



Decision and Reasons for Decision

Application Number: 100101

Applicant: N31ZEO

Respondent: Department of Justice and Attorney-General

Third Party: Queensland Newspapers Pty Ltd

Decision Date: 8 November 2013

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – CONTRARY TO PUBLIC INTEREST – correspondence between the Office of Liquor and Gaming Regulation and Queensland Police Service about liquor-related incidents at licensed venues – objections to disclosure raised by owner of a venue – accountability of regulatory and law enforcement agencies in relation to licensed venues and public safety – impact of disclosure on the venue’s business affairs – disclosure is prohibited by an Act – whether disclosure would, on balance, be contrary to the public interest – whether access to information may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – DISCLOSURE DECISION – ONUS ON EXTERNAL REVIEW – whether objecting participant has established that decision not to disclose information is justified or that the Information Commissioner should give a decision adverse to the access applicant – section 87(2) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. Queensland Newspapers Pty Ltd (**Third Party**) applied to the Department of Justice and Attorney-General (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to correspondence between the Office of Liquor and Gaming Regulation (**OLGR**)¹ and the Liquor Enforcement and Proactive Strategy (**LEAPS**) Coordinator at the Queensland Police Service (**QPS**) in relation to a number of named licensed venues.
2. The Department contacted owners of the relevant venues, including the external review applicant (**Applicant**), to seek their views on disclosure of the information it had

¹ As OLGR is part of the portfolio of the Attorney-General and Minister for Justice, the Department is, for the purposes of the RTI Act, the agency which deals with requests for information held by OLGR.

located in response to the access application. The Applicant objected to information about its venue being disclosed. The Department decided to grant access to the information on the basis that it was not exempt or contrary to the public interest to disclose under the RTI Act.²

3. The Applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision to disclose information about the Applicant's venue. On external review, the Applicant submitted that disclosure of the information would, on balance, be contrary to the public interest.
4. OIC decided³ to affirm the Department's decision on the grounds that disclosure of the information would not, on balance, be contrary to the public interest. The Applicant appealed OIC's decision to the Queensland Civil and Administrative Tribunal (**QCAT**). By decision dated 4 June 2013,⁴ QCAT ordered that OIC's decision be set aside and the matter be remitted to OIC to be dealt with by another Commissioner in accordance with the terms of the judgment. OIC reopened the external review and the matter was considered afresh in accordance with QCAT's decision.
5. I acknowledge that disclosure of the information is prohibited by another Act and its disclosure may also prejudice the Applicant's business affairs. However, for the reasons set out below, I am satisfied that these factors favouring nondisclosure are outweighed by the significant public interest factors favouring disclosure, particularly with respect to the transparency and accountability of OLGR and QPS in relation to the serious issue of alcohol-related violence at licensed venues.
6. Therefore, the Department's decision to disclose information about the Applicant's venue is affirmed, on the basis that its disclosure would not, on balance, be contrary to the public interest under the RTI Act.

Background

7. Significant procedural steps relating to the application and external review process are set out in the appendix to this decision.

Reviewable decision

8. The decision under review is the Department's internal review decision dated 21 December 2011 granting access to information under the RTI Act.

Evidence considered

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

Information in issue

10. LEAPS is a program which involves QPS working with OLGR with a view to ensuring compliance with legislation and regulations concerning licensed venues. QPS officers who attend or become aware of liquor-related incidents involving licensed venues

² The Department also sought QPS' views on disclosure. The Department has confirmed to OIC that QPS initially objected to disclosure of information and sought internal review of the Department's decision to disclose information. QPS did not however, apply to OIC for external review and therefore, QPS was not involved in the external review process.

³ By decision dated 29 October 2012.

⁴ *ASD v Office of the Information Commissioner; Chief Executive, Office of Liquor and Gaming Regulation* [2013] QCATA (**ASD**) per Justice Cullinane, as amended on 11 June 2013.

create a report and forward this to the QPS LEAPS Coordinator. The LEAPS Coordinator then sends the information to OLGR which assesses the information in the context of its regulatory activities.⁵

11. The information in issue in this review (**Information in Issue**) comprises information contained in two spreadsheets prepared by the QPS LEAPS Coordinator and sent to OLGR. The spreadsheets contain:
 - the date, time and location of incidents recorded by QPS officers as having occurred at, or in the vicinity of, the Applicant's venue
 - a summary of the facts relating to the incidents, including the nature of any offence(s), any resulting arrests and/or description of any injuries sustained
 - an indication as to any substance(s) the individuals involved were observed as having been affected by, and the level of intoxication (where applicable); and
 - QPS' reference number.
12. The Information in Issue does not include the names of any individuals involved in the incidents.

Issues for determination

13. As the Department decided to disclose the Information in Issue to the Third Party under the RTI Act, the Applicant has the onus of establishing that a decision not to disclose the document or information is justified or that the Commissioner should give a decision adverse to the person who wishes to be given access to the document.⁶
14. The Applicant submits that:
 - the RTI Act does not apply to the Information in Issue; and
 - access should be refused to the Information in Issue as its disclosure would, on balance, be contrary to the public interest.
15. Accordingly, these are the issues for determination in this review.⁷
16. The Applicant made extensive submissions to OIC to support its view that the Information in Issue should not be disclosed.⁸ In making my decision in this review, I have carefully considered all of the submissions. However, in these reasons for decision, I have not referred to any submissions which are unrelated to the issues for determination.

⁵ See *Commissioner's Circular 27/2010 – Drink Safe Precincts and Banning Orders*, 2 December 2010 available at <http://www.police.qld.gov.au/Resources/Internet/rti/policies/documents/Circular%2027-2010.pdf> (**Commissioner's Circular**) at pages 2 to 3.

⁶ Section 87(2) of the RTI Act.

⁷ The Applicant did not submit on external review that access should be refused on the basis that the Information in Issue is exempt under sections 47(3)(a) and 48 and schedule 3 of the RTI Act and therefore, I have not considered that basis for refusal in these reasons for decision. There is no evidence before me to suggest that the Information in Issue is exempt.

⁸ On reopening the external review, OIC invited the Applicant to make any further submissions on the issues in the external review and told the Applicant that unless OIC heard from the Applicant by 15 July 2013, OIC would assume the Applicant did not wish to make any further submissions and wished for OIC to take into account its external review application of 5 January 2012 and its previous submissions of 9 February 2012 and 9 July 2012. As the Applicant did not respond, I have taken these submissions and the external review application into account. I have also considered the Applicant's submissions dated 7 October 2011 and 28 November 2011 made to the Department in response to the consultation process and in the internal review application. The Applicant was invited to make submissions in response to OIC's preliminary view dated 30 August 2013 but did not do so.

Findings

Does the RTI Act apply to the Information in Issue?

17. Yes, for the reasons that follow.

18. The Applicant submits⁹ that:

- the Information in Issue is not genuinely of a kind which is within the scope of the preamble of the RTI Act as it is of a private nature and concerns a single business operation, rather than government processes generally; and
- only the factual matter in the Information in Issue comprises ‘*information*’ and, accordingly, the balance of the document is beyond the scope of the RTI Act.

19. Section 23 of the RTI Act creates a right for any person to access *documents of an agency*. The term *document* is defined expansively in the *Acts Interpretation Act 1954* (Qld)¹⁰ to include ‘*any paper or other material on which there is writing*’ and ‘*any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced ...*’. I am satisfied the Information in Issue comprises a document within this definition.

20. Section 12 of the RTI Act relevantly defines *document of an agency* as follows:

*In this Act, **document**, of an agency, means a document, other than a document to which this Act does not apply, in the possession, or under the control, of the agency whether brought into existence or received in the agency...*

21. I am satisfied the Information in Issue is in the physical possession of the Department, which is an agency for the purposes of the RTI Act.¹¹ I am also satisfied that the Information in Issue is not a document to which the RTI Act does not apply.¹²

22. Accordingly, the Information in Issue comprises a document of an agency and is therefore subject to the operation of the RTI Act.

Would disclosure of the Information in Issue be, on balance, contrary to the public interest?

23. No, for the reasons that follow.

Relevant law

24. Under the RTI Act, a person has a right to be given access to documents of an agency.¹³ Access should be given to a document unless disclosure would, on balance, be contrary to the public interest.¹⁴ The right of access is subject to some limitations, including grounds on which access to information may be refused.¹⁵ One ground for refusal of access is where disclosure would, on balance, be contrary to the public

⁹ Submission dated 9 July 2012.

¹⁰ Section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Qld).

¹¹ Section 14 of the RTI Act.

¹² As it is not a document mentioned in schedule 1 of the RTI Act: see section 11 of the RTI Act.

¹³ Section 23(1) of the RTI Act.

¹⁴ Section 44(1) of the RTI Act. This is referred to as the *pro-disclosure bias* in deciding access to documents.

¹⁵ The grounds for refusal of access are listed in section 47(3) of the RTI Act. Section 47(2)(a) of the RTI Act provides that these grounds are to be interpreted narrowly.

interest.¹⁶

25. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest¹⁷ and explains the steps that a decision-maker must take¹⁸ in deciding the public interest as follows:

- identify any irrelevant factors and disregard them
- identify relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

OLGR and the LEAPS program

26. In considering the application of the public interest test to the Information in Issue, it is necessary to understand the context in which the Information in Issue was gathered. OLGR is responsible for the regulation and development of Queensland's liquor industry in a way that is compatible with minimising harm caused by alcohol abuse.¹⁹ The Commissioner's Circular notes that:²⁰

... past occurrences have shown that a succession of minor 'one-off' incidents may be regarded as precursors to significant incidents such as brawls and other behaviour resulting in injury to members of the public and officers.

27. The Commissioner's Circular outlines the process whereby QPS officers must report incidents involving alcohol-related violence to the QPS LEAPS Coordinator, who in turn conveys details of the incident to OLGR. The Commissioner's Circular states:²¹

The purpose of recording these incidents is to enable the OLGR to identify any trends at licensed premises that may require proactive negotiations with the licensee of the premises aimed at curtailing potential significant incidents.

Irrelevant factors

28. The Applicant submits²² that:

- taken out of context, the Information in Issue may lead to a person assuming that its venue has not complied with liquor laws
- release of the Information in Issue in its current form could be misinterpreted and undermine OLGR's and the Applicant's objectives and functions; and
- the Information in Issue is '*sensational in some respects*' and, as the Third Party is a media organisation, it is reasonable to expect it will publish the Information in Issue.

¹⁶ Sections 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the 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.

¹⁷ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

¹⁸ Section 49(3) of the RTI Act.

¹⁹ <http://www.olgr.qld.gov.au/aboutus/index.shtml>.

²⁰ Commissioner's Circular at page 2.

²¹ Commissioner's Circular at page 2.

²² Submissions dated 9 February 2012 and 9 July 2012.

29. Under section 49(3)(d) of the RTI Act, I must disregard whether disclosing information could reasonably be expected to result in the access applicant misunderstanding or misinterpreting the document as the RTI Act states that this is an irrelevant factor.²³
30. An access applicant is not required to provide reasons for requesting information under the RTI Act nor to indicate what they intend to do with the information.²⁴ The RTI Act also provides that it is irrelevant to consider whether disclosing the information could reasonably be expected to result in mischievous conduct by the access applicant.²⁵ To the extent any of the Applicant's submissions relate to these issues, they are not relevant to my findings in this matter. However, when considering the possible harm or prejudice that may result from disclosing the Information in Issue, I have assessed it as though the Information in Issue would be made publicly available.

Factors favouring disclosure

Promote open discussion of public affairs and enhance government's accountability

31. If disclosing information could reasonably be expected to²⁶ promote open discussion of public affairs and enhance the Government's accountability, a factor favouring disclosure will arise for consideration.²⁷
32. Venues selling liquor in Queensland must have a liquor licence²⁸ and must comply with the conditions, responsibilities and obligations of their licences.²⁹ This includes an obligation on licensees to provide and maintain a safe environment in and around the premises.³⁰ OLGR is responsible for ensuring licensees comply with relevant licence conditions.
33. The Information in Issue comprises information that was before OLGR about alcohol-related incidents, as reported by QPS. I consider disclosing the Information in Issue would enhance QPS' and OLGR's accountability by providing information about how the two agencies work together in relation to alcohol-related violence at licensed premises. The public interest in enhancing government's accountability through disclosure of this information is considerable, as government has indicated that the reporting process is a mechanism designed to curb more serious incidents of alcohol-related violence at licensed premises.
34. The Applicant submits that the Information in Issue is too specific to its venue to significantly advance the public interest in enhancing agencies' accountability.³¹ I have previously found that disclosing information about a single business provides the public with a 'snapshot' of how an agency performs its regulatory functions and accordingly,

²³ Schedule 4, part 1, item 2 of the RTI Act.

²⁴ *CH32GI and Department of Justice and Attorney-General; Third Parties* (Unreported, Queensland Information Commissioner, 22 November 2012) at [44].

²⁵ Schedule 4, part 1, item 3 of the RTI Act.

²⁶ The term *could reasonably be expected to* requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. The expectation must arise as a result of disclosure, rather than from other circumstances: see *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31] citing *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106; *Murphy and Treasury Department* (1995) 2 QAR 744 at [45]-[47], [54]; *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009).

²⁷ Schedule 4, part 2, item 1 of the RTI Act.

²⁸ <http://www.olgr.qld.gov.au/liquor/licensing/index.shtml>.

²⁹ <http://www.olgr.qld.gov.au/liquor/compliance/index.shtml>.

³⁰ Section 148A(4) of the *Liquor Act 1992* (Qld) (**Liquor Act**).

³¹ Submission dated 9 February 2012.

can reasonably be expected to enhance the agency's accountability and promote open discussion of how the agency discharges its functions.³² In any event, I note that the scope of the access application was not limited to the Applicant's venue, but rather related to a range of venues.

35. For these reasons, I am satisfied that disclosing the Information in Issue would enhance QPS' and OLGR's accountability and promote public discussion about how OLGR performs its functions in concert with QPS. I consider this factor favouring disclosure warrants significant weight.

Contribute to positive and informed debate on important issues or matters of serious interest

36. The significant impact of alcohol-related violence on society is well documented.³³ I consider the prevalence of alcohol-related violence, and the response of government agencies to such incidents, are matters of serious interest. Disclosing the Information in Issue could reasonably be expected to contribute to positive and informed debate on these issues³⁴ by enabling the public to examine the nature and frequency of the incidents reported by QPS LEAPS officers to OLGR. I consider this public interest factor favouring disclosure warrants significant weight.

Revealing environmental or health risks or measures relating to public safety

37. A factor favouring disclosure will also arise if disclosing information could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.³⁵
38. I am satisfied that the process whereby QPS officers disclose information about alcohol-related violence to OLGR is a measure designed to improve public safety at licensed venues by enabling OLGR to identify trends and take proactive action to prevent more serious incidents.
39. Given the significant effects of alcohol-related violence on the community, revealing government agency measures which go to curbing this problem is a matter of considerable public interest and accordingly, I afford this factor significant weight.

Safe, informed and competitive markets

40. I have previously found a public interest in having safe, informed and competitive markets.³⁶ As I have noted at paragraph 32, licensed venues must comply with the conditions, responsibilities and obligations of their respective licences, including the obligation to maintain a safe environment in and around the premises.
41. The Information in Issue was created by QPS officers who responded to incidents of violence which they believed involved persons under the influence of alcohol or other substances. I consider disclosing this information will enable patrons to make a more informed decision about their choice of venue by providing some information about the

³² *Seven Network (Operations) Limited and Redland City Council; A third party* (Unreported, Queensland Information Commissioner, 30 June 2011) (*Seven Network*) at [23].

³³ See the Law, Justice and Safety Committee, 'Inquiry into Alcohol-Related Violence – Final Report', Report No 74, March 2010 (available at <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2010/5310T1903.pdf>) as well as, for example, 'Qld emergency departments treat more binge drinkers' ABC News, available at <http://www.abc.net.au/news/2013-07-18/big-spike-in-qld-binge-drinkers-at-risk/4827710>.

³⁴ Giving rise to the public interest factor favouring disclosure in schedule 4, part 2, item 2 of the RTI Act.

³⁵ Schedule 4, part 2, item 14 of the RTI Act.

³⁶ *Seven Network* at [33]-[45].

safety of particular venues. Accordingly, I consider this factor favouring disclosure is relevant.

42. I acknowledge, however, that the safety of a venue is only one of many factors that a person is likely to consider in determining which venue to attend. For this reason, I afford this factor only moderate weight.

Other considerations

43. The Applicant submits that the public interest in disclosing the Information in Issue is reduced as the information is incorrect and unsubstantiated.³⁷ However, the Applicant has not provided any evidence to support its claim that the information is incorrect, despite being invited to provide submissions to OIC.³⁸ The Department's initial decision to the Third Party³⁹ stated that QPS had requested the following caveat accompany the Information in Issue:

The information contained within the Liquor Incident Table is released on the basis that it may record only the complainant's version of events prior to the conduct of any investigation.

44. I acknowledge the Information in Issue represents QPS' initial account of the incidents prior to the matter being investigated—in some cases this account may be based primarily on a complainant's version of events. Other parties may therefore provide different accounts of the events. This has been made clear to the Third Party. However, I consider the public interest in disclosing the Information in Issue arises not from the information comprising a comprehensive or final account of alcohol-related incidents at the Applicant's venue but rather, by demonstrating the nature and frequency of QPS' reporting of such incidents to OLGR.
45. I have also considered whether the age of the Information in Issue reduces the weight to be afforded to these public interest factors. The Information in Issue dates from October 2009 to May 2011. I am satisfied that there remains a public interest in disclosing information from this time period as it will enable the public to consider OLGR's response to the incidents and examine the effectiveness of OLGR's actions, for example, by comparing the information against more recent data.
46. The Applicant submits⁴⁰ that the public interest factors above are not advanced by disclosing information which identifies the Applicant's venue. I have considered whether it is possible to de-identify the Information in Issue, by releasing information about the incidents of alcohol-related violence without disclosing the Applicant's name.
47. The Third Party applied for access to information about 16 named venues, one of which was the Applicant's venue. As a decision has been made to release information about the other venues,⁴¹ I do not consider it is possible to now de-identify the Information in Issue as the Third Party could identify the Applicant by a process of elimination. In any event, as I have noted at paragraphs 40 to 42 above, I consider there is a public interest in disclosing the name of the venue. Disclosing the Information in Issue without the venue name would prevent the public from using the information to make informed choices about the safety of particular venues.

³⁷ Submission dated 9 July 2012.

³⁸ Including in response to OIC's preliminary view dated 30 August 2013.

³⁹ Dated 25 October 2011.

⁴⁰ In its submissions to QCAT dated 31 January 2013 in ASD.

⁴¹ Either by the Department, or by OIC on external review.

Factors favouring nondisclosure

Disclosure is prohibited by an Act

48. A factor favouring nondisclosure will arise where an Act prohibits disclosure of the information.⁴² Section 48 of the Liquor Act provides:

48 Preservation of confidentiality

- (1) Subject to subsection (2), a person who is engaged, or has been engaged, in giving effect to this Act must not make a record of, or directly or indirectly disclose, information about the affairs of another person gathered in the course of administration of this Act.*

Maximum penalty—35 penalty units.

- (2) Subsection (1) does not apply to—*
- (a) disclosing information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or*
 - (b) disclosing information in the register; or*
 - (c) disclosing information about the status of an application required to be advertised under section 118(1); or*
 - (d) disclosing information about the status of an application to the tribunal for a review and the names of the parties to the review; or*
 - (e) doing anything for the purposes of this Act.*

49. I consider this provision would generally prohibit disclosure of the Information in Issue and accordingly, I am satisfied this factor favouring nondisclosure arises for consideration.
50. It is then necessary to consider the weight to be afforded to this public interest factor. Persons administering the Liquor Act have access to a wide range of information, some of which is particularly sensitive—for example, individuals' criminal history checks. Section 48 of the Liquor Act is, in my view, a standard confidentiality provision included in legislation to prevent the indiscriminate disclosure of information which an agency officer may have access to in the course of their duties. It is not, however, a blanket prohibition on disclosure—the confidentiality provision does not apply to disclosure of information in a range of specific circumstances including, for example, doing anything for the purposes of the Liquor Act or producing documents in compliance with a lawful process.⁴³
51. This provision must be balanced against the express intention of the RTI Act—a later Act—to override provisions in other Acts prohibiting the disclosure of information.⁴⁴ I note that Parliament did not include information gathered under the Liquor Act in schedule 3, section 12 of the RTI Act, which specifically exempts information the disclosure of which is prohibited under several listed Acts.
52. Accordingly, while I consider this factor is relevant, it warrants only moderate weight.

Prejudice the business affairs of entities

53. The RTI Act provides that a factor favouring nondisclosure will arise if disclosing information could reasonably be expected to prejudice the private, business,

⁴² Schedule 4, part 3, item 22 of the RTI Act.

⁴³ Section 48(2) of the Liquor Act.

⁴⁴ Section 6 of the RTI Act.

professional, commercial or financial affairs of an entity.⁴⁵ In most instances, the question of whether disclosure of information could reasonably be expected to prejudice⁴⁶ business affairs will turn on whether the information is capable of causing competitive harm to an entity.⁴⁷

54. The Information in Issue comprises relatively detailed accounts⁴⁸ by QPS officers of alleged incidents of violence at the Applicant's premises. I accept that disclosing the Information in Issue could reasonably be expected to prejudice the Applicant's business affairs by damaging its reputation and deterring some existing or potential patrons from visiting its venue.
55. The Applicant submits⁴⁹ that the prejudice to its business affairs would be serious as people reviewing the information may form the view that the Applicant's venue has not complied with liquor laws. The Applicant states that it disputes some of the incidents and notes it has put forward exculpatory material in relation to some of the incidents.⁵⁰
56. I acknowledge that some of these incidents may have formed part of the material relied on for regulatory action against the Applicant. However, the Information in Issue does not disclose this—it merely comprises a record of QPS' attendance at the incidents. Having reviewed the Information in Issue, I do not consider its disclosure alone necessarily reflects adversely on security, procedures or staff of the Applicant's venue. Many of the incidents described are relatively minor and reflect the types of situations which one may expect to occur in a busy public venue where alcohol is served.
57. Moreover, I consider that members of the public are generally aware that liquor-related incidents occur in many licensed venues and still choose to attend the venues. As I have noted at paragraph 42, the history of alcohol-related incidents of violence is only one factor of many considered by potential patrons in selecting a venue to attend.
58. Having taken into account the above considerations, I consider this factor warrants moderate weight.

Prejudice to regulatory action arising from the incidents

59. In July 2012, the Applicant submitted that some of the incidents outlined in the Information in Issue were the subject of proposed disciplinary action by OLGR, and that disclosure may prejudice that action.⁵¹ I have therefore considered whether disclosing the Information in Issue could reasonably be expected to prejudice these proceedings or have an adverse impact on the administration of justice, either generally, or for the Applicant.⁵²
60. OLGR submits⁵³ that:

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

⁴⁶ Adopting the ordinary meaning of the term *prejudice*: see *Daw and Queensland Rail* (Unreported, Queensland Information Commissioner, 24 November 2010) at [16].

⁴⁷ *Kalinga Woolloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd; Treasury Department* (Unreported, Queensland Information Commissioner, 9 May 2012) at [89].

⁴⁸ The Applicant submits, in submissions dated 9 February 2012 and 9 July 2012, that the information lacks specificity and detail. However, having carefully reviewed the Information in Issue, I do not consider this to be the case—QPS' account of the events are, in my view, relatively detailed.

⁴⁹ Submissions dated 9 February 2012 and 9 July 2012.

⁵⁰ Submission dated 9 July 2012.

⁵¹ Submission dated 9 July 2012.

⁵² Potentially giving rise to the factors favouring nondisclosure in schedule 4, part 3, items 8 and 9 of the RTI Act.

⁵³ In telephone conversations with OIC staff on 22 and 29 July 2013 and 8 October 2013.

- some of the incidents referred to in the Information in Issue resulted in it taking regulatory action against the Applicant
- this regulatory action was the subject of proceedings before QCAT; and
- the QCAT proceedings were finalised as a result of consent orders in September 2013.

61. As the proceedings involving the Applicant have now been finalised, I consider the factors noted at paragraph 59 above are not relevant in the circumstances. In any event, even if the QCAT proceedings remained on foot, matters on review or appeal to QCAT are determined by QCAT members. The Information in Issue does not purport to comprise a detailed or final account of the incidents in question. I do not consider it reasonable to expect that QCAT members would be swayed by reading QPS officers' accounts of incidents that are currently the subject of appeal or review before QCAT.
62. For these reasons, I am satisfied that it is not reasonable to expect that disclosure would impede the administration of justice, either generally or specifically for the Applicant, nor do I consider it reasonable to expect that disclosure could prejudice the regulatory action taken by OLGR, and considered on appeal to QCAT.

Prejudice a deliberative process of government

63. The RTI Act recognises that:
- disclosing information could reasonably be expected to cause a public interest harm through disclosure of:
 - an opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - a consultation or deliberation that has taken place
 in the course of, or for, the deliberative processes involved in the functions of government (**Harm Factor**),⁵⁴ and
 - a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice a deliberative process of government (**Prejudice Factor**).⁵⁵
64. As the Information in Issue does not comprise:
- an opinion, advice or recommendation; or
 - a consultation or deliberation that has taken place,

I am satisfied the Harm Factor is not relevant.

65. The Applicant submits that disclosure would prejudice a deliberative process of government, namely *'the current proposed disciplinary action being imposed by'* OLGR.⁵⁶ However, as I have noted at paragraph 60, OLGR submits that its regulatory action in relation to the incidents referred to in the Information in Issue is now complete, as are the related QCAT proceedings. Even if this were not the case, I do not consider QCAT proceedings constitute a deliberative process of government. Nor do I consider it is reasonable to expect that either QCAT members or regulatory officers such as those at OLGR would be influenced in relation to any current action against the Applicant by the disclosure of the Information in Issue through the right to information process.

⁵⁴ Schedule 4, part 4, section 4(1) of the RTI Act.

⁵⁵ Schedule 4, part 3, item 20 of the RTI Act.

⁵⁶ Submission dated 9 February 2012.

66. The Applicant further submits⁵⁷ that disclosure would cause:
- disruption to OLGR's objectives and functions as contained in the Liquor Act; and
 - *'premature and unnecessary debate, concern and confusion in the community to an extent that would be contrary to the public interest'*.
67. The Applicant has not provided any evidence to support these claims. It is not enough for the Applicant to simply assert that disclosure will result in some kind of adverse consequence—the Prejudice Factor requires a reasonable expectation of prejudice to the relevant deliberative process.⁵⁸
68. There is no evidence before me to suggest that disclosing the Information in Issue could reasonably be expected to disrupt OLGR's functions or objectives. OLGR has not submitted that disclosure would have such an impact. There is also no evidence before me to suggest that disclosing the Information in Issue could reasonably be expected to cause *premature and unnecessary debate*.
69. Accordingly, I find that the Prejudice Factor is also not relevant for consideration in this review.

Prejudice the fair treatment of individuals

70. The RTI Act provides that a factor favouring nondisclosure will arise where:
- disclosure of information could reasonably be expected to prejudice the fair treatment of individuals; and
 - the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.⁵⁹
71. The Applicant submits that the Information in Issue consists of unsubstantiated allegations of *'liquor incidents suggestively caused by non compliance misconduct and unlawful, negligent or improper conduct'* and that its publication is likely to *'negatively affect the attitude of numerous persons including other regulatory authorities in their dealings with [the Applicant's venue] and its staff'*.⁶⁰ The Applicant further contends that if its venue is *'unfairly and inaccurately'* portrayed as habitually non-compliant with liquor laws, compliance officers from various agencies may attend the Applicant's premises more frequently in the future, resulting in *'overzealousness in compliance activity'*.⁶¹
72. I accept that the Information in Issue contains allegations in relation to unlawful conduct by patrons (such as assault). There is no evidence before me to suggest that all of the allegations have been the subject of court proceedings. On that basis, I consider the allegations may remain unsubstantiated.
73. However, in order for this factor favouring nondisclosure to arise, I must also be satisfied that disclosure could reasonably be expected to prejudice the fair treatment of individuals. The Applicant submits that the prejudice would arise through the impact of increased regulatory or compliance activity on the Applicant's staff.⁶² The Applicant, as

⁵⁷ Submission dated 9 July 2012.

⁵⁸ *Abbot and The University of Queensland* (Unreported, Queensland Information Commissioner, 16 October 2012) at [24].

⁵⁹ Schedule 4, part 3, item 6 of the RTI Act.

⁶⁰ Submission dated 9 July 2012.

⁶¹ Submission dated 9 July 2012.

⁶² Submission dated 9 July 2012

a licensed venue, is required to maintain a safe environment for patrons and staff, and it is legitimate for the Applicant's venue to be subject to oversight by OLGR and other regulatory agencies. Increased regulatory or compliance activity by government agencies, acting within the law, cannot be said to *prejudice the fair treatment* of individuals.

74. The Applicant makes reference to the Law, Justice and Safety Committee's inquiry into alcohol-related violence,⁶³ which the Applicant submits followed The Courier Mail's *Punch Drunk* series of articles.⁶⁴ I do not consider a government inquiry into an issue of serious public interest, such as alcohol-related violence, can be said to *prejudice* an individual's *fair treatment*. Moreover, I consider this demonstrates that disclosing this type of information can advance the public interest by promoting positive and informed debate about such issues.
75. Accordingly, I am satisfied this factor favouring nondisclosure is not relevant in the circumstances of this review.

Prejudice security, law enforcement or public safety

76. The RTI Act provides that a factor favouring nondisclosure will arise if disclosing information could reasonably be expected to prejudice security, law enforcement or public safety.⁶⁵
77. The Applicant submits that disclosure could reasonably be expected to prejudice security, law enforcement or public safety by creating the perception that the Applicant's premises has poor security, thereby attracting patrons who may seek to take advantage of this situation and '*misbehave*'.⁶⁶
78. I consider a risk to public safety could only arise through disclosure if the security arrangements at the Applicant's venue were in fact inadequate—there is no evidence before me to suggest that is the case. In any event, the Information in Issue does not include details of the security arrangements in place at the venue. Accordingly, I do not consider it reasonable to expect that disclosure of this information would enable patrons to prejudice security or public safety in the way the Applicant has described.
79. As this factor favouring nondisclosure must arise as a direct result of disclosing the relevant information, I am satisfied it is not relevant in the circumstances of this review.

Balancing the relevant public interest factors

80. There are clear public interest factors in favour of disclosing the Information in Issue. Alcohol-related violence in and around licensed venues is a serious issue of significant public interest. I consider disclosing the Information in Issue could reasonably be expected to enhance QPS' and OLGR's accountability by enabling the public to scrutinise the manner in which these agencies deal with such incidents. I also consider it would enable the public to consider one of the measures in place to curb alcohol-related violence, and contribute to positive and informed debate about these issues. I consider these factors favouring disclosure warrant significant weight. I am also satisfied that the public interest in enabling patrons to make more informed decisions about the safety of particular venues warrants moderate weight.

⁶³ <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2010/5310T1903.pdf>.

⁶⁴ Submission dated 9 July 2012.

⁶⁵ Schedule 4, part 3, item 7 of the RTI Act.

⁶⁶ Submission dated 9 July 2012.

81. These factors must be weighed against the potential prejudice to the Applicant's business affairs and the fact that disclosure of the Information in Issue is prohibited by the Liquor Act. However, for the reasons outlined above, I consider these factors warrant only moderate weight and, in the circumstances of this review, are outweighed by the significant public interest favouring disclosure.
82. Accordingly, I find that disclosing the Information in Issue would not, on balance, be contrary to the public interest.

DECISION

83. Having considered the matter afresh and for the reasons set out above, I affirm the Department's decision to grant access to the Information in Issue on the basis that disclosure would not, on balance, be contrary to the public interest.
84. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

J S Mead
Right to Information Commissioner

Date: 8 November 2013

APPENDIX

Significant procedural steps

Date	Event
8 August 2011	The Department received the access application.
27 September 2011	The Department consulted with the Applicant under section 37 of the RTI Act about disclosure of information relating to its venue and invited the Applicant to identify any objections to disclosure.
10 October 2011	The Applicant notified the Department that it objected to disclosure of the relevant information and provided submissions supporting its case.
31 October 2011	The Department issued its initial decision to the Applicant, deciding to disclose information relating to the Applicant's venue.
28 November 2011	The Applicant applied to the Department for internal review.
21 December 2011	The Department again decided to disclose information about the Applicant's venue.
5 January 2012	OIC received the external review application. OIC asked the Department for a number of procedural documents relevant to the review.
13 January 2012	The Department provided the procedural documents to OIC.
25 January 2012	OIC notified the Department and the Applicant that the external review application had been accepted and asked the Department to provide a copy of the Information in Issue.
27 January 2012	The Department provided OIC with a copy of the Information in Issue.
9 February 2012	OIC received a submission from the Applicant.
30 April 2012 - 22 May 2012	OIC sought clarification from the Department in relation to the Information in Issue.
18 June 2012	OIC provided the Applicant with an update on the status of the external review.
22 June 2012	OIC conveyed to the Applicant the preliminary view that there was no basis for the Information Commissioner to set aside the Department's decision to grant access to the Information in Issue. OIC invited the Applicant to provide submissions supporting its case if it did not accept the preliminary view.
9 July 2012	The Applicant advised OIC it did not accept the preliminary view and lodged submissions in support of its case.
31 July 2012	OLGR provided OIC with information on issues relevant to the review.
27 August 2012	OIC provided the Applicant with an update on the status of the external review.
21 September 2012	OIC provided the Department with an update on the status of the external review and asked the Department to convey the status of the review to the Third Party.
28 September 2012	OIC provided the Applicant with a further update on the status of the external review.
29 October 2012	OIC made a written decision affirming the Department's decision and gave a copy of the decision to the Department and the Applicant.
23 November 2012	OIC received a copy of an application to QCAT made by the Applicant.
26 November 2012	OIC notified the Department that OIC had received notice that the Applicant had appealed OIC's decision.
3 December 2012	OIC received a sealed copy of the Applicant's application to QCAT.
31 January 2013	OIC received a copy of the Applicant's submissions to QCAT in the appeal.
7 June 2013	OIC received a copy of QCAT's decision in the appeal.
14 June 2013	OIC received a copy of QCAT's amended decision in the appeal.

19 June 2013	OIC contacted the Third Party and asked if they wished to pursue access to the Information in Issue. The Third Party advised that they continued to seek access to the Information in Issue.
1 July 2013	<p>OIC notified the Department, the Applicant and the Third Party that OIC had reopened the external review. OIC invited the Department to make any further submissions on the issues in the external review by 15 July 2012.</p> <p>OIC invited the Third Party to participate in the external review.</p> <p>OIC invited the Applicant to make any further submissions on the issues in the external review and told the Applicant that unless OIC heard from the Applicant by 15 July 2013, OIC would assume the Applicant did not wish to make any further submissions and wished for OIC to take into account its external review application of 5 January 2012 and its previous submissions of 9 February 2012 and 9 July 2012.</p> <p>The Department advised OIC that it did not wish to make any further submissions.</p>
17 July 2013	The Third Party confirmed that it wished to participate in the external review but did not wish to make any submissions.
18 July 2013	OIC made enquiries with the Department and OLGR about issues relevant to the external review.
22 July 2013	OLGR provided the requested information to OIC.
29 July 2013	OLGR provided OIC with further information on issues relevant to the external review.
26 August 2013	OLGR provided OIC with further information on issues relevant to the external review.
29 August 2013	OIC provided the Applicant with an update on the status of the external review.
30 August 2013	<p>OIC conveyed to the Applicant a preliminary view on the issues in the external review and invited the Applicant to lodge any final submissions by 13 September 2013. OIC advised the Applicant that if OIC did not hear from the Applicant by 13 September 2013, OIC would proceed to issue a formal decision to finalise the external review.</p> <p>OIC provided the Department with an update on the status of the external review.</p>
12 September 2013	OIC provided the Third Party with an update on the status of the external review.
8 October 2013	OLGR provided OIC with information on issues relevant to the external review.