



## Decision and Reasons for Decision

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Citation:	<i>Taxi Council of Queensland Inc and Queensland Police Service</i> [2016] QICmr 16 (27 April 2016)
Application Number:	312545
Applicant:	Taxi Council of Queensland Inc
Respondent:	Queensland Police Service
Third Party:	Uber Australia Pty Ltd
Decision Date:	27 April 2016
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - applicant objection to disclosure - whether applicant has established that a decision not to disclose is justified - section 87(2) of the <i>Right to Information Act 2009</i> (Qld)</b>  <b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - meeting agendas and minutes - 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)</b>

## REASONS FOR DECISION

### Summary

1. The initial access applicant (the **third party** in this external review) applied to the Queensland Police Service (**QPS**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents that mention '*Taxi Council Qld; Taxis; Uber; Ride sharing; and shared economy*'.
2. QPS located 63 pages of responsive information. QPS consulted with the applicant under section 37 of the RTI Act in respect of the proposed release of 22 pages (**documents in issue**), seeking the applicant's views as to possible disclosure of that information to the third party.
3. The applicant objected to the proposed disclosure of the documents in issue. Notwithstanding the applicant's objections, QPS decided<sup>1</sup> to release the documents in

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<sup>1</sup> By decision to the applicant dated 26 May 2015 (**Original Decision**).

issue to the third party, subject to the deletion of irrelevant information and personal information<sup>2</sup> appearing in four pages.

4. The applicant sought internal review of the Original Decision and, on internal review, QPS affirmed the Original Decision.
5. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of QPS's internal review decision. In the course of the review, the third party was joined as a participant in the review.<sup>3</sup>
6. For the reasons set out below, I vary QPS's decision and find that there is no basis under the RTI Act to refuse access to all but a small amount of the information in issue in this review.

## **Background**

7. Significant procedural steps relating to the external review are set out in the Appendix.
8. On external review:
  - the third party confirmed that they did not seek access to email addresses, landline or mobile telephone numbers of individuals who do not work for government agencies<sup>4</sup>
  - QPS accepted OIC's view that all information in the documents in issue is relevant to the access application and disclosing landline telephone numbers and email addresses of government agency officers would not, on balance, be contrary to the public interest;<sup>5</sup> and
  - the applicant accepted OIC's view that the documents in issue were not exempt information.<sup>6</sup>

As these issues were resolved during the review process, they are not addressed in these reasons for decision.

## **Reviewable decision**

9. The decision under review is QPS's internal review decision dated 9 July 2015.

## **Evidence considered**

10. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

## **Information in issue**

11. The information in issue in this review (**Information in Issue**) comprises all information in the documents in issue, other than email addresses and landline or mobile telephone

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<sup>2</sup> Comprising telephone numbers and email addresses, including the mobile telephone number of one agency officer.

<sup>3</sup> Under section 89(3) of the RTI Act.

<sup>4</sup> As confirmed by OIC's email to the third party dated 27 October 2015.

<sup>5</sup> OIC conveyed a preliminary view to QPS on 20 November 2015. QPS was invited to make submissions within a specified period if they did not agree with the preliminary view. QPS did not provide any submission within the specified period and has not since provided a submission regarding OIC's preliminary view.

<sup>6</sup> OIC conveyed a preliminary view on a range of issues to the applicant on 20 November 2015. The applicant was advised that if they did not respond to the preliminary view within a specified period, they would be taken to have accepted the preliminary view. The applicant did not provide a response in respect of OIC's preliminary view regarding exempt information within the specified period and has not since provided a response.

numbers of individuals who do not work for government agencies. It can generally be described as information about meetings, which occurred in the past, between representatives of the taxi industry and government agencies in which passenger transport issues were discussed.

### Issue for determination

12. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>7</sup> An agency should decide to give access to information unless giving access would, on balance, be contrary to the public interest.<sup>8</sup>
13. There are some limitations on the right of access, including grounds for refusal of access.<sup>9</sup> However, in its internal review decision, QPS determined that the majority of the Information in Issue should be disclosed.
14. As the decision under review is a disclosure decision,<sup>10</sup> the applicant bears the onus of establishing that a decision not to disclose the Information in Issue is justified or that the Information Commissioner should give a decision adverse to the third party (as access applicant).<sup>11</sup>

### Applicant's submissions

15. The applicant provided OIC with a number of submissions to support nondisclosure of the Information in Issue.<sup>12</sup> I have carefully considered those submissions. In summary, the applicant submits the Information in Issue should not be disclosed because:
  - releasing government information to the third party would be contrary to the rule of law and the object of the RTI Act; and/or
  - disclosing the Information in Issue would, on balance, be contrary to the public interest.
16. I will address each of the applicant's objections in turn.
17. The applicant's submissions also raise specific concerns about the legality of the third party's operations and activities.<sup>13</sup> To the extent the applicant's submissions are relevant to the issue for determination, I have addressed them below.

### Right to access information

18. In summary, the applicant submits<sup>14</sup> that as the passenger transport industry in Queensland is regulated by law<sup>15</sup> and the third party is an organisation involved in systematic breaches of that law, releasing government information to such an organisation is contrary to the rule of law and contrary to the object of the RTI Act.

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<sup>7</sup> Section 23 of the RTI Act.

<sup>8</sup> Section 44 of the RTI Act. This is referred to as the 'pro-disclosure bias' and is the starting point in deciding access to information under the RTI Act.

<sup>9</sup> Set out in section 47(3) of the RTI Act.

<sup>10</sup> 'Disclosure decision' is defined in section 87(3) of the RTI Act as 'a decision to disclose a document or information contrary to the view of a relevant third party obtained under section 37' of the RTI Act.

<sup>11</sup> Section 87(2) of the RTI Act.

<sup>12</sup> As set out in the Appendix.

<sup>13</sup> OIC does not have jurisdiction to make any determination about those concerns.

<sup>14</sup> Submission dated 11 December 2015.

<sup>15</sup> Through legislation such as the *Transport Operations (Passenger Transport) Act 1994* (Qld) (TOPTA).

19. A person who wishes to be given access to a document of an agency under the RTI Act may apply to the agency for access to the document.<sup>16</sup> Section 24(2) of the RTI Act sets out the criteria which an applicant must meet in order to have a valid RTI application. Namely, the application must:
- be in the approved form, accompanied by the application fee
  - give sufficient information concerning the documents sought to enable a responsible officer of the agency to identify the documents
  - state an address to which notices under the RTI Act may be sent to the applicant; and
  - state whether access is sought for the benefit or use by the applicant or another entity, and where it is sought for another entity, state the name of the other entity.

The third party's access application meets the above criteria.

20. To make application under the RTI Act, an applicant must be a 'person'.<sup>17</sup> The legality of the third party's business activities is therefore irrelevant to its right to make application to access government held information under the RTI Act. The third party is an entity that is entitled to make access applications to government agencies and apply to OIC for review of agencies' decisions.

## Contrary to the public interest information

### Relevant law

21. An agency may refuse access to information if its disclosure would, on balance, be contrary to the public interest.<sup>18</sup> In assessing the balance of the public interest, the RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>19</sup> and explains the steps that a decision-maker must take<sup>20</sup> 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.

### Analysis

#### Irrelevant factors

22. In summary, the applicant submits<sup>21</sup> that the third party made the access application in the expectation that it may yield some commercially valuable information for its illegal

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<sup>16</sup> Section 24 of the RTI Act. 'Person' is defined in Schedule 1 of the *Acts Interpretation Act 1954* (Qld) to include an individual and a corporation.

<sup>17</sup> Section 23 of the RTI Act provides that, subject to the Act, a person has a right to be given access under the Act to documents of an agency.

<sup>18</sup> 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>19</sup> 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.

<sup>20</sup> Section 49(3) of the RTI Act.

<sup>21</sup> Submission dated 19 January 2016.

commercial purpose. More specifically, the applicant submits<sup>22</sup> that *'any application made for the purpose of furthering an illegal enterprise must be contrary to the public interest'*.<sup>23</sup>

23. The Information Commissioner has previously explained that:<sup>24</sup>

*An access applicant's motives for seeking access to information are irrelevant to a consideration as to whether access should be granted to requested information. Speculation as to the identity of a particular access applicant, the access applicant's reasons for lodging an application, and any intended use of the information are not generally matters to be taken into account in assessing the balance of the public interest.*

24. The RTI Act also specifically precludes a decision maker from taking into account any *'mischievous conduct by the applicant'*<sup>25</sup> in deciding the public interest.

25. The applicant's submissions referred to in paragraph 22 above do not give rise to a relevant consideration under the RTI Act. The third party's reasons for seeking access to the Information in Issue are irrelevant and I have therefore not taken them, or any other irrelevant factor, into account.

### **Accountability and transparency**

26. The RTI Act recognises factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:

- promote open discussion of public affairs and enhance the Government's accountability<sup>26</sup>
- reveal the reason for a government decision and any background or contextual information that informed the decision;<sup>27</sup> and
- contribute to positive and informed debate on important issues or matters of serious interest.<sup>28</sup>

27. Government agencies must generally be transparent and accountable about meetings they hold with various industry stakeholders. The Information in Issue records the matters discussed in meetings between representatives of the taxi industry and government agencies. I consider that disclosing the Information in Issue would allow the community to scrutinise agency interaction with the taxi industry regarding passenger transport issues. For this reason, I am satisfied that disclosing the Information in Issue would enhance government accountability and transparency and would show background information that informed government decision making, as it will reveal the nature of matters discussed between agency and industry representatives.

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<sup>22</sup> Submission dated 19 January 2016.

<sup>23</sup> I am not required to determine the legality of the third party's business activities or commercial purpose in this review.

<sup>24</sup> *Helping Hands Network Pty Ltd and Department of Education, Training and Employment* (Unreported, Queensland Information Commissioner, 30 October 2012) at [66], citing *State of Queensland v Albiez* [1995] 1 Qd R 215 at 219 where de Jersey J observed that *'the Freedom of Information Act does not confer any discretion on the Information Commissioner, or the Supreme Court, to stop disclosure of information because of any particular motivation in the applicant'*. See also the Victorian Supreme Court decision in *Victoria Police v Marke* [2008] VSCA 218, in which Weinberg JA noted at paragraph 66 *'[the FOI Act] does not, in the normal course, contemplate that the motives of the person seeking access to a document should be scrutinised and characterised as either worthy or unworthy. These are value judgements, which are likely to be highly subjective, and have no place in a scheme that is designed to ensure the proper accountability of government.'* I consider these observations apply equally to the RTI Act. See also *Rylsey Enterprises Pty Ltd and Cassowary Coast Regional Council* [2015] QICmr 13 at [14]-[16].

<sup>25</sup> Schedule 4, part 1, item 3 of the RTI Act.

<sup>26</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>27</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 2 of the RTI Act.

28. I note that a wider public debate is currently occurring about passenger transport services, particularly since the government's appointment of an independent taskforce to review taxi, limousine and rideshare activities across the state. As the Information in Issue records discussions about passenger transport issues, I consider that disclosing that information would contribute to that debate.
29. In the circumstances, I find that the public interests in enhancing accountability, revealing the reason for government decisions and contributing to positive and informed public debate carry significant weight in favour of disclosing the Information in Issue.

### Personal information and privacy of other individuals

30. The applicant submits<sup>29</sup> that the names, addresses and emails contained in the Information in Issue are personal information<sup>30</sup> and should not be disclosed.
31. The RTI Act recognises that:
- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;<sup>31</sup> and
  - disclosing information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>32</sup>
32. As a result of the negotiated agreement to remove certain personal information from the Information in Issue (as referred to in paragraph 8 above), the Information in Issue does not contain email addresses, landline or mobile telephone numbers of individuals who do not work for government agencies. The personal information that remains, which is only a small amount of the Information in Issue, comprises:
- the names of the taxi industry representatives who attended or were noted as apologies for the meetings recorded in the Information in Issue (**Industry names**); and
  - the names, email addresses, landline and mobile telephone numbers of individuals who work for government agencies (**Officer Information**).

### Industry names

33. The Industry names appear on seven pages of the Information in Issue.<sup>33</sup> I have carefully considered the Industry names and I note that:
- the applicant's website outlines that its representatives who attended the meetings recorded in the Information in Issue have undertaken extensive advocacy, in multiple forums, on passenger transport issues, much of which has also been widely reported; and

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<sup>29</sup> External review application.

<sup>30</sup> Section 12 of the IP Act defines personal information as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

<sup>31</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>32</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>33</sup> At pages numbered 2, 3, 5, 16, 30, 31 and 33 of 63.

- the website of another taxi industry body,<sup>34</sup> confirms that their representatives have held meetings with QPS and the Department of Transport and Main Roads (**Department**) and lists the names of the industry body's contact representatives.

34. Given that the Industry names are made publicly available by the applicant and another taxi industry body, I consider that the extent of the prejudice and public interest harm that could be anticipated from disclosing the Industry names is greatly reduced. Accordingly, I find that the public interest factors favouring nondisclosure to protect personal information and privacy carry low weight in respect of the Industry names.

### **Officer Information**

35. I have carefully considered the Officer Information, which appears on 13 pages of the Information in Issue.<sup>35</sup>

36. Generally, information relating to the day-to-day work duties and responsibilities of public sector officers may be disclosed under the RTI Act, despite it falling within the definition of personal information.<sup>36</sup>

37. The Officer Information includes one mobile telephone number of an agency officer.<sup>37</sup> That mobile telephone number appears in the context of QPS prepared and maintained records of meeting attendance. QPS has confirmed that the mobile telephone number is the telephone number for the officer's privately owned mobile telephone, rather than a work issued mobile telephone. I consider the private mobile telephone number is the officer's personal information and attracts a high privacy interest.<sup>38</sup>

38. In respect of the remaining Officer Information, I am satisfied that it is wholly related to the routine day-to-day work activities of the officers who attended the recorded meetings and that very little prejudice or public interest harm would result through disclosure of that information.

39. Accordingly, I find that the public interest factors favouring nondisclosure to protect personal information and privacy carry significant weight in respect of the mobile telephone number and carry low weight in respect of the remaining Officer Information.

### **Administration of justice**

40. The applicant submits<sup>39</sup> that, as the third party is actively attempting to block investigation of its contraventions of Queensland law,<sup>40</sup> releasing information to such an organisation will impede the administration of justice.<sup>41</sup>

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<sup>34</sup> Representatives of this industry body attended some of the meetings recorded in the Information in Issue.

<sup>35</sup> At pages numbered 2-5, 12, 13, 15, 17, 28, 30-33 of 63.

<sup>36</sup> *Underwood and Department of Housing and Public Works* (Unreported, Queensland Information Commissioner, 18 May 2012) at [60] and *G8KPL2 and Department of Health* (Unreported, Queensland Information Commissioner, 17 June 2013).

<sup>37</sup> At page 5 of 63.

<sup>38</sup> Even if the mobile telephone number had been for a work issued mobile telephone, which allows an individual to be contacted directly and potentially outside of working hours, I consider that it falls outside the realm of routine work information and would attract a certain level of privacy. Refer to *Underwood and Department of Housing and Public Works (No. 1)* [2016] QICmr 11 at [49].

<sup>39</sup> External review application and submissions dated 11 December 2015 and 19 January 2016.

<sup>40</sup> In particular, the applicant refers to the third party's employees actively blocking Department officers from investigating breaches of the TOPTA.

<sup>41</sup> The applicant's submission dated 11 December 2015 also refers to the release of information offending the administration of justice.

41. Given these submissions, I have considered whether disclosing the Information in Issue could reasonably be expected to impede the administration of justice generally, including procedural fairness,<sup>42</sup> or for a person.<sup>43</sup>
42. For these factors favouring nondisclosure to arise, there must be a reasonable expectation that justice will be impeded **as a result of** disclosing the Information in Issue. The applicant's submissions do not identify how disclosing the Information in Issue will impede the administration of justice, either generally, for the applicant, its members or any other person.
43. I have carefully considered the Information in Issue. Most of the Information in Issue records matters that have been extensively reported in the press, are referred to on the applicant's website and form part of the wider public debate about passenger transport services. In particular, I note that the types of compliance activities undertaken by the Department in respect of the third party's business operations and the difficulties that have been encountered in undertaking those compliance activities have been recorded in the Infrastructure, Planning and Natural Resources Committee public hearings and briefing in respect of the *Transport Legislation (Taxi Services) Amendment Bill 2015*. For the Information in Issue relating to matters already in the public domain, I am unable to identify a direct connection between disclosure of that information and the applicant's submitted impact on the administration of justice.
44. The remaining Information in Issue generally relates to operational matters associated with taxi vehicles or regulated aspects of the passenger transport industry. These include statistics, compliance matters associated with general parking and driving regulations and compliance matters associated with taxi specific regulatory obligations. Given the nature of the remaining Information in Issue and the context in which it appears, I am unable to identify a direct connection between disclosure of this information and the applicant's submitted impact on the administration of justice.
45. For these reasons, I am not persuaded by the applicant's submissions and I do not consider that these nondisclosure factors arise for consideration in balancing the public interest.

### **Prejudice flow of information**

46. The applicant submits<sup>44</sup> that:
  - the meetings recorded in the Information in Issue were conducted on a confidential basis
  - the sensitive and private nature of matters discussed at those meetings, the relationship between attendees and purposes for which information was communicated at those meetings should attract an obligation of confidence; and
  - disclosing the Information in Issue will reveal the content of the meeting discussions with QPS and '*will discourage [the applicant] and [its] members from providing information to QPS in the future*'.
47. Public interest factors favouring nondisclosure will arise if:
  - disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information<sup>45</sup>

<sup>42</sup> Schedule 4, part 3, item 8 of the RTI Act.

<sup>43</sup> Schedule 4, part 3, item 9 of the RTI Act.

<sup>44</sup> External review application.

<sup>45</sup> Schedule 4, part 3, item 16 of the RTI Act.



- the information consists of information of a confidential nature that was communicated in confidence and disclosure of the information could reasonably be expected to prejudice the future supply of information of this type;<sup>46</sup> and
- disclosing information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.<sup>47</sup>

48. There is nothing in the Information in Issue which indicates that the meeting participants considered the matters were being discussed on a confidential basis or that information was provided by meeting participants on a confidential basis. Additionally, the matters discussed at the meetings were not confidential in nature. Those matters instead covered general passenger transport issues. The recorded information relating to the third party already forms part of the wider public debate about passenger transport services. For these reasons, I am satisfied that the Information in Issue is not confidential information and its disclosure could not reasonably be expected to prejudice the future supply of confidential information or an agency's ability to obtain confidential information. Accordingly, I am not persuaded by the applicant's submissions and I do not consider that the nondisclosure factors relating to the supply or ability to obtain confidential information arise for consideration in balancing the public interest.

49. I accept that there is a strong interest in protecting the free flow of information to law enforcement agencies, as those agencies often rely on information from the public to be alerted to and to pursue breaches of the law. In this case, the information which is reported on or discussed at the meetings recorded in the Information in Issue is generally information which has been provided outside of the meetings, rather than information provided by meeting participants at the meetings. While the applicant submits that disclosing the Information in Issue will result in the applicant and its members being hesitant to provide information to QPS in the future, there is no evidence before me which suggests that disclosure would discourage other meeting participants or members of the public providing information to QPS or any other regulatory agency. I also consider that disclosing the Information in Issue is unlikely to cause the applicant to cease its advocacy on behalf of the taxi industry. Accordingly, I afford the nondisclosure factor relating to flow of information to regulatory agencies low weight in the circumstances.

### **Prejudice security, law enforcement or public safety**

50. In summary, the applicant submits<sup>48</sup> that:

- in establishing a legislative framework for passenger transport services, Parliament has judged that regulation of the passenger transport industry is required to ensure public safety
- as the third party is actively attempting to block investigation of its contraventions of Queensland law, disclosing the Information in Issue could reasonably be expected to prejudice security and law enforcement
- public safety concerns arise in respect of the third party's business operations;<sup>49</sup> and
- consultation and cooperation with QPS on issues of public safety is voluntary and disclosing the Information in Issue would prejudice that process.

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<sup>46</sup> Schedule 4, part 4, section 8 of the RTI Act.

<sup>47</sup> Schedule 4, part 3, item 13 of the RTI Act.

<sup>48</sup> External review application and submissions dated 11 December 2015 and 19 January 2016.

<sup>49</sup> The applicant's submissions specifically refer to concerns regarding the level of insurance coverage for drivers, passengers and the public.

51. The RTI Act recognises that a factor favouring nondisclosure will arise where disclosure of information could reasonably be expected to prejudice security, law enforcement or public safety.<sup>50</sup>
52. For this factor favouring nondisclosure to arise, there must be a reasonable expectation that prejudice to security, law enforcement or public safety will arise **as a result of** disclosing the Information in Issue. The applicant's submissions do not identify how disclosing the Information in Issue will result in such prejudice.
53. I have carefully considered the Information in Issue. Where it refers to the compliance activities of various regulatory agencies, those references merely document compliance activities that have already been undertaken by those agencies, based on information that had been received by those agencies before the meetings recorded in the Information in Issue. Additionally, as noted in paragraph 43 above, the Department's compliance activities in respect of the third party's operations and the difficulties encountered in undertaking those activities already form part of the public debate currently occurring in respect of passenger transport services. I therefore consider that disclosure of the Information in Issue will not prejudice the future receipt of information required for agencies' compliance activities.
54. The Information in Issue also refers to public safety concerns raised in respect of the third party's business operations. The applicant has raised public safety concerns regarding the third party's operations in multiple forums and on its website. Those concerns also form part of the public debate that is currently occurring regarding passenger transport services. Additionally, as noted in paragraph 44 above, the Information in Issue also reports on or discusses operational matters associated with taxi vehicles and regulated aspects of the passenger transport industry. While this information may be of interest to the third party and identify a range of issues associated with the legislative framework for the taxi industry, I am unable to identify any evidence which connects its disclosure to any prejudice to security, law enforcement or public safety.
55. In these circumstances, I am not satisfied that the disclosure of the Information in Issue could reasonably be expected to prejudice security, law enforcement or public safety. Accordingly, I am not persuaded by the applicant's submissions and I do not consider that this nondisclosure factor arises for consideration in balancing the public interest.

#### **Prejudice management function or business affairs**

56. The applicant submits that the factors favouring nondisclosure in schedule 4, part 4, section 7(1)(a)<sup>51</sup> and schedule 4, part 4, section 3(c) of the RTI Act<sup>52</sup> are relevant to the consideration of the public interest in this case.
57. Public interest factors favouring nondisclosure will arise if disclosing information could reasonably be expected to:
  - cause a public interest harm because disclosure of the Information in Issue would disclose trade secrets of an agency or another person;<sup>53</sup> and
  - have a substantial adverse effect on the management or assessment by an agency of the agency's staff.<sup>54</sup>

<sup>50</sup> Schedule 4, part 3, item 7 of the RTI Act.

<sup>51</sup> External review application.

<sup>52</sup> Submission dated 11 December 2015.

<sup>53</sup> Schedule 4, part 4, section 7(1)(a) of the RTI Act.

<sup>54</sup> Schedule 4, part 4, item 3(c) of the RTI Act.

58. The applicant's submissions do not identify how disclosing the Information in Issue will disclose trade secrets or have a substantial adverse effect on an agency's management or assessment of its staff.
59. I have carefully considered the Information in Issue. It does not contain any information which comprises or could be characterised as the trade secret of an agency or any person. However, it does contain information which relates to operational matters associated with taxi vehicles or regulated aspects of the passenger transport industry and a range of information which already forms part of the wider public debate on passenger transport services. I therefore consider that disclosure of the Information in Issue will not cause a public interest harm, as it would not disclose trade secrets of any agency or person.
60. As noted in paragraph 11 above, the Information in Issue records the range of passenger transport issues that were discussed between agency and industry representatives. The Information in issue does not contain, refer or relate to any staffing or personnel management issues of QPS or any other agency. To the extent the Information in Issue records matters associated with agency compliance activities, some of this information is already in the public domain, as noted in paragraph 43 above, and the remaining information includes references to compliance activities regarding general parking and driving regulations and taxi specific regulations. I am therefore unable to identify how disclosing such information could reasonably be expected to impact upon an agency's management or assessment of its staff.
61. For these reasons, I am not persuaded by the applicant's submissions and I do not consider that these nondisclosure factors relating to trade secrets and agency management or assessment of agency staff arise for consideration in balancing the public interest.

#### **Facilitate or further illegal activity**

62. The applicant submits<sup>55</sup> that disclosing the Information in Issue is contrary to the public interest because it will facilitate what it considers to be the third party's illegal conduct and further the third party's illegal enterprise. In this review, I make no finding about the legality of the third party's conduct or business activities.
63. The applicant's submission raises a public interest factor favouring nondisclosure which requires consideration in the context of the public interest test—that is, whether disclosure of the Information in Issue could reasonably be expected to facilitate or further illegal activity.
64. I have carefully considered the Information in Issue. As I have previously observed:
- most of the Information in Issue relates to matters already in the public domain, including information that is about the third party's business activities as at the dates of the recorded meetings; and
  - the remaining Information in Issue generally relates to operational matters associated with taxi vehicles or regulated aspects of the passenger transport industry.

The applicant's submissions do not identify how disclosing the Information in Issue would facilitate or further illegal conduct on the part of the third party. Disclosing

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<sup>55</sup> Submission dated 19 January 2016.

information which simply records details of the third party's business activities as at the date of the recorded meetings is unlikely to facilitate illegal activity on the part of the third party or further the third party's illegal enterprise as the applicant has submitted. Further, while the remaining Information in Issue may be of interest to the third party and identify a range of issues associated with the legislative framework for the taxi industry, I am unable to identify how it could be used to facilitate or further illegal conduct on the part of the third party as the applicant has submitted.

65. Based on the evidence before me and, for the reasons set out above, I afford the nondisclosure factor relating to the facilitation or furtherance of illegal activity no weight in the circumstances.

### **Balancing the public interest**

66. I have determined that factors favouring disclosure of the Information in Issue related to accountability, transparency and contributing to positive and informed public debate should be afforded significant weight.
67. In respect of the small amount of personal information in the Information in Issue, I am satisfied that the significant weight of the pro-disclosure factors outweigh the nondisclosure factors related to privacy and personal information, other than in respect of the mobile telephone number of an agency officer.
68. In respect of the remaining Information in Issue, I am satisfied that the pro-disclosure factors outweigh the low weight of the nondisclosure factors related to administration of justice, the flow of information to agencies and the furtherance or facilitation of illegal activity.
69. Based on the information before me and for the reasons set out above, I am not satisfied that disclosing the Information in Issue, other than the mobile telephone number of an agency officer, would, on balance, be contrary to the public interest.

### **Conclusion**

70. For the reasons outlined above, I am satisfied that the applicant has not discharged the onus, imposed by section 87(2) of the RTI Act, of establishing that government information should not be released to the third party or that the Information in Issue, other than the mobile telephone number of an agency officer, comprises contrary to public interest information.
71. Accordingly, I find that the Information in Issue, other than the mobile telephone number of an agency officer (as it appears on page 5 of 63), should be disclosed as it is not exempt or contrary to public interest information under the RTI Act.

### **DECISION**

72. I vary QPS's decision and find that there is no basis under the RTI Act to refuse access to the Information in Issue, other than the mobile telephone number of an agency officer.

73. Access to the mobile telephone number of an agency officer is refused on the basis that to disclose the telephone number would be contrary to the public interest under the RTI Act.<sup>56</sup>
74. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Assistant Information Commissioner Corby**

**Date: 27 April 2016**

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<sup>56</sup> Under sections 47(3)(b) and 49 of the RTI Act.

## APPENDIX

### Significant procedural steps

<b>Date</b>	<b>Event</b>
7 April 2015	QPS received the access application.
12 May 2015	QPS consulted with the applicant about proposed disclosure of information to the third party.
12 May 2015	QPS received the applicant's objections to the proposed disclosure.
26 May 2015	QPS issued its decision to the applicant.
11 June 2015	QPS received the applicant's internal review application.
9 July 2015	QPS issued its internal review decision to the applicant.
<b>4 August 2015</b>	<b>OIC received the external review application.</b>
6 August 2015	OIC notified QPS that the external review application had been received and requested relevant procedural documents by 13 August 2015.
19 August 2015	OIC received the requested documents from QPS.
21 August 2015	OIC notified the applicant and QPS that it had accepted the external review and requested QPS provide a copy of the documents in issue by 4 September 2015.
11 September 2015	OIC received the requested documents from QPS.
27 October 2015	OIC received and accepted the third party's application to participate in the external review.
20 November 2015	OIC conveyed a preliminary view to the applicant and QPS and requested submissions by 4 December 2015.
11 December 2015	OIC received the applicant's submissions.
4 January 2016	OIC confirmed its preliminary view to the applicant and requested submissions by 19 January 2016.
19 January 2016	OIC received the applicant's further submissions.