



Decision and Reasons for Decision

Citation: *A83 and Department of State Development and Infrastructure (Office of Industrial Relations) [2024] QICmr 3 (12 February 2024)*

Application Number: 317216

Applicant: Anon

Respondent: Department of State Development and Infrastructure (Office of Industrial Relations)

Decision Date: 12 February 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSALS OF ACCESS - EXEMPT INFORMATION - INFORMATION GIVEN UNDER COMPULSION UNDER AN ACT THAT ABROGATED PRIVILEGE AGAINST SELF-INCRIMINATION - records relating to the investigation of a workplace incident involving the applicant - whether exempt information to which access may be refused - sections 47(3)(a) and 48 and schedule 3, section 10(3) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - accountability and transparency - fair treatment and administration of justice - personal information and privacy - impede administration of justice - prejudice ability to obtain information - 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)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - OTHER ACCESS AVAILABLE - access refused to ASIC search reports - whether access may be refused under sections 47(3)(f) and 53(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to the Office of Industrial Relations (**OIR**)¹ under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access documents relating to a 2021 workplace incident in which the applicant was injured.²
2. OIR located relevant documents and decided³ to refuse access to them, on the ground disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of OIR's decision.⁴
4. During the external review, OIR agreed to disclose some of the located documents⁵ to the applicant, subject to the removal of individuals' signatures and mobile telephone numbers. However, the applicant continues to seek access to the remaining documents.
5. For the reasons set out below, I vary OIR's decision and find that access may be refused to the information remaining in issue in this review, on the grounds that it comprises exempt information;⁶ its disclosure would, on balance, be contrary to the public interest;⁷ and other access is available.⁸

Background

6. The applicant was injured while she was at work on 11 October 2021 (**Incident**) and the Incident was notified to OIR pursuant to the *Work Health and Safety Act 2011* (Qld) (**WHS Act**).
7. In investigating the Incident, Workplace Health and Safety Queensland (**WHSQ**)⁹ collected relevant information for the purpose of determining whether an offence under the WHS Act had been committed. OIR then referred the matter to the Office of the Work Health and Safety Prosecutor (**OWHSP**) for determination of whether, or not, to proceed with a prosecution.¹⁰
8. At commencement of the external review, the matter remained under assessment by the OWHSP. However, during the review, OIR confirmed that a Complaint and Summons had been issued by the OWHSP against a particular duty holder regarding the Incident. Proceedings arising from that issued Complaint and Summons remain ongoing as at the date of this decision.

¹ At this time, OIR was part of the Department of Education, however, following machinery of government changes, OIR is now part of the Department of State Development and Infrastructure.

² Access application dated 8 February 2023.

³ Decision dated 28 March 2023.

⁴ External review application dated 31 March 2023.

⁵ Comprising 72 pages.

⁶ Under sections 47(3)(a) and 48 of the RTI Act.

⁷ Under sections 47(3)(b) and 49 of the RTI Act.

⁸ Under sections 47(3)(f) and 53 of the RTI Act.

⁹ WHSQ, as Queensland's work health and safety regulator, is part of OIR (<<https://www.worksafe.qld.gov.au/about/who-we-are/workplace-health-and-safety-queensland>>).

¹⁰ OWHSP is an independent prosecution office, established under the WHS Act to conduct and defend proceedings for breaches of Queensland's work health and safety and resources safety and health laws (refer to <https://www.owhsp.qld.gov.au/>). The WHS Act sets out the timeframes in which the OWHSP is required to bring proceedings.

9. The significant procedural steps taken during the external review are set out in the Appendix.

Reviewable decision

10. The decision under review is OIR's decision dated 28 March 2023.

Evidence considered

11. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix).
12. I have also had regard to the *Human Rights Act 2019 (HR Act)*, including the right to seek and receive information.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 and *Information Privacy Act 2009 (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 following observations made by Bell J, on the interaction between equivalent pieces of Victorian legislation,¹³ that '*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

13. As noted in paragraph 4 above, signatures and mobile telephone numbers were removed from the located documents that were disclosed to the applicant during the review. While the applicant's representative confirmed that the applicant wished to access the '*balance of the documents that have not been disclosed*',¹⁵ the applicant did not seek to contest the removal of information from the disclosed documents.¹⁶
14. Accordingly, the documents remaining in issue comprise 1482 pages and three audio recordings (**Information in Issue**). This information was gathered or prepared by OIR in investigating the Incident and it includes:¹⁷
- the investigation report
 - witness statements and other information which was provided to, or obtained by, WHSQ from individuals other than the applicant—some of this information was provided pursuant to notices issued under section 171 of the WHS Act; and
 - ASIC search reports.

Issue for determination

15. The issues for determination in this review are whether access to the Information in Issue may be refused on the basis:

¹¹ Section 21(2) of the HR Act.

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]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from our position).

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

¹⁴ In *XYZ* at [573].

¹⁵ By email dated 29 August 2023.

¹⁶ On this basis, that removed information is not considered in this decision.

¹⁷ Section 108 of the RTI Act prevents me from describing the Information in Issue in any more detail in this decision.

- it comprises exempt information
- its disclosure would, on balance, be contrary to the public interest; and/or
- other access to it is available.

Relevant law

16. Under the RTI Act, a person has a right to be given access to documents of an agency.¹⁸ However, this right is subject to limitations, including the grounds upon which an agency may refuse access to documents.
17. The refusal grounds include where:
 - information comprises exempt information for the purpose of the RTI Act¹⁹
 - disclosing information would, on balance, be contrary to public interest information;²⁰ and
 - where other access to information is available.²¹
18. These grounds for refusal are examined below.

Exempt information

19. Under schedule 3, section 10(3) of the RTI Act, information given in the course of an investigation of a contravention or possible contravention of the law, under compulsion under an Act that abrogated the privilege against self-incrimination will be exempt from disclosure.
20. Following the issue of the Complaint and Summons, OIR submitted²² that some of the Information in Issue comprised exempt information under schedule 3, section 10(3) of the RTI Act, because it was provided in the course of WHSQ's investigation and it was provided by persons in response to a compulsory notice issued to them under section 171 of the WHS Act, which abrogates the privilege against self-incrimination.
21. The applicant has not sought to contest that some of the Information in Issue comprises exempt information.²³
22. Having reviewed the Information in Issue, I am satisfied that notices were issued by WHSQ to a number of persons under section 171 of the WHS Act. Those notices required the persons to provide information and/or documents. I am further satisfied that section 172(1) of the WHS Act abrogates the privilege against self-incrimination in that it provides that a person is not excused from answering a question or providing information or a document under this part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
23. I therefore find the information within the Information in Issue that was provided by persons in response to the notices issued under section 171 of the WHS Act is exempt information under schedule 3, section 10(3) of the RTI Act, including that information as it is summarised in the investigation report.

¹⁸ Section 23 of the RTI Act.

¹⁹ Sections 47(3)(a) and 48 of the RTI Act. Schedule 3 identifies what comprises exempt information for the purpose of the RTI Act.

²⁰ Sections 47(3)(b) and 49 of the RTI Act.

²¹ Sections 47(3)(f) and 53 of the RTI Act.

²² Submissions dated 18 December 2023.

²³ As noted in the Appendix, I conveyed a preliminary view to the applicant's representative on 3 January 2024 and invited the applicant to provide additional submissions. No response was received from the applicant or her representative.

24. For completeness, I also note that OIR submitted²⁴ that the exemption provision in schedule 3, section 10(1)(e) of the RTI Act also applied to the Information in Issue.²⁵ I understand that, at this time, the Complaint and Summons has only been mentioned in court.²⁶ Given this and the information currently before me, I am not satisfied that the exemption provision in schedule 3, section 10(1)(e) of the RTI Act has been enlivened.

Public interest balancing

25. 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.²⁷

26. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:²⁸

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

27. I have had regard to all public interest factors listed in Schedule 4 of the RTI Act,²⁹ and to the submissions received from the applicant and OIR in reaching my decision. I have also had regard to the RTI Act's pro-disclosure bias³⁰ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.³¹

Findings

28. I have not taken any irrelevant factors into account in reaching my decision.

Factors favouring disclosure

29. Some, but not all, of the Information in Issue relates to the applicant and comprises her personal information.³² This gives rise to a factor favouring disclosure of the applicant's personal information,³³ to which I attribute high weight. However, this information about the applicant is intertwined with the personal information of other individuals to such an extent that it cannot be disclosed without also disclosing the personal information of those other individuals (giving rise to factors favouring nondisclosure discussed below).

²⁴ Submissions dated 18 December 2023.

²⁵ This exemption arises where disclosure of information could reasonably be expected to prejudice a person's fair trial or the impartial adjudication of a case.

²⁶ That is, the matter is not currently listed for hearing or trial. Information about OWHSP prosecution processes can be found at < <https://www.owhsp.qld.gov.au/guidelines/court-process>>.

²⁷ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

²⁸ Section 49(3) of the RTI Act.

²⁹ Relevant factors are discussed below.

³⁰ Section 44 of the RTI Act.

³¹ Section 47(2)(a) of the RTI Act.

³² '*Personal information*' is defined in section 12 of the IP Act 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*'.

³³ Schedule 4, part 2, item 7 of the RTI Act.

30. The applicant submitted³⁴ that the Information in Issue is '*relevant and necessary for [the applicant's] claim for damages for personal injuries*'. Although the access right in the RTI Act is not meant to serve as an adjunct to court disclosure processes, given this submission, I have considered the public interest factor in schedule 4, part 2, item 17 of the RTI Act, which arises where disclosing information could reasonably be expected to contribute to the administration of justice for a person.
31. In determining whether this factor applies to favour disclosure of the Information in Issue, I must consider whether:³⁵
- the applicant has suffered loss, or damage, or some kind of wrong, in respect of which a remedy is, or may be, available under the law;
 - the applicant has a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information held by an agency would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.
32. The applicant has been injured and has submitted that she intends to commence proceedings to claim damages in respect of her injury. On this basis, I am satisfied the applicant has demonstrated the first two elements above. As noted above, the applicant also submitted that access to the Information in Issue is relevant and necessary for her foreshadowed personal injuries claim. I consider that disclosing the Information in Issue may, by providing further information about the Incident, assist the applicant in evaluating and/or pursuing her foreshadowed damages claim. However, I also consider that it is reasonable to expect the applicant would, as a result of her involvement in the Incident and the information which has been disclosed, already be aware of certain information that could assist in her evaluation and/or pursuit of the foreshadowed claim (including information about the other individuals who were present at the Incident and the equipment involved in the Incident).³⁶ Taking this into account, I afford moderate weight to this disclosure factor.
33. Under the RTI Act, public interest factors favouring disclosure will arise where disclosing information could reasonably be expected to:
- advance the fair treatment of individuals in accordance with the law in their dealings with agencies;³⁷ and
 - contribute to the administration of justice generally, including procedural fairness.³⁸
34. The applicant submitted that '*denying disclosure on the basis of a potential Workplace Health and Safety assessment or prosecution would be prejudicial towards [the applicant's] civil entitlements*'.³⁹ During the review, I notified the applicant that the

³⁴ Submissions dated 7 September 2023.

³⁵ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17] and confirmed in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

³⁶ Although pre-litigation disclosure processes exist under the *Uniform Civil Procedure Rules 1999*, I have not taken this into account as it is unclear whether the processes would be available in the circumstances of this matter.

³⁷ Schedule 4, part 2, item 10 of the RTI Act. This public interest factor does not require a decision maker to ensure that an applicant is provided with sufficient information to enable that applicant to be *subjectively* satisfied that he or she received fair treatment.

³⁸ Schedule 4, part 2, item 16 of the RTI Act. The fundamental requirements of procedural fairness—that is, an unbiased decision-maker and a fair hearing—should be afforded to a person who is the subject of an investigation or decision. The fair hearing aspect of procedural fairness requires that, before a decision that will deprive a person of some right, interest or legitimate expectation is made, the person is entitled to know the case against them and to be given the opportunity of replying to it (*Kioa v West* (1985) 159 CLR 550 at 584 per Mason J).

³⁹ Submissions dated 7 September 2023. I have addressed this submission in further detail in paragraph **Error! Reference source not found.**

OWHSP had issued a Complaint and Summons.⁴⁰ Apart from the generalised fairness argument referenced above, the applicant has not enunciated how she considers disclosure of the Information in Issue could reasonably be expected to contribute to her fair treatment in her dealings with OIR (or any other agency) or her procedural fairness.⁴¹ A workplace injury investigation under the WHS Act is generally focussed on determining whether an offence under the WHS Act has been committed—in that context, persons involved in such an investigation may receive notification of its outcome (or any prosecution outcome), however, they are not usually provided with substantive investigation information.⁴² On the information before me, the applicant, as the injured worker, was afforded an opportunity to participate in OIR's investigation of the Incident by providing statements about her recollections and opinions concerning the Incident.⁴³ Taking these matters into account, I afford low weight to these fair treatment and general administration of justice factors.⁴⁴

35. Public interest factors relating to government accountability and transparency also favour disclosure.⁴⁵ There is a clear public interest in people being able to discuss and understand the way in which OIR undertakes their responsibilities under the WHS Act. I am satisfied that disclosing the Information in Issue would provide the applicant with a complete picture of the actions taken by WHSQ when investigating the Incident, the information obtained during that investigation and the reasons for referring the matter to OWHSP. Although I consider the information which OIR disclosed to the applicant during this review has, to some extent, advanced OIR's accountability and transparency,⁴⁶ I do not consider that disclosure has significantly discharged these disclosure factors. In the particular circumstances of this matter (including that is now the subject of an ongoing Complaint and Summons process), I afford moderate weight to these accountability and transparency factors favouring disclosure.
36. I acknowledge that the applicant suffered a workplace injury. However, having carefully reviewed the Information in Issue, I do not consider that its disclosure could reasonably be expected to contribute, in any meaningful way, to a positive and informed debate on important issues or matters of serious interest⁴⁷ or reveal environmental or health risks or measures relating to public health and safety.⁴⁸ For this reason, I afford these factors only low weight in favour of disclosure.
37. Taking into account the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.⁴⁹

⁴⁰ As evidenced in the Appendix, the applicant was invited to provide additional submissions following the OWHSP's prosecution decision. No additional submissions were received from the applicant.

⁴¹ The words '*could reasonably be expected to*' require a decision-maker to make a judgment about whether something is reasonable, as distinct from something that is irrational, absurd or ridiculous; to distinguish between an expectation that is reasonably based, and the expectation of an occurrence that is merely a possibility, speculative, conjectural or hypothetical (*Attorney-General's Department v Cockcroft* (1986) 64 ALR 97 at 106 and *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 44).

⁴² In this regard, I note the general nondisclosure provision in section 271 of the WHS Act.

⁴³ The information disclosed to the applicant during the course of the review related to the statement she provided to OIR's investigation of the Incident.

⁴⁴ Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴⁵ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁶ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

⁴⁷ Schedule 4, part 2, item 2 of the RTI Act.

⁴⁸ Schedule 4, part 2, item 14 of the RTI Act.

⁴⁹ Having carefully considered all factors listed in schedule 4, part 2 of the RTI Act, 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); allow or assist enquiry into, or reveal or substantiate, agency conduct deficiencies (schedule 4, part 2, items 5 and 6 of the RTI Act); and reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant (schedule 4, part 2, item 12 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 outweigh the significant weight that I have afforded to the public interest factors that favour the nondisclosure of the Information in Issue.

Factors favouring nondisclosure

38. The RTI Act recognises that there is a public interest harm⁵⁰ in disclosing an individual's personal information 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.⁵¹
39. The Information in Issue includes information obtained from, or about, individuals other than the applicant. I am satisfied that information of this nature comprises the personal information of those other individuals. As noted above, the applicant's personal information appears intertwined with some of this information.
40. The applicant proposed that '*personal identification details of witnesses and/or third parties*'⁵² and '*privacy matters*'⁵³ could be redacted to facilitate disclosure of the Information in Issue. However, given the nature of the Information in Issue and the applicant's involvement in the Incident, I consider the identities of many other individuals would remain ascertainable even if their '*identification details*' were redacted within the Information in Issue, as the applicant proposed. It is also my view that privacy considerations extend beyond witness and third party personal identification details—as noted above, the Information in Issue also includes information provided by, or about, other individuals (some of which was obtained pursuant to the exercise of WHSQ's coercive powers). On this basis, I do not consider the applicant's redaction proposals would serve to substantially alleviate the personal information and privacy considerations that arise in respect of the Information in Issue.
41. It is reasonable to expect that individuals who participated in the Incident investigation and provided information to OIR would have contemplated that such information would be used in the investigation and any subsequent prosecution processes. However, I consider those other individuals would not have contemplated that the information they provided would be disclosed under the RTI Act, where there can be no restriction on its use, dissemination or republication, particularly while a prosecution process is ongoing. In these circumstances, I consider disclosure of this personal information of other individuals would be a significant intrusion into their privacy and the extent of the harm that could be expected to arise from its disclosure would be significant. On this basis, I afford significant weight to the nondisclosure factors which arise in this regard.⁵⁴
42. The applicant also submitted that:⁵⁵
- ..., to alleviate concerns, the information and documentation will be subject to the implied undertaking privilege. The parties can't release it to third parties and would only be used in the course of [the applicant's] civil matter.*
43. The implied undertaking referenced by the applicant arises under common law, usually where documents and information are obtained through compulsory court processes. The undertaking can generally be described as an obligation not to use such documents and information for any collateral or ulterior purpose unrelated to the proceedings in which the documents and information were obtained.⁵⁶ There is no

⁵⁰ Schedule 4, part 4, section 6 of the RTI Act.

⁵¹ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' is not defined in the IP Act or the RTI Act. 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).

⁵² Submissions dated 7 September 2023.

⁵³ Submissions dated 18 September 2023.

⁵⁴ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

⁵⁵ Submissions dated 7 September 2023.

⁵⁶ The content and scope of such an implied undertaking was discussed in *Hearn v Street* (2008) 235 CLR 125.

evidence before me which suggests that any of the Information in Issue is of that nature.⁵⁷ As I have noted above, the access right in the RTI Act is not meant to serve as an adjunct to court disclosure processes and, under the RTI Act, there is no restriction on the use, dissemination or republication of information which is disclosed pursuant to an access application. The RTI Act also confers no power on the Information Commissioner to exact any undertaking, or to impose any condition, concerning the use to which a person granted access to a document under the RTI Act will put the document or information contained in it. For these reasons, the applicant's proposed usage restriction does not obviate the personal information and privacy considerations that arise in respect of the Information in Issue and it does not affect the weight which I have afforded to the nondisclosure factors in paragraph 41 above.

44. Public interest factors favouring nondisclosure will also arise where disclosing information could reasonably be expected to:
- impede the administration of justice generally, including procedural fairness;⁵⁸ and
 - impede the administration of justice for a person;⁵⁹ and
45. I consider these nondisclosure factors apply to the Information in Issue, given there is now an ongoing prosecution process concerning the Incident, which is in its early stage. I consider it is reasonable to expect that disclosure of the Information in Issue to the applicant at this time could impact the prosecution processes which are now occurring in respect of the issued Complaint and Summons.⁶⁰ On the information before me, the Information in Issue is not generally known and, as I have noted, there is no restriction placed on the use, dissemination or republication of information disclosed under the RTI Act. Noting this, the nature of the Information in Issue and the applicant's foreshadowed damages claim, I consider it is reasonable to expect that disclosure of the Information in Issue to the applicant, at this time, would impede the administration of justice generally⁶¹ and for the duty holder who is the subject of the issued Complaint and Summons. Accordingly, I find these factors favouring nondisclosure are deserving of significant weight.
46. Under the RTI Act, the public interest also favours nondisclosure where disclosing information could reasonably be expected to prejudice the flow of information to law enforcement or regulatory agencies.⁶²
47. As I have noted above, WHSQ has certain coercive powers when conducting its investigations,⁶³ however, not all of the Information in Issue comprises information obtained pursuant to an exercise of those coercive powers. There is a strong public interest in protecting the free flow of information to regulatory agencies and the ability of those agencies to obtain information which is relevant to their investigation, including the opinions and observations of concerned individuals (whether they are complainants, witnesses, informers or the subjects of investigation).⁶⁴ For information within the Information in Issue that was obtained from individuals other than the

⁵⁷ I am therefore satisfied that none of the Information in Issue is currently subject to an implied undertaking.

⁵⁸ Schedule 4, part 3, item 8 of the RTI Act.

⁵⁹ Schedule 4, part 3, item 9 of the RTI Act.

⁶⁰ For example, as the prosecution process is at an early stage, disclosure of information to the applicant, at this time, will provide the applicant (who is not a party in the prosecution process) with information relevant to the offence identified in the Complaint and Summons prior to disclosure of such information to the subject duty holder under the relevant prosecution disclosure processes.

⁶¹ Including procedural fairness in the commenced prosecution process.

⁶² Schedule 4, part 3, item 13 of the RTI Act.

⁶³ The WHS Act confers various powers on inspectors to compel the production of documents and information.

⁶⁴ See for example: *P6Y4SX and Queensland Police Service* [2015] QICmr 25 (11 September 2015), *P6Y4SX and Department of Police* (Unreported, Queensland Information Commissioner, 31 January 2012), and *SW5Z7D and Queensland Police Service* [2016] QICmr 1 (15 January 2016).

applicant, I consider its disclosure under the RTI Act, particularly now a prosecution process has been commenced but not finalised, could be expected to discourage individuals from coming forward with relevant information or participating openly in future investigations. Noting the circumstances in which WHSQ obtained or received the Information in Issue, I afford moderate weight to this factor favouring nondisclosure.

Balancing the relevant public interest factors

48. For the reasons set out above, I am satisfied that privacy considerations and the protection of the personal information of other individuals warrant significant weight in favour of nondisclosure. Further, anticipated impediments to the administration of justice are deserving of significant weight and I have afforded moderate weight to expected prejudice to the flow of information.
49. On the other hand, I have afforded high weight to the factor favouring disclosure of the applicant's personal information within the Information in Issue. However, that personal information of the applicant is inextricably intertwined with the personal information of other individuals. In addition, and for the reasons outlined above, I have identified additional disclosure factors which favour disclosure of the Information in Issue (such as those relating to accountability and transparency, an informed debate on important issues, fair treatment, the administration of justice and public health and safety). Taking into account the nature of the Information in Issue and the information which has been disclosed to the applicant, I have afforded these factors either moderate or low weight.
50. On balance, I am satisfied that the public interest factors favouring nondisclosure outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the Information in Issue would, on balance, be contrary to the public interest and access may be refused on this basis.⁶⁵

Other access

51. Sections 47(3)(f) and 53(a) of the RTI Act allow an agency to refuse access to a document that is reasonably available under another Act or administrative arrangement, whether or not the access is subject to a fee or charge.
52. The applicant has not sought to contest that other access is available to some of the Information in Issue.⁶⁶
53. I am satisfied that access to documents within the Information in Issue which comprise ASIC search reports is reasonably available by means other than an access application under the RTI Act. Consequently, I find that access to these reports can be refused in full,⁶⁷ on the basis that other access to them is available.

DECISION

54. For the reasons set out below, I vary OIR's decision and find that access to the Information in Issue may be refused, as it comprises exempt information;⁶⁸ its

⁶⁵ Sections 47(3)(b) and 49 of the RTI Act.

⁶⁶ As noted in the Appendix, I conveyed a preliminary view to the applicant's representative on 3 January 2024 and invited the applicant to provide additional submissions. No response was received from the applicant or her representative.

⁶⁷ Under section 47(3)(f) of the RTI Act.

⁶⁸ Sections 47(3)(a) and 48 of the RTI Act.

disclosure would, on balance, be contrary to the public interest⁶⁹ and other access is available.⁷⁰

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

T Lake
Acting Assistant Information Commissioner

Date: 12 February 2024

⁶⁹ Sections 47(3)(b) and 49 of the RTI Act.

⁷⁰ Sections 47(3)(f) and 53 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
31 March 2023	OIC received the external review application.
5 May 2023	OIC notified the applicant and OIR that the application for external review had been accepted and requested information from OIR.
11 May 2023	OIC received the requested information from OIR.
1 June 2023	OIC requested further information from OIR, including about the status of the OWHSP assessment.
7 June 2023	OIC received the requested information from OIR.
7 July 2023	OIC asked OIR to confirm its disclosure position.
14 July 2023	OIC provided an update to the applicant's representative.
10 August 2023	OIC received confirmation from OIR about the particular information it agreed to disclose.
14 August 2023	OIC notified the applicant's representative of the information which OIR had agreed to disclose and asked the representative to notify OIC if the applicant wished to access any further information.
17 August 2023	OIR disclosed information to the applicant's representative.
29 August 2023	OIC received the applicant's request to access the undisclosed documents.
30 August 2023	OIC received confirmation from OIR that the matter remained under consideration by the OWHSP. OIC conveyed a preliminary view to the applicant's representative in respect of the undisclosed documents and invited the applicant to provide a submission if she did not accept the preliminary view.
7 September 2023	OIC received the applicant's submissions.
8 September 2023	OIC conveyed a further preliminary view to the applicant's representative in respect of the undisclosed documents and invited the applicant to provide a submission if she did not accept the preliminary view.
18 September 2023	OIC received the applicant's further submissions.
22 September 2023	OIC reiterated the preliminary view to the applicant's representative.
30 October 2023	In response to OIC's request for information about the status of the OWHSP assessment, OIC received OIR's notification that a Complaint and Summons had been issued. OIC invited OIR to provide further submissions regarding its disclosure position in the changed circumstances.
16 November 2023	OIC notified the applicant's representative of the issued Complaint and Summons and invited the applicant to provide additional submissions in the changed circumstances.
18 December 2023	OIC received OIR's further submissions.

Date	Event
3 January 2024	OIC conveyed a further preliminary view to the applicant's representative and invited the applicant to provide additional submissions.
5 February 2024	OIC confirmed to the applicant's representative that a formal decision would be issued to finalise the review and noted the applicant had made no additional submissions.