



Decision and Reasons for Decision

Citation: *C32 and Office of the Health Ombudsman [2025] QICmr 103 (22 December 2025)*

Application Number: 318478

Applicant: C32

Respondent: Office of the Health Ombudsman

Decision Date: 22 December 2025

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - whether information would be privileged from production in a legal proceeding on the ground of legal professional privilege - whether access to information may be refused on the basis that it is exempt - sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - PREJUDICE AN INVESTIGATION - whether disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case under schedule 3, section 10(1)(a) of the *Right to Information Act 2009 (Qld)* - whether access may be refused under section 47(3)(a) and section 48 of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Office of the Health Ombudsman (**OHO**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) to access '*internal communications, emails memos or meetings notes discussing*' certain investigations and proceedings.²

¹ The access application is dated 20 December 2024 (**Access Application**). It nominated a timeframe of '*April 2020 to Present*'.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009 (Qld)* (**IP Act**). As the Access Application was made before this change, the RTI Act and IP Act **as in force prior to 1 July 2025** remain applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act and IP Act in this decision are to those Acts **as in force prior to 1 July 2025**.

2. OHO located relevant documents and decided (**Original Decision**)³ to refuse access to them on the basis they comprised exempt information of the type identified in schedule 3, section 10(1)(a) of the RTI Act.
3. The applicant applied to OHO for an internal review of the Original Decision.⁴ On internal review, OHO again refused access to the requested documents, however, decided (**Internal Review Decision**)⁵ that they comprised exempt information of the types identified in schedule 3, sections 7 and 10(1)(a) of the RTI Act.
4. The applicant then applied⁶ to the Office of the Information Commissioner (**OIC**) for external review.
5. For the reasons set out below, I affirm the decision under review and find that access may be refused to the documents sought by the applicant, as they comprise exempt information.

Background

6. OHO is an independent statutory body, established under the *Health Ombudsman Act 2013* (Qld) (**HO Act**), which is responsible for managing health service complaints in Queensland.
7. Under the HO Act, OHO is authorized to conduct complaint investigations. In doing so, the HO Act empowers OHO to require the production of information and confirms that noncompliance with such requirements is an offence.⁷ After completing an investigation, the Health Ombudsman must decide whether, or not, to take further action.⁸ The HO Act generally prohibits disclosure of certain information, which relevantly includes information acquired or accessed by OHO staff during the course of an investigation.⁹

Reviewable decision

8. The decision under review is the Internal Review Decision.

Evidence considered

9. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes).
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to freedom of expression¹⁰ (which includes the right to seek and receive information) and the right to privacy and reputation.¹¹ I consider a decision-maker will be '*respecting, and acting compatibly with*' these rights, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹² I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent Victorian legislation,¹³ that '*it is perfectly*

³ Decision dated 20 January 2025.

⁴ On 22 January 2025.

⁵ By letter dated 20 February 2025.

⁶ On 21 February 2025 (**External Review Application**).

⁷ Refer, for example, to sections 228 and 229 of the HO Act.

⁸ Section 90 of the HO Act.

⁹ Section 272 of the HO Act.

¹⁰ Section 21 of the HR Act.

¹¹ Section 25 of the HR Act.

¹² *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹³ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

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.¹⁴

Information in issue

11. The information being considered in this review comprises the 564 pages which OHO located as relevant to the access application (**Information in Issue**). I confirm that I have carefully reviewed all of this information.
12. While I am constrained about the manner in which I can describe the Information in Issue,¹⁵ I can confirm that almost all of it comprises communications which request, provide or receive legal advice, together with references to those communications or the provided advice (**Category 1 Information**). The remaining Information in Issue (**Category 2 Information**) is information prepared for, or considered in, OHO's complaint investigations.
13. The applicant's submissions¹⁶ reference information that was recently disclosed to him by another agency, and his belief that this separate disclosure '*demonstrates*' that the Information in Issue is not exempt and favours disclosure of the Information in Issue to him. However, there are no details before me about the contents of that referenced information disclosure or the circumstances in which that disclosure was made.¹⁷ Section 108 of the RTI Act precludes me from addressing, in this decision, the applicant's assumption that the Information in Issue includes the information (or some of it) which was recently disclosed to him in the referenced separate process.

Issue for determination

14. The issue for determination is whether the Information in Issue comprises exempt information and access to it may be refused on that basis.

General submissions made by the applicant

15. I have addressed below the applicant's submissions which relate to the issue for determination. However, the applicant has also made submissions of a more general nature, and I address those here.

OHO's investigative processes and decisions

16. The applicant has provided extensive submissions to OIC, outlining his dissatisfaction with, and concerns about, OHO's complaint investigation processes and decisions.¹⁸

¹⁴ XYZ at [573]. This approach was endorsed by Judicial Member DJ McGill SC in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

¹⁵ Section 108 of the RTI Act.

¹⁶ Email dated 7 November 2025.

¹⁷ I notified the applicant of this by letter dated 11 November 2025 and I also noted that that the fact certain information may be disclosed in separate processes does not, of itself, mean that information should be released under the RTI Act in response to an access application.

¹⁸ For example, in the External Review Application the applicant raised concerns about procedural overreach and abuse of process in respect of certain investigative actions taken by OHO. The applicant made further submissions throughout the review, identifying what he considered to be flaws in OHO's investigative decisions and processes and the perceived impacts that arise as a result (for example, in the applicant's emails dated 24 March 2025, 8 April 2025, 22 April 2025, 29 April 2025, 6 May 2025 and 10 May 2025). To avoid identifying the applicant, I can provide no further details about these submissions.

17. External review under the RTI Act is a merits review¹⁹ of government decisions about access to, and amendment of, documents. After conducting an external review of an agency's decision under the RTI Act (in circumstances where the review is unable to be resolved without a formal decision), the Information Commissioner is required to decide, in a written decision, whether the agency's decision should be affirmed, varied or set aside.²⁰ As the Queensland Civil and Administrative Tribunal (QCAT) has observed,²¹ the role of the Information Commissioner, '*as an independent specialist*', is to conduct an examination of the information in question and '*decide whether or not there was a right to access in accordance with the Act*'.
18. In conducting a merits review in this matter, I have considered afresh the applicant's entitlement under the RTI Act to access the information requested in the Access Application. Given this, OIC's external review jurisdiction does not extend to addressing the applicant's concerns about OHO's complaint investigation processes and decisions.²²

OHO's processing of the Access Application

19. In the External Review Application, the applicant also raised general concerns about the involvement certain officers had in OHO's processing the Access Application. Noting the merits review nature of this review, I am satisfied that I am not required, in these Reasons for Decision, to address those general concerns.²³

The external review process

20. The applicant submitted²⁴ that a '*blanket description*' of the Information in Issue was '*legally insufficient*' and he requested²⁵ that OIC provide him with a '*Document-level privilege index*' containing the following details for each page of the Information in Issue—author; date, recipient(s), brief subject line and '*the precise legal basis for any claim of privilege or exemption, with reference to the statute or legal principal relied upon*'.
21. Section 108 of the RTI Act imposes clear restrictions upon the level of detail that the Information Commissioner (or delegate) can provide to an applicant about the nature and content of information claimed to be exempt information or contrary to the public interest information and information which the Information Commissioner (or delegate) considers is protected by legal professional privilege. QCAT has also confirmed²⁶ that, on external review, the Information Commissioner was not required to provide an applicant with a list describing documents claimed to be exempt.²⁷

¹⁹ That is, external review is an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to reach the correct and preferable²⁵ decision. The Court of Appeal noted in *Commissioner of the Police Service v Shelton & Anor* [2020] QCA 96 that section 118 of the IP Act '*provides for the relevant form of review to be merits review*' (per Justice Holmes at [12]). While that decision concerned an external review under the IP Act, I consider this observation is also relevant to external reviews conducted under the RTI Act.

²⁰ Section 110 of the RTI Act.

²¹ *Mokbel v Queensland Police Service* [2023] QCATA 158 (*Mokbel*) at [12].

²² The complaint decisions made by OHO (which have been referenced in the applicant's submissions) are not reviewable decisions under the RTI Act.

²³ With the exception of section 113 of the RTI Act, the Information Commissioner has no jurisdiction to deal with complaints made about agency RTI decision-makers. Under section 113, the Information Commissioner is empowered, in certain circumstances, to notify an agency at the completion of an external review about an agency's officer conduct in the administration of the RTI Act. However, that section does not empower or obligate the Information Commissioner, in a decision issued pursuant to section 110 of the RTI Act, to address or make findings about alleged conduct deficiencies of agency officers in dealing with an access application.

²⁴ Applicant's email dated 7 November 2025.

²⁵ Applicant's email dated 7 November 2025.

²⁶ *Mokbel* at [8]-[12], where the Judicial Member stated: '*I consider that natural justice did not require that the appellant be provided with a list with a description of the documents claimed to be exempt.*'

²⁷ By letter dated 11 November 2025, I notified the applicant of the decision in *Mokbel* and the effect of section 108 of the RTI Act.

22. The decision under review included a limited description of the Information in Issue. During the review, I conveyed a preliminary view to the applicant to broadly identify the nature of the Information in Issue and explain the basis upon which it was not disclosed.²⁸ When doing this, I invited the applicant to provide a submission if he wished to contest the preliminary view and he has provided a submission in support of his position. In the circumstances of this matter, the applicant has been appraised of the general nature of the Information in Issue (and the basis upon which it has been refused) and has been afforded an opportunity to put forward a submission supporting his position. As a result, I am satisfied that the applicant has been able to properly respond to OIC concerning the reviewable issue in this matter and has been afforded due process in this review.
23. I turn now to consideration of the substantive issue to be determined in this review.

Category 1 Information

24. On external review, OHO submitted²⁹ that almost all of the Information in Issue comprises information that is subject to legal professional privilege.³⁰
25. The applicant submitted³¹ that the decision under review failed to consider whether documents were of a purely administrative nature and whether they could be partially disclosed.

Relevant law

26. The RTI Act creates a right of access to documents of government agencies.³² This access right is subject to some limitations, including the grounds on which access to information may be refused.³³ One ground of refusal is where information comprises exempt information.³⁴ Information will qualify as exempt where it would be privileged from production in a legal proceeding on the ground of legal professional privilege.³⁵
27. Legal professional privilege protects confidential communications between a lawyer and their client, made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or, for use in legal proceedings either on foot or reasonably

²⁸ Letter dated 17 October 2025. It is the practice of OIC to convey a preliminary view, based on an assessment of the material before the Information Commissioner or her delegate at that time, to an adversely affected participant. This is to explain the issues under consideration to the participant and affords them the opportunity to put forward any further information they consider relevant to those issues. It also forms part of the Information Commissioner's processes for early resolution of external reviews.

²⁹ OHO letter dated 30 April 2025.

³⁰ I note that, in the Internal Review Decision under review, OHO characterised the information that if considered to be subject to legal professional privilege (on 162 pages) as follows:

Documents which contain or discuss internal legal advice in final or draft form which were created for the dominant purpose of giving or seeking legal advice;

Documents which contain external legal advice from Counsel which was produced for the dominant purpose of giving legal advice;
and

Documents that attach or discuss internal legal advice and were produced for the dominant purpose of communicating that legal advice to OHO staff.

³¹ External Review Application.

³² Section 23(1)(a) of the RTI Act.

³³ The grounds on which access can be refused are set out in section 47 of the RTI Act.

³⁴ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 of the RTI Act identifies the types of information which Parliament has determined will comprise exempt information under the RTI Act.

³⁵ Schedule 3, section 7 of the RTI Act. This exemption reflects the requirements for establishing legal professional privilege at common law.

anticipated, at the time of the relevant communication.³⁶ The privilege will extend to copies of unprivileged documents made for the dominant purpose of obtaining legal advice.³⁷ The privilege may also protect communications between salaried employee legal advisers of a government department or statutory authority and his/her employer as the client (including communications through other employees of the same employer), provided there is a professional relationship of legal adviser and client, which secures to the advice an independent character, notwithstanding the employment.³⁸

28. There are qualifications and exceptions to legal professional privilege (such as waiver and improper purpose) which may affect the question of whether information attracts or remains subject to it, and therefore whether it comprises exempt information under the RTI Act.³⁹

Findings

29. I am satisfied that the necessary professional relationship exists between OHO (as the client) and both their internal and external legal advisers. There is no evidence before me to indicate that any of the Category 1 Information has been disclosed outside of that lawyer-client relationship.
30. Having carefully reviewed the Category 1 Information, I am satisfied that it comprises confidential communications between lawyer and client, prepared for the dominant purpose of giving or receiving legal advice or professional legal assistance, and internal references to such communications and the provided advice.
31. Accordingly, I am satisfied that the Category 1 Information meets the requirements of legal professional privilege.
32. The applicant has offered no evidence that legal professional privilege in the Category 1 Information has been waived or that any communication within the Category 1 Information was created in furtherance of an illegal, improper or dishonest purpose.
33. As there is nothing before me which indicates that any qualification or exception arises in respect of this information, I find that the Category 1 Information comprises exempt information and access to it may be refused on that basis.⁴⁰
34. Regarding the applicant's submission that OIC '[r]econsider the withheld material on a page-by-page basis and release all documents or parts of documents that are not genuinely privileged',⁴¹ I am satisfied that no part of the Category 1 Information could be

³⁶ *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 at page 73; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at page 552. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] 265 CLR 646 at page 659-660. I note that the dominant purpose has been described as 'the ruling, prevailing or most influential purpose' (*Commissioner of Taxation (Cth) v Spotless Services Ltd* (1996) 186 CLR 404 at page 416) and it is to be determined objectively (refer to *AWB Limited v Cole (No 5)* (2006) 155 FCR 30 at [44], where Justice Young observed that '[t]he purpose for which a document is brought into existence is a question of fact that must be determined objectively.').

³⁷ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 (**Propend**) at page 509 (Brennan CJ).

³⁸ *Waterford v Commonwealth* (1987) 163 CLR 54 at 95 per Mason and Wilson JJ.

³⁹ Once a factual basis for a claim of legal professional privilege has been established, a party contending that privilege has been waived bears the onus of establishing such waiver (refer to *Sanrus Pty Ltd & Ors v Monto Coal 2 Pty Ltd & Ors* [2019] QSC 144 at [28], citing *New South Wales v Belfair Pty Ltd* (2009) 180 FCR 543 at 556 [54]). Similarly, as McMurdo J observed in *Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Limited & Ors* [2014] QSC 303 at [61], a party alleging legal professional privilege does not apply for reasons of improper purpose is required to establish 'a prima facie case' that the relevant communications were for the purpose of facilitating alleged misconduct, or that any communication was created in furtherance of an illegal, improper or dishonest purpose. See also *Propend* at page 591.

⁴⁰ Under section 47(3)(a) of the RTI Act.

⁴¹ Applicant's email dated 7 November 2025.

released, as legal professional privilege applies to the entire content of the Category 1 Information.

35. The applicant also submitted that '[t]he OIC's duty is to assess privilege and exemption on a page-by-page basis and then to carry out a transparent public-interest balancing exercise'.⁴² However, where information meets the requirements of an RTI Act exemption, it is not necessary to also carry out a public interest balancing exercise.⁴³ This is because Parliament has determined that disclosure of exempt information is contrary to the public interest in all circumstances.⁴⁴ On external review, the Information Commission (or delegate) has no discretion to decide that information should be released, once the information is established as exempt information.⁴⁵ Accordingly, to the extent the applicant's submissions raise public interest considerations which he considers favour disclosure of the Category 1 Information,⁴⁶ I am unable to take them into account.

Category 2 Information

36. OHO maintains that the remaining Information in Issue comprises exempt information under schedule 3, section 10(1)(a) of the RTI Act. The applicant submitted that, as OHO's complaint investigations have been ongoing for a period of some years '*without any new evidence*',⁴⁷ he considers that OHO is not entitled to rely upon this exemption.⁴⁸

Relevant law

37. Information will qualify as exempt where its disclosure could reasonably be expected to prejudice an investigation of a contravention or possible contravention of the law (including revenue law) in a particular case.⁴⁹
38. For this exemption to apply, I must be satisfied that an agency is conducting an investigation of a contravention or possible contravention of the law; that disclosure of the information in issue could reasonably be expected to prejudice the investigation; and none of the exceptions to the exemption, contained in schedule 3, section 10(2) of the RTI Act, apply.
39. The term '*could reasonably be expected to*' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility.⁵⁰ The expectation must arise as a result of disclosure, rather than from other circumstances. 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

⁴² Applicant's email dated 7 November 2025. In this email, the applicant also requested that OIC provide '*a short statement explaining how the public interest balancing exercise in s 49 of the RTI Act was applied to the principal categories of withheld material, and why the acknowledged factors favouring disclosure ... were not determinative*'.

⁴³ This was confirmed by QCAT in *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [10] and *Mokbel* at [30].

⁴⁴ Section 48(2) of the RTI Act.

⁴⁵ Section 105(2) of the RTI Act confirms that, on external review, the Information Commissioner (or delegate) has no discretion to disclose exempt or contrary to the public interest information.

⁴⁶ For example, in the applicant's email dated 7 November 2025, he submitted: '*Under the Right to Information Act 2009 (Qld), the Commissioner must identify and weigh the relevant public-interest factors in s 49. The facts now engaged are decisive and strongly favour disclosure ...*'.

⁴⁷ External Review Application.

⁴⁸ In support of his position that the exemption could not be relied upon, the applicant also outlined his belief (in the applicant's email dated 7 November 2025) that no investigatory act had been taken by OHO for a considerable period of time.

⁴⁹ Schedule 3, section 10(1)(a) of the RTI Act.

⁵⁰ Previous decisions of the Information Commissioner have established that a mere possibility is not sufficient to show that a particular consequence could reasonably be expected: see *Murphy and Treasury Department* (1995) 2 QAR 744 at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

balance of probabilities that disclosing the document will produce the anticipated prejudice.⁵¹

Findings

40. Given the applicant's submissions, I asked OHO to provide information about the status of the relevant investigations.
41. Having then considered all the evidence before me,⁵² I am satisfied that OHO is investigating certain complaints involving the applicant under the HO Act⁵³ and those investigations are ongoing.
42. I consider that, for a complaint investigation to be thorough and rigorous, it is important for the investigators to maintain an ability to freely obtain relevant information and conduct inquiries of all relevant individuals (whether they be complainants, potential witnesses or the subject of the investigation) until the conclusion of the investigation. Here, the applicant has confirmed that, although the investigations have been ongoing for some time, he has yet to be interviewed by OHO.⁵⁴ In the circumstances of this matter, I consider that disclosure of the Category 2 Information, at this time, could reasonably be expected to inhibit or hamper further inquiries that may need to be conducted by OHO's investigators. Accordingly, I find that disclosure of the Category 2 Information could reasonably be expected to prejudice the ongoing OHO investigations.
43. Having reviewed the Category 2 Information, there is no evidence before me which indicates that any of the exceptions in schedule 3 section 10(2) of the RTI Act arise.⁵⁵ Accordingly, I find that none of those exceptions apply.
44. As the requirements of schedule 3, section 10(1)(a) of the RTI Act are met, and no exceptions to that exemption apply, I find that the Category 2 Information comprises exempt information and access to it may be refused on that basis.

DECISION

45. For the reasons set out above, I affirm the reviewable decision⁵⁶ and find that the Information in Issue comprises exempt information⁵⁷ and access to it may be refused on that basis.⁵⁸

⁵¹ Refer, for example, to *Tol and The University of Queensland* [2015] QICmr 4 (18 February 2015) at footnote [8], citing with approval *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31].

⁵² Including the Information in Issue, the applicant's submissions (including information the applicant provided with his email dated 10 May 2025) and OHO's submissions (dated 30 April 2025, 6 August 2025 and 19 December 2025).

⁵³ While I am unable to detail the particular nature of these complaints, I am satisfied they include allegations about possible contraventions of the law.

⁵⁴ Applicant's email dated 10 May 2025.

⁵⁵ Schedule 3, sections 10(2)(a) to (e) identify the exceptions to the exemption in schedule 3, section 10(1)(a) of the RTI Act. In this regard, I specifically confirm that, although the applicant's submissions raise concerns that OHO's investigative actions and decisions are an abuse of process, I am satisfied (based on the information which is before me) that the Category 2 Information does not 'consist of matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law'.

⁵⁶ Under section 110(1)(a) of the RTI Act.

⁵⁷ Under schedule 3, sections 7 and 10(1)(a) of the RTI Act.

⁵⁸ Under sections 47(3)(a) and 48 of the RTI Act.

46. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



T Lake
Principal Review Officer

Date: 22 December 2025