



Decision and Reasons for Decision

Citation: *F53 and Minister for Energy and Clean Energy Jobs [2024] QICmr 56 (24 October 2024)*

Application Number: 316490

Applicant: F53

Respondent: Minister for Energy and Clean Energy Jobs

Decision Date: 24 October 2024

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - request for conduct referrals and documents about the applicant - information about other individuals - accountability and transparency - personal information and privacy - whether disclosure of information 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 - IRRELEVANT INFORMATION - whether information may be deleted on the basis it is irrelevant - section 73 of the *Right to Information Act 2009 (Qld)*

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - whether agency has conducted reasonable searches - whether access to further documents may be refused on the basis they are nonexistent or unlocatable - sections 47(3)(e) and 52(1) of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement (**Minister**)² under the *Right to Information*

¹ Access application dated 2 September 2021. The date range specified in the access application is 'January 2019-current'. The access application was received on 2 September 2021 and, as such, the date range of the application is 1 January 2019 to 2 September 2021.

² As confirmed in correspondence sent to the applicant on 22 September 2021, the access application was acknowledged as made to the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement. Under subsequent machinery of government changes, the Minister's portfolio has changed and he is now the Minister for Energy and Clean Energy Jobs.

Act 2009 (Qld) (**RTI Act**) to access documents concerning specified conduct referrals and information about the applicant.

2. The access application was dealt with by the Department of Energy and Public Works (**Department**) under direction from the Minister.³ The Department located 267 pages as relevant to the application, disclosed 204 of those pages and decided⁴ to refuse access to one page and parts of 62 pages. The Department also deleted information irrelevant to the access application from the disclosed documents.
3. The applicant then applied⁵ to the Office of the Information Commissioner (**OIC**) for review of the decision to refuse him access to information. He also raised concerns that certain further documents should have been located.
4. During the external review, the Department disclosed additional information to the applicant. The applicant remains dissatisfied with the level of information which has been disclosed.
5. For the reasons set out below, I vary the Department's decision and find that:
 - access may be refused to information on the basis that disclosure would, on balance, be contrary to the public interest⁶
 - certain information may be deleted on the basis it is irrelevant to the scope of the application;⁷ and
 - access to any further documents may be refused on the basis they do not exist or cannot be located.⁸

Reviewable decision and evidence considered

6. The decision under review is the Department's decision dated 19 November 2021.
7. 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). Significant procedural steps taken by OIC in conducting this review are set out in the Appendix.
8. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**),⁹ particularly the right to seek and receive information.¹⁰ 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.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent Victorian legislation,¹² 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*'.¹³

³ Section 30(3) of the RTI Act.

⁴ Decision dated 19 November 2021.

⁵ External review application dated 17 December 2021 (**External Review Application**).

⁶ Under section 47(3)(b) of the RTI Act.

⁷ Under section 73 of the RTI Act.

⁸ Under sections 47(3)(e) and 52 of the RTI Act.

⁹ Relevant provisions of which commenced on 1 January 2020.

¹⁰ Section 21(2) of the HR Act.

¹¹ XYZ v Victoria Police (General) [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; and Horrocks v Department of Justice (General) [2012] VCAT 241 (2 March 2012) at [111].

¹² *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹³ XYZ at [573]. This approach, in the context of the *Information Privacy Act 2009* (Qld) (**IP Act**) and RTI Act, was endorsed by McGill J in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23], observing that the Information Commissioner '*was conscious [of the right to seek and receive information] and considered that the application of the Act gave effect to the requirements of the Human Rights Act. I see no reason to differ from that conclusion.*'

Information in issue

9. In the External Review Application, the applicant:
- (i) identified certain redaction inconsistencies and queried the basis for uncoded redactions within the documents which had been disclosed
 - (ii) contested the refusal of access to information on specific pages of the located documents; and
 - (iii) identified further documents he considered were missing.
10. The Department was asked to address the applicant's redaction concerns¹⁴ and provide a submission concerning the contested access refusals and the missing documents identified by the applicant.¹⁵ In response:
- the Department disclosed further information to address the raised redaction issues¹⁶
 - the Department disclosed small portions of information to which access had been refused pursuant to the decision under review¹⁷
 - as a result of further searches conducted on external review, the Department located additional documents (**Additional Documents**) and disclosed them to the applicant, subject to the deletion of small portions of information;¹⁸ and
 - the Department provided OIC with details about its conducted searches, explanations about the documents the applicant considered to be missing and the Department's disclosure position for the remaining information which had not been disclosed to the applicant.¹⁹
11. Accordingly, the information which remains in issue in this review comprises the undisclosed information appearing on 69 pages of the documents which were dealt with in the decision under review and small portions of information removed from the Additional Documents (**Information in Issue**).
12. While the RTI Act prevents me from describing the Information in Issue in any detail,²⁰ I can confirm that there is a notable level of duplication within the Information in Issue and it broadly includes:
- the mobile telephone numbers of public sector officers, which were refused on 37 pages²¹ (**Mobile Telephone Numbers**)
 - information identifying or about other individuals/entities (**Third Party Information**); and
 - information deleted on the basis it was not relevant to the access application (**Deleted Information**).²²

¹⁴ Summarised in paragraphs 9(i) and 9(ii) above.

¹⁵ By letter dated 1 March 2022, which included a request for the Department to conduct further searches for documents relevant to the access application.

¹⁶ OIC received confirmation from the Department that this additional information had been sent to the applicant on 5 July 2022.

¹⁷ OIC received confirmation from the Department that this additional information had been sent to the applicant on 5 July 2022.

¹⁸ OIC received confirmation from the Department that the Additional Documents, incorporating such redactions, had been sent to the applicant on 7 September 2022.

¹⁹ The Department's letters dated 8 July 2022 and 30 August 2022.

²⁰ Section 108 of the RTI Act requires the Information Commissioner (or delegate) to avoid disclosure of information which is claimed to be exempt information or contrary to the public interest information.

²¹ Pages 2, 6, 7, 8, 25, 26, 34, 39, 41, 42, 43, 45, 53, 54, 64, 65, 68, 69, 70, 72, 73, 74, 98, 109, 113, 125, 126, 127, 137, 140, 201, 218, 221, 222, 223, 225 and 263. I also note that for 27 of these pages, mobile telephone numbers were the only portions of information deleted.

²² The Deleted Information appears on pages 45, 208, 210, 212, 214, 215, 216, 217, 258, 262, 265 and 267.

Issues for determination

13. The issues for determination are whether:
- access to the Mobile Telephone Numbers and Third Party Information may be refused on the basis disclosure would, on balance, be contrary to the public interest;²³ and
 - the Deleted Information is irrelevant to the terms of the access application; and
 - access to further documents relevant to the access application may be refused on the basis that they do not exist or cannot be located.²⁴
14. The applicant provided submissions to OIC.²⁵ While I have carefully reviewed all of those submissions, certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act.²⁶ Accordingly, in reaching this decision, I have only considered and addressed the applicant's submissions to the extent they are relevant to the issues for determination on external review.

Preliminary matters

15. Before considering the issues for determination, it is necessary to deal with the following preliminary matters arising from concerns expressed in the applicant's submissions.
16. Under the RTI Act:
- the procedures to be followed on external review are, subject to the Act, within the discretion of the Information Commissioner, and external review proceedings are required to be conducted with as much expedition as the requirements of the Act and a proper consideration of the matters before the Information Commissioner allow;²⁷ and
 - the RTI Act permits the Information Commissioner to delegate all or any of the Commissioner's powers under the Act.²⁸
17. In an email received on 22 July 2024, the applicant contended that a particular OIC officer was not authorised to conduct this external review during 2022. I can confirm that the OIC officer in question was appropriately authorised to conduct the review in 2022.
18. In any event, I am the delegated decision-maker in this matter.²⁹ There is no actual, perceived or potential conflict of interest of which I am aware that should preclude me acting as the decision-maker in this matter.³⁰ I am also satisfied that the applicant's

²³ Sections 47(3)(b) and 49 of the RTI Act.

²⁴ Sections 47(3)(e) and 52 of the RTI Act.

²⁵ As set out in the Appendix.

²⁶ For example, the applicant raised concerns with OIC about the Department's processing of the access application, including his perception that the time taken to issue the decision under review was 'exorbitant'. Apart from section 113 of the RTI Act (which empowers the Information Commissioner to give certain notifications to an agency or Minister at the completion of an external review), OIC's external review jurisdiction does not extend to investigating received complaints about an agency's conduct or processes, or the way it has handled a particular application. Therefore, I have not addressed the applicant's concerns in this regard in these reasons for decision. For completeness, I also note that, on the information before me, there is no evidence which suggests that the Information Commissioner should issue any notice under section 113 of the RTI Act.

²⁷ Section 95(1)(a) of the RTI Act.

²⁸ Section 145 of the RTI Act.

²⁹ In accordance with my delegation, the Right to Information Commissioner was consulted on this decision before it was issued.

³⁰ In this regard, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter (paraphrasing the principles applying to the determination of apprehended bias-refer, for example, to *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337).

external review application has been properly considered on its merits and the applicant has been afforded several opportunities to put forward submissions and relevant information supporting his position.

19. I will now turn to consideration of the substantive issues to be determined in this review.

Mobile Telephone Numbers and Third Party Information

Relevant law

20. The access right under the RTI Act is subject to limitations, including grounds for refusal of access. One refusal ground is where the disclosure of information would, on balance, be contrary to the public interest.³¹
21. In deciding whether disclosure of information would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:³²
- 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.
22. 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 bias³³ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.³⁴

Findings

23. In the External Review Application, the applicant submitted that he believed the refusal provisions of the RTI Act were being dishonestly used '*to hide information that would cause embarrassment/reveal corrupt conduct in breach of the RTI Act*'. To the extent the applicant is asserting that disclosure of any of the Information in Issue could be expected to cause embarrassment to Government, this is an irrelevant public interest factor.³⁵ I have not taken this, or any other irrelevant factor into account, in making my decision.

Public interest factors favouring disclosure

24. A small amount of information about the applicant appears within one page of the Third Party Information, giving rise to a public interest factor favouring disclosure in respect of that information.³⁶ I afford significant weight to that factor. However, I also note that this information about the applicant appears with information about other individuals in

³¹ Sections 47(3)(b) and 49 of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

³² Section 49 of the RTI Act.

³³ Section 44 of the RTI Act.

³⁴ Section 47(2)(a) of the RTI Act.

³⁵ Schedule 4, part 1, item 1 of the RTI Act.

³⁶ Schedule 4, part 2, item 7 of the RTI Act.

such a way that disclosing it would also disclose the other individuals' personal information (giving rise to the nondisclosure factors discussed below).

25. 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 accountability;³⁷
 - 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;³⁸ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁹
26. The Department has disclosed almost all the located information to the applicant. I consider this has substantially advanced the factors relating to government accountability and transparency, as the disclosed information generally identifies how the applicant's various complaints have been handled.
27. I consider the disclosure of Mobile Telephone Numbers could, to some extent, further advance government accountability. However, in this matter, I afford low weight to the public interest factor⁴⁰, as the names and titles of the officers to whom the Mobile Telephone Numbers relate have been disclosed to the applicant. I also consider that disclosure of these Mobile Telephone Numbers would not, in any way, further advance the remaining factors referenced in paragraph 25 above.
28. The Third Party Information includes the names, identifying information and other personal information of individuals other than the applicant; certain details of the applicant's complaints about other individuals; certain details about the decision made in respect of a particular complaint made by the applicant; and the name of a non-public sector entity. I consider disclosing information of this nature could, to some extent, be expected to further advance the public interest factors referenced in paragraph 25. In determining the weight to be afforded to these factors, I have taken into account that the disclosed information confirms that the applicant was notified of the decision issued about one of his complaints⁴¹ and was provided with responses about certain other complaints.⁴² In these circumstances, and given the relatively limited nature of the Third Party Information, I afford these accountability and transparency factors low weight.
29. A public interest factor favouring disclosure will arise where disclosing information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.⁴³ Given the limited nature of this information and the context in which it appears, I do not consider this factor applies to favour disclosure of either the Mobile Telephone Numbers or the Third Party Information.
30. Under the RTI Act, factors favouring disclosure will also arise in circumstances where disclosing information could reasonably be expected to:

³⁷ Schedule 4, part 2, item 1 of the RTI Act.

³⁸ Schedule 4, part 2, item 3 of the RTI Act.

³⁹ Schedule 4, part 2, item 11 of the RTI Act.

⁴⁰ Schedule 4, part 2, item 1 of the RTI Act.

⁴¹ This disclosed information also confirmed the applicant was notified of his review rights concerning that decision.

⁴² In this regard, I note that some of the Third Party Information appears within located copies of these complaint responses.

⁴³ Schedule 4, part 2, item 2 of the RTI Act.

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official;⁴⁴ and
 - reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁴⁵
31. The applicant submitted that disclosure would substantiate that the Minister '*had engaged in misconduct*'.⁴⁶ Further, in support of his position that disclosure would reveal '*corrupt conduct*', the applicant referenced the provision of an '*editable version*' of a particular document to the Ministerial Office and his concerns about the allocation of particular officers to the investigation of one of his complaints.⁴⁷ Apart from these submissions, the applicant has not enunciated how he considers the disclosure of Mobile Telephone Numbers and/or the Third Party Information would substantiate such alleged misconduct or reveal corrupt conduct. Having carefully reviewed the Third Party Information and the information provided with the External Review Application, I am satisfied that there is nothing within the Third Party Information which gives rise to any expectation that its disclosure would allow or assist inquiry into, reveal or substantiate, agency or official conduct deficiencies. I am also satisfied that disclosing the Mobile Telephone Numbers could not be expected to allow or assist inquiry into, reveal or substantiate, such deficiencies. On this basis, I find these factors do not apply to favour disclosure of the Mobile Telephone Numbers or the Third Party Information.
32. Factors favouring disclosure will also 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;⁴⁸ and
 - contribute to the administration of justice generally, including procedural fairness.⁴⁹
33. The applicant submitted⁵⁰ that disclosure of information would contribute to the administration of justice, as it would enable him to provide extra information not included in the requested referrals and '*would actually assist in the administration of justice rather than impede it*'. Further, the applicant submitted that disclosure would provide him with procedural fairness.⁵¹ The applicant has not otherwise offered any explanation for how he considers the disclosure of particular undisclosed information could be expected to contribute to the administration of justice.
34. Given the limited nature of the Mobile Telephone Numbers, I am satisfied that the factors concerning fair treatment and the general administration of justice do not apply to favour their disclosure.

⁴⁴ Schedule 4, part 2, item 5 of the RTI Act.

⁴⁵ Schedule 4, part 2, item 6 of the RTI Act.

⁴⁶ External Review Application. On this basis, the applicant submitted that the factor in schedule 4, part 2, item 6 of the RTI Act applied to favour disclosure. In support of his position, the External Review Application attached a copy of an 18 September 2020 letter the applicant had received from the Minister and highlighted a statement that the Minister had made '*representations*' on his behalf to the agencies nominated in the access application.

⁴⁷ External Review Application.

⁴⁸ Schedule 4, part 2, item 10 of the RTI Act.

⁴⁹ Schedule 4, part 2, item 16 of the RTI Act.

⁵⁰ External Review Application. In this regard, I note that these submissions arise from information which has been disclosed to the applicant.

⁵¹ External Review Application. I note that this submission relates to a certain document which the applicant believes should exist. Noting the restriction placed upon me by section 108 of the RTI Act, in this decision, I am unable to address the applicant's belief that any particular documents form part of the Third Party Information.

35. In respect of the Third Party Information, I note that this information appears in documents which generally concern the applicant's various complaints about other individuals. I also note that, on its face, the first part of the access application requested copies of referrals made to specific agencies about the conduct of other individuals. 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.⁵² Accordingly, in general terms, procedural fairness considerations arise for the person who is the subject of an investigation or decision. Here, this is not the applicant. In respect of the decision issued in respect of one of the applicant's complaints, the applicant was afforded review rights if he was dissatisfied with that decision.⁵³ I further note that agencies nominated in first part of the access application have legislative powers which enable them to obtain information they consider relevant to the conduct of investigations. In all the circumstances of this matter and taking the nature of the Third Party Information into account, I find that the public interest factors relating to fair treatment and the general administration of justice do not apply to favour disclosure.
36. A further public interest factor will favour disclosure where disclosing information could reasonably be expected to contribute to the administration of justice for a person.⁵⁴ While the applicant has not specifically raised this factor in support of his position, I have considered whether it applies to favour disclosure of the Mobile Telephone Numbers or the Third Party Information. In determining whether this factor applies, I must consider whether:⁵⁵
- 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 this particular information would assist the applicant to pursue the remedy or evaluate whether a remedy is available or worth pursuing.
37. Noting the names and titles of relevant public sector officers have been disclosed in the located documents, I am satisfied that this factor does not apply to the Mobile Telephone Numbers. There is also nothing before me which indicates that disclosure of the Third Party Information is required to assist the applicant to pursue, or evaluate, any particular remedy. Accordingly, I do not consider this factor applies to favour disclosure of the Mobile Telephone Numbers or the Third Party Information.
38. The applicant submitted that he believed the information provided by the Minister in the requested referrals was '*incorrect or misleading*'.⁵⁶ Where disclosing information could reasonably be expected to reveal that the information was incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant, a factor favouring disclosure of that information will arise.⁵⁷ I am satisfied that this factor does not apply to favour disclosure of the Mobile Telephone Numbers. Having reviewed the applicant's submissions and the Third Party Information, there is nothing before me which suggests that the Third Party Information is incorrect, out of date, misleading,

⁵² *Kioa v West* (1985) 159 CLR 550 at 584 per Mason J.

⁵³ The complaint decision is not the reviewable decision being considered in this external review.

⁵⁴ Schedule 4, part 2, item 17 of the RTI Act

⁵⁵ *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 recently in *V43 and the Council of the City of Gold Coast; X20 (Third Party)* [2024] QICmr 43 (19 September 2024) at [17].

⁵⁶ External Review Application.

⁵⁷ Schedule 4, part 2, item 12 of the RTI Act.

gratuitous, unfairly subjective or irrelevant. Therefore, I am also satisfied that this public interest factor does not apply to the Third Party Information.

39. The applicant also submitted that disclosure of information would contribute to the enforcement of the criminal law.⁵⁸ Under the RTI Act a factor favouring disclosure will arise where disclosing information could reasonably be expected to contribute to the criminal law.⁵⁹ The applicant has not enunciated how he considers this public interest factor applies to any of the undisclosed information. I note that the applicant has received a decision in respect of the complaint to which his specific submission about this public interest factor relates. In these circumstances and given the nature of the Mobile Telephone Numbers and Third Party Information, I do not consider this factor applies to favour disclosure.
40. I have carefully considered all the other factors listed in schedule 4, part 2 of the RTI Act and the applicant's submissions. Having done so, I cannot identify any other public interest considerations favouring disclosure of the Mobile Telephone Numbers or the Third Party Information.⁶⁰

Public interest factors favouring nondisclosure

41. The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm⁶¹ 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.⁶²
42. The concept of '*privacy*' is not defined in 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.⁶³
43. The Mobile Telephone Numbers form part of the direct contact details of public sector officers. The Third Party Information almost entirely comprises of information which identifies, or is about, individuals other than the applicant. I am therefore satisfied that these components of the Information in Issue comprise the personal information of individuals other than the applicant.⁶⁴
44. As to the weight to be afforded to these factors, I note that, 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 generally attract a high privacy

⁵⁸ External Review Application. This submission relates to one of the applicant's complaints, in which he alleged fraud by the individual who was the subject of that complaint. As noted in paragraph 35 above, the disclosed information confirms that the applicant was afforded rights of review in respect of that complaint decision. I also again confirm the complaint decision is not the reviewable decision being considered in this external review.

⁵⁹ Schedule 4, part 2, item 18 of the RTI Act.

⁶⁰ I cannot see how disclosing the Mobile Telephone Numbers or the Third Party Information could, for example, 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 weight that I have afforded to the public interest factors that favour the nondisclosure of the Mobile Telephone Numbers and Third Party Information.

⁶¹ Schedule 4, part 4, section 6 of the RTI Act.

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

⁶³ 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.

⁶⁴ '*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*'.

interest and the harm arising from disclosure is generally considered to be low.⁶⁵ I acknowledge that the Mobile Telephone Numbers are routine personal work information. However, I consider mobile phone numbers are different to other officer contact details (such as email addresses or general office phone numbers) in that they would allow the officer to be contacted outside of office hours. Here, this gives rise to a reasonable expectation of intrusion into the officers' personal spheres. I am satisfied that disclosing information of this nature under the RTI Act (where there can be no restriction on its use, dissemination or publication) would be a substantial intrusion into the privacy of these officers and the extent of the harm that would arise from its disclosure would also be substantial. Accordingly, for the Mobile Telephone Numbers, I afford moderate weight to these nondisclosure factors.

45. As noted above, the Third Party Information appears in the context of the applicant's various complaints and some of this information is intertwined with a small amount of the applicant's personal information. Given this complaint context and highly personal nature of this information, I am satisfied that its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals 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 these factors which favour nondisclosure of the Third Party Information.
46. As the subject matter of the access application generally concerns complaints the applicant has made, I acknowledge that he may be aware of some of the Third Party Information. However, I do not consider this negates the right to privacy or the harm disclosure of the Third Party Information could be expected to cause (noting again there can be no restriction on the use, dissemination or republication of information disclosed under the RTI Act). In the External Review Application, the applicant submitted that redaction of personal information from a particular document he considers to be responsive to the access application would protect '*the individuals' right to privacy and protection of their personal information*'. While I am unable to address the applicant's belief that any particular document forms part of the Information in Issue, given the specific terms of the access application, I do not consider this redaction proposal would negate or alleviate the personal information and privacy considerations referenced above.
47. The Third Party Information also includes a small amount of information which identifies a private sector entity. Taking into account the complaint context in which this information appears, and its limited nature, I consider only a low level of prejudice to the business and commercial affairs of the relevant entity could be expected to arise from its disclosure.⁶⁶ For this reason, I afford only low weight to the public interest factors relating to business and commercial affairs.

Balancing the public interest factors

48. For the reasons outlined above, I am satisfied that privacy considerations and the protection of the personal information of other individuals⁶⁷ warrant moderate weight in respect of the Mobile Telephone Numbers and significant weight for the personal information of other individuals within the Third Party Information. For information about a private entity within the Third Party Information, I have afforded low weight to the nondisclosure factors which relate to business and commercial affairs.⁶⁸

⁶⁵ Routine personal work information can include, for example, a work email address, a work phone number, or an opinion given in a professional capacity.

⁶⁶ Giving rise to the factors in schedule 4, part 3, items 2 and 15 of the RTI Act.

⁶⁷ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

⁶⁸ Schedule 4, part 3, items 2 and 15 of the RTI Act.

49. On the other hand, I have afforded low weight to the factor relating to government accountability for the Mobile Telephone Numbers. Taking into account the information which has been disclosed and the nature of the Third Party Information, I have also afforded only low weight to the disclosure factors relating to government accountability and transparency for that component of the Information in Issue. For the small amount of the applicant's personal information within one page, I afford significant weight to the factor which favours its disclosure,⁶⁹ noting that this information appears in such a way that its disclosure would also disclose the other individuals' personal information.
50. On balance, I am satisfied that the public interest factors favouring nondisclosure of the Mobile Telephone Numbers and Third Party Information outweigh the factors favouring disclosure. For this reason, I find that disclosure of the Mobile Telephone Numbers and Third Party Information would, on balance, be contrary to the public interest and access may be refused on that basis.⁷⁰

Deleted Information

51. Section 73 of the RTI Act permits an agency to delete information that is not relevant to the access application from the document before giving access to a copy of the document.
52. In deciding whether information is irrelevant, it is necessary to consider whether the information has any bearing upon, or is pertinent to, the terms of the application.⁷¹
53. Having carefully considered the terms of the access application and reviewed the Deleted Information, I am satisfied that the Deleted Information is not relevant to the terms of the access application—in particular, I confirm that the Deleted Information does not relate to the applicant, his property or any of his complaints.
54. On this basis, I find the applicant is not entitled to access the Deleted Information in the documents which the Department has disclosed, as it is not relevant to the access application and may be deleted under section 73 of the RTI Act.

Nonexistent or unlocatable documents

55. As noted in paragraph 9, on external review, the applicant identified the documents which he considered were missing⁷²—broadly, these were further Hot Issues Briefs, attachments to certain located emails, legal advice of a particular nature furnished to the Minister, correspondence forwarding a particular letter, recordings/records/case notes of the applicant's telephone calls with staff/officers of the Minister's Office and further emails.

Relevant law

56. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate

⁶⁹ Schedule 4, part 2, item 7 of the RTI Act.

⁷⁰ Under section 47(3)(b) of the RTI Act. Accordingly, I am satisfied that the Department has discharged its review onus under section 87(1) of the RTI Act that access may be refused to this information.

⁷¹ *Van Vennendaal and Queensland Police Service* [2017] QICmr 36 (28 August 2017) at [12], citing with approval *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [52].

⁷² External Review Application.

documents applied for by applicants.⁷³ However, where a document is nonexistent or unlocatable, access to it may be refused.⁷⁴

57. A document is nonexistent if there are reasonable grounds to be satisfied the document does not exist.⁷⁵ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.⁷⁶
58. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, which include:⁷⁷
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities⁷⁸
 - the agency's practices and procedures (including but not exclusive to its information management approach); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested document/s and the nature of the government activity to which the request relates.
59. By considering the above key factors, a decision-maker may conclude that a particular document was not created because, for example the agency's processes do not require creation of that specific document. In such instances, it is not necessary for the agency to search for the document, but sufficient that the circumstances to account for the nonexistence are adequately explained by the agency.⁷⁹ If searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents. What constitutes reasonable steps will vary from case to case, depending on which of the key factors are most relevant in the circumstances.
60. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.⁸⁰ What constitutes reasonable steps will, as noted above, vary case by case as the search inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the circumstances.⁸¹

⁷³ Section 130(2) of the RTI Act. The Information Commissioner also has power under section 115 of the RTI Act to require additional searches to be conducted during an external review. The Queensland Civil and Administrative Tribunal confirmed in *Webb v Information Commissioner* [2021] QCATA 116 at [6] that the RTI Act 'does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents' and that, ultimately, the Information Commissioner is dependent on the agency's officers to do the actual searching for relevant documents.

⁷⁴ Sections 47(3)(e) and 52 of the RTI Act.

⁷⁵ Section 52(1)(a) of the RTI Act.

⁷⁶ Section 52(1)(b) of the RTI Act.

⁷⁷ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (**Pryor**) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38] (**PDE**). These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15], *T12 and Queensland Police Service* [2024] QICmr 8 (20 February 2024) at [12], and *G43 and Office of the Director of Public Prosecutions* [2023] QICmr 50 (12 September 2023) at [19].

⁷⁸ Particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it.

⁷⁹ However, if searches are relied on to justify a decision that the documents do not exist, all reasonable steps must be taken to locate the documents.

⁸⁰ In answering these questions, regard should again be had to the circumstances of the case and the relevant key factors (**Pryor** at [21]).

⁸¹ Such steps may, for example, include inquiries and searches of all relevant locations identified after consideration of relevant key factors.

61. On an external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.⁸² However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.⁸³ Suspicion and mere assertion will not satisfy this onus.⁸⁴

Findings

62. As noted in paragraph 10 above, OIC asked the Department to conduct further searches and address the applicant's submissions about missing documents. Some of the missing documents identified by the applicant (namely, one missing email attachment and one Hot Issues Brief, with associated email correspondence) were located as a result of the conducted further searches and these additional documents were, for the most part, disclosed to the applicant. The Department also provided OIC with an explanation about the missing documents which had not been located by its further searches, including identifying where the remaining missing email attachments identified by the applicant appeared within the documents which were the subject of the decision under review.
63. In September 2022, OIC conveyed a preliminary view to the applicant⁸⁵ that the Department had conducted appropriately targeted searches of the locations where it was reasonable to expect that documents relevant to the access application would be stored. As part of that preliminary view, OIC provided the applicant with the explanations OIC had received from the Department about the categories of missing documents which had not been located by the conducted further searches.
64. Although the applicant was invited to respond to that preliminary view, he did not directly address it and instead stated:⁸⁶

Under the RTI Act s87 the agency has the onus of establishing the decision was justified

- i. Given that in both Reviews the Agency provided additional documents, it is established that the agency was not justified in its decision.*
- ii. The outcome of the External Reviews should report this in a new Decision for accountability and transparency.*

65. The question I must consider is whether the Department has taken all reasonable steps to locate documents relevant to the access application.
66. The Department relies on the searches and enquiries conducted by its officers to justify its position that reasonable steps have been taken to locate documents responsive to the access application and has provided information about its searches and enquiries, as set out below.
67. The decision under review confirms that, in processing the access application, searches were conducted of records held by the Office of the Minister. In respect of those searches and the further searches conducted on external review, the Department's provided search information⁸⁷ demonstrates that:

⁸² Section 87(1) of the RTI Act.

⁸³ See *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

⁸⁴ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23]; *Dubois and Rockhampton Regional Council* [2017] QICmr 49 (6 October 2017) at [36]; *Y44 and T99 and Office of the Public Guardian* [2019] QICmr 62 (20 December 2019) at [38].

⁸⁵ As set out in the Appendix.

⁸⁶ Applicant's email dated 22 July 2024.

⁸⁷ The Department's letter dated 8 July 2022 and a completed search certification.

- staff in the Minister's Office conducted searches for documents responsive to the access application
- targeted enquiries by senior staff were also made for some of the specific documents the applicant identified as missing on external review; and
- on external review, senior staff made inquiries with the A/Manager, ICT Operations, Ministerial Services, Department of the Premier and Cabinet,⁸⁸ who conducted an extensive search of the IT back up systems and associated archival media for further documents responsive to the access application (specifically including those documents which the applicant had identified as missing).

68. Having considered all of the information before me (including details of the Department's searches, the documents located by the Department and submissions from the applicant), I consider that the Department has conducted suitably targeted searches of the record-keeping systems of the Minister's Office (including relevant email accounts) where it would be reasonable to expect the requested information would be found. I also consider that those searches were conducted by appropriately qualified staff and that appropriate enquiries were undertaken in an effort to locate all responsive documents within the records of the Minister's Office.

69. Accordingly, I am satisfied that:

- the Department has taken reasonable steps to locate documents relevant to the access application; and
- access to any further documents relevant to the access application may be refused on the basis they do not exist or cannot be located.⁸⁹

DECISION

70. For the reasons set out above, I vary the Department's decision and find that:

- access may be refused to the Mobile Telephone Numbers and Third Party Information on the basis that disclosure of that information would, on balance, be contrary to the public interest⁹⁰
- the Deleted Information is irrelevant to the terms of the access application and may be deleted;⁹¹ and
- access to any further documents may be refused on the basis they do not exist or cannot be located.⁹²

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

T Lake
Principal Review Officer

⁸⁸ A search of this nature was conducted as access to email accounts of ministerial staff who no longer work in the Office are the responsibility of the Department of Premier and Cabinet.

⁸⁹ Under section 47(3)(e) of the RTI Act.

⁹⁰ Under sections 47(3)(b) and 49 of the RTI Act.

⁹¹ Under section 73 of the RTI Act.

⁹² Under sections 47(3)(e) and 52 of the RTI Act.

Date: 24 October 2024

APPENDIX

Significant procedural steps

Date	Event
17 December 2021	OIC received the applicant's external review application.
31 January 2022	OIC notified the applicant and the Department that the application for external review had been accepted and requested information from the Department.
4 February 2022	OIC received the requested information from the Department.
14 February 2022	OIC received the applicant's submissions.
1 March 2022	OIC asked the Department to address the applicant's concerns about redaction discrepancies, the refusal of access to certain information and documents which the applicant had identified as missing. OIC provided an update to the applicant.
4 May 2022	At the Department's request, OIC granted an extension (to 24 May 2022) for the Department's requested response.
5 May 2022	OIC provided an update to the applicant.
24 May 2022	At the Department's request, OIC granted a further extension (to 30 May 2022) for the Department's requested response.
1 June 2022	At the Department's request, OIC granted a further extension (to 10 June 2022) for the Department's requested response.
8 June 2022	OIC provided an update to the applicant.
15 June 2022	OIC received the Department's submission.
16 June 2022	OIC notified the applicant that the Department had agreed to disclose additional information and asked the Department to send that additional information to the applicant.
5 July 2022	OIC received the Department's notification that the additional information had been provided to the applicant.
1 August 2022	OIC asked the Department to provide further information.
30 August 2022	OIC received the Department's submission.
1 September 2022	OIC wrote to the applicant to (i) notify him that the Department had located additional documents and agreed to disclose most of the information within them; (ii) convey a preliminary view to the applicant about the information not being disclosed and the sufficiency of the Department's searches; (iii) invite him to provide a submission (by 23 September 2022) if he wished to contest the preliminary view; and (iv) notified the applicant that, in the absence of his response by the due date, the review would proceed on the basis he was satisfied with the disclosed information and the review would be finalised under section 90(4) of the RTI Act. OIC asked the Department to send additional information to the applicant.

Date	Event
7 September 2022	OIC received the Department's confirmation that additional information had been sent to the applicant.
14 September 2022	At the applicant's request, OIC granted the applicant a significant extension of time (to 7 December 2022) for any response he wished to make to the preliminary view.
20 December 2022	In the absence of a response from the applicant, OIC notified the applicant and the Department that the external review had been finalised under section 90(4) of the RTI Act.
3 June 2024	The Information Commissioner wrote to the applicant to (i) notify that the review remained open, due to an identified administrative issue with the 20 December 2022 closure notices; (ii) invite the applicant to provide (by 24 June 2024) any outstanding submissions he wished to make addressing the substantive issues in the preliminary view conveyed to him on 1 September 2022; and (iii) notify him that, in the absence of any further submissions by the due date, the review would be finalised under section 90(4) of the RTI Act.
25 June 2024	At the applicant's request, OIC granted an extension of time for the applicant to provide any outstanding submissions he wished to make addressing the substantive issues in the preliminary view sent on 1 September 2022.
22 July 2024	OIC received the applicant's submission, which requested that the outcome of the external review be reported in a decision.
29 July 2024	OIC notified the Department that the review remained open and that the applicant had requested that a decision be issued.
8 October 2024	OIC conveyed a further preliminary view to the applicant and confirmed the next step in the review would be the issue of a formal decision to finalise the review.