



Decision and Reasons for Decision

Citation: *Australian Workers' Union and Queensland Treasury; Ardent Leisure Limited (Third Party) [2016] QICmr 28 (28 July 2016)*

Application Number: 312543

Applicant: Australian Workers' Union

Respondent: Queensland Treasury

Third Party: Ardent Leisure Limited ACN 104 529 106

Decision Date: 28 July 2016

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - Workplace Health and Safety Queensland documents relating to worker and public safety in relation to amusement rides at a theme park - whether disclosure would found an action for breach of confidence - whether information is exempt under schedule 3, section 8 of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - Workplace Health and Safety Queensland documents relating to worker and public safety in relation to amusement rides at a theme park - prejudice to law enforcement or public safety procedures - whether information is exempt under schedule 3, section 10(f), (g) or (i) of the *Right to Information Act 2009* (Qld) - whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - Workplace Health and Safety Queensland documents relating to worker and public safety in relation to amusement rides at a theme park - accountability and transparency of regulatory body - public health and safety at theme parks - prejudice to the free flow of information to a regulatory body - prejudice to the business and commercial affairs of a theme park - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The Australian Workers' Union¹ (**AWU**) applied to the Department of Justice and Attorney - General (**DJAG**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to all documents relating to the safety of persons and workers at the workplace identified as the theme park, Dreamworld.
2. DJAG conducted searches of the records held by the regulator for workplace health and safety laws in Queensland, Workplace Health and Safety Queensland (**WHSQ**).² DJAG consulted the third party, Ardent Leisure Limited³ (**Dreamworld**), about disclosure. Dreamworld broadly objected to disclosure of any documents in relation to the application.
3. DJAG decided that access to some information could be refused under the RTI Act on the basis that it was exempt, or because its disclosure, would, on balance, be contrary to the public interest.⁴ However, the decision was issued outside the relevant statutory timeframe and therefore, DJAG was deemed to have made a decision refusing access to all relevant information at the end of the processing period.⁵
4. AWU applied to the Office of the Information Commissioner (**OIC**) for external review of the deemed refusal of access decision. During the external review, AWU agreed to narrow the scope of its application to seek only documents relating to amusement rides and ride-related plant and machinery.⁶ OIC formed the view that there was no basis, under the RTI Act, to refuse access to the information falling within the narrowed scope. Queensland Treasury did not contest that view.⁷
5. OIC considered that Dreamworld may be concerned about disclosure of the information identified for disclosure and therefore, invited Dreamworld to participate in the review. On external review, Dreamworld maintained its objections to disclosure of the WHSQ documents, raising confidentiality and public interest grounds, including the potential prejudice to Dreamworld's ongoing working relationship with the regulator, WHSQ.
6. For the reasons set out below, I set aside the deemed decision and instead, find that access may not be refused to any of the information in issue in this review as it is not exempt and nor would its disclosure, on balance, be contrary to the public interest under the RTI Act.

Background

7. Significant procedural steps relating to the application and review are set out in the Appendix.

Reviewable decision

8. The decision under review is the decision deemed to have been made by DJAG, on 10 July 2015, refusing access to all of the information requested in the access application.

¹ Queensland Branch.

² <https://www.worksafe.qld.gov.au/about-us/about-workplace-health-and-safety-queensland> (accessed 25 July 2016) identifies WHSQ as the regulator for work health and safety laws in Queensland.

³ The operator of Dreamworld.

⁴ Decision dated 31 July 2015.

⁵ Section 46 of the RTI Act.

⁶ See paragraph 10 below.

⁷ After the review commenced, a machinery of government change transferred the functions of the Office of Industrial Relations, including WHSQ, from DJAG to Queensland Treasury (**Treasury**). Therefore, Treasury is named as the respondent agency in the review as it is the agency currently responsible for the documents in issue. See the *Administrative Arrangements Order (No.3) 2015* (at page 28) available at <https://www.qld.gov.au/about/how-government-works/government-responsibilities/> (accessed 22 July 2016).

Evidence considered

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

Information in issue

10. AWU agreed to narrow the scope of its application on external review as follows:⁸

*Documents about the safety of persons and workers only in relation to the **rides and ride related plant and machinery at Dreamworld**, including audits, risk assessments, breaches, improvement notices, advice, investigations, inspections, inspector notes/file notes, correspondence and emails (Date range: January 2004 to April 2015). Not including the names or personal information of any private sector employees or members of the public.*

11. Of the 371 relevant pages originally located by DJAG, 143 pages fall within the narrowed scope.⁹ These include:

- incident notification forms sent by Dreamworld to WHSQ and correspondence in reply
- records created by WHSQ inspectors in connection with Dreamworld site visits/inspections, including handwritten notes
- extracts from the WHSQ database recording incidents, workplace events and complaints relating to the employer, Dreamworld
- complaints received by WHSQ from members of the public and a private sector plant/machinery inspector; and
- correspondence and supporting reports sent by Dreamworld to WHSQ about specific ride-related incidents.

12. AWU specifically agreed to exclude details of workplace incidents unrelated to amusement rides and the personal information of private sector employees and members of the public.¹⁰

Relevant law

13. The RTI Act is administered with a pro-disclosure bias in that it provides that access should be given to a document unless giving access would, on balance, be contrary to the public interest.¹¹ The RTI Act also sets out certain grounds on which access to information may be refused.¹² It is Parliament's intention that these grounds are to be interpreted narrowly.¹³ Relevantly, access may be refused to exempt information¹⁴ or to information which, if disclosed, would, on balance, be contrary to the public interest.¹⁵

14. In the circumstances of this review, there is a practical onus on the third party, Dreamworld to establish that a decision not to disclose the information in issue, as described at paragraph 11 above, is justified.¹⁶

⁸ During a telephone discussion between AWU and OIC on 4 January 2016.

⁹ Some of the information is duplicated throughout the 143 pages. For example, the text of a complaint originally sent to WHSQ by email (page 1 of File 1) has been copied into internal WHSQ complaint records (page 62 and 71 of File 1) and activity logs (pages 12, 30-32, 48 and 59 of File 1). AWU did not expressly agree to exclude duplicates and therefore, the information remains in issue.

¹⁰ To the extent this information appears in the documents remaining in issue, it has been redacted. As this information is not in issue on external review, it is not dealt with in this decision.

¹¹ Section 44(1) of the RTI Act.

¹² Section 47(3) of the RTI Act.

¹³ Section 47(2)(a) of the RTI Act.

¹⁴ Sections 47(3)(a) and 48 and schedule 3 of the RTI Act.

¹⁵ Sections 47(3)(b) and 49 and schedule 4 of the RTI Act.

¹⁶ Section 87 of the RTI Act. While the reviewable decision is not a 'disclosure decision', the respondent agency, Treasury, has not contested OIC's view that there is no basis on which to refuse access to the information. As a result, the proper contradictor to the external review application is the third party objecting to disclosure of the information, i.e. Dreamworld. A similar approach was recently taken in *Sunshine Coast Environment Council Inc and Department of National Parks, Sport and Racing; Springborg MP* (Third Party) [2016] QICmr 10 (4 March 2016), see [18] and the cases cited therein.

Exempt information – breach of confidence

15. Information will be exempt if its disclosure would found an action for breach of confidence.¹⁷ It is well-settled that the words of the section refer to an action based in equity for breach of an equitable obligation of confidence.¹⁸
16. For this exemption to apply, five cumulative elements must be established:¹⁹
 - a) information must be able to be specifically identified²⁰
 - b) information must have the necessary quality of confidence and will not extend to information that is generally known, useless or trivial²¹
 - c) circumstances of the communication must create an equitable obligation of confidence²²
 - d) disclosure to the access applicant must constitute an unauthorised use of the confidential information;²³ and
 - e) disclosure would result in detriment to the party claiming confidentiality.²⁴

Findings

17. Dreamworld has submitted that two versions of an incident report, prepared by Dreamworld in relation to a ride-related incident (**Incident Report**), were provided to WHSQ inspectors on the expectation that the information would remain confidential.²⁵ In the submissions originally made to DJAG, Dreamworld also claimed certain other documents were exempt on this basis (**Incident Forms**).²⁶
18. I am satisfied that the Incident Report and the Incident Forms meet the first two cumulative elements set out above as the information is specifically identifiable, is not useless or trivial and is not generally available.

(c) circumstances of the communication

19. To establish element (c), I must be satisfied that the information was communicated and received on the basis of a mutual understanding of confidence. The understanding must have existed at the time of the communication and may be express or implied.²⁷ This is usually the most difficult requirement to satisfy and requires that the '*recipient should be fixed with an enforceable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it.*'²⁸
20. The Information Commissioner has previously indicated that the relevant circumstances to consider in determining element (c) include, but are not limited to, the:

¹⁷ Section 48 and schedule 3, section 8 of the RTI Act.

¹⁸ See *TSO08G and Department of Health* (Unreported, Queensland Information Commissioner, 13 December 2011) at [12] (**TSO08G**).

¹⁹ See the Information Commissioner's analysis in *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (**B and BNRHA**), applying the equivalent provision, section 46(1)(a) of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**). The criteria set out in *B and BNRHA* has been consistently applied in the context of the RTI Act, see *TSO08G* at [13] and more recently in *Edmestone and Blackall-Tambo Regional Council* [2016] QICmr 12 (15 April 2016) at [14].

²⁰ *B and BNRHA* at [60] to [63].

²¹ *B and BNRHA* at [64].

²² *B and BNRHA* at [76].

²³ *B and BNRHA* at [103] to [106].

²⁴ *B and BNRHA* at [111] citing *Attorney-General v Guardian Newspapers (No. 2)* [1990] 1 AC 109 (Lord Keith of Kinkell at 256).

²⁵ Dreamworld's submissions dated 11 May 2016 to OIC relate to pages 34-349 of File 2. As Dreamworld claims that this information is exempt, I am prevented from describing it in any more detail in these reasons for decision (see section 108(3) of the RTI Act).

²⁶ Submissions dated 24 July 2015 in relation to two incident notification forms, pages 137 and 201 of File 2, and an incident investigation report form, page 154 of File 2. In the submissions to DJAG, Dreamworld also identified several other documents as subject to its breach of confidence claim. However, those documents are not in issue in this review as they do not fall within the narrowed scope agreed to by AWU during the external review process, see paragraphs 10-11 above.

²⁷ *B and BNRHA* at [90].

²⁸ *B and BNRHA* at [76].

- nature of the relationship between the parties
 - nature and sensitivity of the information
 - purpose/s for which the information was communicated
 - nature and extent of any detriment to the interests of the information-supplier that would follow from an unauthorised disclosure of the information; and
 - circumstances relating to the communication.²⁹
21. The Incident Report is marked '*Private and Confidential*' and I understand that Dreamworld expected it to be handled in this way by WHSQ. The labelling of information as 'confidential' will ordinarily constitute a relevant circumstance to be evaluated when determining whether an enforceable obligation of confidence is imposed, but it is generally not, of itself, determinative of the issue.³⁰ There is no evidence available to OIC to indicate that WHSQ expressly agreed to accept the Incident Report or Incident Forms on a confidential basis.
22. In considering the circumstances of the communication, I have taken into account that the WHSQ inspectors received the Incident Report as part of a notification from Dreamworld, under the *Work Health and Safety Act 2011* (Qld) (**WHS Act**), about a specific ride-related incident at the Dreamworld workplace. Dreamworld has explained that the Incident Report was provided voluntarily and that its disclosure '*would constitute an unauthorised use of the document and would further restrict cooperation and information sharing between Dreamworld and WHSQ.*³¹ Treasury has not made any formal submissions to OIC indicating that the Incident Report was received confidentially by WHSQ inspectors but has confirmed that it was provided voluntarily by Dreamworld.³²
23. The Incident Forms were sent by Dreamworld to WHSQ as notification of injuries sustained by Dreamworld workers while performing work duties in connection with amusement rides. Dreamworld has a duty, under Part 3 of the WHS Act, to notify WHSQ of certain injuries/incidents. However, it is not clear whether all of the forms were provided pursuant to this legislative requirement; some information appears to have been provided voluntarily. In any event, for the reasons set out below, I do not consider this is of any consequence to my conclusion on the breach of confidence exemption.
24. Under the WHS Act, inspectors have a broad range of functions and powers to assist in the resolution of work health and safety issues at workplaces, require compliance with, investigate contraventions of, and assist in the prosecution of offences under, the WHS Act.³³ WHSQ inspectors also have extensive powers of entry, the power to require production of documents and the power to make copies of documents given under a requirement under the WHS Act.³⁴ While Dreamworld may have provided some information voluntarily, I am satisfied that WHSQ inspectors have the necessary statutory powers to require documents, such as the Incident Report and Incident Forms, to be provided for the purpose of the inspectors discharging their functions under the WHS Act.³⁵
25. The relationship between Dreamworld and WHSQ involves the exchange of information about safety assessments of amusement rides, related incidents and complaints. In *Seven Network (Operations) Limited and Safe Food Production Queensland; Food business (Third Party)*,³⁶ the Acting Assistant Information Commissioner found that where a government agency has the statutory responsibility for the oversight and regulation of an industry, it is not compatible with the role of that agency to maintain a commercial in confidence relationship with the entities

²⁹ *B and BNRHA* at [84].

³⁰ *B and BNRHA* at [91].

³¹ Dreamworld's submissions to OIC dated 11 May 2016.

³² In a telephone call with OIC on 26 May 2016.

³³ Section 160 of the WHS Act.

³⁴ As set out in part 9, divisions 2 and 3 of the WHS Act.

³⁵ See sections 160, 165, 171 and 174 of the WHS Act.

³⁶ Unreported, Queensland Information Commissioner, 10 February 2012 at [32] (*Seven and Safe Food*).

it is responsible for regulating. I am satisfied this reasoning equally applies to the relationship between Dreamworld and WHSQ and therefore, does not assist in establishing element (c) of the breach of confidence requirements.

26. Dreamworld has also argued that confidentiality is implied by section 271 of the WHS Act.³⁷ That section provides for confidentiality of information obtained under the WHS Act and applies to prevent the unauthorised disclosure of information by WHSQ inspectors. Various exceptions to the confidentiality provision are set out in section 271(3) of the WHS Act, including where disclosure of information is *'required or authorised under a law'*. The fact that the WHS Act sets out exceptions to the confidentiality requirement demonstrates that there are certain circumstances and proper processes which will permit disclosure. I am satisfied that release under the RTI Act is a proper process and is a release authorised under a law,³⁸ as contemplated by the WHS Act. For this reason, while I consider the confidentiality required of WHSQ inspectors is a relevant factor to consider in determining element (c), I do not consider this, of itself, establishes an equitable obligation of confidence.

Conclusion

27. Having carefully considered the circumstances relevant to communication of the information in issue by Dreamworld to WHSQ, as discussed above, I find that while there are some factors which may be indicative of confidentiality, the regulatory nature of the relationship between WHSQ and Dreamworld, and the mandatory requirements of the WHS Act, are determinative in this case.
28. Accordingly, I am satisfied that the Incident Report and Incident Forms were not communicated to WHSQ in circumstances giving rise to an equitable obligation of confidence and therefore, element (c) cannot be established on the facts of this case. For this reason, it is not necessary to examine the remaining breach of confidence requirements.
29. On the basis of the above, I find that the Incident Report and Incident Forms are not exempt under schedule 3, section 8 of the RTI Act.³⁹

Exempt information - lawful method or procedure

30. Dreamworld has argued⁴⁰ that the information in issue comprises exempt information under schedule 3, section 10(1)(f), (g) and (i) of the RTI Act (**law enforcement exemptions**) as disclosure could reasonably be expected to prejudice:
- the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law⁴¹
 - the maintenance or enforcement of a lawful method or procedure for protecting public safety;⁴² and/or
 - a system or procedure for the protection of persons, property or the environment.⁴³

³⁷ Dreamworld's submissions to DJAG dated 24 July 2015.

³⁸ *Seven and Safe Food* at [28].

³⁹ While Dreamworld's submissions focused only on specific documents in relation to the breach of confidence exemption, for the reasons set out at paragraphs 22 to 27 above, I am satisfied that element (c) could not be established in relation to **any** of the information in issue provided by Dreamworld to WHSQ about ride-related incidents, as the specific nature of the relationship is not one involving circumstances giving rise to an equitable obligation of confidence.

⁴⁰ Dreamworld's submissions to DJAG dated 24 July 2015.

⁴¹ Schedule 3, section 10(f) of the RTI Act.

⁴² Schedule 3, section 10(g) of the RTI Act.

⁴³ Schedule 3, section 10(i) of the RTI Act.

Findings

31. WHSQ inspectors are responsible for requiring compliance with, investigating potential breaches of, and assisting in the prosecution of offences under, the WHS Act.⁴⁴ I am satisfied that this constitutes a lawful procedure for investigating a possible contravention of the law and protecting public safety and a procedure for the protection of persons, for the purpose of applying the law enforcement exemptions.
32. WHSQ inspectors generally require access to Dreamworld premises or documents to perform their duties under the WHS Act. I understand that Dreamworld has, in the past, allowed inspectors such access on an informal and voluntary basis.⁴⁵ However, as stated at paragraph 24 above, under the WHS Act, WHSQ inspectors have extensive powers of entry, the power to require production of documents and the power to make copies of documents in performing their functions under the WHS Act.⁴⁶
33. The case of *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General (Nine Network)* also considered the provision of information to WHSQ by ride operators in relation to amusement ride safety.⁴⁷ There, the Right to Information Commissioner found that it would be unreasonable to suggest that disclosure of information obtained under a 'mandatory legislative scheme' would prejudice the voluntary provision of information by ride operators in the future as operators have a commercial interest in operating safe rides.⁴⁸
34. Similarly, I consider that theme park operators such as Dreamworld are obligated to cooperate with WHSQ inspectors in order to comply with requirements of the WHS Act and to maintain necessary permits and approvals for their continued operation of amusement rides. Given that Dreamworld operates a theme park with various amusement rides as its main attractions, it is unlikely to be in Dreamworld's commercial interests to be uncooperative or obstructionist in its dealings with the regulator. In any event, even if Dreamworld was to elect not to provide information voluntarily in the future, I am satisfied that WHSQ inspectors have sufficiently extensive statutory powers to rely on to require relevant information from Dreamworld, in order to perform their statutory functions and thereby ensure the efficient functioning of WHSQ processes. For these reasons, I find it is unreasonable to suggest that the WHSQ procedures identified at paragraph 31 above would be prejudiced through disclosure of the information in issue. Therefore, I am satisfied that the law enforcement exemptions do not apply in this case.
35. Accordingly, I find that the information in issue is not exempt under schedule 3, section 10(f), (g) or (i) of the RTI Act.

Contrary to the public interest

36. As set out at paragraph 13 above, the RTI Act provides that access to information should be granted, unless its disclosure would, on balance, be contrary to the public interest. Where the public interest favours nondisclosure, access to information may be refused on this basis.⁴⁹
37. 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

⁴⁴ Section 160 of the WHS Act.

⁴⁵ Dreamworld's submissions to OIC dated 11 May 2016 and telephone discussion with OIC on 26 May 2016.

⁴⁶ As set out in part 9, divisions 2 and 3 of the WHS Act.

⁴⁷ (Unreported, Queensland Information Commissioner, 14 February 2012) I acknowledge that the information in issue in *Nine Network* was not the same as the information in issue in this review in that *Nine Network* was concerned with the disclosure of the names of ride operators in the context of compliance notices issued by WHSQ as part of the regulator's safety audit process for mobile show rides. However, to the extent *Nine Network* examines the nature of the relationship between the regulator, WHSQ and amusement ride operators, and the exchange of information for the purpose of ensuring ride safety, I consider the Right to Information Commissioner's reasoning in *Nine Network* has application to the facts of this case.

⁴⁸ At [36]-[37].

⁴⁹ Section 47(3)(b) of the RTI Act.

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.

38. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest⁵⁰ and explains the steps for a decision-maker to take⁵¹ in deciding the public interest as follows:
- (i) identify any irrelevant factors and disregard them
 - (ii) identify relevant public interest factors favouring disclosure and nondisclosure
 - (iii) balance the relevant factors favouring disclosure and nondisclosure; and
 - (iv) decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

Findings

(i) Irrelevant factors

39. Dreamworld has raised concerns about AWU's reasons for requesting the information in issue and has submitted that '*AWU's main rationale for submitting the RTI application was to use the process as political leverage within an enterprise bargaining agreement negotiation*'.⁵²
40. It is well-settled that an access applicant's motives for seeking access to information are an irrelevant consideration.⁵³ The RTI Act also provides that it is irrelevant to consider whether disclosure could reasonably be expected to result in mischievous conduct by the applicant.⁵⁴
41. Dreamworld has also submitted that I should take into account the fact that the access applicant, AWU, is not a media outlet and therefore, disclosure will not be made to the public at large or lead to positive, informed debate.⁵⁵ The identity of an access applicant is irrelevant in applying public interest factors. Therefore, I have not considered this submission any further in these reasons.⁵⁶
42. Accordingly, to the extent Dreamworld's submissions raise irrelevant factors, I have disregarded them in making this decision.

(ii) Factors favouring disclosure

Accountability and transparency of WHSQ

43. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to:

⁵⁰ Schedule 4 of the RTI Act sets out factors favouring disclosure and nondisclosure. However, this list of factors is not exhaustive and therefore, factors that are not listed may also be relevant in a particular case.

⁵¹ Section 49(3) of the RTI Act.

⁵² Dreamworld's submissions to OIC dated 11 May 2016.

⁵³ See *State of Queensland v Albietz, Information Commissioner (Qld) and Anor* [1996] 1 Qd R 215, where de Jersey J observed that '*the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant*' (at 219). See also *Victoria Police v Marke* [2008] VSCA 218, in which Weinberg JA noted (at [66]) '[the FOI Act] does not, in the normal course, contemplate that the motives of the person seeking access to a document should be scrutinised and characterised as either worthy or unworthy. These are value judgements, which are likely to be highly subjective, and have no place in a scheme that is designed to ensure the proper accountability of government and I consider these observations apply equally to the RTI Act. These observations have been cited with approval by the Information Commissioner in *Helping Hands Network Pty Ltd and Department of Education, Training and Employment* (Unreported, Queensland Information Commissioner, 30 October 2012) at [66].

⁵⁴ Schedule 4, part 1, item 3 of the RTI Act.

⁵⁵ Dreamworld's submissions to DJAG dated 24 July 2015.

⁵⁶ In any event, Treasury has obligations under section 78 of the RTI Act, to include copies of non-personal documents released under the RTI Act, on its disclosure log, subject to section 78B of the RTI Act.

- promote open discussion of public affairs and enhance the government's accountability⁵⁷
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;⁵⁸ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁹
44. There is a clear public interest in people being able to discuss and understand the way in which regulatory entities such as WHSQ undertake their responsibilities under the WHS Act.⁶⁰ Accordingly, I consider the above factors apply in this case. These factors have not been discharged to any extent through partial disclosure as, to date, there has been no information released to AWU in response to its application.
45. The WHS Act sets out the functions and powers of inspectors as follows:⁶¹

160 Functions and powers of inspectors

An inspector has the following functions and powers under this Act—

- (a) *to provide information and advice about compliance with this Act;*
 - (b) *to assist in the resolution of—*
 - (i) *work health and safety issues at workplaces; and*
 - (ii) *issues related to access to a workplace by an assistant to a health and safety representative; and*
 - (iii) *issues related to the exercise or purported exercise of a right of entry under part 7;*
 - (c) *to review disputed provisional improvement notices;*
 - (d) *to require compliance with this Act through the issuing of notices;*
 - (e) *to investigate contraventions of this Act and assist in the prosecution of offences.*
46. As set out in paragraph 11 above, the information in issue includes records created by WHSQ inspectors in connection with Dreamworld site visits/inspections, including handwritten notes and extracts from the WHSQ database recording incidents, workplace events and complaints relating to Dreamworld. These internal WHSQ records demonstrate how WHSQ deals with issues/complaints about ride related safety incidents. Generally speaking, the information in issue sets out how WHSQ inspectors ensure compliance with the WHS Act with respect to amusement rides which are considered to be '*high risk plant*'.⁶² I am satisfied that disclosure would serve the public interest by providing the community with a comprehensive understanding of the procedures adopted and actions taken by the regulatory authority in dealing with issues relating to amusement ride safety, and disclose the reasons for certain decisions made by WHSQ inspectors.
47. Dreamworld contends that due to the age of the documents, the compliance purpose of the information has already been served⁶³ and '*any WHS enforcement value in the documents*' is exhausted.⁶⁴ I acknowledge that some of the information dates back to 2004. However, during the date range of this application, the compliance and investigative functions of WHSQ have remained largely consistent.⁶⁵ I also consider the factors set out at paragraph 43 above, apply to information relating to WHSQ investigations which have been finalised as disclosure will still

⁵⁷ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁸ Schedule 4, part 2, item 3 of the RTI Act.

⁵⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁶⁰ *Nine Network* at [48].

⁶¹ Section 160 of the WHS Act.

⁶² Under schedule 1 of the WHS Act.

⁶³ Dreamworld's submissions to DJAG dated 24 July 2015, paragraph 2.4(c).

⁶⁴ Dreamworld's submissions to DJAG dated 3 September 2015.

⁶⁵ See the repealed *Workplace Health and Safety Act 1995* (Qld).

serve an accountability and transparency purpose. For these reasons, I do not consider that the age of the documents reduces the weight of these public interest factors to any extent.

48. For the reasons set out above, I afford the above factors significant weight in favour of disclosure.

Public safety and consumer protection

49. The RTI Act recognises that the public interest will favour disclosure of information where disclosure could reasonably be expected to reveal measures relating to public health and safety.⁶⁶
50. The Right to Information Commissioner has also identified a factor favouring disclosure of information which could reasonably be expected to enhance consumer protection by creating a safe, informed and competitive marketplace.⁶⁷ In *Nine Network* the RTI Commissioner considered that this factor could be advanced by disclosing the identities of individual amusement ride operators who had received improvement and/or prohibition notices under the WHS Act.⁶⁸ In this regard, the RTI Commissioner stated that:

56. ... Disclosure of this information will considerably increase the information available to consumers and significantly advance the public interest in informed and transparent markets by identifying the rides and the owners which have received notices.

*57. Additionally, disclosure will place the amusement ride operators and the industry in general on notice that information about how they comply with their obligations under the WHS Act may be disclosed to the public under the RTI Act, which could reasonably be expected to increase compliance in the amusement industry generally.*⁶⁹

51. Dreamworld argues that this case can be distinguished from *Nine Network* because the '*the potential prejudice to Dreamworld outweighs any advancement to public safety given that the purpose of the Documents (work health and safety compliance) has already been served*' and as the application is targeted only at Dreamworld, there is '*no opportunity for a fair comparison against other industry participants*'.⁷⁰
52. It is common knowledge that, from time to time, concerns may be raised about ride safety at theme parks.⁷¹ I consider that the open disclosure of safety concerns and the measures taken to address them by Dreamworld will draw the relevant information to the community's attention and provide the public with greater confidence when attending this theme park. While the incidents appear to have been resolved by Dreamworld and WHSQ, I am satisfied that there remains a public interest in community awareness of any safety issues associated with amusement rides and the corresponding steps taken by WHSQ to investigate the incidents and by the theme park operator, to mitigate any future risks. To this end, I find that disclosure will serve a dual purpose of revealing measures relating to public safety and creating a safe and informed marketplace.

⁶⁶ Schedule 4, part 2, item 14 of the RTI Act.

⁶⁷ *Seven Network (Operations) Limited and Redland City Council; A Third Party* (Unreported, Queensland Information Commissioner, 30 June 2011) at [33]-[45].

⁶⁸ *Nine Network* at [54]-[59].

⁶⁹ *Nine Network* at [56]-[57].

⁷⁰ Dreamworld's submissions to DJAG dated 24 July 2015, paragraph 1.23.

⁷¹ See, for example, media reports about rides at Dreamworld available from https://www.parkz.com.au/article/2016/04/20/397-Dreamworlds_Log_Ride_reopens.html (accessed 18 July 2016) and http://www.goldcoastbulletin.com.au/news/gold-coast/dreamworlds-big-thrill-ride-the-buzzsaw-has-been-closed-due-to-safety-concerns/newsstory/ab76b2cc06c4732b82a709ed3f87_aaff (accessed 18 July 2016).

53. As I have already acknowledged, the information that was in issue in *Nine Network* is of a different character to the information in issue in this review.⁷² I accept that disclosing information relating solely to Dreamworld may not assist the public in comparing the performance of various ride operators, as was the case in *Nine Network*. However, to the extent the information in issue demonstrates the steps taken by Dreamworld to manage incidents relating to amusement ride safety, I am satisfied that disclosure could still reasonably be expected to enhance consumer protection. Accordingly, I find that the weight of this factor is only slightly reduced.
54. For the reasons set out above, I have attributed moderate weight to these factors.

(iii) Factors favouring nondisclosure

Prejudice the flow of information

55. The RTI Act recognises a factor favouring nondisclosure where disclosure of information could reasonably be expected to prejudice the flow of information to a regulatory agency.⁷³
56. Dreamworld submits that it has '*forged a highly productive and respectful relationship, characterised by open and unrestricted information sharing*' with WSHQ and disclosure of the information in issue would damage this relationship.⁷⁴ Dreamworld has also indicated that since this particular access application was made, it has restricted its cooperation with WSHQ '*in order to protect our documents from non-meritorious RTI applicants*'.⁷⁵
57. As noted above, the WHS Act confers various powers on inspectors to compel the production of documents and information. As the RTI Commissioner noted in *Nine Network*:

75. ... while a cooperative relationship with industry participants may in some circumstances be desirable, it is not necessary to ensure the protections enshrined in the WHS Act are maintained.

*76. Ride operators are required to comply with the safety standards set out in the WHS Act or face the penalties set out in that Act. WSHQ in turn is charged with upholding that scheme. This is not a consensual or cooperative regime. Rather, it is a mandatory framework that ultimately demands compliance on the part of industry participants.*⁷⁶

58. While I understand there is some risk in Dreamworld being less forthcoming in providing information voluntarily, on an informal basis, to WSHQ in the future, I do not accept that Dreamworld can deny any level of cooperation with WSHQ given the mandatory compliance framework set up under the WHS Act, and also in view of the applicable penalty provisions.⁷⁷ For these reasons, I am not satisfied that disclosure could reasonably be expected to prejudice the flow of information to WSHQ to any significant extent. Accordingly, I have only attributed low weight to this factor in favour of nondisclosure.

Prejudice the business, commercial or financial affairs of Dreamworld

59. Dreamworld contends that disclosing the information in issue could reasonably be expected to prejudice its business, commercial and financial affairs.⁷⁸ I acknowledge in a general sense

⁷² See footnote 47 above.

⁷³ Schedule 4, part 3, item 13 of the RTI Act. In view of my findings on the breach of confidence exemption above, I have not considered the application of the related public interest harm factor in schedule 4, part 4, item 8 of the RTI Act as I am not satisfied that the information in issue was communicated in confidence.

⁷⁴ Dreamworld's submissions to OIC dated 11 May 2016.

⁷⁵ Dreamworld's submissions to OIC dated 11 May 2016.

⁷⁶ At [75] and [76].

⁷⁷ For example, sections 165(2), 171(6) and 188 of the WHS Act.

⁷⁸ Dreamworld's submissions to DJAG dated 24 July 2015 at paragraph 1.3 and Dreamworld's submissions to DJAG dated 3 September 2015.

that disclosing information about incidents relating to amusement ride safety may negatively impact Dreamworld's reputation and thereby cause some prejudice to its business and commercial affairs. For this reason, I am satisfied that this factor applies.⁷⁹ In deciding the weight to be attributed to this factor, I must consider the extent of prejudice that could reasonably be expected to result directly from disclosure of the information in issue.

60. Given the nature of Dreamworld's business as a large theme park operator and the 11-year timeframe of the access application, I consider it is reasonable to expect WHSQ would have received some complaints and notifications regarding amusement ride safety. In this regard, certain incidents have been reported in the media.⁸⁰ Many of the safety concerns that are recorded in the information in issue involve members of the public and is therefore, not necessarily secret information known only to Dreamworld and WHSQ.
61. The information in issue also includes Dreamworld's responses to the health and safety concerns/complaints. In many instances, WHSQ inspectors have recorded their observations following site visits to show that they are satisfied with the steps taken by Dreamworld to mitigate health and safety risks. In my view, this information serves to demonstrate the steps taken by Dreamworld to improve the safety of its premises/workplace. As this information reflects positively on Dreamworld's proactive approach to resolving health and safety issues, I am not persuaded it could prejudice Dreamworld's reputation or business affairs.
62. For the reasons set out above, I afford moderate weight to this factor in favour of nondisclosure.

Disclosure prohibited by an Act

63. Dreamworld submits that disclosure of any of the information in issue is prohibited under section 271 of the WHS Act and that therefore, a further factor favouring nondisclosure⁸¹ applies.⁸² As set out at paragraph 26 above, the WHS Act imposes a general obligation of confidentiality upon WHSQ inspectors. I am therefore satisfied that this public interest factor applies to the information in issue.
64. The WHS Act operates to prohibit the disclosure of information unless it is required or authorised under a law. I am satisfied that release under the RTI Act is a release authorised under a law.⁸³ In addition, section 6 of the RTI Act provides that the RTI Act is intended to override the '*provisions of other Acts prohibiting disclosure*'. Parliament has expressly recognised information which is the subject of certain Acts prohibiting disclosure as exempt information.⁸⁴ Notably, section 271 of the WHS Act is not part of that list.⁸⁵
65. Therefore, while this factor applies, I afford it very limited weight in favour of disclosure, in view of the statutory framework discussed above.

(iv) Balancing the public interest

66. I am satisfied that, in addition to the pro-disclosure bias, there are several factors which strongly favour disclosure of the information remaining in issue in this review. There is a clear public interest in the community being able to discuss and understand the way in which regulatory entities such as WHSQ perform their responsibilities under the WHS Act. This has heightened importance in the context of public safety issues relating to amusement rides. In this regard, I also find that disclosure would serve to moderately enhance consumer protection.

⁷⁹ Schedule 4, part 3, item 2 of the RTI Act.

⁸⁰ See the media reports cited at footnote 71 above.

⁸¹ Schedule 3, part 3, item 22 of the RTI Act

⁸² Dreamworld's submissions to DJAG dated 24 July 2015.

⁸³ *Seven and Safe Food* at [28].

⁸⁴ Schedule 3, section 12 of the RTI Act.

⁸⁵ See *Queensland Newspapers Pty Ltd and Queensland Police Service; Third Parties* [2014] QICmr 27 (12 June 2014) at [121].

67. I acknowledge that disclosing the information in issue may have some impact on Dreamworld's business and commercial affairs, in terms of its reputation. However, given the particular nature of the information, I do not consider this prejudice could reasonably be expected to be significant. Also, any prejudice to the free flow of information to WHSQ would be minimal given the mandatory compliance framework set up under the WHS Act. Finally, while the WHS Act includes a confidentiality provision, the weight of this is very limited as it must be balanced against the express intention of the RTI Act.
68. On balance, I find that the public interest factors favouring disclosure outweigh the nondisclosure factors in this case. Accordingly, I find that disclosure would not, on balance, be contrary in the public interest, and therefore, access to the information in issue may not be refused under section 47(3)(b) of the RTI Act.

DECISION

69. I set aside the deemed decision to refuse access to information under the RTI Act. In substitution, I find that the information remaining in issue is not exempt and nor would its disclosure, on balance, be contrary to the public interest and that therefore, access may not be refused under section 47(3)(a) or section 47(3)(b) of the RTI Act.
70. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 28 July 2016

APPENDIX

Significant procedural steps

Date	Event
20 April 2015	DJAG received the access application from AWU.
10 July 2015	DJAG wrote to Dreamworld to seek its views on disclosure and provided Dreamworld with copies of the relevant documents for consultation.
24 July 2015	Dreamworld provided submissions to DJAG setting out its objections to disclosure of the consultation documents.
31 July 2015	DJAG purported to issue a decision to AWU and Dreamworld granting access to certain information and refusing access to the remaining information.
5 August 2015	OIC received an application for external review from AWU.
6 August 2015	OIC asked DJAG to provide relevant procedural documents.
11 and 14 August 2015	DJAG provided OIC with the relevant procedural documents.
26 August 2015	OIC notified AWU and DJAG that the external review application had been accepted.
2 September 2015	OIC confirmed to DJAG that its decision dated 31 July 2015 had been issued outside the relevant statutory timeframe and that therefore, DJAG was deemed to have made a decision refusing access to all of the located documents.
3 September 2015	Dreamworld wrote to DJAG seeking internal review, including a further submission setting out its objections to disclosure of the located documents.
7 September 2015	DJAG wrote to Dreamworld to advise that due to the effect of the deemed decision, the internal review option was unavailable to Dreamworld to pursue.
11 September 2015	DJAG provided OIC with a copy of the located documents.
21 September 2015	Dreamworld wrote to OIC seeking information about its external review rights.
29 September 2015	OIC spoke with Dreamworld's legal representative to convey information about the external review process and confirmed that OIC would invite Dreamworld to participate in the review if OIC formed the view that information should be disclosed, contrary to its objections.
21 October 2015	OIC provided AWU with an update on the status of the external review, by telephone.
2 November 2015	OIC provided Dreamworld with an update on the status of the external review, by telephone.
26 November 2015	OIC and AWU discussed options for narrowing the scope of the application.
14 December 2015	OIC provided DJAG with an update on the status of the external review, by telephone, and requested a schedule of the located documents. DJAG provided the schedule to OIC on this date.
4 January 2016	In a telephone conversation with OIC, AWU agreed to narrow the scope of the external review.
5 January 2016	OIC confirmed, by email to AWU, the agreed narrowed scope (as set out at paragraph [10] above).
18 January 2016	DJAG advised OIC that the Office of Industrial Relations, encompassing WHSQ, had been transferred to Treasury, in a machinery of government change.
12 February 2016	OIC conveyed a written preliminary view to Treasury that the information remaining in issue in the review was not exempt or contrary to the public interest.
15 February 2016	OIC provided AWU with an update on the status of the external review, by telephone.

Date	Event
19 February 2016	Dreamworld asked OIC for an update on the status of the review process.
22 February 2016	OIC telephoned Dreamworld to provide an update on the status of the review and conveyed the narrowed scope. Dreamworld indicated to OIC that it was in separate negotiations with AWU and would consider informally resolving this matter.
25 February 2016	Dreamworld notified OIC that due to its ongoing negotiations with AWU, it was seeking a six week suspension of the external review. Treasury notified OIC that it accepted OIC's preliminary view dated 12 February 2016.
15 March 2016	AWU formally requested a suspension of the external review to undertake negotiations with Dreamworld.
12 April 2016	AWU notified OIC that its negotiations with Dreamworld had not been successful and therefore, asked OIC to proceed with the external review process.
14 April 2016	OIC confirmed to Dreamworld's legal representative that the external review would proceed and that OIC would shortly write to Dreamworld to convey a preliminary view on disclosure and invite it to become a participant. OIC asked Treasury to send Dreamworld a redacted version of the information remaining in issue in the review, for the purpose of third party consultation.
22 April 2016	OIC issued a preliminary view to Dreamworld that access to the information remaining in issue could not be refused as it was not exempt and would not, on balance, be contrary to the public interest to disclose.
11 May 2016	OIC received submissions from Dreamworld, contesting the preliminary view.
19 May 2016	OIC provided AWU with an update on the status of the external review, by telephone.
23 May 2016	OIC requested additional information from Treasury.
26 May 2016	OIC received additional submissions from Dreamworld and Treasury, by telephone.