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Our Reference: RTI Application 2023/24-351

11 April 2024

Peter White obo Body Corporate for St James Community Titles Scheme 19922
28/50 Boblynne Street
CHAPEL HILL QLD 4069

Email: stjames4069@gmail.com

Dear Mr White

Decision Notice: Right to Information Application – 2023/24-351

I refer to your application submitted on behalf of Body Corporate for St James Community Titles Scheme 19922 under the *Right to Information Act 2009* (the Act), received by Brisbane City Council on 03 March 2024.

Scope of Application

Your application requested access to:

In the Deed the Third Schedule page 28 Item H – Bridge, for this item to have been included in the deed there must have been prior correspondence between the developer and the Council. I wish to see that correspondence.

From 01/01/1989 to 03/03/2024.

On 04 March 2024, you and I spoke on the telephone, and you confirmed that you wish for the Body Corporate to again be the applicant. We also discussed combining your other application (referred to as 2023/23-352) with this application, therefore we discussed revising the scope to include both. The revised scope became:

Refer to CAG's Deed document dated 26 September 1991 provided for RTI2023/24-246.

Part 1:

In the Deed, the Third Schedule at page 28, "Item H – Bridge", for this item to have been included in the Deed, there must have been prior correspondence between the developer and the Council.

We are requesting information, such as communication and correspondence between Council and the developer, in relation to this, and all information relevant to what resulted in that item being included in the Deed. The information we are requesting includes, but is not limited to:

- *planning process letters*

- *correspondence*
- *notes and records in relation to communication, and*
- *all other relevant documents.*

Search dates: between 01/01/1989 (or earlier, if communication commenced sooner) and 03/03/2024.

Part 2:

We are requesting information, such as internal correspondence, in relation to:

- *the decision not to include the bridge built for the Council in the Council Asset Register, and*
- *the decision not to comply with Clause 15 on page 16 of the Deed that states that the Council will be responsible for ongoing maintenance.*

Search dates: between 01/01/1989 (or earlier, if communication commenced sooner) and 31/12/2000.

In accordance with section 54 of the Act, you are to be provided a prescribed written notice of a decision (Decision Notice), and in accordance with section 18 of the Act, the original due date for the Decision Notice for your application was 09 April 2024.

Following an extension requested under section 35 of the Act, the revised due date is 15 April 2024. Thank you again for your patience and understanding in relation to the delay in being able to finalise this application.

Searches Conducted

Following receipt of your application, searches were conducted by:

- City Administration and Governance
- Development Services (DS), within City Planning and Sustainability
- City Standards, and
- Asset Management (AM) within Brisbane Infrastructure.

The following systems were searched:

- Records Manager (Content Manager), and
- Hard copy files

In response to your application, 114 pages of information were located, comprising 87 pages of scanned information from hard copy files, and 27 copyright plans.

Decision

I am delegated to make decisions on access applications under section 30(2) of the Act. In relation to the 114 pages of information, on 11 April 2024, I have made the decision to:

- provide access in full to 96 pages of information, with
 - 69 pages being pages of scanned information, and
 - 27 pages being copyright plans, with access being provided by way of inspection in accordance with section 69 of the Act, due to the information being plans subject to copyright laws

- provide access in part to 18 pages of information, with
 - five of those pages containing information which is being refused under section 47(3)(b) of the Act, in accordance with section 49 and Schedule 4(3)(2) of the Act, and
 - 14 of those pages containing information, with information being refused under section 47(3)(b) of the Act, in accordance with section 49 and Schedule 4(4)(6) of the Act.

All contrary to public interest information being refused under section 47(3)(b) of the Act has been deleted (by way of redaction) in accordance with section 75 of the Act.

Copyright Documents – Section 68

For other plans that are subject to copyright laws, I am providing you with access to these plans by way of inspection of these documents.

Some of these plans are stand-alone documents, and some are referred to in the pages of scanned information provided to you. All except two of them are too large to have scanned.

In accordance with section 68(1)(a) of the Act, access to documents may be given to a person in a form different to the form applied for by the applicant, such as providing a reasonable opportunity to inspect the document.

This includes if access such as being provided a copy of the document would involve an infringement of the copyright of a person, in accordance with section 68(4)(c) of the Act. In total, there are 27 pages of information that are plans/documents protected by copyright.

To arrange an inspection of these documents, please contact Council's RTI team by emailing Brisbane.RTI@brisbane.qld.gov.au to organise a mutually agreeable date and time to inspect the copyright protected material.

You will be able to inspect the documents at:

Level 23 of Brisbane Square
266 George Street
Brisbane.

Please refer to the enclosed information sheet regarding Inspections.

Public Interest Balancing Test

Section 47(3)(b) of the Act provides that an agency may refuse access to a document (or information) to the extent the document comprises information the disclosure of which would be, on balance, contrary to the public interest under section 49 of the Act.

Section 49 of the Act provides steps to be taken by an agency in deciding whether, on balance, disclosure of the information would be contrary to the public interest, and also provides that Parliament considers factors included in Schedule 4 of the Act to be appropriate for deciding this. This is referred to as the public interest balancing test.

To apply the public interest balancing test, I must undertake the following steps:

- identify any factor that is irrelevant and disregard them¹
- identify any factors favouring disclosure² and nondisclosure³
- balance the relevant factors favouring disclosure and nondisclosure, and
- decide whether, on balance, disclosure of the information would be contrary to the public interest.

Business, Professional, Commercial or Financial Affairs of Entities – Schedule 4(3)(2)

Some of the information I am refusing access to is information that, were it to be disclosed, could reasonably be expected to prejudice the commercial affairs of a business, as it contains information in relation to their charges for their service.

In relation to the public interest balancing test:

- there are no irrelevant factors to be disregarded
- there are no factors favouring disclosure of the information as the disclosure of this information would be of no benefit to you, and
- Schedule 4(3)(2) favours nondisclosure of the information as disclosure of the information could reasonably be expected to prejudice the business, professional, commercial or financial affairs of entities.

Even though the information is relatively historical information, the information – were it to be provided – would not be of any benefit to you. Therefore, I consider Schedule 4(3)(2) to have the greatest weight, and am refusing access to this information under section 47(3)(b) of the Act, in accordance with section 49 and Schedule 4(3)(2) of the Act.

Personal Information

Some of the information includes the personal information of other people, being either their name or their signature.

In relation to personal information, section 12 of the *Information Privacy Act 2009* states that *personal information* is any information about an individual whose identity can reasonably be ascertained.

In relation to the personal and private information, the following factors are the summary of the factors I considered for my assessment:

- there are no irrelevant factors to be disregarded
- there are no factors favouring disclosure of the information
- Schedule 4(3)(3) favours nondisclosure of the information as it could reasonably be expected to prejudice the protection of an individual's right to privacy in relation to their identity in a particular location at a particular time, and

¹ Part 1 of Schedule 4 of the RTI Act.

² Part 2 of Schedule 4 of the RTI Act.

³ Parts 3 and 4 of Schedule 4 of the RTI Act.

- Schedule 4(4)(6) favours nondisclosure of the information as disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person in relation to other people's faces.

In relation to the personal information of other people, I consider Schedule 4(4)(6) of the Act to have the most weight as to release as it would be releasing the personal information of other people with no factor favoring the disclosure for those pieces of information. I am therefore refusing access to their personal information under section 47(3)(b) of the Act, in accordance with section 49 and Schedule 4(4)(6) of the Act.

Human Rights Considerations

In assessing this information and making my decision, I have had regard to Queensland's *Human Rights Act 2019* (HR Act), including the right to seek and receive information as embodied in section 21 of the HR Act.

By observing and applying the law relating to your application, and taking into consideration all relevant human rights, I have made a decision compatible with human rights, as required by section 58(1) of the HR Act.

Charges Estimate Notice

I note receipt of the application fee of \$55.75.

In accordance with section 36 of the Act, I must provide you with a 'charges estimate notice' in relation to whether I consider any additional charges are payable – being a processing charge or an access charge:

- a processing charge⁴ is the charge for the time an agency spends searching for or retrieving a document, and making, or doing things related to making, a decision on the application, and
- an access charge⁵ is related to the cost of giving the applicant access to a document, such as the cost of photocopies. This is the actual cost incurred by the agency.

I have formed the view that you are not liable to pay any processing charges, and as you are receiving the information electronically, there are no access charges in relation to this application.

I am, however, required under section 36(1)(b) of the Act to provide you with a charges estimate notice to notify you of my decision in relation to processing and access charges, which I have done below in the form of a Final Charges Notice.

Final Charges Notice

ITEMS	COST
Processing charges	\$0.00
Access charges	\$0.00
TOTAL COST	\$0.00

⁴ Section 56 of the Act

⁵ Section 57 of the Act

Review Rights

If you are not satisfied with my decision, you are entitled to seek an internal review under section 82 of the Act, and/or an external review under section 88 of the Act. You may choose to forgo an internal review and apply directly to the Office of the Information Commissioner (OIC) to seek an external review, in writing within 20 business days after the date of this Decision Notice.

Internal Review

Section 82 of the Act provides for you to be able to apply for an internal review, requesting Council to review this decision (referred to as the original decision). Within Council, this internal review is conducted by our City Legal team, which sits independently and separate from my RTI team.

Should you decide to lodge an internal review application, your application must be lodged within 20 business days after the date of this Decision Notice, and be emailed to:

Brisbane.RTI@brisbane.qld.gov.au

Or mailed in writing to:

Right to Information and Information Privacy
Brisbane City Council
GPO Box 1434
BRISBANE QLD 4001

Your internal review application will be referred to another officer of this agency, within the City Legal team, who is at least as senior as me – the original decision maker, and who will consider the matter afresh. You will be notified of the internal review decision within 20 business days after the agency receives your internal review application.

External Review

Section 88 of the Act provides for you to be able to apply for an external review, either instead of an internal review, or after an internal review has been requested and you are not satisfied with the internal review decision.

Further, if you request an internal review and do not receive an internal review decision within 20 business days, then an internal review decision affirming the original decision is deemed to have been made, and you are entitled to apply to the OIC for an external review. Applications for an external review should be emailed to:

administration@oic.qld.gov.au

Or mailed to:

Office of the Information Commission
PO Box 10143
Adelaide St
Brisbane QLD 4000

Again, you may forgo the opportunity to seek internal review and apply directly to the OIC to seek an external review, in writing within 20 business days after the date of this Decision Notice.

You can contact OIC on 07 3234 7373, or find more information at their website:

www.oic.qld.gov.au

Please let me know if there is anything I can assist you with.

Kind regards

A handwritten signature in cursive script that reads "Shanti".

Shanti Padme

Senior Information and Policy Officer

Enc:

Brisbane City Council Information Sheet: Inspection of Documents

OIC Information Sheet: Personal Information

OIC Information Sheet: Review Rights

Schedule 4 of the Act

Schedule of Relevant Documents

This Schedule is relevant to the 114 pages of information in relation to your request.

AF: Access in Full

AP: Access in Part

RAF: Refuse Access in Full

Document - Pages	Total Pages	Total Pages per Decision	Decision	Reasons for Refusal (or Irrelevant Information)
AM – Email	2	2	AF	
DS – 2_290_10_2107_90	21	4	AP	Schedule 4(4)(6) – personal information of other people This information includes the names and signatures of other people.
		17	AF	
DS – 2_290_10_2107_90 – Copyright plans	8	8	AF	Copyright plans There are eight copyright plans identified in this file, with full access being provided by way of inspection in person.
DS – 2_397_19-HH_83	16	3	AP	Schedule 4(4)(6) – personal information of other people This information includes the names and signatures of other people.
		13	AF	
DS – 2_397_19-HH_83 – Copyright plans	3	3	AF	Copyright plans There are three copyright plans identified in this file, with full access being provided by way of inspection in person.
DS – 0_397_12-530_89	48	7	AP	Schedule 4(4)(6) – personal information of other people This information includes the names and signatures of other people.

		5	AP	Schedule 4(3)(2) – prejudice the business affairs of entities This is the financial or business affairs of a private business.
		37	AF	
DS – 0_397_12-530_89 Copyright plans	16	16	AF	Copyright plans There is one copyright plan identified in this file, with full access being provided by way of inspection in person.

Inspection of documents under the *Right to Information Act 2009*

This information sheet provides applicants with information where they have been advised by a decision notice under the *Right to Information Act 2009* (RTI Act) that released documents are required to be inspected rather than being provided with a copy of these documents.

There is no fee for inspecting documents, however the number of attendees may be limited by restrictions outside of Council's control. Attendees can nominate another individual to attend an inspection on their behalf by notifying the RTI team of the individual/s name/s at the time of arranging the inspection.

Under the RTI Act, Council can give applicants access to copyright protected documents by way of inspection of the documents. Some documents may be inspected in their entirety or in part where other exemptions of the RTI Act apply.

Size of documents

Sometimes Council records can contain physically large plans that are unable to be scanned and can only be accessed by way of inspection of the documents in the hard copy format.

Copyright protected documents

As a general rule, for documents created by a 3rd party outside of Council, under the *Copyright Act 1968 (Clth)*, that 3rd party will own the copyright over those documents. Unless you have signed written consent of the copyright owner, giving permission for a copy of the documents to be provided to you, then Council will not be able to provide you with a copy of the documents.

Requirements of inspecting documents held by Council

Prior to inspection day:

Contact the RTI team as advised in your decision notice to organise at time during Council's business hours from 8:30am to 4:30pm.

Arriving on the day:

Council's address is – 266 George Street, Brisbane. It is in the Suncorp Building off Reddacliff Place. Please enter the building via the George Street entrance and proceed to the lifts on the left and go to Level 16 of the building where you will be required to sign in for a visitor pass and wait for a RTI team member to escort you to the inspection room on Level 23.

During the inspection:

The documents will be provided in electronic form via a laptop touch screen via Adobe in a PDF format or in a physical hard copy format.





Please feel free to bring pen and paper to copy any relevant details from the documents but no photography on any mobile or portable devices is allowed in any circumstance and no printed copies can be made of the documents.

If you require more time than your allocated appointment time has been booked for, please make another appointment with the RTI team member to return for another inspection.

If you have any questions in relation to the documents such as the redactions of parts of the documents or the decision that was made by the decision maker then you can contact the decision maker to discuss, however if your questions are in relation to the content of the documents then it is best that you note the name of the Council officer and refer matter specific questions to them afterwards.

After the inspection:

Contact the RTI team member via the phone in the inspection room to come and escort you back to Level 16 to sign out and return your visitor pass.

Review rights

If you are not satisfied with the decision of the release of the documents, you are entitled to exercise your review rights as stated in your decision notice.



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Interpreting the Legislation – *Information Privacy Act 2009*

Personal information

Section 12 of the *Information Privacy Act 2009*

- 1.0 Personal information
- 2.0 What is personal information?
- 3.0 When will information be about an individual?
- 4.0 When will an individual's identity be apparent or reasonably ascertainable?
- 5.0 Examples of personal information

1.0 Personal information

Personal information is 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.

The concept of personal information is central to the *Information Privacy Act 2009* (Qld) (**IP Act**). The objects of the IP Act are:

- the fair collection and handling of personal information in the public sector environment
- to provide a statutory right for individuals to access and amend their personal information held by entities in the public sector environment.¹

Personal information is defined in section 12 of the IP Act, and is used in both the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).

¹ Section 3 of the IP Act.



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Under the IP Act:

- personal information held by Queensland public sector agencies² is protected by the privacy principles in schedules three and four of the IP Act
- there are limits placed on when personal information can be sent out of Australia
- individuals can apply to access their personal information without having to pay a fee
- individuals can apply to have their personal information amended if they believe it is inaccurate, incomplete, out-of-date or misleading without having to pay a fee.

Under the RTI Act:

- individuals can apply to access information, including the personal information of other people, but a fee is payable
- personal information is one of the factors to be considered when deciding if release of information might be contrary to the public interest
- it is an offence to attempt to mislead or deceive a person in order to gain access to someone else's personal information
- agencies are not permitted to publish personal information of an applicant in their disclosure logs.

2.0 What is personal information?

Personal information can be almost any information that is associated with an identifiable living individual. It can include correspondence, audio recordings, images, alpha-numerical identifiers and combinations of these.³

For information to be personal information two criteria must be satisfied⁴.

- It must be *about* an individual.
- The individual's identity must be reasonably ascertainable from the information or opinion.

Information does not have to be true in order to be personal information and it does not need to be written down or recorded in another material form, such as a photograph or audio recording. It can

² In this Guideline references to an 'agency' include Ministers, unless otherwise specified.

³ Office of the Victorian Privacy Commissioner, *Guidelines to the Information Privacy Principles*, September 2006.

⁴ *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (Mahoney).



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be spoken or communicated in another way, for example, by sign language.

3.0 When will information be ‘about’ an individual?

Where information is not clearly about an individual, eg name, date of birth etc, it will be necessary to consider the context in which the information appears. The key question to ask is, taking into account all the circumstances in which the information appears, is there sufficient connection between the fact or opinion and the individual to reveal something about the individual?

Some information will obviously be about an individual: medical records, financial records, bank details or salary. For other information, the connection between the individual and the information will not be so obvious. Even if the information appears to be about something other than an individual—a car, for example, or a piece of land—it can still be about the individual. For example, information that the rates account for a particular property has not been paid for a year is about the land, but it also reveals a fact about the owner, that they have not paid the rates account they owe their local council.⁵

In *Tomkins and Rockhampton Regional Council*⁶ the Assistant Information Commissioner considered whether “line up” photographs of dogs and interview recordings with a person attacked by specific dogs were about the individual dog owner. The recordings were about the victim’s account of the attack and her consideration of the dog “line up” photos. There was no information on the photographs that related to the dog owner, only handwritten numbers.

The Commissioner decided neither the recordings nor the photographs were *about* the dog owner: neither revealed a fact or opinion about the dog owner nor was there a sufficient link or connection between the information in the recording or photographs and the dog owner.⁷

The OIC’s ‘*What is Personal Information checklist*’⁸ will help determine if information is about an individual.

⁵ As details of property ownership is a matter of public record, and titles can be searched for and viewed by anyone for a small fee, the identity of a property owner will always be reasonably ascertainable.

⁶ [2016] QICmr 2 (22 January 2016) (*Tomkins*), applying *Mahoney*. *About* is also discussed in *Telstra Corporation Limited and Privacy Commissioner* [2015] AATA 991.

⁷ *Tomkins* at paragraph 32.

⁸ <www.oic.qld.gov.au>



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4.0 When will an individual's identity be apparent or reasonably ascertainable?

An individual's identity will be apparent where it can be determined from the information itself, without referring to any other information. For example:

- where the information includes the person's name
- where the information includes the person's photograph, where they can be clearly seen in the photograph; or
- where the information is so unique that it cannot be anyone else, for example, if the information says it is about 'the woman who wears a crown and was Queen of England in 2008'.

'Reasonably ascertainable' allows for the information to be compared or cross-referenced with other information to identify the person. How far the cross-referencing can go and still be reasonable will depend on a number of factors, such as:

- How available is the other information?
- How difficult is it to obtain?
- How many steps are required to identify the person?
- How certain will the identification be? Will it identify one specific person or a group of people?
- Can the person receiving the information use it to identify the person? For example, if the information is a fingerprint, the average person will not have access to a database which will enable them to match it to a person, while a police officer may have access to such a database.

5.0 Examples of personal information

The definition of personal information is very broad and it captures a large amount of information. Examples of personal information are:

- a person's name, address, phone number or email address
- a photograph of a person
- a video recording of a person, whether CCTV or otherwise, for example, a recording of events in a classroom, at a train station, or at a family barbecue
- a person's salary, bank account or financial details
- allegations of wrongdoing against a person or details of wrongdoing or offences they may have committed
- details about a person's land ownership or disputes to do with their land
- details about a person's education or education activities, such as what degree they possess or their candidature for a PhD



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- the fact that a person is a member, or leader, of an association and their attendance at meetings
- a person's medical details or health information
- a person's fingerprints or blood type
- details about a person's religious or sexual preferences
- details about a person's membership of a trade union or professional body.

Personal information includes some information that people may not normally consider to be private. For example:

- a work email address or phone number
- opinions given as part of a person's employment
- the fact that a person is the author of a report
- a person's name appearing in work documents
- a letter written in a person's official capacity, such as a letter from the president of a club.

However, this does not necessarily mean that the routine personal work information of public servants is not appropriate to be released. See the Guideline: *Routine personal work information of public servants* for more information on this issue.

For additional information and assistance please refer to the OIC's Guidelines, or contact the Enquiries Service on 07 3234 7373 or email enquiries@oic.qld.gov.au.

This guide is introductory only, and deals with issues in a general way. It is not legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

If you have any comments or suggestions on the content of this document, please submit them to feedback@oic.qld.gov.au

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Changes to legislation after the update date are not included in this document



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Information Sheet

INFORMATION SHEET - *Right to Information Act 2009* and *Information Privacy Act 2009*

Explaining your review rights

If you have received a reviewable decision under the *Right to Information Act 2009* (Qld) (**RTI Act**) or the *Information Privacy Act 2009* (Qld) (**IP Act**) that you are not satisfied with, you have the right to seek a review.

You also have the right to seek a review if you have been consulted as third party under either of those Acts and documents are going to be released over your objections.

What is a reviewable decision?

A *reviewable decision* is a specific kind of decision. They are listed in the RTI and IP Act and include a decision:

- that your application does not comply with all the requirements of the Act
- to refuse to information contained in a document; and
- to release documents over the objections of a consulted third party.

Deemed decisions

You can also seek a review of a *deemed decision*. A deemed decision happens if an agency fails to make any decision on your application or does not make a decision in the time allowed by the Act. In those circumstances, the Act deems the agency to have made a decision refusing you access to the documents.

When can I apply for review?

You cannot apply for a review until you have actually received the decision from the agency. It will usually be contained in a letter or formal notice sent to you from the agency you applied to.¹

In the case of a deemed decision, you can apply for a review when you become aware that the decision is overdue. Note that an application for review of a deemed decision can only be made to the Office of the Information Commissioner (**OIC**).

¹ This is called a notice of decision or a 'prescribed written notice'.



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Limits of a review

A review will only deal with the documents covered by your initial application. You cannot ask for more documents, or for different documents, as part of a review.

Internal Review or External Review?

Apart from deemed decisions, which can only be dealt with by the Information Commissioner, you have two choices for review: internal review and external review.

If you choose an internal review and are not satisfied with the result, you will be able to have an external review of the internal review decision. However, if you choose external review first, you will not be able to have an internal review of the external review decision.

Internal review

An internal review will be conducted by a different officer of the agency who is at least as senior as the original decision maker. The internal review officer is required to consider your application and relevant documents and make a new decision as if the reviewable decision had not been made.

There is no fee for internal review applications.

How do I apply for an internal review?

An application for internal review must:

- be in writing
- provide an address where correspondence can be sent (this can be an email or a postal address)
- be made **within 20 business days** from the date stated on the decision notice, not from when you receive the notice (unless the agency allows further time); and
- be lodged at the office of the agency. If you are unsure where to submit your internal review application, contact the relevant agency that made the decision.

How long does an internal review take?

An agency has 20 business days to give an applicant written notice of the internal review decision.



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If the internal review decision maker does not give you a decision in time, they will be taken to have upheld the original decision and you can apply to the OIC for an external review.

What are the advantages of an internal review?

There can be advantages to having the decision internally reviewed by the agency before, or instead of, proceeding to external review.

Seeking an internal review will mean you have two opportunities for review, as you can seek an external review if the internal review does not resolve your concerns, and internal review's 20 business days will generally be shorter than an external review.

As part of your internal review, you can submit new arguments and evidence for consideration by the agency which may assist them to further consider other relevant public interest factors in determining what information can be released.

External review

You can apply to have a reviewable decision externally reviewed by the Information Commissioner if you:

- have received a healthcare decision
- have had a deemed decision on your application
- are not satisfied with the first reviewable decision made by an agency; or
- applied for internal review and are not satisfied with that decision.

An external review reconsiders all aspects of the reviewable decision, including questions of law and questions of fact, and during the review you will have a chance to make submissions.

How do I apply for an external review?

Applications for external review must be made **within 20 business days** from the date on your decision notice.

To apply for an external review you need to apply in writing, including:

- your name
- address and contact details
- details of the decision for review, including the date of the decision and the name of the agency you applied to.



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Your application can be lodged using the [external review application form](#)² available on the OIC website or:

- by post: PO Box 10143, Adelaide Street, Brisbane, Qld, 4000
- by email: administration@oic.qld.gov.au
- in person: Level 7, 133 Mary St, Brisbane

There is no fee for making an external review application.

The following information is not required as part of your application, but it may assist with the early assessment and processing of your application:

- reasons why you want an external review
- copies of your decision notice or notices
- any other documents or information which supports your application.

How long does an external review take?

The time taken by the OIC to complete an external review varies depending on the circumstances, such as complex issues, large numbers of documents, unexpected delay from the agency involved or providing procedural fairness to all review participants. The OIC will work with all participants to encourage resolution without a formal decision. External reviews requiring a formal decision will often require up to one year to finalise.

For more information about the external review process, refer to [What to expect at external review](#).

Do I have any review rights after an external review?

There is a limited right of appeal from a decision of the Office of the Information Commissioner (**OIC**) to the Queensland Civil and Administrative Tribunal (**QCAT**).

An appeal to QCAT can only be made on a question of law after OIC makes a formal decision which is adverse to you. There is no right of appeal if you simply disagree with the outcome of the external review, and there is no right of appeal if OIC informally resolves an external review. An appeal to QCAT must be made within 20 business days from the date of the decision.

For information about filing an appeal with QCAT go to www.qcat.qld.gov.au. The LawRight³ Self Representation Service may be able to provide assistance with QCAT matters relating to RTI. They can be contacted on 3846 6317.

² <https://www.oic.qld.gov.au/about/right-to-information/apply-for-external-review-of-an-access-or-amendment-decision>

³ For more information see www.lawright.org.au/cms/page.asp?ID=61114.



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For additional information, please see the OIC's Information Sheets on the OIC website or you contact the Enquiries Service on 07 3234 7373 or enquiries@oic.qld.gov.au.

This information sheet is introductory only, and deals with issues in a general way. It is not legal advice. Additional factors may be relevant in specific circumstances. For detailed guidance, legal advice should be sought.

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Minister: Attorney-General and Minister for Justice
Agency: Department of Justice and Attorney-General

Right to Information Act 2009

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Schedule 4

Schedule 4 Factors for deciding the public interest

[section 49](#)

Note—

Access to a document may be refused to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under [section 49](#)—see [section 47\(3\)\(b\)](#).

Part 1 Factors irrelevant to deciding the public interest

- 1 Disclosure of the information could reasonably be expected to cause embarrassment to the Government or to cause a loss of confidence in the Government.
- 2 Disclosure of the information could reasonably be expected to result in the applicant misinterpreting or misunderstanding the document.
- 3 Disclosure of the information could reasonably be expected to result in mischievous conduct by the applicant.
- 4 The person who created the document containing the information was or is of high seniority within the agency.

Part 2 Factors favouring disclosure in the public interest

- 1 Disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability.
- 2 Disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.
- 3 Disclosure of the information could reasonably be expected to 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.
- 4 Disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.
- 5 Disclosure of the information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official.
- 6 Disclosure of the information could reasonably be expected to reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.
- 7 The information is the applicant's personal information.

- 8 The information is the personal information of a child within the meaning of [section 25](#), the agent acting for the applicant is the child's parent within the meaning of [section 25](#) and disclosure of the information is reasonably considered to be in the child's best interests.
- 9 The information relates to a person who has died and both of the following apply—
- (a) the information would, if the person were alive, be personal information of the person;
 - (b) the applicant is an eligible family member of the person.
- 10 Disclosure of the information could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.
- 11 Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.
- 12 Disclosure of the information could reasonably be expected to reveal that the information was—
- (a) incorrect; or
 - (b) out of date; or
 - (c) misleading; or
 - (d) gratuitous; or
 - (e) unfairly subjective; or
 - (f) irrelevant.
- 13 Disclosure of the information could reasonably be expected to contribute to the protection of the environment.
- 14 Disclosure of the information could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety.
- 15 Disclosure of the information could reasonably be expected to contribute to the maintenance of peace and order.
- 16 Disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.
- 17 Disclosure of the information could reasonably be expected to contribute to the administration of justice for a person.
- 18 Disclosure of the information could reasonably be expected to contribute to the enforcement of the criminal law.
- 19 Disclosure of the information could reasonably be expected to contribute to innovation and the facilitation of research.

Part 3 Factors favouring nondisclosure in the public interest

- 1 Disclosure of the information could reasonably be expected to prejudice the collective responsibility of Cabinet or the individual responsibility of members to Parliament.
- 2 Disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.
- 3 Disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.
- 4 The information is the personal information of a child within the meaning of [section 25](#), the applicant is the child's parent within the meaning of [section 25](#) and disclosure of the information is reasonably considered not to be in the child's best interests.

- 5 The information relates to a person who has died and all of the following apply—
- (a) the information would, if the person were alive, be personal information of the person;
 - (b) the applicant is an eligible family member of the person;
 - (c) the disclosure of the information could reasonably be expected, if the person were alive, to impact on the person's privacy.
- 6 Disclosure of the information could reasonably be expected to prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct.
- 7 Disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety.
- 8 Disclosure of the information could reasonably be expected to impede the administration of justice generally, including procedural fairness.
- 9 Disclosure of the information could reasonably be expected to impede the administration of justice for a person.
- 10 Disclosure of the information could reasonably be expected to prejudice the security or good order of a corrective services facility.
- 11 Disclosure of the information could reasonably be expected to impede the protection of the environment.
- 12 Disclosure of the information could reasonably be expected to prejudice the economy of the State.
- 13 Disclosure of the information could reasonably be expected to prejudice the flow of information to the police or another law enforcement or regulatory agency.
- 14 Disclosure of the information could reasonably be expected to prejudice intergovernmental relations.
- 15 Disclosure of the information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.
- 16 Disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.
- 17 Disclosure of the information could reasonably be expected to prejudice the competitive commercial activities of an agency.
- 18 Disclosure of the information could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the ombudsman or auditor-general.
- 19 Disclosure of the information could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.
- 20 Disclosure of the information could reasonably be expected to prejudice a deliberative process of government.
- 21 Disclosure of the information could reasonably be expected to prejudice the effectiveness of testing or auditing procedures.
- 22 Disclosure of the information is prohibited by an Act.

Part 4 Factors favouring nondisclosure in the public interest because of public interest harm in disclosure

1 Affecting relations with other governments

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—
 - (a) cause damage to relations between the State and another government; or
 - (b) divulge information of a confidential nature that was communicated in confidence by or for another government.
- (2) Subsection (1) applies only for 10 years after the information was brought into existence.
- (3) The information commissioner may, on application by a prescribed entity, extend the 10 year period if the commissioner considers the extension in the public interest.
- (4) An application for an extension may be made before or after the end of the 10 year period.
- (5) In this section—

prescribed entity means—

 - (a) an agency or Minister; or
 - (b) an entity that would be a relevant third party under [section 37](#) in relation to the document containing the information in relation to which the extension is sought.

2 Affecting investigations by ombudsman or audits by auditor-general

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could prejudice the conduct of—

- (a) an investigation by the ombudsman; or
- (b) an audit by the auditor-general.

3 Affecting particular operations of agencies

Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could—

- (a) prejudice the effectiveness of a method or procedure for the conduct of tests, examinations or audits by an agency; or
- (b) prejudice achieving the objects of a test, examination or audit conducted by an agency; or
- (c) have a substantial adverse effect on the management or assessment by an agency of the agency's staff; or
- (d) have a substantial adverse effect on the conduct of industrial relations by an agency.

4 Disclosing deliberative processes

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm through disclosure of—

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (b) a consultation or deliberation that has taken place;

in the course of, or for, the deliberative processes involved in the functions of government.

Examples of information of the type mentioned in subsection (1)—

- a document prepared by an agency about projections of future revenue for the State
- a document prepared to inform a decision by an agency about potential road routes, where disclosure of all potential routes, including those that are subsequently rejected, could have a negative impact on property values or cause community concern

- (2) If the deliberative processes mentioned in subsection (1) include public consultation, subsection (1) applies only until the public consultation starts.
- (3) However, subsection (1) does not apply for information to the extent it consists of—
 - (a) information that appears in an agency's policy document; or
 - (b) factual or statistical information; or
 - (c) expert opinion or analysis (other than expert opinion or analysis commissioned in the course of, or for, the deliberative processes mentioned in subsection (1)) by a person recognised as an expert in the field of knowledge to which the opinion or analysis relates.
- (4) Also, subsection (1) does not apply for information if it consists of—
 - (a) a report of a body or organisation—
 - (i) established within an agency; and
 - (ii) prescribed under a regulation; or
 - (b) the record of, as a formal statement of the reasons for, a final decision, order or ruling given in the exercise of—
 - (i) a power; or
 - (ii) an adjudicative function; or
 - (iii) a statutory function; or
 - (iv) the administration of a publicly funded scheme.

5 Disclosing information brought into existence for ensuring security or good order of corrective services facility

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose information that—
 - (a) is in the possession of, or brought into existence by, the department in which the [Corrective Services Act 2006](#) is administered; and
 - (b) is—
 - (i) a recording of a telephone call made by an offender from a corrective services facility; or
 - (ii) an audio recording made in a corrective services facility for the security or good order of the facility; or
 - (iii) a visual recording of a corrective services facility or a part of a corrective services facility; or
 - (iv) a document to the extent that it refers to or contains any part of a recording mentioned in subparagraph (i), (ii) or (iii).

- (2) In this section—

offender means an offender as defined under the [Corrective Services Act 2006](#).

6 Disclosing personal information

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead.
- (2) However, subsection (1) does not apply if what would be disclosed is only personal information of the person by whom, or on whose behalf, an application for access to a document containing the information is being made.

7 Disclosing trade secrets, business affairs or research

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because—
 - (a) disclosure of the information would disclose trade secrets of an agency or another person; or
 - (b) disclosure of the information—
 - (i) would disclose information (other than trade secrets) that has a commercial value to an agency or another person; and
 - (ii) could reasonably be expected to destroy or diminish the commercial value of the information; or
 - (c) disclosure of the information—
 - (i) would disclose information (other than trade secrets or information mentioned in paragraph (b)) concerning the business, professional, commercial or financial affairs of an agency or another person; and
 - (ii) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.
- (2) However, subsection (1) does not apply if what would be disclosed concerns only the business, professional, commercial or financial affairs of the person by whom, or on whose behalf, an application for access to the document containing the information is being made.
- (3) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure—
 - (a) would disclose the purpose or results of research, whether the research is yet to be started, has started but is unfinished, or is finished; and
 - (b) could reasonably be expected to have an adverse effect on the agency or other person by whom, or on whose behalf, the research is intended to be, is being, or was, carried out.
- (4) However, subsection (3) does not apply if what would be disclosed concerns only research that is intended to be, is being, or was, carried out by the agency or other person by whom, or on whose behalf, an application for access to the document containing the information is being made.

8 Affecting confidential communications

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm if—
 - (a) the information consists of information of a confidential nature that was communicated in confidence; and
 - (b) disclosure of the information could reasonably be expected to prejudice the future supply of information of this type.
- (2) However, subsection (1) does not apply in relation to deliberative process information unless it consists of information communicated by an entity other than—
 - (a) a person in the capacity of—
 - (i) a Minister; or
 - (ii) a member of the staff of, or a consultant to, a Minister; or
 - (iii) an officer of an agency; or
 - (b) the State or an agency.

- (3) In this section—

deliberative process information means information disclosing—

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- (b) a consultation or deliberation that has taken place;

in the course of, or for the purposes of, the deliberative processes involved in the functions of government.

9 Affecting State economy

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could—
 - (a) have a substantial adverse effect on the ability of government to manage the economy of the State; or
 - (b) expose any person or class of persons to an unfair advantage or disadvantage because of the premature disclosure of information concerning proposed action or inaction of the Assembly or government in the course of, or for, managing the economy of the State.
- (2) Without limiting subsection (1)(a), that paragraph applies to information the disclosure of which would reveal—
 - (a) the consideration of a contemplated movement in government taxes, fees or charges; or
 - (b) the imposition of credit controls.

10 Affecting financial or property interests of State or agency

- (1) Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure could have a substantial adverse effect on the financial or property interests of the State or an agency.
- (2) Subsection (1) applies only for 8 years after the information was brought into existence.