Act. Section 12 of the IP Act defines personal information as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

¹⁴ Grounds for refusal of access are set out in section 47 of the RTI Act. Section 67(1) of the IP Act provides that access to information may be refused under the IP Act on the same grounds as in section 47 of the RTI Act.

¹⁵ Schedule 3, section 7 of the RTI Act.

for use, or obtaining material for use, in legal proceedings that have commenced, or were reasonably anticipated, at the time of the relevant communication.¹⁶

19. Thus, for information to attract LPP, the following elements must be established:

- confidential communications
- dominant purpose test; and
- professional relationship and independence.

20. Finally, it is also settled law that LPP can be lost if it is expressly¹⁷ or impliedly¹⁸ waived.

Applicant's submissions

21. The applicant submits¹⁹ that this review should consider:

whether the in-house lawyer provided the advice in an independent way; and

whether the Department, by its actions, impliedly waived LPP in relation to the information.

22. Additionally, the applicant asserts that:

In the context of federal FOI legislation, it is recommended that government departments and agencies not claim LPP in relation to particular information unless it is considered that 'real harm' would result from releasing the information. I believe that the same principles should be applied in the Queensland FOI legislation context.

And that;

In this instance, there would not be real harm in releasing the subject information to me. Instead, the truth would be exposed. I ask that the OIC intervene to recommend to the Department that the information be released to me on this basis.

Findings

Confidential communications and Dominant purpose

23. The applicant's submission querying whether the Department can claim LPP focuses on the issue of whether the third element of the test has been satisfied in relation to the Category A Information. Accordingly, I do not propose to explore the first two elements of the test except in so far as to state that I am satisfied, on the basis of the information before me in this review, that the first two elements of the test for LPP are satisfied.

Professional relationship and independence

24. In this matter, the applicant has asked OIC to consider if the Department's in-house lawyer provided advice with the requisite degree of independence.

25. LPP only attaches to confidential communications between a legal adviser and a client if:

¹⁶ *Esso Australia Resources Ltd v Commission of Taxation* (1999) 74 ALJR 339.

¹⁷ *Goldberg v Ng* (1994) 33 NSWLR 639 at page 670.

¹⁸ *Osland v Secretary to the Department of Justice* [2008] HCA 37 at paragraph 45.

¹⁹ Page 5 of letter from applicant dated 12 April 2017.

- the advice is provided by the legal adviser in his or her capacity as a professional legal adviser; and
 - the legal adviser is competent and independent.²⁰
26. The High Court of Australia has established that LPP may protect communications between salaried employee legal advisers of a government department or statutory authority and his/her employer as client (including communications through other employees of the same employer) provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character notwithstanding the employment.²¹
27. A lawyer employed by a government agency or an 'in-house' lawyer may claim privilege on behalf of his or her employer as the client.²² However, an in-house lawyer will not have the required degree of independence if their advice is affected by their personal loyalties, duties and interests.²³
28. In *Potter and Brisbane City Council*²⁴, the Information Commissioner found that the Brisbane City Council's City Solicitor and the professional staff of the City Solicitor's office:
- were appropriately qualified legal practitioners
 - conducted their practice with the requisite degree of independence from their employing organisation; and
 - had given legal advice to the Council which attracted LPP.
29. In this review, the Department has submitted:
- the Category A Information was created specifically for the purpose of obtaining legal advice²⁵
 - it was not disclosed to any party outside the relevant units of the department;²⁶ and
 - the advice was provided by a suitably qualified legal practitioner acting in the capacity of an in-house legal advisor.²⁷
30. Having reviewed the Category A Information, I note that the legal advice was sent directly between an officer in the Employee Relations Unit and an officer in the In-house Legal Unit. The sole reference to another individual being involved in the communication is of another legal officer with the Department's In-house Legal Unit, who appears to have provided assistance in the provision of the legal advice.
31. There is no evidence before me to suggest that the officer who provided the legal advice (or anyone else in the In-House Legal Unit) were answerable to other persons in respect of the advice they provided about the workplace investigation. Furthermore, there is no evidence before me to indicate that the advice was provided in a manner that differed from the usual practice of obtaining and/or providing in-house legal advice.

²⁰ *Proudfoot v Human Rights and Equal Opportunity Commission* (1992) 28 ALD 734 at 740.

²¹ *Waterford v Commonwealth* (1986) 163 CLR 54 per Mason and Wilson JJ at paragraph 7 of their Honours' judgement.

²² *Attorney-General (NT) v Kearney* (1985) 158 CLR 500 at 530-531.

²³ *Seven Network News v News Ltd* (2005) 225 ALR 672 at 674.

²⁴ (1994) QAR 37.

²⁵ The Department's decisions dated 18 March 2016 and 17 May 2016.

²⁶ The Department's decisions dated 18 March 2016 and 17 May 2016.

²⁷ Confirmed by the Department in a telephone conversation dated 7 June 2017.

32. For the reasons outlined above, I am satisfied that the officer in the In-house Legal Unit who provided the legal advice (which comprises Category A Information) was an appropriately qualified legal practitioner who provided the advice with the requisite degree of independence from the Department.
33. As all three elements have been met, I am satisfied that the Category B Information attracts LPP, and is exempt information.

Waiver of legal professional privilege

34. The applicant asserts that the Department's actions may have impliedly waived LPP, but has not expanded on his concerns in this regard. Nonetheless, I have considered whether the Department has impliedly waived LLP in accordance with the test set out in *Mann v Carnell*²⁸ at page 13 which states:

What brings about the waiver is the inconsistency, which the courts, where necessary informed by considerations of fairness, perceive, between the conduct of the client and maintenance of the confidentiality; not some overriding principle of fairness operating at large.

35. As outlined in paragraph 30, the Category A Information is correspondence between the Department's In-House Legal Unit and the Employee Relations Unit only. There is no evidence before me to suggest this communication has been disclosed to any other individuals. Accordingly, there is no evidence before me to indicate that the Department has taken actions inconsistent with the maintenance of confidentiality that impliedly (or expressly) waive LPP.
36. Particularly, I do not consider that the Department has taken any action that has disclosed the substance or effect of communications subject to LPP, in part or full. I am satisfied that the internal communications between the Department's officers has not resulted in a waiver of LPP.

Should 'real harm' be considered?

37. I will now consider the applicant's submission that OIC should consider taking the approach recommended to federal government departments, namely that they should not claim LPP unless real harm would result from releasing the information.
38. I understand the applicant's reference to this 'recommended' approach to be a reference to the advisory notice issued by the then Secretary of the Commonwealth Attorney-General's Department dated 2 March 1986, following a Federal Cabinet decision in June 1985, known as the 'Brazil Direction'.²⁹
39. In summary, the 'Brazil Direction' directed that Commonwealth agencies should not refuse access to non-contentious material only because there were technical grounds of exemption available under the *Freedom of Information Act 1982* (Cth). The Brazil Direction, was not however, a direction to the Australian Information Commissioner to consider the question of 'real harm' in determining if information were exempt information under the Commonwealth *Freedom of Information Act 1982*.
40. In Queensland, under the IP Act and RTI Act, government departments have a discretion to release information, even if it is exempt. Thus, a government department may choose to disclose information to an applicant under the IP or RTI Acts, even though it is subject

²⁸ (1999) 201 CLR 1.

²⁹ <https://www.oaic.gov.au/freedom-of-information/foi-archive/foi-guidelines-archive/part-5-exemptions-version-1-1>.

to LPP. However, those Acts do not bestow the power to exercise the same discretion upon OIC. Section 118(2) of the IP Act states:

If it is established that a document is an exempt document or a contrary to public interest document, or contains exempt information or contrary to public interest information the commissioner does not have power to direct that access to the document, or the document to the extent of the information, is to be given.

41. Thus, as I have established that the Category A information satisfies the requirements for exemption under the RTI Act, I have no discretion to consider the issue of whether there would be any 'real harm' to the department in disclosing the Category A information and whether the information should be otherwise disclosed.

Conclusion – Legal professional privilege

42. I am satisfied that the Category A Information is exempt information on the grounds that it is subject to LPP and accordingly access to the Category A information is refused.

Category B Information

Relevant law

43. Access to information may be refused where disclosure would, on balance, be contrary to the public interest. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and explains the steps that a decision-maker must take into account 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.³⁰

44. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

Applicant's Submissions

45. The applicant provided a number of submissions to OIC during the course of the review. Additionally, the applicant provided extensive information about the background events which lead to his making a complaint about Officer X. I have carefully considered each of the submissions raised by the applicant and I have distilled the submissions into central issues discussed below.

Findings

Irrelevant factors

³⁰ 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.

46. I do not consider that any irrelevant factors arise in this matter.

Factors favouring disclosure

Personal information of the applicant

47. A factor favouring disclosure of some parts of the Category B Information is that it is the personal information of the applicant.³¹
48. The applicant has submitted:

This is not about disclosing information relating to unsubstantiated allegations about [Officer X]. Rather, it is about disclosing information about what [Officer X] and other witnesses state about me and my work...this is my personal information (not [Officer X's] personal information).³²

...

In the course of the investigation [Officer X] made further comments and expressed further opinions about me and my work...I am entitled to know exactly what [Officer X] stated about me and my work...during the investigation; this is clearly my personal information and I am entitled to know this information.³³

49. The Category B Information was created for the purpose of investigating the conduct of Officer X in relation to feedback expressed by Officer X about the applicant's professional performance. I am satisfied that to some extent, the Category B Information consists of the applicant's personal information, in that it discusses the bases for his complaint to the Department, which was feedback about his work performance.³⁴ I give significant weight to this factor.

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

50. The applicant submits that *'If you deny me access to my personal information, I will be precluded from exercising my right to seek amendment of the information and put the record straight.'*³⁵ Accordingly, I have considered whether disclosing the Category B Information could reasonably be expected to reveal that information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant as this is recognised in the RTI Act as a factor favouring disclosure of information.³⁶

51. The applicant stated that in his view³⁷,

'In the course of the investigation, [Officer X] made further comments and expressed further opinion about [him] and his work [He is] entitled to know what [Officer X] stated about [him] and [his] work ... during the investigation...'

Without knowing what was said about [him] and [his] work ... during the investigation, how can [he] challenge and rebut this information and set the record straight?

³¹ Schedule 4, part 2, item 7 of the RTI Act.

³² Page 12 of letter from applicant dated 12 April 2017.

³³ Page 6 of letter from applicant dated 12 April 2017.

³⁴ *Personal information* is defined in section 12 of the IP Act as *information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

³⁵ Page 6 of letter from applicant dated 12 April 2017.

³⁶ Schedule 4, part 2, item 12 of the RTI Act.

³⁷ Page 6 of letter from applicant dated 12 April 2017.

[Refusal of access] means that the Department can keep a record of the comments made, and opinions expressed, by [Officer X] and other persons about [him] and [his] work ..., without [his] knowledge of its content. Also, this means the Department can disseminate this untruthful information to third parties, as if it is the unchallenged truth, and continue to trash [his] good name.

52. I have carefully reviewed the Category B information. It is, by its very nature, the particular opinions and versions of events expressed by the relevant individuals who provided statements in the investigation (including Officer X). It is shaped by factors such as the individuals' memories of relevant events and subjective impressions. This inherent subjectivity does not mean that the Category B Information is necessarily incorrect or unfairly subjective.³⁸
53. Additionally, no further comment or opinion about the applicant and his work is contained in the Category B Information in the sense that no new commentary or opinion is expressed. Rather, the Category B Information contains opinion about Officer X's conduct in providing feedback about the applicant.
54. I note that in the course of the investigation of his complaint, the applicant; sought copies of the statements of Officer X and other witnesses in order to question the accuracy of the evidence given and rebut it; and questioned the integrity of the investigation process. Information already disclosed to the applicant pursuant to this access application shows that the Workplace Investigator addressed these issues in the course of the investigation. In particular, at pages 21 – 22 of the Investigation Report, the Workplace Investigator set out the advice that had been given to the applicant on these issues. Of relevance to the public interest factor being considered by me are the following excerpts from those pages:

3. All parties who participate in an investigation, including [Officer X] as the subject officer, are given a warning/direction about maintaining confidentiality. Should [Officer X] (or anyone else) choose to ignore that direction by contacting witnesses, it is a matter for the Department to discipline [that person] accordingly. It is not something that I would become involved with as the Investigator and I will not be providing any 'written confirmation' that this has not occurred. If the integrity of an investigation is compromised by any persons, this will be reported to the Department and evidence weighted accordingly.

Witnesses are asked to provide the facts of a matter, to the best of their recollection. Any statement I obtain from [a witness] will be in accordance with my standard practice of gathering the necessary and relevant information.

4. As outlined within my email of 15 January 2015, Chapter 5 of Corruption in Focus explains that preserving confidentiality is important because it ensures the integrity of any investigation. To that end, the identity of the person under investigation and any other person involved in the investigation should be kept confidential. Therefore, I cannot compromise the integrity of my investigation by releasing the investigation plan to external parties (or giving the client permission to do so).

...

6. I will not be providing [the applicant], or anyone else who has participated in the investigation, with copies of any statements/records of interview I obtain. Please see point 4 above re maintaining confidentiality...

³⁸ Marshall and Department of Police (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20].

55. I note that there is nothing in the information before me to suggest that it was necessary for the Workplace Investigator to give low weight in their findings to any evidence provided by any witnesses in the course of the investigation.
56. The applicant clearly remains disgruntled with the procedure adopted by the Workplace Investigator, the outcome of the investigation and the fact he was not privy to the evidence provided by Officer X and other witnesses. However, there is nothing in the information before me to suggest that disclosure of the Category B Information could reasonably be expected to reveal that the Category B Information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.
57. Accordingly, I give this factor in favour of disclosure very low weight.

Accountability and transparency

58. In summary, the applicant has submitted:

I am particularly concerned that the 2 senior officers at [another agency] who bullied me gave statements to the investigator.³⁹

The Department has acted in a secretive manner and done its utmost to cover-up the information [sought in this application].⁴⁰

...

The investigation was flawed from the outset. It was obvious, from the outset that the investigator was never going to conduct an impartial and unbiased investigation.⁴¹

...

The Department refused to provide me with the terms of reference and investigation plan, after I requested these documents at the outset. What did it have to fear? There was no transparency and accountability.⁴²

...

I know the reason why the Department did not make any adverse finding about [Officer X's] conduct. This is because [Officer X's] evidence and the evidence of other witnesses was NOT tested during the investigation.⁴³

...

I will be seeking to reopen the investigation, so that the truth is exposed and [Officer X] is brought into account for [Officer X's] conduct. This will include ensuring that –

- *The investigation is conducted by an independent body (not by the Department); and*
- *[Another department] provides full access to [relevant documents] as part of this reconstituted investigation.⁴⁴*

59. The applicant's submissions give rise to the following factors favouring disclosure regarding the accountability and transparency of government, particularly in circumstances where disclosing information could reasonably be expected to:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official⁴⁵
- reveal the reason for a government decision and any background or contextual information that informed the decision,⁴⁶ and

³⁹ Page 3 of applicant's letter to the Department dated 17 April 2016.

⁴⁰ Page 1 of letter from applicant dated 12 April 2017.

⁴¹ Page 4 of letter from applicant dated 12 April 2017.

⁴² Page 4 of letter from applicant dated 12 April 2017.

⁴³ Page 8 of letter from applicant dated 12 April 2017.

⁴⁴ Page 5 of letter from applicant dated 12 April 2017.

⁴⁵ Schedule 4, part 2, item 5 of the RTI Act.

⁴⁶ Schedule 4, part 2, item 11 of the RTI Act.

- reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁴⁷

60. In addition to the submissions of the applicant, I have also considered if disclosure could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.⁴⁸

Open discussion of public affairs and enhancing government accountability

61. Although the applicant has not explicitly argued that disclosure of the Category B Information could promote open discussion of public affairs and enhance government accountability, and thus be a factor in favour of disclosure in the public interest, I have nonetheless considered this factor below.

62. Generally, there is a public interest in workplace investigations being conducted with as sufficient a degree of transparency and accountability as to afford the parties to such an investigation (and the public generally) with an understanding of the outcome and conclusions of the investigation. This does not, however, extend to affording complainants a right to second-guess or reinvestigate such investigations. Particularly in circumstances where other avenues of redress for perceived investigative inadequacy are available.

63. As the applicant was the complainant in the workplace investigation, it is understandable that he seeks access to the Category B Information to be more informed of the nature and extent of the investigation. However, in this regard I note that the applicant has been provided with the content of the feedback from Officer X and in the external review process the applicant has received the following information about the workplace investigation:

- the substance of the allegations investigated
- the investigation methodology and the investigative process
- information that the applicant provided during the workplace investigation process
- the conclusion and outcome of the investigation; and
- details of the relevant policies and legislation pertinent to the investigation.

64. I have reviewed the Category B Information in light of the applicant's assertions that the investigation was flawed from the outset and biased. There is nothing in the information before me to support the applicant's assertions. Rather, the investigation appears to have been conducted in the usual manner of such investigations. In this regard, I note the information set out at paragraph 54 above.

65. In light of the above, I consider that the applicant has received sufficient information about the investigation to understand the reasons for the workplace investigation finding regarding his complaint. I do not consider that releasing the Category B Information would enhance the transparency or accountability of the Department in relation to the workplace investigation.

66. Accordingly, while this public interest factor in favour of disclosure is relevant, I have afforded it low weight.

⁴⁷ Schedule 4, part 2, item 6 of the RTI Act.

⁴⁸ Schedule 4, part 2, item 1 of the RTI Act.

Deficiencies in the conduct or administration of an agency or official

67. Another public interest factor to consider in favour of disclosing the Category B Information is whether disclosure of the information could reasonably be expected to allow or assist with inquiry into possible deficiencies in the conduct or administration of an agency or official.
68. It is evident that the applicant believes that the investigation into Officer X's conduct was deficient and not conducted appropriately. Accordingly, he is seeking the Category B Information in order to have the investigation reopened and investigated by an independent body.
69. As referred to above at paragraph 63, the applicant has received information about the workplace investigation. Although there is a requirement for an agency to be accountable and transparent in the conduct of workplace investigations, it does not oblige an agency to provide a complainant with access to its entire investigation file.⁴⁹
70. I consider that it is not reasonable to expect that the release of the Category B Information would disclose a deficiency in either the conduct of Officer X (given the result of the investigation was to find the allegation against Officer X unsubstantiated), the Workplace Investigator, or investigation itself. As previously observed, the information before me suggests that the workplace investigation process was in accordance with the usual conduct of such matters.
71. I note that the applicant may raise any concerns about deficiencies in the conduct or administration of the Department regarding the investigation with relevant integrity bodies without accessing the information in issue.
72. Accordingly, as there is nothing in the information before me to suggest inappropriate conduct on the part of the Workplace Investigator or the Department; that the information appears on its face to be appropriate in the circumstances of the investigation; and there are other avenues of redress that do not necessitate the provision of the information; I afford this factor in favour of disclosure low weight.

The reason for a government decision and any background or contextual information that informed the decision

73. If disclosing information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision, it is relevant to consider this public interest factor favouring disclosure.
74. I appreciate that the applicant is dissatisfied with the outcome of the investigation, and he seeks further information to reveal all of the evidence relied upon in the investigation.
75. As the workplace investigation was instigated by the Department because the applicant raised a complaint about the feedback provided by Officer X, I am satisfied that he is aware of the background to the investigation.
76. The applicant will also likely be aware of who provided witness statements in the investigation, as there are only a small number of individuals who are privy to, and capable of providing information of evidential value to, the matter about which the complaint relates. The applicant is likely to be aware of some of the content of these statements.

⁴⁹ 8A3BPQ and Queensland Police Service [2014] QICmr 42 (30 October 2014) at paragraphs 23-24.

77. As noted at paragraph 63, the applicant has received information, through the external review process, about aspects of the investigation. I consider that the applicant has received sufficient information to assist his understanding of the background and contextual circumstances of the workplace investigation decision.
78. On the evidence before me, I am not satisfied that the release of Category B Information will provide the applicant with further information that reveals the reasons for his complaint being found unsubstantiated.
79. Accordingly, I afford this factor low weight, as the applicant is already aware of the background and context of the investigation decision and the disclosure of the Category B Information could not reasonably be expected to expand his understanding in a significant way.

Reveal or substantiate that an agency or Official has engaged in misconduct or negligent, improper or unlawful conduct

80. A factor favouring disclosure in the public interest will arise where disclosing information could reasonably be expected to reveal or substantiate that an agency or official has engaged in official misconduct or negligent, improper or unlawful conduct.
81. It is clear from the applicant's submissions that he considers that the disclosure of further information will reveal or substantiate his complaint of improper conduct on the part of Officer X and/or his concerns about the manner the workplace investigation was conducted. The applicant raises serious allegations regarding the manner in which the Department conducted the workplace investigation, including that it failed to test the relevant evidence collected.
82. It is evident from the information before me that the allegations against Officer X were not substantiated following an independent investigation. Thus disclosing the Category B Information (which primarily concerns that investigation) will not disclose that Officer X engaged in misconduct or other improper conduct.
83. Additionally, the evidence before me suggests that the investigation was conducted appropriately. As noted at paragraph 54 the workplace investigator was clearly on notice that the integrity of the investigation would be scrutinised by the applicant. The investigator included in the investigation report the concerns of the applicant in this regard and the responses that had been given by the Workplace Investigator to the applicant.
84. Accordingly, I am of the opinion that the Category B Information does not disclose that either Officer X or the Department or its agent acted inappropriately.
85. I am not satisfied that the disclosure of Category B Information to the applicant will reveal or substantiate inappropriate conduct by the Department or Officer X.
86. Accordingly, I afford this factor low weight.

Advance fair treatment and procedural fairness

87. In summary, the applicant submitted that :

I strongly believe that in the statements [Officer X] provided as part of the investigation of my complaint, [Officer X] continued to make false, unfounded and defamatory statements about me and my work...⁵⁰

...

I wish to bring defamation proceedings against [Officer X]. I need further evidence of [Officer X's] defamatory comments.⁵¹

...

I was never given the opportunity to comment on, or respond to, witness statements or records of interview during the investigation. Accordingly, I was denied the most basic right to procedural fairness. This meant that [Officer X] was able to perpetuate [Officer X's] lies, misleading information and malicious, unbalanced and vicious comments about me and my work...⁵²

...

What [OIC] don't appear to understand is that a person cannot simply express an opinion about the work of another person with impunity. There needs to be a proper basis for such an opinion.⁵³

In my case, the complaint which lead to the investigation was about [Officer X's] comments and opinion about me and my work... That is, ultimately the information in question is about me and impacts on my reputation. This is a different scenario to that of other investigations dealt with by OIC.⁵⁴

...

If the [Workplace Investigator] had acted in a fair and improper manner, I would have been given access to this information during the investigation. Furthermore, I would have been afforded procedural fairness by being given the opportunity to respond to this information before findings were made on my complaint.⁵⁵

...

I suggest that a witness in an investigation would appreciate that whatever he or she states to the investigator would be put to the complainant for response. Otherwise, the witness would not be concerned about the truth of his or her evidence, and would state whatever he or she liked with impunity. In this instance, I suggest [Officer X] and other witnesses would appreciate that their evidence would be revealed to me, particularly given that this matter concerned my personal and work reputation.⁵⁶

88. In accordance with the applicant's submissions, I have considered whether disclosing the Category B Information could reasonably be expected to:

- contribute to the administration of justice generally, including procedural fairness⁵⁷
- contribute to the administration of justice for the applicant as an individual;⁵⁸ and
- advance the fair treatment of the applicant in accordance with the law in his dealings with agencies.⁵⁹

Contribute to the administration of justice generally, including procedural fairness

89. Generally speaking, in the workplace investigation context, the principle of procedural fairness does not extend to the complainant in the same manner in which it extends to the subject of the workplace investigation. It is essential that the fundamental requirements of procedural fairness (that is, a fair hearing and decision-maker free from

⁵⁰ Page 2 of applicant's letter to the Department dated 17 April 2016.

⁵¹ Page 5 of letter from applicant dated 12 April 2017.

⁵² Page 4 of letter from applicant dated 12 April 2017.

⁵³ Page 8 of letter from applicant dated 12 April 2017.

⁵⁴ Page 8 of letter from applicant dated 12 April 2017.

⁵⁵ Page 9 of letter from applicant dated 12 April 2017.

⁵⁶ Page 10 of letter from applicant dated 12 April 2017.

⁵⁷ Schedule 4, part 2, item 16 of the RTI Act.

⁵⁸ Schedule 4, part 2, item 17 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 10 of the RTI Act.

bias) should be afforded to the subject of the complaint, whose future employment and reputation may be impacted by the outcome of the investigation.

90. The obligation to provide procedural fairness to the applicant, as a complainant, is less onerous. In this matter, the applicant has been provided procedural fairness in that he had the opportunity to provide a statement as part of the workplace investigation. There is no evidence before me to indicate that the applicant's complaint (including the evidence he provided in the workplace investigation) was disregarded or not properly considered by the Department.
91. The applicant submits that he should be given the opportunity to respond to any comment made about his professional performance in order to provide a response articulating his version of events. However, as previously mentioned at paragraph 49, the purpose of the investigation was not to bring into question the professional conduct of the applicant, but rather to investigate the professional conduct of Officer X.
92. The comments made in witness statements, as part of the workplace investigation, are for the consideration of the investigator and subsequent decision maker in testing the evidence. I am not satisfied that procedural fairness dictates that the complainant should be provided with the witness statements, nor am I satisfied that a response from the complainant would have assisted the investigator or the decision maker.
93. The applicant has clearly articulated, in making a complaint about Officer X, that he disagrees with the feedback provided. Accordingly, I do not consider that any further response by the applicant would afford procedural fairness or contribute to the administration of justice generally.
94. I have afforded this factor low weight.

Contribute to the administration of justice for the applicant as a complainant

95. A public interest factor favouring disclosure will arise if disclosing information could reasonably be expected to contribute to the administration of justice for a person, for example, by allowing a person subject to adverse findings to access information that may assist them in legal proceedings.
96. The applicant has raised that he is considering defamation proceedings in relation to the comments of Officer X. In determining whether this public interest factor in favour of disclosure applies, I must consider whether:
 - the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law;
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy, or evaluate whether a remedy is available or worth pursuing.⁶⁰
97. I acknowledge the applicant's view that he has been adversely effected by Officer X's feedback. I note that the applicant's employer has identified the feedback as a contributing factor regarding the non-renewal of the applicant's employment contract. It is evident that the applicant considers that due to this adverse effect, he is able to claim a remedy, specifically in reference to defamation.

⁶⁰ *Willsford and Brisbane City Council (1993)* 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, (16 December 2011).

98. I am not, however, satisfied that the release of Category B Information will enable him to assess if there is a reasonable basis to pursue a defamation claim, as it would appear the applicant already has full access to the feedback provided by Officer X, which he considers to be the basis for a defamation action.
99. I do not consider that the release of full copies of witness statements, containing personal opinions, will allow the applicant to evaluate whether a legal remedy against Officer X for defamation is available or worth pursuing. Therefore, this factor is afforded low weight.

Advance the fair treatment of the applicant, as an individual

100. The RTI Act gives rise to a factor favouring disclosure where disclosing information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.
101. This public interest factor does not require a decision maker to ensure that an applicant is provided with sufficient information to enable that applicant to be subjectively satisfied that he or she received fair treatment rather, it is about providing information to ensure fair treatment in future dealings.
102. As stated in paragraph 97, while the applicant has been adversely effected by the feedback provided by Officer X, there is no evidence before me, which indicates that the information gathered as part of the workplace investigation would advance the fair treatment of the applicant in his future dealings with either this former employer or the Department (the subject of this review).
103. Accordingly, I am satisfied that the disclosure of the Category B Information will not advance the fair treatment of the applicant.
104. I afford this factor low weight.

Factors favouring nondisclosure

105. I will now turn to a consideration of factors favouring nondisclosure.

Personal information and privacy of other individuals

106. As noted earlier in this decision, a public interest factor which favours disclosure of some of the Category B Information is the fact that it contains the applicant's personal information.
107. However, the personal information of the applicant is intrinsically intertwined with the personal information of other individuals, as the Category B Information contains the opinions, and comments of other individuals.
108. The applicant refers to the case of *Re McKinnon and Department of Immigration and Ethnic Affairs*⁶¹ (**McKinnon**) and submits that: "*intertwined personal information should be separated where possible, without diminishing or impairing the quality or completeness of the applicant's personal information*".⁶²

⁶¹ Full citation: *Cheryl Anne McKinnon and Lynette Powell and Department of Immigration and Ethnic Affairs* [1995] AATA 364 (12 December 1995).

⁶² Page 9 of letter from applicant dated 12 April 2017.

109. The case of *McKinnon* is a federal Freedom of Information matter, which relates to a migration matter whereby Mrs McKinnon and Mrs Powell sought to vary a decision made by the Department of Immigration and Ethnic Affairs to release documents to Mr Powell which included documents where they expressed their versions of events and opinions. These documents were relied upon when Mr Powell's visa was cancelled without notice under section 128 of the *Migration Act 1958*, after Mrs Powell withdrew her sponsorship.
110. The factual circumstances and the information in issue in *McKinnon* are different to those in this matter, however, the principle espoused in *McKinnon* that intertwined personal information should be separated, where possible, is pertinent. I have carefully reviewed the Category B Information with a view to separating the applicant's personal information from that of the other individuals, however, in this instance, it is not possible to separate the applicant's personal information from the personal information of other individuals without '*diminishing or impairing the quality or completeness of the applicant's personal information*'.
111. As it is not possible to separate the personal information of the applicant and other individuals, I have considered whether disclosing the Category B Information could be reasonably expected to:
- prejudice the protection of an individual's right to privacy;⁶³ and
 - cause a public interest harm if it would disclose personal information of a person.⁶⁴
112. The applicant submits that:
- [OIC] has blindly followed the approach taken in other cases considered by the OIC on external review, in which the applicant seeks access to investigation and complaint documents...ultimately the information in question is about me and impacts on my reputation.*⁶⁵
- ...
- I do not accept your observation that the majority of the Category B Information is the personal information of individuals other than me. Also, I reject your finding that this information is highly sensitive personal information which would not ordinarily be released under the IP Act.*⁶⁶
113. I have distinguished this matter from other information access applications related to workplace investigations. In particular, in this matter, it is relevant that the applicant is the complainant and not the subject of the investigation.
114. The applicant submits that the High Court decision of *Smallbone v New South Wales Bar Association* [2011] FCA 1145 (***Smallbone***) should be considered to support the disclosure of other persons' opinions.
115. By way of summary, in *Smallbone*, Mr Smallbone sought injunctive relief under section 98 of the *Privacy Act 1988* (Cth). The information in issue in *Smallbone* concerned Mr Smallbone in that it was comments⁶⁷ obtained through a consultation process undertaken by the New South Wales Bar Association (**NSW Bar Association**) related to his application for Senior Counsel. The NSW Bar Association provided Mr Smallbone with limited access to the comments by deidentifying the names of the individuals who provided feedback.

⁶³ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁴ Schedule 4, part 4, section 6 of the RTI Act.

⁶⁵ Page 8 of letter from applicant dated 12 April 2017.

⁶⁶ Page 9 of letter from applicant dated 12 April 2017 with reference to the case of *Katz v Victorian Police* [2013] VACT 2046 at [38] at page 10 of the same letter.

⁶⁷ In total 579 persons were consulted in relation to all applications for Senior Counsel and 458 persons responded with some persons providing comment in relation to Mr Smallbone. The exact number of persons who responded to Mr Smallbone's application is unclear.

116. There is no real parallel with the facts of *Smallbone* and the present matter, though Officer X's position is probably more akin to Mr Smallbone's position, by virtue of the fact that Officer X was to respond to the allegations or opinion of others as was Mr Smallbone.
117. Given that a very limited number of individuals are privy to Officer X's feedback it is reasonable to infer that the applicant would be able to identify the opinions of individuals who provided evidence. As such, deidentification of statements by simply removing the names of individuals who provided statements in the investigation would not adequately protect the individuals' privacy in this matter.
118. Ordinarily where personal information is about routine day-to-day work activities of public sector employees, it is considered to be routine personal work information and the public interest factor in favour of not disclosing that type of personal information is given very low weight.
119. Although the Category B Information in this case appears in a workplace context, it relates to a confidential workplace investigation and thus is not wholly related to routine day-to-day work activities and is not routine personal work information of the various individuals involved in the investigation.⁶⁸
120. The disclosure of the Category B Information under the IP Act would be a significant intrusion into the privacy of the individuals who provided statements and the extent of the public interest harm that could be anticipated from disclosure is significant. Furthermore, although the applicant may know some of the Category B Information as a result of his participation in the investigation processes, it does not negate the weight to be attributed to these factors.
121. In these circumstances, I afford these public interest factors favouring nondisclosure significant weight.

Prejudice to the fair treatment of individuals

122. A relevant factor favouring nondisclosure of the Category B Information is if disclosure may reasonably be expected to prejudice the fair treatment of individuals.⁶⁹
123. In this matter, as previously noted, the Category B Information is primarily about the investigation of the subject of the complaint, Officer X. This complaint was investigated by the Workplace Investigator in accordance with the terms of reference outlined by the Department. The allegations raised by the applicant were ultimately found to be unsubstantiated.
124. The applicant submitted that he "*was denied the most basic right to procedural fairness when the investigator refused to provide [him] with details of the evidence of Officer X and the other witnesses and denied [him] the opportunity to respond to the evidence.*"⁷⁰ As previously observed at paragraphs 89 and 90, a complainant and subject of a complaint attract different procedural fairness rights in workplace investigations.
125. While the applicant submits that he has not been afforded the same rights in relation to reputational damage, this submission is not pertinent to this public interest factor as the feedback provided by Officer X, which the applicant states adversely damaged his

⁶⁸ *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at paragraph 60.

⁶⁹ Schedule 4, part 3, item 6 of the RTI Act.

⁷⁰ Page 11 of letter from applicant dated 12 April 2017.

reputation, was not provided as part of the workplace investigation process. This feedback was provided to the applicant's employer prior to the workplace investigation.

126. I have reviewed the Category B Information and there is nothing within this information that would warrant the right of reply to which the applicant is referring.
127. The disclosure of information relating to unsubstantiated allegations about Officer X has the potential to adversely affect the reputation and the current and future employment of Officer X.
128. I consider that the public interest weighs strongly against disclosing information relating to unsubstantiated allegations as to do so may result in the unfair treatment of the individual about whom the complaint was made. I afford this factor significant weight.

Prejudice to management function and ability to obtain confidential information

129. The RTI Act recognises public interest factors favouring nondisclosure of information in circumstances where disclosing information could reasonably be expected to prejudice an agency's management function⁷¹ or its ability to obtain confidential information.⁷²
130. In workplace investigations, the expectation is usually that staff supply information to workplace investigators on the understanding that it will be used for the investigation or any subsequent disciplinary investigations. It is also expected that staff will cooperate in the investigative process and provide information in an open and honest manner.
131. The applicant submits that:

...a witness in an investigation would appreciate that whatever he or she states to the investigator would be put to the complainant for a response. Otherwise, the witness would not be concerned about the truth of his or her evidence, and could state whatever he or she liked with impunity.⁷³

...

In this instance, procedural fairness required that-

- *details of the evidence of [Officer X] and other witnesses should have been disclosed to me; and*
- *I should have been given a full and fair opportunity to respond to this evidence before any findings were made on my complaint. This is because the evidence was about me and my work...⁷⁴*

...

In these circumstances, [Officer X] and other witnesses would have implicitly understood that whatever they stated about me and my work...would be divulged to me.

132. I do not accept the applicant's submission that there was an implicit understanding that the applicant (as the complainant in the workplace investigation) would be informed of the content of witness statements. Evidence gathered in such investigation is designed to prove or disprove the allegation against the subject of the complaint. It is the subject to whom the evidence must be put if it contains adverse allegations.
133. Although I appreciate that the applicant raised the complaint about Officer X in relation to feedback about his work performance, this does not mean that an investigation into Officer X's conduct is about the applicant.

⁷¹ Schedule 4, part 3, item 19 of the RTI Act.

⁷² Schedule 4, part 3, item 16 of the RTI Act.

⁷³ Page 10 of letter from applicant dated 12 April 2017.

⁷⁴ Page 11 of letter from applicant dated 12 April 2017.

134. Disclosing the Category B Information could reasonably be expected to have a detrimental effect on the Department's management function, as disclosing information of this type would tend to discourage individuals from coming forward with relevant information in the future.
135. I am also satisfied that disclosure of this information could reasonably be expected to cause staff to lose confidence in the finalisation of investigations, particularly where allegations are found to be unsubstantiated.⁷⁵ This, in turn, would significantly impact the effectiveness of future investigations.⁷⁶
136. I afford this factor significant weight.

Balance factors favouring disclosure and factors favouring nondisclosure

137. I have set out below the weight apportioned to each of the public interest factors for and against the disclosure of the Category B information. I have then balanced those factors against each other to ascertain where the balance of the public interest lies.
138. The IP Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.⁷⁷
139. I have taken into account the various factors enlivened by the applicant's submissions as well as other factors identified by me. Additionally, I have reviewed the various factors for and against disclosure enunciated in Schedule 4 of the RTI Act. I did not consider any other factors listed in Schedule 4 of the RTI Act to be relevant to this matter.
140. There is a public interest factor of significant weight in releasing the applicant's personal information to him. However, weighted against this public interest factor is that fact that the applicant's personal information is intrinsically intertwined with the personal information of other individuals, namely Officer X and other individuals who provided witness statements. The personal information and privacy considerations relating to other individuals involved in the investigation (and referenced throughout the documents) attracts significant weight, as it is within a workplace investigation context where the allegations were found to be unsubstantiated.
141. I afforded very low weight to the factor favouring disclosure which would reveal that the information was incorrect, unfairly subjective or irrelevant. Although the applicant asserts that the witnesses provided statements which did not accurately reflect his professional conduct and performance, I am not satisfied that the release of the Category B Information would facilitate an amendment to the information.⁷⁸
142. I have afforded low weight to the disclosure of the Category B Information in relation to accountability and transparency factors. I am not satisfied that the release of further information would provide the applicant with a better understanding of the Department's reasons for finding the complaint unsubstantiated or that the Department's investigation was deficient.
143. I have also afforded low weight to procedural fairness factors favouring the disclosure of the Category B Information. The applicant is not the subject of the complaint and,

⁷⁵ *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [17].

⁷⁶ *6XDOH and Department of Community Safety* (Unreported, Queensland Information Commissioner, 26 June 2012) at [6].

⁷⁷ Section 64 of the IP Act.

⁷⁸ In accordance with section 74 of the IP Act.

accordingly cannot expect to be afforded the same right of response or appeal. In relation to potential defamation proceedings, I consider that the applicant already has sufficient information to evaluate whether a remedy is available or worth pursuing.

144. In contrast, I am satisfied that this same factor favouring nondisclosure should be afforded significant weight, as the disclosure could detrimentally effect the treatment of individuals involved in the investigation, including Officer X.
145. I am also mindful that disclosure could reasonably be expected to prejudice the ability of agencies to conduct workplace investigations and manage staff in the future. I have afforded significant weight to this factor in favour of nondisclosure.
146. Taking into account all of the matters set out above, I am satisfied that, on balance, the public interest factors favouring nondisclosure of the Category B Information outweigh the public interest factors favouring disclosure.

DECISION

147. For the reasons set out above, I vary the decision under review and find that:
 - access to the Category A Information may be refused under section 67 of the IP Act and section 47(3)(a) and schedule 3, section 7 of the RTI Act; and
 - access to the Category B Information can be refused under section 67 of the IP Act and sections 47(3)(b) and 49 of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.
148. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

Assistant Information Commissioner Corby

Date: 9 June 2017

APPENDIX 1: SIGNIFICANT PROCEDURAL STEPS

Date	Event
12 June 2016	OIC received the application for external review of the Department's decision
24 June 2016	OIC informed the applicant and the Department that the application for external review had been accepted. OIC requested the Department to provide the documentation relevant to the application.
13 July 2016	OIC received the requested procedural documents from the Department.
4 August 2016	OIC requested further information from the Department in relation to the scope of the documentation and clarification about searches.
19 August 2016	the Department was granted an extension to the response to OIC until 26 August 2016.
22 August 2016	OIC and the Department discussed OIC's request for the further information regarding the Department's searches.
25 August 2016	The Department responded to OIC's letter dated 19 August 2016, providing further information about the searches conducted and copies of the relevant documents. OIC and the Department discussed OIC's request for the further information regarding the Department's searches.
17 October 2016	OIC requested further clarification from the Department regarding management of applicant's complaint.
3 November 2016	The Department provided a response to OIC's letter dated 17 October 2016, including copies of further information. OIC and the Department discussed OIC's requested the Department to provide further information about the management of the applicant's complaint in relation third party involvement.
18 November 2016	The Department provided a response to OIC's request of 3 November 2016, confirming the third party involvement in the investigation of the applicant's complaint.
23 November 2016	OIC conveyed a written preliminary view to the Department, providing a marked up version of the documentation to be released, and inviting PSC to provide submissions by 7 December 2016.
6 December 2016	The Department requested an extension to the submission response period. OIC granted an extension until 14 December 2016.
13 December 2016	OIC received the Department's submissions in response to the preliminary view dated 23 November 2016. OIC and the Department discussed the requirement of third party consultation prior to the disclosure of the documentation

Date	Event
9 January 2017	OIC conveyed a second written preliminary view to the Department, and requested submissions by 17 January 2017.
17 January 2017	OIC received further submissions in response to the preliminary view dated 9 January 2017.
10 February 2017	OIC conveyed written preliminary view to applicant, inviting the applicant to provide submissions by 3 March 2017. OIC wrote to the Department requesting that further documents be released to the applicant.
16 February 2017	OIC and the Department discussed OIC's request to disclose documentation to the applicant. OIC received correspondence from the Department confirming that the further documents had been released to the applicant.
27 February 2017 – 10 April 2017	Communication between the applicant and OIC where the applicant sought clarification on various points in the preliminary view and an extension to the response period. OIC clarified the points raised by the applicant and granted a number of extensions to the response period.
12 April 2017	OIC received submissions from the applicant.
18 April 2017 – 12 May 2017	Various communications between OIC and the applicant regarding the possibility of the applicant being deidentified in this decision. By telephone conversation on 11 May 2017, and confirmed by letter dated 12 May 2017, OIC agreed to issue a deidentified formal decision.
21 May 2017	OIC received further correspondence from the applicant requesting reassurance that the decision would not contain any information that would make it possible to reasonably ascertain the applicant's identity.

APPENDIX 2: INFORMATION IN ISSUE

Table 1, Category A Information

File	Page number	Full refusal	Part refusal	Ground of refusal
A	1 - 7.	X		LPP
A	81 – 89.	X		LPP
A	96 – 102.	X		LPP
B	343 – 344.	X		LPP
C	1 – 15.	X		LPP

Table 2, Category B Information

File	Page number	Full refusal	Part refusal	Ground of refusal
A	8 - 10.		X	CTPI
A	12 – 29.		X	CTPI
A	31 – 44.		X	CTPI
A	45 – 73.	X		CTPI
A	74 – 77.		X	CTPI
A	78 – 79.	X		CTPI
A	80.		X	CTPI
A	92.		X	CTPI
A	95.		X	CTPI
B	5.		X	CTPI
B	9 – 41.		X	CTPI
B	42 – 72.	X		CTPI
B	73 – 76.		X	CTPI
B	77 – 78.	X		CTPI
B	79 – 81.		X	CTPI
B	85.		X	CTPI
B	88.		X	CTPI
B	129 – 130.		X	CTPI
B	133 – 134.		X	CTPI
B	142 – 151.	X		CTPI
B	153 – 157.	X		CTPI
B	247 – 288.	X		CTPI
B	290 – 297.	X		CTPI
B	299 – 315.	X		CTPI
B	350.		X	CTPI
B	352.		X	CTPI
B	389 – 392.	X		CTPI
B	Audio file – part 1	X		CTPI
B	Audio file – part 2	X		CTPI
B	Audio file – part 3	X		CTPI
B	Audio file – part 4	X		CTPI

File	Page number	Full refusal	Part refusal	Ground of refusal
B	Audio file – part 5	X		CTPI
B	Audio file – part 6	X		CTPI
D	1 – 5.		X	CTPI
D	8.		X	CTPI
D	12.		X	CTPI