



Decision and Reasons for Decision

Citation: *Y64 and Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and Arts; and Others [2024] QICmr 26 (17 June 2024)*

Application Number: 316775

Applicant: Y64

Respondent: Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and Arts

Third Party: D13

Fourth Party: L49

Decision Date: 17 June 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - application to access certain documents relating to a Department policy review - whether information would be privileged from production in a legal proceeding - whether access may be refused under 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 - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - SERIOUS ACT OF HARASSMENT OR INTIMIDATION - application to access certain documents relating to a Department policy review - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - application to access certain documents relating to a Department policy review - government accountability and transparency - personal information and privacy - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the former Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (**Department**)² under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access a broad range of documents relating to a review of Facilitated Communication³ (**FC**).
2. In February and April 2022, the applicant agreed to a narrowing of her access request to six categories of documents.⁴
3. The Department located 604 pages as relevant to the narrowed access application, released 220 pages and decided⁵ to refuse access to 144 pages and parts of 240 pages on various grounds.⁶
4. The applicant then applied⁷ to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.⁸
5. During the review, the applicant agreed to further narrow her access request. Following OIC's consultation with a number of third parties, the Department agreed to disclose some further information to the applicant and the Third Party and Fourth Party were joined as participants. As a result of this, the information remaining in issue has been substantially reduced.
6. For the reasons set out below, and having carefully considered all received submissions and disclosure objections (including those raised by the Third Party and Fourth Party), I vary the Department's decision and find that:
 - access may be refused to a small amount of personal information, as its disclosure would, on balance, be contrary to the public interest; and
 - there is no basis under the RTI Act to refuse access to the balance of the information remaining in issue, as it does not comprise exempt information and its disclosure would not, on balance, be contrary to the public interest.

¹ The access application is dated 17 October 2021.

² Following a machinery of government changes that have occurred during this external review, the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships ceased to exist and the functions of that agency are currently the responsibility of the Department of Child Safety, Seniors and Disability Services. In 2021, the Department of Children, Youth Justice and Multicultural Affairs was authorised under section 30 of the RTI Act to deal with the access application on behalf of the former Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships and made a decision under delegation on their behalf. For ease of reference in this decision, I will simply refer to the various agencies collectively as the Department.

³ Facilitated Communication is sometimes called 'assisted typing' or 'supported typing'. In generalised terms, it involves the concept of a facilitator physically supporting the arms, hands or wrists of a person while they type/point to letters or pictures on a keyboard or similar device (this reflects how FC has been described in information which has been disclosed to the applicant). Its use as a communication technique for non-verbal individuals has been the subject of a large volume of published diverging views over many years.

⁴ The narrowed application was also limited to documents within the date range '1 January 2011 to current' and excluded information considered in the applicant's previous access applications.

⁵ Decision dated 9 June 2022.

⁶ The Department also deleted irrelevant information from the disclosed documents pursuant to section 73 of the RTI Act.

⁷ By email dated 11 October 2021.

⁸ In the external review application, the applicant confirmed that she did not seek to access mobile telephone numbers or personal information about specific stakeholders. On many of the pages which the Department decided to partially disclose, the only refused information comprises mobile telephone numbers.

Background

7. In 2011, the Department was preparing to review its augmentative and alternate communication policy and procedures, which generally concerned communication support for people with complex communication needs. When the review was undertaken, it encompassed a clarification of the Department's practice position about FC.
8. The applicant stated in her external review application that she was seeking to access information about the Department's policy review because she has concerns about the review process. In this regard, I note that the applicant is an interested and active participant in public discussion about the use of FC and has made a number of applications to the Department seeking access to information about FC and changes to the Department's policy concerning FC. This decision is being issued in finalisation of the second of the applicant's external reviews on this topic.
9. In this external review, a number of third parties were consulted regarding the potential release of certain information (**Consultation Information**) that may be of concern to them.⁹ The Department required that these third parties only be provided with descriptions of the Consultation Information (rather than copies of the Consultation Information).¹⁰ Some of the consulted parties indicated that this made it difficult for them to provide their disclosure views to OIC. I accept that the Department's consultation requirements did impact the ability of the consulted parties to provide their disclosure views in a timely and meaningful way, particularly where the Consultation Information included communications which had occurred approximately a decade before the consultation process was undertaken. As a result, the consultation process took considerable time to complete.
10. The significant procedural steps taken during the external review are set out in the Appendix to this decision.

Reviewable decision

11. The decision under review is the Department's decision dated 9 June 2022.

Evidence considered

12. The evidence, submissions, legislation and other material I have considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
13. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹¹ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act and the *Information Privacy Act 2009* (Qld) (**IP 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 made by Bell J on the interaction

⁹ The Department had previously consulted some of these third parties when it was processing the application.

¹⁰ The disclosure restrictions in section 107 of the RTI Act prevented the Information Commissioner from providing a copy of the Consultation Information to the consulted parties during the external review.

¹¹ Section 21(2) of the HR Act. Section 21 of the HR also encompasses the rights to hold an opinion without interference and freedom of expression. The right to privacy and reputation is set out in section 25 of the HR Act. I have also had regard to those rights.

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

between similar pieces of Victorian legislation:¹³ *'it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.'*¹⁴

Information in issue

14. As set out in paragraph 5, some of the information which the Department decided not to disclose to the applicant is no longer in issue in this review.¹⁵
15. The information which remains in issue for the purpose of this decision (**Information in Issue**) appears on 22 pages.¹⁶ It should be noted that the Information in Issue does not comprise all the information appearing on these pages, as some of these pages have already been partially disclosed to the applicant and the applicant is not pursuing access to certain portions of information appearing on other pages.
16. While I am unable to describe the Information in Issue in any detail in this decision,¹⁷ I can confirm that it appears within correspondence related to the preparation stages for the Department's policy review and it also includes the personal information of individuals other than the applicant (such as their names and their opinions).

Issues for determination

17. The Third Party and the Fourth Party have objected to disclosure of information in this review on the basis that such disclosure could reasonably be expected to result in a serious act of harassment or intimidation or, in the alternative, that disclosure is contrary to the public interest.
18. The Department also maintains that small portions of the Information in Issue appearing on three pages comprise exempt information, being subject to legal professional privilege.¹⁸
19. Accordingly, the issues for determination are whether access may be refused to the Information in Issue on the basis that:
 - it comprises exempt information, as it is subject to legal professional privilege or its disclosure could reasonably be expected to result in a serious act of harassment or intimidation;¹⁹ and/or

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

¹⁴ XYZ at [573].

¹⁵ In the external review application, the applicant confirmed she did not seek access to mobile telephone numbers and personal information about specific stakeholders within the located documents. On 15 June 2023, OIC proposed to exclude certain further information from consideration on external review—namely, information which the Department had identified as irrelevant, duplicated, previously considered in another review, or relating to submissions made by other supporters of FC. As the applicant did not object to this information being excluded, it does not form part of the Information in Issue. On 29 March 2023, the Department disclosed further information to the applicant. On 6 July 2023, the applicant accepted a preliminary view that she was not entitled to access certain personal information (including contact details where a person's name had otherwise been disclosed) and certain information which the Department had refused on the grounds of legal professional privilege and Parliamentary privilege. Finally, on 12 June 2024, the Department confirmed that it no longer maintained a previous submission that four pages of the Information in Issue were not responsive to the application.

¹⁶ Pages 14, 16-20, 76, 82, 84, 90-91, 248, 453-454, 458, 518-519, 524, 579-580 and 585-586 of 604. This was confirmed to the applicant on 15 June 2023. When processing the access application, the Department has numbered the first 442 pages of the located documents as 1-442, however, pages 443-604 are numbered 1-141. For the purpose of this decision, I have identified the pages on which the Information in Issue appears by reference to the page at which it appears within the 604 page bundle as a whole.

¹⁷ Section 108(3) of the RTI Act relevantly prevents the Information Commissioner (or delegate) from including information in a decision, or reasons for a decision, that is claimed to be exempt information or contrary to the public interest information.

¹⁸ These appear on pages 453, 454 and 458. In respect of the remaining Information in Issue, the Department accepted OIC's view that pages 16-20 and 82-89 did not comprise exempt information, however, stated that the Department's disclosure position for these pages was subject to the consultation outcome.

¹⁹ Sections 47(3)(a) and 48 and schedule 3, section 10(1)(d) of the RTI Act.

- its disclosure would, on balance, contrary to the public interest to disclose.

Legal professional privilege

Relevant law

20. A person has a right to be given access to documents of an agency under the RTI Act.²⁰ However, this right is subject to other provisions of the RTI Act, including the grounds upon which an agency may refuse access to documents.²¹
21. One ground of refusal is where information is exempt from disclosure.²² Relevant to this matter, information will qualify as exempt where it would be privileged from production in a legal proceeding on the ground of legal professional privilege.²³
22. Legal professional privilege attaches to confidential communications between a lawyer and client made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or preparing for, or for use in, or in relation to, existing or reasonably anticipated legal proceedings.²⁴ The dominant purpose has been described as '*the ruling, prevailing or most influential purpose*',²⁵ and it is to be determined objectively, having regard to the evidence, the nature of the documents and the parties' submissions.²⁶ A claim of legal professional privilege is not established by a mere assertion that privilege applies.²⁷
23. Qualifications and exceptions to legal professional privilege²⁸ may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore whether it comprises exempt information under the RTI Act.
24. On external review, the Department bears the onus²⁹ of establishing that access may be refused to information on the ground it is exempt.

Findings

25. As noted above, the Department only maintains that legal professional privilege applies to small portions of the Information in Issue appearing on three pages. Although I am prevented from describing these components of the Information in Issue in any detail,³⁰ I can confirm that they appear within an Implementation Plan under the heading '*Legal*

²⁰ Section 23 of the RTI Act.

²¹ These refusal rounds appear in section 47 of the RTI Act.

²² Section 47(3)(a) and 48 of the RTI Act. Schedule 3 identifies what comprises exempt information for the purpose of the RTI Act.

²³ Schedule 3, section 7 of the RTI Act.

²⁴ The general principles of legal professional privilege were summarised by the High Court of Australia in *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552 as follows: '*It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings*'. These principles were confirmed by the High Court in *Glencore International AG v Commissioner of Taxation* [2019] HCA 26 at [23]-[25].

²⁵ *Federal Commissioner of Taxation v Spotless Services Ltd* (1996) 186 CLR 404 at page 416.

²⁶ In *AWB Limited v Honourable Terrance Rhoderic Hudson Cole (No 5)* (2006) 155 FCR 30 (*AWB*), Justice Young observed at [44] that '*The party claiming privilege carries the onus of proving that the communication was undertaken, or the document was brought into existence, for the dominant purpose of giving or obtaining legal advice. The onus might be discharged by evidence as to the circumstances and context in which the communications occurred or the documents were brought into existence, or by evidence as to the purposes of the person who made the communication, or authored the document, or procured its creation. It might also be discharged by reference to the nature of the documents, supported by argument or submissions*'. His Honour also noted that the purpose for which a document is brought into existence is a question of fact that must be determined objectively.

²⁷ *AWB* at [44].

²⁸ Such as waiver or improper purpose.

²⁹ Section 87(1) of the RTI Act.

³⁰ Pursuant to section 108(3) of the RTI Act.

Advice.³¹ On its face, this information does not comprise a confidential communication between a lawyer and client for the dominant purpose of providing legal advice or for use in legal proceedings on foot or reasonably anticipated at the time of the communication.

26. In October 2022 and March 2023, OIC invited the Department to provide evidence supporting its claim that these components of the Information in Issue related to a privileged communication. In April 2023, the Department confirmed that it had not been able to identify the relevant privileged communication to which this Information in Issue relates.
27. In the absence of such supporting evidence, I am unable to conclude that these components of the Information in Issue are subject to legal professional privilege. As a result, I do not consider the Department has met its onus of establishing that this information is exempt on the basis of legal professional privilege and accordingly, I find that access to this information cannot be refused on that ground.³²

Serious harassment or intimidation

Relevant law

28. Information will also qualify as exempt where its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation (**Harassment or Intimidation Exemption**).³³
29. The term '*could reasonably be expected to*' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,³⁴ nor merely a possibility.³⁵ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.³⁶ Factors which may be relevant in determining whether the requisite harassment or intimidation could reasonably be expected to occur include, but are not limited to:³⁷
- past conduct or a pattern of previous conduct
 - the nature of the relevant information in issue
 - the nature of the relationship between the parties and/or relevant third parties; and
 - relevant contextual and/or cultural factors.
30. The RTI Act does not define '*serious act of harassment or intimidation*'. Therefore, the terms are given their ordinary meanings.³⁸

³¹ I can also confirm that the Information in Issue on pages 453 and 454 is duplicated on page 458.

³² In this regard, the Department has not sought to raise any alternate ground for refusal of access to this specific component of the Information in Issue. Having turned my mind to the refusal grounds in the RTI Act, I am unable to identify any applicable ground for refusal of access to these small components of the Information in Issue.

³³ Schedule 3, section 10(1)(d) of the RTI Act.

³⁴ *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**) at [106].

³⁵ *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**) at [44] citing *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279, at [160].

³⁶ *Murphy* at [45]-[47]. In reaching a finding, 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, or, in this case, serious harassment or intimidation—see *Cockcroft* at [106], cited in *Sheridan and South Burnett Regional Council, Local Government Association of Queensland Inc and Dalby Regional Council; and Crime and Misconduct Commissioner* (Unreported, Queensland Information Commissioner, 9 April 2009) (**Sheridan**) at [192], which considered substantially similar provisions of the repealed *Freedom of Information Act 1992* (Qld).

³⁷ *Sheridan* at [193] and *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) at [19].

³⁸ The Information Commissioner has previously accepted the following definitions:

- '*harass*' includes '*to trouble by repeated attacks, ... to disturb persistently; torment*'; and

31. The reference to 'serious' in the exemption indicates that Parliament had envisaged that some degree of low-level harassment or intimidation would be tolerated before the exemption applied.³⁹ Therefore, the expected harassment or intimidation must also be serious in nature for the exemption to apply.⁴⁰ Being disparaging, unpleasant or '*irksome and annoying*' is not sufficient to establish the exemption.⁴¹
32. The Queensland Civil and Administrative Tribunal has also confirmed that, for the Harassment or Intimidation Exemption to apply, '*it must be reasonably expected that a person would be subject to a serious act or harassment or intimidation as a result of the disclosure of the information, rather than independently or from any other circumstance*'.⁴²
33. Accordingly, for this exemption to apply, I must be satisfied that:
 - there is a reasonable expectation of harassment and intimidation arising as a result of disclosure, rather than from other circumstances; and
 - the expected harassment or intimidation is serious in nature.

Analysis

34. Not all of the parties who were consulted in this external review objected to disclosure of the information they were consulted about. However, the consulted parties who objected to disclosure raised specific concerns about the disclosure of their identifying information within the Information in Issue. To avoid identifying the consulted parties (in particular, the Third and Fourth Parties), and given the nature of certain disclosure concerns they have raised, I must necessarily be circumspect in how I describe those disclosure objections (and the Information in Issue they may specifically reference) in this decision.
35. Accordingly, I provide the following summary of the received disclosure objections which are relevant to the issue of whether the Harassment or Intimidation Exemption applies to the Information in Issue:
 - some of the consulted parties consider that the applicant, and other advocates for FC, have engaged in bullying behaviour (including via social media, other online activities and publications) and have made defamatory statements about individuals/entities holding opposing views over many years
 - as a result of those bullying behaviours, certain organisations had taken steps to de-identify their members and the authors of publications about FC
 - disclosing further information to the applicant would result in that information being shared with other FC supporters and thereby renew, and increase, what some of the consulted parties perceive as harassing and intimidating behaviours (including online) towards various individuals/entities holding an opposing view to the supporters of FC; and

• '*intimidate*' includes '*to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear*'.

(Refer to 6ZJ3HG and Department of Environment and Heritage Protection; OY76VY (Third Party) [2016] QICmr 8 (24 February 2016) at [32], citing Sheridan at [194]-[195]).

³⁹ Sheridan at [187] and [294].

⁴⁰ Relevant dictionary definitions of 'serious' include '*weighty or important*' (Macquarie Dictionary Online retrieved 27 May 2024 from <https://www.macquariedictionary-com-au>); '*giving cause for apprehension; critical*' (Macquarie Dictionary Online retrieved 27 May 2024); and '*having (potentially) important, esp. undesired, consequences; giving cause for concern*' (New Shorter Oxford Dictionary (Fourth Edition), as quoted by the Information Commissioner in Sheridan at [197]).

⁴¹ Bowmaker Realty and Department of Justice and Attorney General; Andrews [2015] QICmr 19 (17 August 2015) at [31].

⁴² Watson v Office of Information Commissioner Qld & Ors [2015] QCATA 95 at [19].

- as a result of a number of particular actions undertaken by certain advocates of FC,⁴³ some of the consulted parties expressed concern about the impact disclosure of the Information in Issue would have on their safety and mental well-being⁴⁴ and the reputation of various individuals/entities.
36. In assessing whether the disclosure of information in this review *could reasonably be expected to result in any person being subjected to a serious act of harassment or intimidation*, I have carefully considered the received disclosure objections.
37. On the material before me in this review, it is evident that the applicant is a supporter of FC. The applicant has also published her FC views, including online, and disagreed with the published views of individuals/entities who are not supportive of FC. Taking this and the information before me into account, I consider it is reasonable to expect that, following the disclosure of information in this external review process, the applicant may make further posts online expressing opposition to the FC views of certain individuals/organisations.⁴⁵
38. As I have noted above, the wording of the Harassment or Intimidation Exemption contemplates that lower levels of harassment or intimidation will not be captured by the exemption.⁴⁶ I have carefully reviewed the received disclosure objections and, in my view, the applicant's past conduct (and apprehended future conduct) outlined in those objections does not meet the level of severity necessary for the Harassment or Intimidation Exemption to apply. While I accept the applicant's published views may be somewhat disparaging, unpleasant and annoying, they do not amount to *serious* harassment or intimidation. Instead, they are more in the nature of robust public dissent or discussion. In this context, it is reasonable to expect that any posts the applicant may make online following disclosure of information in this external review process will be of a similar character to the applicant's previous posts—that is, they will be critical expressions of dissent or disagreement but will not be abusive or threatening in nature.
39. I also recognise that it is possible the applicant may share information being released in response to her various access applications concerning FC. However, there is nothing in the information before me to suggest that the applicant has demonstrated a pattern of sharing information with others so as to encourage, or incite, them to engage in the types of behaviours which are the subject of the received disclosure objections. I am also satisfied that the past conduct of FC supporters (and the apprehended future acts of them) raised in the disclosure objections also does not amount to serious acts of harassment or intimidation.
40. For these reasons, I find that there is no reasonable basis to expect that disclosure of the Information in Issue would result in any individual being subjected to a serious act of harassment or intimidation. Accordingly, the Information in Issue does not comprise exempt information and access to it cannot be refused on that basis.
41. I have, however, taken the disclosure objections outlined in paragraph 35 above into consideration in weighing the public interest below.

⁴³ To avoid identifying the consulted parties, I cannot further detail these actions.

⁴⁴ While information will also be exempt from disclosure under schedule 3, section 10(1)(c) of the RTI Act where its disclosure would reasonably be expected to endanger a person's life or physical safety, I am satisfied that none of the disclosure objections received from the consulted parties provided any information which indicated this exemption could be enlivened in respect of the Information in Issue.

⁴⁵ In reaching this conclusion, I do note that the disclosure objections indicate that the applicant's past posts were generally triggered by the publication of a document or article or a particular posting on social media. I do, however, acknowledge that the constancy of the applicant's online presence is a source of concern to some of the consulted parties.

⁴⁶ *Sheridan* at [187] and [294].

Contrary to the public interest

Relevant law

42. Access may also be refused under the RTI Act where disclosure of information would, on balance, be contrary to the public interest.⁴⁷ 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.⁴⁸
43. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁴⁹ and explains the steps that a decision-maker must take⁵⁰ in deciding the public interest.⁵¹

Analysis

Irrelevant factors

44. I have not taken any irrelevant factor into account in this external review.

Factors favouring disclosure

45. The RTI Act recognises that public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability⁵²
 - contribute to positive and informed debate on important issues or matters of serious interest⁵³
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community,⁵⁴ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.⁵⁵
46. As noted in paragraph 8, the applicant raised concerns about the Department's policy review process. More specifically, she submitted that the review undertaken in 2012 was biased and '*the voices of people and organisations opposed to FC were promoted while those of stakeholders and practitioners were excluded or lightly dismissed*'.⁵⁶

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

⁴⁸ 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.

⁴⁹ In schedule 4 of the RTI Act. However, factors listed in schedule 4 are not exhaustive. In other words, factors that are not listed may also be relevant.

⁵⁰ Section 49(3) of the RTI Act.

⁵¹ These steps are to identify any irrelevant factors and disregard them; identify relevant public interest factors favouring disclosure and nondisclosure; balance the relevant public interest factors favouring disclosure and nondisclosure; and decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

⁵² Schedule 4, part 2, item 1 of the RTI Act.

⁵³ Schedule 4, part 2, item 2 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 3 of the RTI Act.

⁵⁵ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁶ External review application.

47. Most of the Information in Issue⁵⁷ appears within communications about who would be involved in the Department's review process and certain steps taken, and feedback obtained, in the preliminary review processes. This information had been refused by the Department in the decision under review.⁵⁸ The Third and Fourth Parties have objected to disclosure of this information. Although the Department has not, on external review, maintained that this information may be refused, the Department indicated its position concerning some of the Information in Issue was subject to the consultation outcome.⁵⁹
48. The Department must be transparent and accountable about its policy positions and how those positions are, from time to time, reviewed and updated. I also accept that FC is a matter of some community interest, as evidenced by the considerable public discussion about its use over many years. However, the Department has disclosed a large amount of information to the applicant. I consider that disclosed information has significantly advanced the accountability and transparency factors listed above, by confirming the intent and scope of the Department's then proposed policy and procedure review; that the Department commissioned research from an independent research team to inform the review; and that the research work would be overseen by a project board. Further, the disclosed information also specifically confirmed that a range of stakeholders would be consulted as part of the Department's policy review.⁶⁰
49. Taking into account the nature of the Information in Issue, I consider its disclosure will, to some extent, further advance the government's accountability and transparency.
50. As noted above, significant information has already been disclosed to the applicant about the Department's review process. In these circumstances, for the Information in Issue which records procedural matters associated with the Department's review preparation, I afford these disclosure factors only moderate weight, taking into account the limited nature of this type of information.
51. In respect of the Information in Issue which records feedback sought or obtained as part of the Department's preliminary review processes, I note that some disclosure concerns were raised during consultation about identifying information and opinions within the Information in Issue. While I acknowledge the received disclosure objections, I note that some information of this nature has already been disclosed to the applicant (whether in this review or in response to the applicant's other access applications). I also note that the applicant accepted OIC's view that an individual's contact details could be refused where their name was otherwise disclosed.⁶¹ Having carefully considered the Information in Issue, I consider the accountability and transparency considerations strongly favour disclosure of such identifying information⁶² and opinions of Departmental officers, particularly as they appear in the context of communications about preparation for a government policy review.⁶³ For the identifying information and opinions of individuals who are not Queensland government officers, I consider these disclosure factors are deserving of less weight. Disclosing the

⁵⁷ That is, apart from the small portions on pages 453, 454 and 458, which the Department submitted were subject to legal professional privilege, as addressed in paragraphs 25-27 above.

⁵⁸ In the decision under review, the Department fully refused access to pages 16-20, 82, 84 and 90-91—on the basis that those documents were subject to legal professional privilege—and pages 518-519, 524, 579-580 and 585-586 of 604 on the ground disclosure would, on balance, be contrary to the public interest. On external review, the Department accepted that pages 16-20, 82, 84 and 90-91 did not comprise exempt information.

⁵⁹ Department's email submission dated 28 November 2022.

⁶⁰ In this regard, I also note that the disclosed information indicates that the applicant was identified as a stakeholder in the Department's policy/procedure review process.

⁶¹ Applicant's email dated 6 July 2023.

⁶² Including names and contact details (such as email addresses).

⁶³ On this basis, I have afforded these factors favouring disclosure significant weight in respect of the identifying information of Departmental officers (which appear on almost all pages within the Information in Issue) and their opinions.

identifying information of these individuals would, in my view, only further advance government accountability and transparency to a limited extent.⁶⁴ However, as these opinion components of the Information in Issue directly relate to the preliminary work conducted for a government policy review, I afford moderate weight to the accountability and transparency factors which favour disclosure.

52. As outlined in paragraph 46, the applicant has concerns with the manner in which the Department's policy review was conducted.⁶⁵ Public interest factors favouring disclosure will also arise in circumstances where disclosing information could reasonably be expected to allow or assist inquiry into, or reveal or substantiate, deficiencies in the conduct of the Department or its officers.⁶⁶ I have carefully considered the Information in Issue (together with the applicant's submissions and the information which has been released to the applicant) and I am satisfied that there is nothing within the Information in Issue which gives rise to an expectation that its disclosure would allow or assist inquiry into, reveal or substantiate, agency or official conduct deficiencies. Accordingly, I find that these factors do not apply to favour disclosure.
53. Taking into account the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.⁶⁷

Factors favouring nondisclosure

54. The RTI Act recognises that there is a public interest harm⁶⁸ in disclosing an individual's personal information⁶⁹ to someone else and that disclosing information which could reasonably be expected to prejudice the protection of an individual's right to privacy gives rise to a public interest factor favouring nondisclosure.⁷⁰ The concept of 'privacy' is not defined in the IP Act or the RTI Act.⁷¹
55. I am satisfied these nondisclosure considerations are enlivened in respect of a large portion of the Information in Issue, as it includes the identifying details and opinions of various individuals (including certain consulted parties) or it may allow the identities of such individuals to be ascertained.
56. Generally, information created in the course of a person's employment is considered to be their routine personal work information and, as such, does not attract a high privacy

⁶⁴ Given this, I afford these factors only low weight for this type of information.

⁶⁵ External review application.

⁶⁶ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁶⁷ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, the Information in Issue does not contain the applicant's personal information (schedule 4, part 2, item 7 of the RTI Act) and I cannot see how disclosing the Information in Issue could, for example, ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); advance the fair treatment of individuals and entities in accordance with the law in their dealing with agencies (schedule 4, part 2, item 10 of the RTI Act); reveal the Information in Issue was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 of the RTI Act); reveal environmental or health risks or measures relating to public health and safety (schedule 4, part 2, item 14 of the RTI Act); contribute to the administration of justice (schedule 4, part 2, items 16 and 17 of the RTI Act); or contribute to innovation and the facilitation of research (schedule 4, part 2, item 19 of the RTI Act). In the event that further relevant factors exist in favour of disclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to displace the overall balance of the public interest as set out in my findings for the various components of the Information in Issue.

⁶⁸ Schedule 4, part 4, section 6 of the RTI Act.

⁶⁹ 'Personal information' is defined in schedule 5 of the RTI Act by reference to the IP Act and 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'.

⁷⁰ Schedule 4, part 3, item 3 of the RTI Act.

⁷¹ It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others (paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56).

interest and the harm arising from disclosure is considered to be low.⁷² For the documents recording communications which are between Departmental officers or between Departmental officers and the project board (or members of the project board), I am satisfied that communications of this nature⁷³ relate to the day-to-day duties and responsibilities of the involved Departmental officers and therefore comprises their routine personal work information. Accordingly, I afford the nondisclosure factors relating to personal information and privacy low to no weight for this component of the Information in Issue.

57. The remaining Information in Issue includes the personal information of various individuals, such as their names and opinions.⁷⁴ In determining the weight to be afforded to the personal information and privacy factors for information of this nature, I have taken into account the received disclosure objections and the information which has already been disclosed to the applicant.
58. Where names within the Information in Issue have already been disclosed to the applicant (whether in this review or in response to the applicant's other access applications), it is reasonable to conclude that disclosing such personal information again to the applicant would not further impact the individuals' privacy in any significant respect and that only minimal harm could reasonably be expected to arise from the further disclosure. I afford only low weight to these nondisclosure factors in respect of that personal information. On the other hand, for names and contact details of individuals which have not previously been disclosed to the applicant, these do not relate to public sector officers, and I consider there would be a higher level of privacy intrusion and harm that could be expected to arise from disclosure. Having noted the context in which this personal information appears, I afford these nondisclosure factors significant weight.
59. I note that the opinions of various individuals which appear within the Information in Issue are not about sensitive private aspects of their lives; they were expressed almost a decade ago and it is apparent (including from the consultation process conducted during the review) that some of the individuals no longer hold the positions they held when the communications in issue occurred. Further, for some of these individuals, their opinions about FC form part of the public record.⁷⁵ In all these circumstances, and having carefully reviewed the Information in Issue of this nature, I consider that:
 - disclosing the opinions of various Queensland public sector individuals within the Information in Issue will not impact their privacy in any significant way and only a low level of harm could reasonably be expected to arise from disclosure; however
 - a higher level of impact and harm could be expected to arise from the disclosure of the opinions of other individuals within the Information in Issue.
60. Accordingly, for these opinion components of the Information in Issue, I have afforded low and moderate weight respectively to the nondisclosure factors relating to personal information and privacy.
61. As noted at paragraphs 34 to 40 above, I do not accept the submissions received from the Third and Fourth Parties that disclosure of the Information in Issue will result in

⁷² Routine personal work information can include, for example, a work email address, a work phone number or an opinion given in a professional capacity.

⁷³ Which appears on pages 16-20, 76, 82 and 90-91.

⁷⁴ As I have noted, on 6 July 2023, the applicant accepted a preliminary view that she was not entitled to access certain personal information—the contact details of individuals where their name has otherwise been disclosed formed part of this excluded personal information.

⁷⁵ For example, in academic publications.

serious harassment and/or intimidation. However, given that the list of public interest factors in the RTI Act is not exhaustive, I consider that these submissions regarding harassment and/or intimidation also raise a public interest factor favouring nondisclosure requiring consideration in the context of the public interest test—that is, that whether disclosure could reasonably be expected to result in a person being subjected to lower level (that is, less than serious) harassment and/or intimidation.

62. It is reasonable to expect, as I have already noted, that the applicant may make posts online expressing opposition to the FC views of certain individuals/organisations following the disclosure of information in this external review process. However, on the information before me, this anticipated conduct has previously occurred—that is, the applicant has publicly expressed her opposition to (or criticism of) the views of certain individuals/organisations. I also note that the Information in Issue records communications that occurred approximately a decade ago. While I accept that the Third and Fourth Parties may consider the reoccurrence of such posts may damage their professional reputation or be disparaging, unpleasant and perhaps even a source of anxiety, I consider the expression of opposition views nonetheless forms part of the robust public discussion on this issue. Consequently, in all the circumstances, I consider that while a public interest consideration arises in this regard (that is, concerning the reasonable expectation that disclosure of the Information in Issue could result in some level of harassment and/or intimidation), I afford it limited weight.

Balancing the public interest

63. I have taken into account the pro-disclosure bias in deciding access to documents under the RTI Act.⁷⁶ After carefully reviewing the Information in Issue, I have identified and considered above the public interest factors which are relevant to the various components of the Information in Issue.
64. I have identified four public interest factors relating to government accountability and transparency which favour disclosure of the various components of the Information in Issue. For the reasons addressed above, I afford significant to moderate to low weight to these factors in respect of different components of the Information in Issue.
65. On the other hand, I have identified a number of factors favouring nondisclosure of the Information in Issue. For the reasons addressed above, considerations relating to personal information, privacy, and harassment and/or intimidation are deserving of moderate to low or limited weight in respect of various components of the Information in Issue.
66. As a result, I am satisfied that:
- for some parts of the Information in Issue,⁷⁷ the factors favouring nondisclosure outweigh the factors favouring disclosure and accordingly, access may be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest; and
 - for the remaining Information in Issue, the factors favouring nondisclosure are outweighed by the factors favouring disclosure and accordingly, access to that information cannot be refused under section 47(3)(b) of the RTI Act as its disclosure would not, on balance, be contrary to the public interest.

⁷⁶ Section 44 of the RTI Act.

⁷⁷ Which appear on pages 519 and 524.

DECISION

67. For the above reasons, I vary the Department's decision and, in respect of the Information in Issue, I find that:

- access may be refused to small portions of information appearing on 6 pages,⁷⁸ as disclosing that information would, on balance, be contrary to the public interest; and
- there is no basis under the RTI Act to refuse access to the remaining information, as it is neither exempt information nor would it, on balance, be contrary to the public interest to disclose.

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

T Lake
Principal Review Officer

Date: 17 June 2024

⁷⁸ Being pages 519, 524, 579, 580, 585 and 586.

APPENDIX

Significant procedural steps

Date	Event
29 June 2022	OIC received the application for external review.
2 August 2022	OIC notified the applicant and the Department that the application for external review had been accepted and requested information from the Department.
11 August 2022	OIC received the requested information from the Department.
13 October 2022	OIC conveyed a preliminary view to the Department concerning certain refused information. OIC consulted a party mentioned in the Information in Issue and confirmed that party had no objection to disclosure.
17 October 2022	OIC sought the disclosure views of a number of third parties (including the Third Party and Fourth Party). One of the consulted parties confirmed they had no objection to disclosure of the information they were consulted about.
24 October 2022	OIC granted, at the Department's request, an extension of time for the Department's response to OIC's preliminary view. The Third Party provided their preliminary objection to disclosure of certain information.
27 October 2022	OIC wrote to the Third Party to confirm receipt of the preliminary disclosure objection.
28 October 2022	OIC notified the Fourth Party that the Department had elected to provide descriptions of the information they were being consulted about, rather than copies of relevant documents.
31 October 2022	OIC conveyed a preliminary view to the Department and requested information to facilitate the process of obtaining disclosure view from various consulted parties.
9, 11 and 14 November 2022	OIC received further requested information from the Department to facilitate the process of consultation with various parties.
28 November 2022	OIC received the Department's response to some aspects of OIC's preliminary view. OIC wrote to the Third and Fourth Parties to provide descriptions of the information they were being consulted about and request their disclosure views.
29 November 2022	OIC granted, at the Department's request, an extension of time for the Department's response to the balance of OIC's preliminary view. OIC received the Fourth Party's disclosure objections.
9 December 2022	OIC consulted a party mentioned in the Information in Issue and confirmed that party had no objection to disclosure.
12 December 2022	OIC received the Third Party's disclosure objections.
16 December 2022	OIC received the Department's submissions.

Date	Event
22 December 2022	The Fourth Party indicated they wished to participate in the external review and provided submissions.
2 March 2023	OIC confirmed the disclosure objections received from the Third Party and asked the Third Party to confirm whether they wished to be joined as a participant in the external review.
16 March 2023	OIC received confirmation that the Third Party wished to participate in the external review.
20 March 2023	OIC notified the Department about the outcome of consultation with the various third parties and conveyed a further preliminary view to the Department.
27 March 2023	The Department agreed to disclose additional information to the applicant.
28 March 2023	<p>OIC notified the applicant that further information would be disclosed and provided an update to the applicant about the external review.</p> <p>The applicant confirmed that, notwithstanding the further information disclosure, she required a formal decision to finalise the review.</p>
3 April 2023	OIC received the Department's further submissions.
15 June 2023	OIC conveyed a preliminary view to the applicant about information to which access may be refused and information which could be disclosed (the latter being the information which remained in issue on external review).
6 July 2023	The applicant confirmed her acceptance of OIC's preliminary view about the information to which access may be refused.
14 August 2023	The Third Party reconfirmed they wished to participate in the external review.
12 June 2024	The Department confirmed that it no longer maintained a previous submission that four pages were not responsive to the application.