



23 May 2011

Mr Paul French  
Brisbane CBD Bicycle User Group  
GPO Box 2104  
Brisbane Qld 4001

Department of  
Transport and Main Roads

Dear Mr French

**Department of Transport and Main Roads Right to Information Access Application – 135/00337**

I refer to your Right to Information Access Application to the Department of Transport and Main Roads ("the Department") requesting access to documents under the *Right to Information Act 2009* ("the Act"). Your application was received by the Department and validated on 29 March 2011 with payment of the \$38.00 application fee.

In your application you requested access to:

*"All correspondence between the Department of Transport and Main Roads, the Centre for Accident Research and Road Safety Queensland (CARRS-Q) and/or the Queensland University of Technology relating to a Department of Transport and Main Roads commissioned investigation by CARRS-Q of national and international evidence on helmet wearing by cyclists.*

*All versions of the report prepared by CARRS-Q detailing its investigation of national and international evidence on helmet wearing by cyclists.*

*All briefings, memos, emails, meeting minutes and other documents held by the Department of Transport and Main Roads relating to the CARRS-Q investigation of national and international evidence on helmet wearing by cyclists and relating to subsequent discussions and negotiations with the researcher(s)."*

I have decided to:

- provide **full** access to 425 documents (pages); and
- provide **partial** access to 2 documents (pages) pursuant to section 47(3)(b), section 49 and Schedule 4, Part 4, item 7 of the Act on the basis that the documents comprise business information the disclosure of which would be contrary to the public interest; and
- provide **partial** access to 13 documents (pages) pursuant to section 47(3)(b), section 49 and Schedule 4, Part 4, item 6 of the Act on the basis that the documents comprise personal information the disclosure of which would be contrary to the public interest.

I made this decision on **23 May 2011**. The reasons for my decision can be found in the attached Statement of Reasons (Attachment A).

**RTI & Privacy**

Legal and Prosecution Services Branch  
Corporate Governance Division  
GPO Box 1549, BRISBANE QLD 4001

ABN 39 407 690 291

Our ref 135/00337  
Your ref  
Enquiries Louise Vasta  
Telephone +61 7 (07) 3306 7105  
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Pursuant to section 37 of the Act, I consulted with the relevant third party to obtain their views on the proposed release of the information. The consulted third party has objected to the release of all the information on the grounds of Business Affairs (Schedule 4, Part 4, Item 7 Disclosing trade secrets, business affairs or research) and Confidential Information (Schedule 4, Part 4, Item 8 Affecting Confidential Communications), therefore, I am required to defer providing you access to the documents until the third party has exhausted their rights to appeal my decision. The third party has 20 business days to appeal my decision.

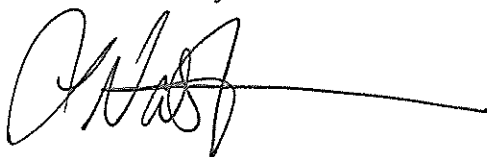
As outlined in the acknowledgement letter issued to you on 29 March 2011, there were certain processing charges associated with your Access Application. After collation of all time costing data, the final processing

The Act requires payment of processing charges if the processing of an application exceeds five hours. After collation of the total time taken to process your application was 18.5 hours; however, on 31 March 2011 you provided a letter from the Office of the Information Commissioner granting Brisbane CBD Bicycle User Group Financial Hardship status under the RTI Act. Accordingly, there are no processing or access charges applicable.

If you are not satisfied with this decision, you can apply for a review under the Act. Please refer to Attachment B for complete details regarding your review rights.

If you have any queries about this decision notice, please do not hesitate to contact me on telephone on (07) 3306 7105 quoting reference number 135/00337.

Yours faithfully

A handwritten signature in black ink, appearing to read 'L. Vasta', with a long horizontal line extending to the right.

Louise Vasta  
**Senior RTI and Privacy Coordinator**

## Statement of Reasons

**Decision Maker:** Louise Vasta  
Right to Information and Privacy Unit  
Department of Transport and Main Roads

**Authority:** By delegation under section 30(2) of the Right to Information Act 2009

**Date of Decision:** 23 May 2011

The following is a statement of reasons for the decision to release information under the Right to Information Act 2009 ("the Act").

### Scope of request

The application was for access to:

*"All correspondence between the Department of Transport and Main Roads, the Centre for Accident Research and Road Safety Queensland (CARRS-Q) and/or the Queensland University of Technology relating to a Department of Transport and Main Roads commissioned investigation by CARRS-Q of national and international evidence on helmet wearing by cyclists.*

*All versions of the report prepared by CARRS-Q detailing its investigation of national and international evidence on helmet wearing by cyclists.*

*All briefings, memos, emails, meeting minutes and other documents held by the Department of Transport and Main Roads relating to the CARRS-Q investigation of national and international evidence on helmet wearing by cyclists and relating to subsequent discussions and negotiations with the researcher(s)."*

### Search results

Searches were conducted within the Searches Unit of the Department's Road Safety & System Management. As a result of these searches I was provided with 440 documents (pages) relevant to the applicants request. The documents are described as:

- Contractor Documents 24 pages
- 2 Drafts and 1 Final Report 323 pages
  - Draft Interim Helmet Report
  - Draft Second Helmet Report
  - Final Helmet Report
- Emails 60 pages
- Briefing Note Documents 33 pages
  - Attachment 2
  - Attachment 3
  - Attachment 4
  - Ministerial Briefing Notes

## **Consultation and deferred access to documents.**

In accordance with section 37 of the Act, I consulted with a third party to seek their views about the release of documents relating to them.

The third party objected to the release of all documents. I have taken this objection and aligned it with reasons as listed in the Act; namely, the information at issue is Business Affairs (Schedule 4, Part 4, Item 7 Disclosing trade secrets, business affairs or research) to determine if these documents are in fact exempt in full or part from disclosure.

I have determined that some of the information contained in 13 pages can be considered as personal information and information contained in 2 pages of the Contractor documents is considered as business information and are contrary to the public interest to release, but I have not been able to establish an argument substantial enough for me to exempt all the documents in question.

A decision will be provided to the third party outlining a detailed argument as to why I do not hold the view that all the information in the documents are exempt from release in full. However, as advised earlier, because an objection has been received, access to the documents cannot be granted to the applicant until the third party appeal rights have been exhausted. The third party has 20 business days from the date of receiving my decision to seek an internal review of my decision to release the documents in question. I will advise the applicant if such a review application is received by the department.

## **Public Interest Considerations**

Section 23 of the Act provides that a person has a right to be given access under the Act to documents of an agency. This right of access is subject to other provisions in the Act, including:

- Section 47 of the Act which sets out grounds on which an entity may refuse access to documents, this includes information the disclosure of which would be contrary to the public interest under section 49 of the Act; and
- Section 49 of the Act which sets out the steps and schedule 4 the factors that a decision-maker must undertake and consider when deciding whether disclosure would, on balance, be contrary to the public interest.

In deciding whether disclosure of the information in issue would, on balance, be contrary to the public interest I have undertaken the steps set out under section 49 of the Act below.

### *Step 1 – Identification of factors irrelevant to deciding the public interest*

Section 49(3)(a) of the Act requires the identification of any factors that are irrelevant when deciding whether the disclosure would, on balance, be contrary to the public interest. I have considered the irrelevant factors set out in schedule 4, part 1, and determined that none apply. I have not identified any other irrelevant factors. Therefore, no irrelevant factors influenced my consideration of whether disclosure of the information at issue would, on balance, be contrary to the public interest.

### *Step 2 – Identification of factors favouring disclosure*

Section 49(3)(b) requires the identification of any factor favouring disclosure that applies to the information. I have identified the factors favouring disclosure, including any factor mentioned in schedule 4, part 2. The factors favouring disclosure that I have identified as being relevant to the information at issue are:

- Applicants under the Act have a right to access documents held by Queensland Government agencies.

### Step 3 – Identification of factors favouring nondisclosure

Section 49(3)(b) requires the identification of any factor favouring non-disclosure that applies to the information. I have identified the factors favouring non-disclosure that apply in relation to the information at issue, including any factors mentioned in schedule 4, part 3 and part 4. The factors favouring nondisclosure that I have identified as being relevant to the information at issue are:

- Disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities.

### Step 4 – Public interest balancing test

The process now calls for the decision-maker to consider the above factors and weigh them in order to determine whether, on balance, disclosure of the information in issue would be contrary to the public interest. If the disclosure would, on balance, be contrary to the public interest, access to the information should be refused.

## **Decision-Maker’s Considerations**

### ***Personal Information***

My considerations in this matter relate to the issue of “personal information”. Schedule 6 of the Act defines personal information as:

*“... information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion”.*

Personal information can only be attributed to a ‘natural person’ not to a business, company or organisation.

### Application of Schedule 4, Part 4, Item 6(1) to the information in issue

*Matter in issue:*

<i>Document</i>	<i>Page</i>	<i>Title</i>	<i>Description</i>
<i>Emails</i>	<i>18, 23, 27, 44, 45, 46 &amp; 47</i>	<i>Email threads</i>	<i>Name and other non work routine personal information</i>
<i>Briefing Notes</i>	<i>2-3</i>	<i>MBN - Helmet Report V1</i>	<i>Name</i>
<i>Briefing Notes</i>	<i>2-3</i>	<i>MBN - Helmet Report V2</i>	<i>Name</i>
<i>Briefing Note</i>	<i>2-3</i>	<i>MBN - Helmet Report V3</i>	<i>Name</i>

I have determined that documents detailed above contain information about an identifiable individual such as the name of a member of the public and that this qualifies as personal information under the Act. Personal information of this type is generally considered to be ‘private’ in nature and the Act recognises that there is a public interest in protecting the privacy of an individual.

The Office of the Information Commissioner (OIC) has developed “Information Sheets” which examine a wide-range of topics/terms encountered in the Act. One such information sheet deals with the concept of personal information. The OIC has also provided a list of examples of what may constitute personal information. Examples are:

- where the information includes a person’s name, address, phone number or email address

- a photograph of a person
- a person's salary, bank account or financial details
- 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

The OIC also provides guideline in relation to the release of information related to government officers and what may constitute an officer's personal information as opposed to an officer's routine personal work information. For instance, the OIC provides that information which details when an officer has taken, or intend to take leave; details the reasons why an officer has, or is accessing leave entitlements etcetera does not qualify as routine personal work information but rather constitute an officer's personal information.

The Information Commissioner is an independent review body which conducts the review of decision made under the *Information Privacy Act 2009* and the *Right to Information Act 2009*. In addition to this the Information Commissioner was also the review body for decision under the repealed *Freedom of Information Act 1992* (FOI Act). In making a decision in this matter, I have had regard to the following comment made by the Information Commissioner in *Re: Stewart and the Department of Transport*:

*"Because s.21 of the Qld FOI Act confers a legally enforceable right of access on any person with no requirement to show a special interest in obtaining particular information, an assessment of the effects of disclosure of a particular document (for the purpose of determining whether an exemption provision applies) generally requires that the interests of a particular applicant be ignored and the question be approached as if disclosure were to anyone who could make an application, or as it is sometimes said "to the world at large".*

Section 23 of the Right to Information Act 2009 (the Act) confers the same legally enforceable rights as Section 21 of the FOI Act.

I have considered the balance of public factors for and against disclosure and find that, although there is a general public interest served by disclosure of matter in Government records, there are countervailing public interests served where the matter in issue is about a person's personal information. As mentioned above, the release of information under the Act is considered as release to the world at large and therefore should not be considered lightly. In light of this, I have considered that disclosure of the information would be contrary to the public interest as it would reveal personal information about an individual and this could constitute an unreasonable invasion of this individuals' right to privacy.

### ***Business Affairs***

The RTI Act recognises there exists a potential public interest harm in the disclosure of information concerning the business, professional, commercial or financial affairs of an agency or another person. Section 32D of the *Acts Interpretation Act 1954* states: "*in an Act, a reference to a person generally includes a reference to a corporation as well as an individual*". The RTI Act states:

#### ***Schedule 4, Part 4—Factors favouring nondisclosure in the public interest because of public interest harm in disclosure***

##### ***7 Disclosing trade secrets, business affairs or research***

*(1) Disclosure of the information could reasonably be expected to cause a public interest harm because—*

*(c) disclosure of the information—*

*(i) would disclose information (other than trade secrets or information mention 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.*

The first requirement when considering Item 7(1)(c) is that the matter in issue must be characterised as information concerning the business, professional, commercial or financial affairs of an agency or another person. It is not enough that the information has some connection with a business, or has been provided to an agency by a business, or will be used by a business in the course of undertaking its business operation. Some examples, from decided freedom of information cases, of information which has been found to concern business, professional, commercial or financial affairs, include:

- financial information submitted in an application for a government grant;
- audited balance sheets and profit and loss accounts;
- information about the pricing structure used by a business; and
- information about the work activities of professionals, eg. Doctors/lawyers, who operate an income-generating professional practice.

Having considered the matter in issue and the characterisations provided in *Re Cannon and Australian Quality Egg Farms Ltd* (1993 S0094, 30 May 1994), I am satisfied that the matter in issue concerns the business affairs of Queensland University of Technology.

The second requirement when considering Item 7(1)(c) is to establish that disclosure of the information in issue could reasonably be expected to have an adverse effect on those affairs. In *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (at pp.339-341, paragraphs 154-160), the Information Commissioner considered the meaning of the words "could reasonably be expected to" as they appeared in the FOI Act:-

*"The words call for the decision-maker ... to discriminate between unreasonable expectations and reasonable expectations, between what is merely possible and expectations which are reasonably based, that is, expectations for the occurrence of which real and substantial grounds exist."*

In *RE Wanless Wastecorp Pty Ltd and Caboolture Shire Council; JJ Richards Pty Ltd* (Third Party) (2002 L0004, 30 June 2003), the Information Commissioner provided further information on when disclosure of information could reasonably be expected to have an adverse effect, he stated:

*"In most instances, the question of whether disclosure of information could reasonably be expected to have an adverse effect will turn on whether the information is capable of causing competitive harm to the relevant agency, corporation or person. Since the effects of disclosure of information under the FOI Act are, with few exceptions, to be evaluated as if disclosure were being made to any person, it is convenient to adopt the yardstick of evaluating the effects of disclosure to a competitor of the agency which, or person whom, the information in issue concerns. (This yardstick is also appropriate when considering the application of s.45(1)(b).) A relevant factor in this regard would be whether the agency or other person enjoys a monopoly position for the supply of particular goods or services in the relevant market (in which case it may be difficult to show that an adverse effect on the relevant business, commercial or financial affairs could reasonably be expected), or whether it operates in a commercially competitive environment in the relevant market".*

Application of Schedule 4, Part 4, Item 7(1)(c) to the information in issue

*Matter in issue:*

<i>Document</i>	<i>Page</i>	<i>Title</i>	<i>Description</i>
<i>Contractor</i>	<i>16 - 17</i>	<i>CARRS-Q - Invitation to Quote</i>	<i>Rates and Costings</i>

In their submission the Queensland University of Technology contended that if the above information was released, as it could be reasonably be expected to cause a public interest harm.

Adverse effect usually refers to the business or individual being exposed to commercial disadvantage, ie. competitive harm. The adverse effect must be on those affairs that the information concerns, not just some general adverse effect. Uncertainty as to what an applicant might do with information is not enough.

These documents contain financial information such as the pricing structure relating to the operations of another person. In a Commonwealth Administrative Appeals Tribunal decision *Drabsch and Collector of Customs*, No. Q84/77, Deputy President Forge, 5 November 1990, unreported, at p.46, paragraph 89, it was stated:

*I am satisfied that information as to a company's pricing structure is information that concerns it in respect of its "business, commercial or financial affairs". In a competitive market, I also find that disclosure of that information could reasonably be expected to unreasonably affect [business operator] in the operation of its business.*

The Office of the Information Commissioner (Queensland) further defined the application and meaning of business, professional, commercial and financial affairs of an agency or another person in its decision *Cannon and the Australian Quality Egg Farms Limited*, S94 of 1993 (Decision No. 94009).

I have determined that if such information, were it to be disclosed, the information would reveal a commercial value to another person, business or entity in the same industry. This I am satisfied, could reasonably be expected to have an adverse effect on the financial affairs of the person concerned. I have decided the balance of factors favour the nondisclosure of the financial affairs of another person identified on those documents.

## **Decision**

I have decided to:

- provide **full** access to 425 documents (pages); and
- provide **partial** access to 2 documents (pages) pursuant to section 47(3)(b), section 49 and Schedule 4, Part 4, item 7 of the Act on the basis that the documents comprise business information the disclosure of which would be contrary to the public interest; and
- provide **partial** access to 13 documents (pages) pursuant to section 47(3)(b), section 49 and Schedule 4, Part 4, item 6 of the Act on the basis that the documents comprise personal information the disclosure of which would be contrary to the public interest.



## APPEAL RIGHTS

If you are dissatisfied or “aggrieved” with the decision of this department made under the *Right to Information Act 2009*, you can apply for an internal or external review of the decision.

An application for internal or external review must be in writing (detailing your grounds for appealing), state your address for service of notices and be lodged with the department within **20 business days** of receiving this decision.

Applications for **internal review** should be forwarded to:

Director  
Legal and Prosecutions Services Branch  
Department of Transport and Main Roads  
GPO Box 1549  
BRISBANE QLD 4001

Your internal review application will be referred to another officer of this agency who is at least as senior as the original decision-maker and who will consider the matter afresh. You will be notified of the decision within 20 business days after the agency receives your internal review application. Using the internal review option gives the agency an opportunity to consider additional evidence or information that is raised in an internal review application and conduct any necessary further searches.

You do not however have to request an internal review to be eligible to apply for an external review by the independent Information Commissioner. You may apply for external review by the Information Commissioner under section 85 of the Act. External reviews may take 4-5 months to complete.

An external review application must be made to the Information Commissioner within **20 business days** from the day on which you receive this decision. Under the RTI Act and *Acts Interpretation Act 1954* (Qld), you are taken to “receive” this decision on the day on which you should receive it in the ordinary course of post.

Applications for **external review** should be forwarded to:

In person: Level 4, 300 Adelaide Street, Brisbane  
Post: PO Box 10143, Adelaide Street, Brisbane Qld 4000  
Fax: 07 3005 7150  
Email: [administration@oic.qld.gov.au](mailto:administration@oic.qld.gov.au)  
Online: <http://www.oic.qld.gov.au/external-review/application-external-review>.