



Decision and Reasons for Decision

Citation:	<i>I65 and Legal Practitioners Admissions Board [2024] QICmr 41 (26 August 2024)</i>
Application Number:	317873
Applicant:	I65
Respondent:	Legal Practitioners Admissions Board
Decision Date:	26 August 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - application to access information about applicant's admission application - whether disclosure of information would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Legal Practitioners Admissions Board (**Board**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) to access information relating to his admission application. As a result of negotiations between the applicant and the Board, the scope of the access application was narrowed (**Narrowed Application**).
2. The Board located 16 documents² as relevant to the Narrowed Application and decided³ to refuse access to 8 documents and parts of the remaining 8 documents. The Board also deleted irrelevant information from the partially disclosed documents.
3. The applicant then applied⁴ to the Office of the Information Commissioner (**OIC**) for review of the Board's decision.
4. During the review,⁵ the applicant accepted my preliminary view that he was not entitled to access the undisclosed information which the Board had deleted on the basis it was

¹ Access application dated 15 January 2024 and specified a date range of '1 September 2023 to 15 January 2024'.

² Comprising 52 pages.

³ Decision dated 15 February 2024.

⁴ Applicant's email dated 6 March 2024 (**External Review Application**).

⁵ As set out in the Appendix.

irrelevant to the Narrowed Application⁶ and the Board disclosed a small amount of additional information to the applicant. However, the applicant maintains that he is entitled to access the remaining undisclosed information.

5. For the reasons set out below, I affirm the Board's decision and find that access to the information remaining in issue may be refused under the RTI Act on the ground its disclosure would, on balance, be contrary to the public interest.⁷

Background

6. The Board is a statutory body established under the *Legal Profession Act 2007*⁸ and has responsibility for making recommendations to the Supreme Court in respect of applications for admission to the legal profession in Queensland.⁹

Reviewable decision

7. The decision under review is the Board's decision dated 15 February 2024.

Evidence considered

8. 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). The significant procedural steps taken during this review are set out in the Appendix.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁰ I consider a decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹²

Information in issue

10. As noted in paragraph 4, some of the information which the Board decided not to disclose is no longer in issue. The remaining undisclosed information (**Information in Issue**) appears on 23 pages (being 19 full pages and parts of 4 pages).¹³
11. I have examined the Information in Issue. The RTI Act precludes me from describing the content of the Information in Issue in these reasons,¹⁴ however, I note that, in the

⁶ 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. As a result of the applicant's acceptance of my preliminary view, the information deleted as irrelevant by the Board is no longer in issue and is not addressed in these reasons for decision.

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

⁸ Section 659.

⁹ Refer to <<https://www.qls.com.au/Legal-Practitioners-Admissions-Board>>.

¹⁰ Section 21(2) of the HR Act.

¹¹ *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].

¹² I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*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*'.

¹³ By reference to the schedule of documents included in the decision under review, I can confirm that the Information in Issue comprises Documents 1, 3, 4, 5, 6, 14, 15 and 16 and parts of Documents 10 and 12 (ie excluding the portions of information deleted from Documents 10 and 12 on the basis they were irrelevant to the access application).

decision under review, the Board described the Information in Issue as comprising third party information and identified that it appeared in emails to and from a third party, file notes and information within Board agenda papers.

Issue for determination

12. The issue for determination in this review is whether access to the Information in Issue may be refused on the ground that disclosure would, on balance, be contrary to the public interest.¹⁵

Preliminary issue

13. Before considering the issue for determination, it is necessary to deal with the applicant's concern that *'[t]he reviewing officer, sort [sic] to refuse access to third party information however at a [sic] no time sort [sic] the opinion or agreement or objection of that third party thereby denying the applicant the most basic rights afforded under the legislation, and cuts against the premise and obligation of intent to release information whereby clearly the intent without third party consultation was to restrict and not release information pertinent to the application'*.¹⁶

14. Section 37 of the RTI Act provides that:

(1) *An agency or Minister may give access to a document that contains information the disclosure of which may reasonably be expected to be of concern to a government, agency or person (the relevant third party) only if the agency has taken steps that are reasonably practicable—*

(a) *to obtain the views of the relevant third party about whether—*

(i) *the document is a document to which this Act does not apply; or*

(ii) *the information is exempt information or contrary to public interest information; and*

(b) *to inform the relevant third party that if access is given to the document because of an access application, access may also be given to the documents under a disclosure log.*

...

15. This requirement to consult a relevant third party only arises in respect of a document to which access is proposed to be given.

16. In the decision under review, the Board confirmed that the content of the located documents concerned a number of third parties, however, consultation was not considered necessary. As the Board decided not to disclose this content concerning third parties, the consultation requirement under section 37 of the RTI Act was not

¹⁴ Section 108(3) of the RTI Act, which prohibits the Information Commissioner from disclosing information that is claimed to be exempt information or contrary to the public interest information in an external review decision.

¹⁵ Pursuant to sections 47(3)(b) and 49 of the RTI Act. External review is a merits review process. I also note that, under section 87(1) of the RTI Act, the Board bears the onus of establishing that the decision under review was justified or that the Information Commissioner should give a decision adverse to the applicant.

¹⁶ External Review Application. I also note that, in the applicant's email dated 16 July 2024, he identified the reasons for seeking the issue of a formal decision in this matter as follows: *A) In keeping with the primary objective of the legislation, disclosure should be the intended purpose of the legislation and given the fact no formal third party consultation took place in regard to a third party whom submitted information to the Board. B) In the response from the Board and the RTI disclosure, there has not been a disclosure of the correspondence, documents and or content of that information which was provided by a third party to the Board in late 2023. The FOI released to myself and your comments and reviews to date, are silent upon these documents which seems contrary to the RTI Act and its intent to provide disclosure.*

enlivened. Given the decision I have reached about the Information in Issue, that consultation requirement was also not enlivened on external review.

Relevant law

17. Under the RTI Act, an individual has a right to be given access to documents of an agency,¹⁷ however, this access right is subject to limitations, including grounds upon which access to information may be refused.¹⁸
18. One ground of access refusal under the RTI Act is where disclosing information would, on balance, be contrary to the public interest.¹⁹ In deciding whether disclosure of information would, on balance, be contrary to the public interest,²⁰ the RTI Act requires a decision-maker to:²¹
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
19. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists, together with all other relevant information, in reaching my decision. I have also kept in mind the RTI Act's pro-disclosure bias²² and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.²³

Findings

20. I have taken no irrelevant factors into account in making my decision.

Public interest factors favouring disclosure

21. As noted above, the access application sought information relating to the applicant's admission application. As such, some (but not all) of the Information in Issue relates to the applicant and comprises his personal information. This gives rise to a factor favouring disclosure,²⁴ to which I attribute high weight. However, where this information about the applicant appears, it 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).
22. The Board submitted that '[a] *primary function of the Board is to support the decisions of the Supreme Court of Queensland by advising appropriately about whether an applicant is a 'fit and proper' person to be admitted*' and that over 1000 admission

¹⁷ Section 23 of the RTI Act.

¹⁸ The refusal grounds are set out in section 47 of the RTI Act.

¹⁹ Sections 47(3)(b) and 49 of the RTI Act.

²⁰ 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, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 *AIAL Forum* 12, 14.

²¹ Section 49(3) of the RTI Act.

²² Section 44 of the RTI Act.

²³ Section 47(2)(a) of the RTI Act.

²⁴ Schedule 4, part 2, item 7 of the RTI Act.

applications are received each year, with most being determined solely on information supplied by the applicant.

23. The RTI Act also 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 accountability;²⁵
 - 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;²⁶ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.²⁷
24. In respect of the applicant's admission application, the applicant was (on the information before me) provided with a copy of the Board's 13 March 2024 letter to the Supreme Court concerning his admission application (**Recommendation**).²⁸ In the Recommendation, the Board notified the Court that:
- the Board was not satisfied the applicant was suitable for admission to the legal profession; and
 - the applicant's admission application had raised three identified matters for consideration by the Court.²⁹
25. On external review, the applicant submitted that the Board's decision to refuse access to information '*Fails the basic principle and premise of the Statutory legislation in allowing public access to information, in a transparent and accountable manner*'.³⁰ I consider that the information which has been disclosed to the applicant (in the Recommendation and in response to his access application) has substantially advanced these public interest factors relating to the Board's accountability and transparency, by enabling scrutiny of the Board's processes and providing background and contextual information about the Recommendation. I do, however, accept that disclosure of the Information in Issue may further advance these accountability and transparency factors to some extent, by providing a complete picture of the information received by the Board in respect of the applicant's admission application. In determining the weight to be afforded to these factors, I have taken into account the nature of the Information in Issue and the matters which the Board identified for the Court's consideration in the Recommendation. In the circumstances, I afford these accountability and transparency factors favouring disclosure of the Information in Issue only low weight.
26. Given the applicant's submissions appear to raise general concerns about the manner in which the Board considered his admission application, I have also considered whether disclosing the Information in Issue could reasonably be expected to allow or assist enquiry into, or reveal or substantiate, deficiencies in the conduct of the Board or its officers.³¹ While I acknowledge the applicant may disagree with the Recommendation, I am satisfied that there is nothing within the Information in Issue

²⁵ Schedule 4, part 2, item 1 of the RTI Act.

²⁶ Schedule 4, part 2, item 3 of the RTI Act.

²⁷ Schedule 4, part 2, item 11 of the RTI Act.

²⁸ The Recommendation was provided by the Board in accordance with Rule 15(2) of the *Supreme Court (Admission) Rules 2004* (Qld) (**Rules**) and a copy was given to the applicant as required by Rule 15(3)(b) of the Rules.

²⁹ To avoid identifying the applicant, I am unable to provide any further detail about the Recommendation in these reasons for decision.

³⁰ External Review Application.

³¹ Schedule 4, part 2, items 5 and 6 of the RTI Act.

itself which gives rise to an expectation that its disclosure would reveal, or substantiate, any conduct deficiencies. Accordingly, I find that these public interest factors do not apply.

27. A factor favouring disclosure will arise where disclosing information could reasonably be expected to reveal the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.³² As I have noted above, the Board described the Information in Issue as comprising third party information. Information of this nature is shaped by an individual's observations, perceptions, concerns and opinions. This inherent subjectivity does not mean that the information is necessarily incorrect or misleading.³³ Having carefully considered the Information in Issue, I do not consider that there is anything before me which indicates that its disclosure would reveal that the Information in Issue is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Accordingly, I find that this factor does not apply.

28. In support of his position, the applicant argued that:³⁴

The basis that release of such information takes away the most basis [sic] premise to which the legal system is built, being every person has the right to face ones accuser or to deal in an open and transparent way, to which this decision erodes that right to the applicant, including the higher burden upon the process of those working within the legal system to be open to scrutiny and standards the public expects.

29. Given this submission, I have also considered the public interest factors favouring disclosure which arise where disclosing information could reasonably be expected to:

- advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies³⁵
- contribute to the administration of justice generally, including procedural fairness;³⁶ and
- contribute the administration of justice for a person.³⁷

30. As noted above, in addition to the information disclosed in response to the access application, the applicant was provided with a copy of the Recommendation. During the review, the Board confirmed to me³⁸ that it 'did not rely on or take into account in reaching its decision any objection from a third party' and '[i]f an objection had been received, it would have been provided to [the applicant] for his response, however this was not the case.' I note that the Recommendation appears to confirm this.³⁹ Further, the Board provided⁴⁰ the following contextual information to me about how it deals with information which is received from third parties about an admission application:

The Board is well aware of the rules of natural justice and evidence and also of its obligation to the Court to properly advise it in accordance with the law. Most people providing such information do so as a formal objection which can be and is provided to the applicant for a response. However, anonymous or confidential disclosures that lead to the discovery of other evidence relevant to suitability can be very important in ensuring that the Court does

³² Schedule 4, part 2, item 12 of the RTI Act.

³³ *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [15]-[20]; *Brodsky and Gympie Regional Council* [2014] QICmr 17 (2 May 2014) at [32].

³⁴ External Review Application.

³⁵ Schedule 4, part 2, item 10 of the RTI Act.

³⁶ Schedule 4, part 2, item 16 of the RTI Act.

³⁷ Schedule 4, part 2, item 17 of the RTI Act.

³⁸ By email dated 24 June 2024.

³⁹ Again, to avoid identifying the applicant, I cannot provide any further information about the Recommendation in these reasons for decision.

⁴⁰ By email dated 24 June 2024.

not ultimately admit a person who may be unsuitable. Where independent corroboration of a confidential or anonymous disclosure is found, it will be provided to the applicant for a response and the corroborating material and response can be considered by the Board. It is vital that suitability issues are brought to the attention of the Court to avoid inappropriate applicants being allowed into the legal profession.

31. In the circumstances of this matter, and taking the particular nature of the Information in Issue into account, I am not satisfied that there is a reasonable expectation disclosure of the Information in Issue would, in any meaningful way, advance the applicant's fair treatment in his dealings with the Board or any other agency, or contribute to the general administration of justice, including procedural fairness. On this basis, while these factors may apply,⁴¹ I afford them no weight.
32. In determining whether the factor in schedule 4, part 2, item 17 of the RTI Act applies, I must consider whether:⁴²
- 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 in Issue would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.
33. The applicant's submissions do not address this disclosure factor and, as I have noted above, the applicant has received a copy of the Recommendation. There is no evidence before me to indicate that disclosure of the Information in Issue is required to enable or assist the applicant to pursue any legal remedy or evaluate whether any legal remedy is available or worth pursuing. Accordingly, on the information before me, I am unable to be satisfied that this factor applies to favour disclosure of the Information in Issue.
34. Taking into account the particular nature of the Information in Issue, I cannot identify any other public interest considerations favouring its disclosure.⁴³

Public interest factors favouring nondisclosure

35. The RTI Act recognises that disclosure of information could reasonably be expected to cause a public interest harm where it discloses personal information of a person⁴⁴ and that a public interest factor also arises where disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.⁴⁵ 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.⁴⁶

⁴¹ Schedule 4, part 2, items 10 and 16 of the RTI Act.

⁴² See *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].

⁴³ 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, given its nature and the circumstances of this matter, contribute to positive and informed debate on important issues or matters of serious interest (schedule 4, part 2, item 2 of the RTI Act); ensure oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act); or contribute to the maintenance of peace and order (schedule 4, part 2, item 15 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.

⁴⁴ Schedule 4, part 4, section 6(1) of the RTI Act. Section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**) relevantly 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*'.

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

⁴⁶ 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.

36. Having carefully reviewed the Information in Issue, I am satisfied that it is information provided by, or about, individuals other than the applicant and it therefore comprises the personal information of third parties. As noted at paragraph 21, some of this information is intertwined with the applicant's personal information.
37. The applicant submitted that '*[a] third party whom [sic] seeks to make a submission, interact with or exchange a document or information would and should expect that in the process of such an interaction, it is discoverable through a RTI process and as such hold a burden of accountability to such information.*' As noted in paragraph 30 above, the Board confirmed to me that it receives, in some instances, anonymous or confidential disclosures concerning admission applications. Given this, I am unable to accept the applicant's assertion that a person making a disclosure to the Board about an admission application would have held an expectation that their disclosure would be made available to others under the RTI Act. For completeness, and noting the restrictions imposed upon me by section 108(3) of the RTI Act, nothing in these reasons should be taken as confirming, or denying, that the Information in Issue comprises such an anonymous or confidential disclosure.
38. In respect of the applicant's admission application, the applicant has received a copy of the Recommendation, which identified three matters (raised in the applicant's admission application) for consideration by the Supreme Court. Further, the Board has confirmed on external review that it did not rely upon, or take into account, any objection in respect of the applicant's admission application. In these circumstances, I am satisfied that disclosing information which was provided to the Board by, or about, other individuals would be a significant intrusion into the third parties' privacy and the harm that could be expected to arise would be significant. On this basis, I afford these nondisclosure factors relating to personal information and privacy significant weight.

Balancing the public interest

39. For the reasons set out above, I am satisfied that the nondisclosure factors relating to the protection of privacy and personal information of other individuals are deserving of significant weight.⁴⁷
40. On the other hand, I have afforded high weight to the factor favouring disclosure of the applicant's personal information⁴⁸ 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, fair treatment and the general administration of justice⁴⁹). However, in the circumstances of this matter and taking into account the nature of the Information in Issue, I have afforded these factors only low or no weight.
41. 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.⁵⁰

⁴⁷ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6(1) of the RTI Act.

⁴⁸ Schedule 4, part 2, item 7 of the RTI Act.

⁴⁹ Schedule 4, part 2, items 1, 3 10, 11 and 16 of the RTI Act.

⁵⁰ Sections 47(3)(b) and 49 of the RTI Act.

DECISION

42. For the above reasons, I affirm the Board's decision and find that access to the Information in Issue may be refused as its disclosure would, on balance, be contrary to the public interest.⁵¹
43. 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: 26 August 2024

⁵¹ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act.

APPENDIX**Significant procedural steps**

Date	Event
6 March 2024	OIC received the external review application and the applicant's email submission.
5 April 2024	OIC notified the applicant and the Board that the application for external review had been accepted and requested information from the Board.
15 April 2024	OIC received the requested information from the Board.
10 June 2024	OIC conveyed a preliminary view to the applicant about the information which the Board had deleted as irrelevant to his access application and invited the applicant to provide a submission if he wished to contest that view. OIC also asked the Board to provide further information concerning its decision to refuse access to certain information.
16 June 2024	OIC received the applicant's notification that he accepted the preliminary view.
24 June 2024	OIC received the further requested information from the Board.
26 June 2024	OIC conveyed a preliminary view to the applicant about the information to which the Board had refused access and invited the applicant to provide a submission if he wished to contest that view.
16 July 2024	OIC received the applicant's submission contesting the preliminary view and requested that a formal decision be issued to finalise the external review.
19 July 2024	OIC wrote to the applicant to confirm the preliminary view and that a formal decision would be issued to finalise the review.
15 August 2024	The Board notified OIC that it agreed to disclose additional information to the applicant, namely small portions of refused information on two pages.
16 August 2024	OIC received the Board's confirmation that the additional information had been disclosed to the applicant.