



Decision and Reasons for Decision

Citation:	<i>Z32 and Queensland Building and Construction Commission; J26 (Third Party) [2021] QICmr 52 (14 October 2021)</i>
Application Number:	315697
Applicant:	Z32
Respondent:	Queensland Building and Construction Commission
Third Party:	J26
Decision Date:	14 October 2021
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - recruitment and personnel information - personal information - prejudice agency management function - accountability and transparency - whether disclosure would on balance be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - SUFFICIENCY OF AGENCY SEARCH EFFORTS - whether agency has taken reasonable steps to identify and locate documents requested by applicant - section 130 and sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Queensland Building and Construction Commission (**QBCC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to various documents concerning the recruitment by QBCC of a named individual (**the third party**).²
2. QBCC located various documents, both during initial processing and on internal review. QBCC decided³ to release some of these (in whole or part), and to refuse access to others, on the ground their disclosure would, on balance, be contrary to the public interest.⁴

¹ Application dated 19 May 2020.

² The third party was, as I understand, appointed on secondment to a position within QBCC, then subsequently appointed to a position on contract, following an open recruitment and selection process.

³ Initial decision dated 11 August 2020; internal review decision dated 2 October 2020.

⁴ Section 47(3)(b) of the RTI Act.

3. The applicant applied⁵ to the Office of the Information Commissioner (**OIC**) for external review of QBCC's decision to refuse him access to information. The applicant also contested the adequacy of QBCC's searches for documents relevant to his request.
4. OIC sought the views of the third party as to possible disclosure of relevant documents. The third party did not ultimately press any objections to disclosure,⁶ and QBCC subsequently agreed to release additional information to the applicant during the review. Additionally, the applicant did not press for access to some information.⁷ As a result, only a small amount of information remains in issue. For reasons explained below, I consider that the applicant is entitled to access some of that information. QBCC may, however, refuse the applicant access to the balance. I therefore vary QBCC's decision to refuse access to all of the information in issue.
5. I am also satisfied that QBCC has taken reasonable steps to locate requested documents, and therefore discharged its search obligations under the RTI Act.

Background

6. Significant procedural steps are set out in the appendix to this decision.

Reviewable decision

7. The decision under review is QBCC's internal review decision dated 2 October 2020.

Evidence considered

8. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
9. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information as embodied in section 21 of that Act. I consider that in observing and applying the law prescribed in the RTI Act, a Right to Information decision-maker will be '*respecting, and acting compatibly with*' this right and others prescribed in the HR Act,⁸ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'⁹

Information in issue

10. The information in issue comprises:
 - segments of information appearing on the second and third pages of a 'Statement Addressing Selection Criteria' (**SASC**) authored by the third party; and
 - three instances of two payroll/employee numbers concerning the third party, appearing on two pages.¹⁰

⁵ Application dated 29 October 2020.

⁶ See email from the third party to OIC dated 6 May 2021. The third party did, however, wish to remain as a participant in the review, their application to participate under section 89(2) of the RTI Act having been accepted by OIC prior to withdrawal by them or their objections.

⁷ See email from OIC to the applicant dated 11 May 2021.

⁸ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

⁹ **XYZ** at [573].

¹⁰ 'New appointment paperwork from 14 May 2018 000003' (one instance); 'New appointment paperwork from 14 May 2018 000007' (two instances).

11. For reasons explained below, I do not consider that grounds exist for refusing access to the first two segments of information redacted from the third page of the SASC. I will refer to this information as the '**Category A Information**'. I will refer to the balance of information redacted from the SASC – to which access may, in my view, be refused – as the '**Category B Information**'.¹¹ The payroll/employee numbers I will simply refer to as the '**Payroll Numbers**'.

Issues for determination

12. The issues for determination are:
- whether QBCC may refuse access to the information in issue on the ground its disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act; and
 - 'sufficiency of search' – that is, whether QBCC has taken reasonable steps to locate documents relevant to the access application (such that access to further documents may be refused, on the ground that any documents are nonexistent or unlocatable).¹²

Procedural complaints/allegations of bias

13. Before dealing with the substantive issues identified in the preceding paragraph, I should firstly note that the applicant made various complaints and allegations during the review, including assertions as to bias against the delegate who managed most of the external review, and claims that the applicant had been denied procedural fairness.
14. I am not the delegate against whom relevant allegations were levelled. Thus, it seems to me that as a matter of fact, the bulk of the applicant's grievances in this regard – including those as to bias – essentially 'fall away', and do not strictly need to be dealt with further.¹³
15. As for complaints as to fairness, having reviewed the procedure followed during this review I am quite satisfied the applicant has been treated fairly. He has been afforded the benefit of detailed preliminary views on issues where those views were against his interests. It is also worth remembering that the applicant is, as a consequence of the external review process, in a considerably better position than following QBCC's decisions, having secured access to a number of pages to which he had been refused access by QBCC. His success in this regard follows OIC having independently and impartially:
- assessed relevant information
 - appraised QBCC's decision to refuse access to same
 - undertaken third party consultation as required by the RTI Act
 - advised QBCC of our view that it had not established grounds for refusing access; and, ultimately,
 - secured QBCC's agreement to release of that information.
16. Further, OIC acceded to the applicant's 14 June 2021 request for an extension of time in which to lodge submissions.¹⁴ We did in our 27 July 2021 letter direct that such submissions be limited to no more than three pages, but this direction followed receipt from the applicant of a discursive 17 page submission¹⁵ canvassing a range of issues (many of which are

¹¹ A copy of relevant pages of the SASC, with each Category clearly marked, will accompany the copy of these reasons forwarded to QBCC.

¹² Sections 47(3)(e) and 52 of the RTI Act.

¹³ As I have had no prior dealings with this matter, nor the applicant.

¹⁴ Email to applicant dated 14 June 2021.

¹⁵ Dated 15 June 2021.

beyond our power to consider), and was made in a context where the issues remaining to be addressed were relatively limited in number, confined to matters of fact, and the page limit imposed corresponded with the length of the OIC letter inviting reply.

17. This was also a direction given consistently with not only the broad discretion conferred on the Information Commissioner to set the procedure on external review,¹⁶ but the express power to give directions prescribed in section 95(2) of the RTI Act.¹⁷
18. OIC is obliged to conduct reviews expeditiously,¹⁸ and strives to meet this obligation with limited resources, which must be apportioned to meet both a range of statutory duties and heavy demand for external review from not just the applicant, but other members of the community. Given this, and the matters canvassed in paragraphs 16 and 17, I am satisfied that the page limit direction made in our 27 July 2021 letter was appropriate, and did not operate to deny the applicant fair opportunity to put forward his case.
19. As for the applicant's assertion of bias, and accompanying request of the Information Commissioner that a delegate other than the original delegate make this decision, it is not, as noted at paragraph 14, strictly necessary to deal with this issue or request, given that the latter has, in practise, occurred: I have come to this matter fresh and have had no prior dealings with the review nor, indeed, the applicant.¹⁹ It is adequate to simply summarise the Commissioner's 11 August 2021 reply to the applicant, noting that the review has been conducted without irregularity, in accordance with OIC's usual practices, and '*well within the broad procedural discretion conferred on ...[the Information Commissioner] (and... delegates) by section 95(1)(a) of the Right to Information Act 2009 (Qld)*'.
20. Finally, for completeness I note that a recurring theme through the applicant's submissions is an insistence that other agencies and public entities have failed to properly discharge their duties or, worse, done so 'corruptly',²⁰ coupled with an insistence that OIC should thus duly report those nominated by the applicant to other agencies for further action, in accordance with applicable statutory duties.²¹ I should make it clear that I do not share the applicant's suspicions, and have identified nothing in the material before me enlivening relevant reporting duties. Yet even if I had, I am under no obligation to account to him for the discharge of such reporting duties, let alone the world at large via published reasons for decision.
21. With that said, I will now turn to the substantive issues to be determined.

Access to information

22. QBCC maintains that access may be refused to all information remaining in issue. The applicant, on the other hand, seeks access to that information.
23. Having considered each of QBCC's and the applicant's submissions, and the actual information in issue, my view is that the preferable position lies somewhere in between. There is no basis for refusing the applicant access to the Category A Information.

¹⁶ Section 95(1)(a) of the RTI Act.

¹⁷ And comports entirely with the practice in superior courts - see, by way of just one example, order 2 of Sheridan DCJ in *Wood v Commissioner of Police* [2021] QDC 209.

¹⁸ Section 90 of the RTI Act.

¹⁹ And thus, have no actual bias against the applicant, and could not be said not to bring an impartial mind to the determination of the issues in this review, in the eyes of a fair-minded lay bystander: *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

²⁰ Paraphrasing, for example, the applicant's 10 August 2021 submissions, referring to 'corrupt conduct'.

²¹ Such as that prescribed in section 113 of the RTI Act.

24. Disclosure of the balance of the information in issue – the Category B Information and the Payroll Numbers – would, however, on balance be contrary to the public interest. Access may therefore be refused to this latter information.
25. In deciding whether disclosure of information would, on balance, be contrary to the public interest,²² the RTI Act requires a decision-maker to:²³
- 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 in issue would, on balance, be contrary to the public interest.
26. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have carefully considered these lists, together with all other relevant information, in reaching my decision.
27. Additionally, I have kept in mind the RTI Act's pro-disclosure bias²⁴ and Parliament's intention that grounds for refusing access to information be interpreted narrowly,²⁵ and have not considered any irrelevant factors.

Findings

Category A Information

28. As noted above, I consider the applicant is entitled to access the Category A Information, for the following reasons.
29. Favouring disclosure of the Category A Information is, firstly, the general public interest in promoting access to government-held information.²⁶ Further, disclosure of this information – material relied on by a candidate for relatively senior public employment, and apparently taken into account by the employing agency²⁷ – could reasonably be expected to:²⁸
- contribute to the transparency of QBCC's recruitment processes, and ensure and enhance the accountability of QBCC for adherence to merit and equity principles in making recruitment decisions;²⁹ and
 - reveal background or contextual information informing QBCC's decisions to appoint the third party.³⁰

²² 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

²³ Section 49 of the RTI Act.

²⁴ Section 44 of the RTI Act.

²⁵ Section 47(2)(a) of the RTI Act.

²⁶ Implicit in the object of the RTI Act.

²⁷ *Antony and Griffith University* (2001) 6 QAR 31 (**Antony**).

²⁸ The phrase 'could reasonably be expected' requires a decision-maker to distinguish 'between what is merely possible ... and expectations that are reasonably based' and for which 'real and substantial grounds exist': *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279, a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld), at [154]-[160]. Other jurisdictions have similarly interpreted the phrase 'as distinct from something that is irrational, absurd or ridiculous': See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at [190].

²⁹ Schedule 4, part 2, item 1 of the RTI Act. The Information Commissioner and predecessors have previously recognised the existence of public interest considerations favouring disclosure of information that will, as here, 'enhance the accountability of ... [agencies] for adherence to merit and equity principles in job selection processes' (*Antony* at [47].)

³⁰ Schedule 4, part 3, item 11 of the RTI Act.

30. As discussed further below, the public interest is served by ensuring the community can access information allowing it to be satisfied public sector appointments are made fairly and transparently. The public interest factors identified in the preceding paragraph deserve substantial weight.
31. Favours nondisclosure is the fact that this information is, as QBCC submits, the third party's personal information,³¹ giving rise to the public interest harm factor prescribed in schedule 4, part 4, section 6 of the RTI Act. The public interest harm that could, however, reasonably be expected to follow disclosure of this personal information would be exceedingly minor, because the third party – whom the personal information is about, and who authored that information – does not object to its release.³² Given this, I consider the relevant harm factor merits only slight weight in balancing the public interest.³³
32. QBCC also argues that disclosure of the Category A Information could reasonably be expected to prejudice QBCC's management function.³⁴ In an email dated 25 August 2021, QBCC submitted that release of this specific information:
- ...could be expected to prejudice the management function of our agency in relation to current and future personnel. I consider QBCC employees or employees from other agencies would be aggrieved at information such as this example relating to internal staff matters being disclosed to a third party. I deem that this should be given substantial weight for nondisclosure in deciding the public interest.*
33. I do not accept this submission. As OIC explained to QBCC during the review, it is not reasonable to expect that disclosure of a passage of information authored by and concerning a specific individual in support of that individual's job selection claims could aggrieve other employees (current or prospective) at all, let alone to an extent that might disrupt or prejudice QBCC's management of those employees.
34. Again, the determining consideration in this regard is that the third party does not themselves object to release. Given this, I do not consider it reasonable to expect that disclosure would perturb or aggrieve other staff in the manner contended by QBCC, so as to give rise to the relevant nondisclosure factor.³⁵ Accordingly, I am not satisfied that disclosure of the Category A information could reasonably be expected to prejudice QBCC's management function.³⁶ This factor does not, therefore, need to be taken into account in balancing the public interest.
35. I turn to balance competing factors against one another. Given the third party does not object to disclosure of his personal information as embodied in the Category A information, I am not satisfied that the applicable public interest harm factor³⁷ attracts sufficient weight

³¹ Personal information is defined in section 12 of the *Information Privacy Act 2009* (Qld) 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.' This definition applies for the purposes of the RTI Act: schedule 5. Relevant information falls within this definition.

³² Email from third party dated 6 May 2021.

³³ And, for completeness, do not consider the related privacy nondisclosure factor stated in schedule 4, part 3, item 3 arises for balancing, in view of the third party's lack of objection to the release of this information. Alternatively, if it did apply, the third party's position means that factor would attract only very minimal weight in balancing the public interest, insufficient to shift the balance of the public interest in favour of nondisclosure.

³⁴ Schedule 4, part 3, item 19 of the RTI Act.

³⁵ Noting that in the event similar information concerning other employees came to be considered for disclosure under the RTI Act, those employees would have fair opportunity to put their own concerns as to release in accordance with the third party consultation requirements stated in sections 37 and 89 of the RTI Act.

³⁶ And certainly not the related public interest harm factor set out in schedule 4, part 4, section 3(c) of the RTI Act, which requires reasonable expectation of not just mere prejudice, but a 'substantial adverse effect' – a grave, weighty, significant or serious effect – on management by an agency of agency staff (*Cairns Port Authority and Department of Lands; Cairns Shelf Co No. 16 Pty Ltd (Third Party)* (1994) 1 QAR 663 at [150]). QBCC did not rely on this harm factor, and given the onus it bears under section 87 of the RTI Act, it is therefore not strictly necessary that I address it – I do so, parenthetically, in the interests of completeness.

³⁷ I.e., schedule 4, part 4, section 6 of the RTI Act.

to displace the weighty accountability and transparency considerations favouring release discussed in paragraph 29. While I acknowledge QBCC's submissions that disclosure of other material through the course of this review advances those public interest considerations, it nevertheless remains the case that:³⁸

...there are public interests favouring disclosure [of written job application materials such as the Category A information]... those include public interests in revealing the kinds of skills, experience and claims required to win particular positions, maintaining public confidence that only appropriately skilled, experienced and qualified people hold public sector positions which are funded by the public purse and ensuring that applications for similar positions are accurate in their particulars and claims.

...

...[I]t is likely in my view that the higher the seniority of the position in question, the stronger the public interest will be in disclosing documents revealing the claims on that position by the successful applicant.

36. The third party was appointed to a relatively senior position within QBCC, an appointment based in part, I gather, on the Category A information. The '*public interest is promoted by ensuring that members of the public can verify that appointments to the public service are made equitably, and based upon the respective merits of the applicants.*'³⁹
37. For the reasons explained above, then, I am satisfied that release of the Category A Information will serve this public interest, to an extent sufficient to displace the marginal weight attaching to the sole public interest consideration telling against disclosure.
38. QBCC has not discharged the onus it carries⁴⁰ of establishing that a decision refusing access to the Category A Information is justified. Bearing in mind, again, the absence of any objection to disclosure from the third party to whom this information relates, I am satisfied that the balance of the public interest in this case favours disclosure.

Category B Information

39. The Category B Information consists of potentially identifying references to others with whom the third party had dealings in a professional capacity, both within their then-employing agency and externally. While these segments reflect entirely commonplace examples of the types of information often relied on by job applicants to demonstrate capacity and experience, they are, given the investigatory nature of the work in which the third party was engaged, nevertheless possessed of some sensitivity; a sensitivity I do not think is attenuated by the third party's general lack of objection to disclosure of the document in which they appear.
40. As information about other people, and from which I consider those persons' identities could reasonably be ascertained,⁴¹ the Category B Information comprises the personal information of persons other than the applicant.⁴² Additionally, as information touching on matters such as workplace performance and the operations of agency personnel in sensitive regulatory contexts, I am also of the view that unconditional disclosure of these limited segments of information could lead to potential disquiet, and thus could reasonably

³⁸ *Re Byrnes and Department of Environment* [2006] WAICmr 6 at [90] and [107], as regards a written expression of interest for a position.

³⁹ *Hawck and Department of Training and Industrial Relations* (Unreported, Queensland Information Commissioner, 31 January 1997), [38].

⁴⁰ Section 87 of the RTI Act.

⁴¹ Being information such as position titles.

⁴² A weight that, unlike the Category A information, is not attenuated by the third party's general lack of objection to release of the SASC, for the reason that the Category B information is, as noted, not personal information about the third party, but others.

be expected to prejudice relevant agencies' management functions.⁴³ Protecting personal information and avoiding prejudice to agency management functions are important public interests, deserving of considerable weight.

41. The same public interest considerations that favour release of the Category A Information also count in favour of disclosure of the Category B Information. However, in this context, my view is that avoiding the public interest harm that would follow the release of personal information, and potential prejudice to agency management function, should be preferred to those favouring disclosure of this information. Withholding these segments will avoid potential public interest harm and prejudice, while not significantly impairing the applicant or any other persons' ability to understand the merits of the third party's claims to appointment nor QBCC's decision to make such appointment.
42. On balance, then, I am satisfied that factors favouring nondisclosure are sufficient to displace those in favour. Disclosure of the Category B Information would, on balance, be contrary to the public interest, and access may therefore be refused to this information, under section 47(3)(b) of the RTI Act.

Payroll Numbers

43. These numbers are rather insignificant items of information, of a largely clerical or administrative nature. The case for release strikes as rather marginal; while disclosure would promote the general public interest in promoting access to government-held information,⁴⁴ and, to some extent, disclosing information informing the community of QBCC operations,⁴⁵ the relatively trivial nature of this information is such that neither consideration would seem to attract anything beyond modest weight. Nevertheless, in view of the RTI Act's express pro-disclosure bias, and the absence of any substantial considerations telling against disclosure,⁴⁶ OIC's initial view was that their disclosure would not, on balance, be contrary to the public interest.
44. QBCC, however, provided us with submissions during the review establishing that like information had in the past been used to perpetrate attempted payroll fraud against QBCC.⁴⁷ Having no reason to gainsay these submissions, OIC advised the applicant of a revised preliminary view, to the effect that unconditional disclosure of the Payroll Numbers could reasonably be expected to give rise to a public interest prejudice⁴⁸ sufficient to displace considerations favouring release, and thus tip the balance of the public interest in favour of nondisclosure.
45. The applicant continues to press for access to these numbers.⁴⁹ The applicant's case, as I understand it, is that each number may enable him to frame future RTI access requests (i.e., by reference to the numbers). It is not obvious to me how this would be so, nor why he requires access to the actual number – should there be documents of interest to him connected to one of these numbers, there would seem to be more than enough information available to him on the pages on which these numbers appear (they being the only

⁴³ Schedule 4, part 3, item 19 of the RTI Act.

⁴⁴ Implicit in, for example, the object of the RTI Act.

⁴⁵ Schedule 4, part 2, item 3 of the RTI Act.

⁴⁶ Accepting that the numbers comprise personal information, they do not appear overly sensitive examples of information of this kind, such that the public interest harm presumed to flow from their release would not appear significant. As with SASC information discussed above, it is also the case that the person to whom they relate – the third party – does not object to their disclosure. As information concerning public employment, these numbers do not seem to me to fall within the third party's 'personal sphere' so as to attract the operation of the privacy nondisclosure factor in schedule 4, part 3, item 3 of the RTI Act. If I were wrong, then given the third party's lack of objection to their disclosure, I would afford this consideration slight weight.

⁴⁷ Submissions dated 21 July 2021.

⁴⁸ Being the nondisclosure factor prescribed in schedule 4, part 3, item 2 of the RTI Act – prejudice financial affairs of entities, and/or a discrete public interest consideration warranting weighting and balancing (noting the lists of public interest considerations set out in schedule 4 are not exhaustive).

⁴⁹ Submissions dated 10 August 2021.

information redacted from those particular pages) to enable him to make a meaningful application.

46. In any event, even if the above assumptions are mistaken, and refusing access to these numbers does impair the applicant in the manner he asserts, this outcome is to be preferred to the converse which I accept could reasonably be expected to follow unconditional release under the RTI Act – potential fraud on a public agency.
47. In summary, then, I find that considerations favouring nondisclosure of the Payroll Numbers as discussed above⁵⁰ attract weight sufficient to displace those that may tell in favour of release. Accordingly, disclosure of the Payroll Numbers would, on balance, be contrary to the public interest. Access may therefore be refused to this information.

Sufficiency of search

48. OIC's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by an applicant.⁵¹
49. OIC asked QBCC for information concerning search steps taken by it by way of letter dated 21 April 2021. It duly provided advice in reply,⁵² which we relayed to the applicant by way of letter dated 31 May 2021, noting that QBCC had in processing their application undertaken some 9.5 hours of searches, across seven days, of both electronic and physical document repositories.
50. We further advised the applicant that QBCC had certified to us its satisfaction that no further documents exist, advice we were prepared to accept. Given this, we concluded that QBCC's searches appeared to have been reasonable, and we could identify no further searches it might reasonably be required to undertake.
51. In reply,⁵³ the applicant submitted that QBCC should be required to conduct further searches for documents concerning several meetings at which QBCC officers and the third party (then employed by another agency) were present.⁵⁴
52. OIC addressed the above contentions by letter to the applicant dated 27 July 2021. Having summarised the applicant's position in terms equivalent to those stated in the preceding paragraph, our letter continued as follows (footnotes included):

I disagree.

The terms of your access application as originally lodged with QBCC requested access to documents concerning... [the third party's] QBCC employment, and those concerning 'the establishment, recruitment and selection' of and for several nominated positions.

Going by QBCC's initial decision, it appears that QBCC then issued you with a notice of intention to refuse to deal under section 42 of the RTI Act, following which you agreed to narrow the terms of your application, so as to request 'copies of documents regarding the recruitment process of... [the third party]' for two positions within QBCC.⁵⁵

⁵⁰ Particularly those identified in footnote 48.

⁵¹ Section 130 of the RTI Act. For a recent discussion of principles applicable to sufficiency of search and nonexistent document cases, see *V45 and Queensland Police Service* [2021] QICmr 30 (16 June 2021) (**V45**).

⁵² Submissions dated 17 May 2021.

⁵³ Submissions dated 15 June 2021.

⁵⁴ Documentary evidence of which meetings the applicant had obtained, as I understand, by way of earlier RTI access applications, and which was linked to his submissions.

⁵⁵ *And which latter, narrower application therefore comprises that the subject of the decision under review and, ultimately, this external review.*

From the documents supplied by you,⁵⁶ however, none of the meetings nominated in your submissions concerned 'the recruitment process of [the third party]' as targeted in your narrowed access application.⁵⁷ Those documents instead appear to evidence:

- in the case of the 5 December 2017 and proposed 22 March 2018 meetings, inter-agency liaison between QBCC and... [the other agency], initiated by the former in an effort to better manage its interactions and dealings with the latter; and
- in the case of the 6 March 2018 meeting, the conduct (and resolution) of a specific administrative investigation undertaken by... [the other agency] of certain QBCC actions.

Requiring QBCC to undertake further searches for documents relating to inter-agency meetings or a particular administrative investigation – in response to a narrowed application for documents concerning two specific recruitment processes – lies beyond what is reasonable. Documents of the former kind fall outside the scope of the present application; should you wish to pursue access to same, you will need to lodge a fresh access application with QBCC.

As for your general request for searches for 'any other documents concerning any other meetings or communications which can be established between...[the former QBCC Commissioner and the Third Party] which can be identified'.⁵⁸ were it even possible for an agency such as QBCC to deal with such a vague and sweeping request,⁵⁹ it is not competent for an applicant to unilaterally expand the terms of an access application on external review.⁶⁰ You applied for access to documents in terms as summarised above, and you are bound by the terms of that application.⁶¹

53. The applicant continues to insist that QBCC has failed to take reasonable steps to locate relevant documents, his 10 August 2021 submissions in reply to OIC's 27 July 2021 letter essentially maintaining the position summarised in paragraph 51. Without wishing to appear presumptuous, these latter submissions appear to be premised on dissatisfaction with the fact that the information the applicant has had disclosed to him by QBCC does perhaps not rise to the level he would expect, based on his subjective construction and understanding of law and regulation governing public sector recruitment.
54. Whether or not the applicant's apprehensions are justified is a matter entirely outside of my remit on external review, and on which I offer no opinion. The adequacy or otherwise of *the content* of 'recruitment process' documentation (as opposed to *searches* for that process documentation), and the processes followed by a given agency in making recruitment decisions, are not matters that fall for me to explore in an external review conducted under the RTI Act. My role is limited to ascertaining whether, relevantly, QBCC has discharged its search obligations in response to the applicant's access application. On that issue, I can say little more than OIC did in our letter to him dated 27 July 2021, extracted in paragraph 52 above. In other words, I do not accept that reasonable steps require QBCC, in responding to an access application for documents '*regarding the recruitment process*' for two positions, to 'cast the net' any more broadly than it has: let alone for documents relating to inter-agency meetings, a particular administrative investigation by another, unrelated agency, or '*any other documents concerning any other meetings*' between nominated individuals.
55. Accordingly, as a matter of fact I am satisfied that QBCC has taken reasonable steps to identify and locate documents applied for by the applicant. While I consider the preceding

⁵⁶ That is, '2018-01-25 – Email...[QBCC to other agency]', '2018-03-12 - Letter...[Third Party to QBCC]; '2018-03-13 – Email...[QBCC to Third Party]'.

⁵⁷ Or indeed, even the terms of your access application as originally framed, none of these meetings concerning the 'establishment, recruitment and selection' of and for any positions.

⁵⁸ Paragraph 65.

⁵⁹ Noting the obligation borne by an applicant to 'give sufficient information concerning the document to enable a responsible officer of the agency or the Minister to identify the document': section 24(2)(b) of the RTI Act.

⁶⁰ *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30, [17].

⁶¹ As narrowed in consultation with QBCC.

finding sufficient to dispose of this issue, if it is necessary to do so, I find that access to further documents may be refused, on the ground that such documents – to the extent they would fall within the scope of the access application – are nonexistent or unlocatable.⁶²

Additional matters

56. Before concluding these reasons, I should briefly address two further issues pressed by the applicant through this review: the authorship of and comments made in the decision under review, i.e. QBCC's internal review decision.
57. On the first, the applicant contests the legitimacy or validity of the decision under review, contending that it was authored by an officer less senior to the initial decision maker '*in flagrant breach of the RTI Act*'.⁶³ The applicant contends that this amounts to '*criminal activity in public service*' by certain QBCC officers, and presses for the '*outcome*' of this review – presumably, this decision – to '*reflect such findings*'.⁶⁴
58. On the second, the applicant takes issue, as I understand, with commentary in the internal review decision defending and/or explaining the recruitment processes the subject of the applicant's RTI access application.⁶⁵
59. Each matter exemplifies the applicant's desire that OIC make findings on issues that are outside our power or authority, which desire appears to be premised on a misconceived notion that we have some free-ranging policing or disciplinary role on external review. As I have observed above, our role is limited to merits review of an agency decision to refuse access to information, not to vindicate general suspicions harboured by an applicant, nor to make public denouncements of asserted agency shortcomings.⁶⁶ The Information Commissioner does, as noted, have an obligation to report evidence of breach of duty or misconduct in limited circumstances;⁶⁷ that reporting obligation is, however, not one required to be carried out by way of published decision or declaration, or with an accounting to an applicant or any other review participant.
60. Do such matters have any bearing, then, on the external review exercise? Given that external review is merits review, the short answer is no. As we explained to the applicant in our 27 July 2021 letter, (by way of quotation of observations made by the Right to Information Commissioner in an earlier, unrelated decision, in response to similar arguments by another applicant):⁶⁸

...OIC conducts a 'merits review' of the relevant agency decision:

This means that OIC stands in the shoes of the agency and can make any decision that was open to the agency to make. The effect of this is that any procedural issues that may have arisen when the agency was processing the application are irrelevant on external review. OIC's role is to conduct a fresh review of the relevant facts and law, and make a fresh decision. Accordingly, an applicant is not prejudiced by any procedural issues or defects that may have occurred during processing as these are corrected and/or are irrelevant under a merits review process.

⁶² Sections 47(3)(e) and 52 of the RTI Act. For a recent discussion of principles relevant to the application of these provisions, see V45.

⁶³ Submissions dated 10 August 2021. This contention is, as I understand, based on the PDF document's properties or metadata, which disclose an 'author' other than the decision's signatory.

⁶⁴ As above. See also the applicant's 15 June 2021 submissions.

⁶⁵ See particularly paragraph 33 of the applicant's 15 June 2021 submissions.

⁶⁶ And certainly not to consider whether QBCC has '*establish[ed] the lawful recruitment and selection of [the Third Party] to executive position(s) at the QBCC*' (applicant's 15 June 2021 submissions, paragraph 34).

⁶⁷ See footnote 21.

⁶⁸ V45 at [17].

61. With all that said, having traversed the above issues I do think it appropriate that, at least as regards the question of authorship,⁶⁹ I record my observation that I can see nothing untoward with QBCC's internal review decision. It clearly bears the name, position, and signature of the-then Acting Commissioner, a position I think I may safely assume was of higher rank than that of the initial decision-maker. That the document's metadata indicates the document itself was created by another, more junior, officer is neither here nor there. From personal experience, it is a routine and commonplace course of action in the contemporary public service for electronic documents such as correspondence, draft reasons for decision or other statutory instruments to be brought into existence by a subordinate officer, resulting in that officer being recorded as the document's originator by the computer application used to create⁷⁰ or finalise⁷¹ the document. The *content* of such correspondence or instrument, however, will be settled,⁷² endorsed and issued by an appropriately empowered officer or delegate.
62. The above appears to have been exactly the case here, such that even if I did have some obligation to entertain and address this issue on external review, there is no objective, probative material before me to cause me to do so.

DECISION

63. I vary, under section 110(1)(b) of the RTI Act, QBCC's decision to refuse access to all of the information in issue, by finding that:
- QBCC may only refuse access to the Category B Information and Payroll Numbers, under section 47(3)(b) of the RTI Act; and
 - QBCC has not established grounds for refusing access to the Category A Information.
64. I further record my satisfaction that QBCC has taken reasonable steps to identify and locate documents relevant to the applicant's RTI access application, and therefore discharged the search obligations it bears under the RTI Act. To the extent it may be necessary, access may be refused to any additional documents relevant to the terms of the applicant's narrowed RTI access application under section 47(3)(e) of the RTI Act, on the basis they are nonexistent or unlocatable within the meaning of section 52 of the Act.
65. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Acting Right to Information Commissioner

Date: 14 October 2021

⁶⁹ The second being a matter I have already touched on: see paragraph 54.

⁷⁰ E.g., Microsoft Word.

⁷¹ E.g., Adobe PDF programs.

⁷² Or have been settled.

APPENDIX

Significant procedural steps

Date	Event
29 October 2020	OIC received the application for external review.
2 November 2020	OIC requested preliminary documents from QBCC.
11 November 2020	OIC received the requested documents from QBCC.
24 November 2020	OIC notified the applicant and QBCC that the external review application had been accepted and requested further documents from QBCC.
9 December 2020	OIC received the requested documents from QBCC.
10 March 2021	OIC consulted the third party and invited the third party to apply to participate in the review.
22 March 2021	The third party applied to participate in the review, and provided OIC with submissions.
8 April 2021	OIC notified the third party that their application to participate in the review had been accepted.
21 April 2021	OIC conveyed a preliminary view to the applicant, agency and third party.
23 April 2021	OIC received further submissions from QBCC in response to the preliminary view. OIC received the applicant's request for clarification of parts of the preliminary view.
27 April 2021	OIC provided clarification to the applicant.
6 May 2021	OIC received the third party's submission in response to the preliminary view.
11 May 2021	Having received no reply from the applicant to OIC's 21 April 2021 preliminary view, OIC wrote to the applicant, confirming that information discussed in that correspondence was no longer in issue.
11 May 2021	OIC conveyed the third party's submission, and the applicant's position in response to the preliminary view, to QBCC.
17 May 2021	OIC received QBCC's submissions in response to OIC's 21 April 2021 preliminary view, including agreement to release some additional information.
31 May 2021	OIC requested QBCC release relevant information to the applicant. OIC conveyed a further preliminary view to the applicant.
15 June 2021	OIC received the applicant's submissions in response to OIC's 31 May 2021 preliminary view.
6 July 2021	OIC conveyed the applicant's submissions to QBCC and requested QBCC consider disclosing further documents.
21 July 2021	OIC received QBCC's further submissions regarding disclosure of further documents.
27 July 2021	OIC conveyed a further preliminary view to the applicant.
10 August 2021	OIC received the applicant's submissions in response to OIC's further preliminary view.
11 August 2021	OIC wrote to the applicant concerning conduct of the review.
12 August 2021	OIC requested QBCC consider disclosing further information.
25 August 2021	QBCC agreed to release some additional information.
7 September 2021	OIC requested QBCC disclose additional information to the applicant. OIC confirmed with the applicant, QBCC and the third party that the next step in the review would comprise a written decision. OIC asked the third party to confirm continuing participation in the review; the third party confirmed their participation.