

13 January 2012

Mr Paul French
Brisbane CBD Bug
GPO Box 2104
Brisbane QLD 4001

Department of
Transport and Main Roads

Dear Mr French

Right to Information Access Application – Decision Letter - 135/00825

I refer to your 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 on 10 November 2011 and validated with payment of the \$39.00 application fee.

Further to the telephone discussion with Lucas Clarke of this office on 23 November 2011, and my correspondence dated 23 November 2011, I confirm your request (dated 7 December 2011) to revise the scope of the application for access to:

*“Northern Cycleway Planning - March 2007
Northern Busway Alliance - Northern Veloway Environmental Investigations - July 2009
Northern Busway Alliance - Northern Veloway Royal Children's Hospital to Windsor North - July 2009
North Brisbane Cycleway - August 2010
North East Transport Study - January 2010
Bicycle and Pedestrian Capacity Model - draft Feb 2010
Benefits of Active Transport - June 2011
North Brisbane Cycleway - Concept Design Study - Concept Planning - August 2010
North Brisbane Cycleway - Concept Design Study - Oct 2010
North Brisbane Cycleway - Cabinet Submission - submitted
North Brisbane Cycleway - Bowen Hills to Kedron Brook - Nov 2011
North Brisbane Cycleway - Concept Design and Property Requirements - Nov 2011
Submission to the Qld Heritage Council - Oct 2011”*

In relation to the Information Access Application, I have decided to:

- provide **full** access to 1175 documents (pages);
- provide **full** access to three (3) documents (plans);
- provide **partial** access to 176 documents (pages) pursuant to Section 47(b) of the Act (Schedule 4, Part 4, Item 4 *deliberative processes*; and Schedule 4, Part 4, Item 4 *personal information*); and
- **refuse** access to 259 documents (pages) pursuant to Section 47(3)(a) and Schedule 3 Section 2(1) (*cabinet information*); and Section 47(b) and Schedule 4, Part 4, Item 4 (*deliberative processes*) of the Act.

Please refer to Attachment A for a schedule of my decision.

I made this decision on 13 January 2012. The reasons for my decision are set out in Attachment B.

I acknowledge copies of the Information Commissioner's approval for financial hardship status for Brisbane Central Business District Bicycle User Group (Brisbane CDB Bug) dated 25 November 2010 and 13 December 2011. As a result, all processing and access charges have been waived for this application.

Accordingly, please find attached a copy of the documents for release in CD format and 3 plans in paper format.

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

Under section 54(2)(a)(iii) and (iv) of the Act, I am required to inform you of the following.

The Act and supporting Ministerial Guidelines place an obligation on State Government Departments to publish documents released through Right to Information applications under this Act. This department publishes documents released under this Act on the department's Disclosure Log, which appears on the Department of Transport and Main Roads website.

However, in situations where the application relates to the personal information of people, these applications **are not published** on the Disclosure Log.

In this instance the released documents do not contain your personal information and therefore *may* be published on the department's Disclosure Log. If this were to occur, it would happen no sooner than 24 hours after you have accessed copies of the released documents.

If you do not access these documents within 40 business days, a notice *may* be placed on the department's Disclosure Log identifying the released documents and details of how these documents may be accessed.

Should you wish to discuss your application in any way, please contact me on 07 3306 6728.

Yours sincerely



Danielle Wills
RTI and Privacy Coordinator

Schedule of the decision:

<i>File Number</i>	<i>Document Description</i>	<i>Full Release</i>	<i>Partial Release</i>	<i>Refuse Release</i>
1	Northern Cycleway Planning	87 & 3 plans		
2	Northern Busway Alliance - Northern Veloway Environmental Investigations	406		
3	Northern Busway Alliance - Northern Veloway Royal Children's Hospital to Windsor North	65		
4	North Brisbane Cycleway – Concept Design Study and Staged Implementation Plan – Technical Report	371	105 (personal information) 71 (deliberative processes)	123 (deliberative processes)
5	North Brisbane Cycleway – Concept Design Study – Concept Planning	1		32 (deliberative processes)
6	North East Transport Study – Northern Cycleway	36		
7	Bicycle and Pedestrian Capacity Model – North Brisbane Cycleway Investigation	85		
8	Benefits of Active Transport	92		
9	North Brisbane Cycleway – Cabinet Submission			77 (cabinet information)
10	North Brisbane Cycleway – Concept Design Study			22 (cabinet information)
11	North Brisbane Cycleway - Bowen Hills to Kedron Brook			1 (cabinet information)
12	North Brisbane Cycleway - Concept Design and Property Requirements			1 (deliberative processes)
13	Submission to the Queensland Heritage Council	35		

**Statement of Reasons
for a decision under the
*Right to Information Act 2009***

RTI Reference Number: 135/00825

Applicant: Brisbane CBD Bug

Decision Maker: Danielle Wills
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: 13 January 2012

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

Legislation References

Sections of legislation referenced in this statement are provided in Attachment E.

Scope of Request

On 10 November 2011 the Department of Transport and Main Roads (the department) received an application for access to:

"Information relating to the planning, design, budgeting, negotiation and implementation of the Northern Veloway, also known as the U11 and/or Northern Cycleway, referred to at page 27 of the Queensland Cycle Strategy 2011-2021 as providing a high quality cycle corridor from the CBD to Kedron and ultimately Chermside."

I refer to the applicant's email dated 7 December 2011, and note the request to amend the scope of the application for access to:

*"Northern Cycleway Planning - March 2007
Northern Busway Alliance - Northern Veloway Environmental Investigations
July 2009
Northern Busway Alliance - Northern Veloway Royal Children's Hospital to
Windsor North - July 2009
North Brisbane Cycleway - August 2010
North East Transport Study - January 2010
Bicycle and Pedestrian Capacity Model - draft Feb 2010
Benefits of Active Transport - June 2011
North Brisbane Cycleway - Concept Design Study - Concept Planning – August
2010
North Brisbane Cycleway - Concept Design Study - Oct 2010
North Brisbane Cycleway - Cabinet Submission - submitted
North Brisbane Cycleway - Bowen Hills to Kedron Brook - Nov 2011*

Search Results

As a result of searches of the department's records by the Integrated Transport Planning division, I was provided with the requested documents excluding the *North Brisbane Cycleway - Cabinet Submission* document.

The reason for the division excluding the document is provided below.

Irrelevant Information

I refer to my telephone discussion with the applicant on 6 January 2012, and I note that it was agreed that images of persons/cyclists and vehicle registration numbers throughout the documents was not required.

Accordingly this information has been removed under section 73(2) of the Act as irrelevant information and is identified on the release and/or part release documents as "NR".

Section 37 Consultation Process

In accordance with section 37 of the Act, consultation was undertaken with several third parties to obtain their views on the proposed release of the information. You were advised of this consultation process by my letter of 3 January 2012.

After consultation with all third parties I was able to finalise my decision. No third parties objected to my final decision to release documents.

However, one of third parties, namely Catherin Brouwer Landscape Architects (*Submission to the Queensland Heritage Council – file 13*), requested that I express to the applicant to be mindful of copyright laws. Please note that reproducing the document may be in breach of copyright laws and the copyright owner may take action against the applicant.

Although the applicant may have sighted a copy of the documents in issue via an administrative information session, and the third parties did not object to the release of this information, I have decided to refuse access to some information in accordance with provisions under the Act. The reasons for excluding some information for release are provided below.

Legislative Time Frames and Extension of Time

The due date for a decision on your application was 5 January 2012. In light of the time lost over the Christmas and New Year period, I requested an extension to the due date of the application.

On 21 December 2011, I confirm the applicant's agreement to a longer processing period making the new due date 16 January 2012.

GENERAL CONSIDERATIONS

Right of Access, Exempt Matter and the Public Interest

The role of the decision maker in this matter is to determine whether or not an applicant is entitled to access documents held by the government.

Section 44(1) of the Act states:

It is the Parliament's intention that if an access application is made to an agency or Minister for a document, the agency or Minister should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.

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 that is exempt information under section 48 of the Act and information, the disclosure of which, would be contrary to the public interest under section 49 of the Act;
- Section 48 of the Act, which sets out an agencies right to refuse access to exempt information and schedule 3 of the Act which identifies the types of information considered to be exempt information; 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 sections 23, 47, 48 and 49 of the Act.

DECISION MAKERS CONSIDERATIONS

Exempt Information

Section 48 of the Right to Information Act 2009, states that an agency must give access to a document, unless disclosure would, on balance, be contrary to the public interest.

Schedule 3 of the Act, sets out the types of information the disclosure of which would, on balance, be contrary to the public interest.

The exemption provision considered in this application is schedule 3, section 2(1) *cabinet information brought into existence on or after commencement*.

The documents considered under this section of the Act are:

- North Brisbane Cycleway – Cabinet Submission (file 9)
- North Brisbane Cycleway – Concept Design Study (file 10)
- North Brisbane Cycleway - Bowen Hills to Kedron Brook (file 11)

Schedule 3, section 2(1) of the Act provides:

- (1) Information is exempt information for 10 years after its relevant date if-*
- (a) it has been brought into existence for the consideration of Cabinet; or*
 - (b) its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations.*

The term 'consideration' is defined in Schedule 3, section 5 of the Act as including:

- (a) discussion, deliberation, noting (with or without discussion) or decision; and*
- (b) consideration for any purpose, including, for example, for information or to make a decision.*

Additionally, Schedule 3, section 3 of the act states:

Without limiting subsection (1), the following documents are taken to be documents comprised exclusively of exempt information under subsection (1)—

- (a) Cabinet submissions;*
- (b) Cabinet briefing notes;*
- (c) Cabinet agendas;*
- (d) notes of discussions in Cabinet;*
- (e) Cabinet minutes;*
- (f) Cabinet decisions;*
- (g) a draft of a document mentioned in any of paragraphs (a) to (f).*

The Integrated Transport Planning division have advised that the documents, *North Brisbane Cycleway – Concept Design Study and North Brisbane Cycleway - Bowen Hills to Kedron Brook*, were compiled for consideration and approval of cabinet, and were included in the actual cabinet submission.

Furthermore, on the 22 December 2011 the relevant cabinet submission namely, Cabinet Decision Number 3370 (Cabinet Submission Number 4314), was sighted, and I confirm that all three documents listed above form part of the submission.

Based on the review of the documents, and the specific inclusion of the documents to the cabinet submission, I consider that this information qualifies as exempt matter pursuant to Schedule 3, section 3 of the Act.

Accordingly, I consider the disclosure of these documents would not be in the public interest and for this reason I have decided to refuse access as exempt information under Schedule 3, section 2 of the Act.

Public Interest Considerations

The following documents are considered under this section of the Act:

- North Brisbane Cycleway – Concept Design Study and Staged Implementation Plan – Technical Report (file 4)
- North Brisbane Cycleway – Concept Design Study – Concept Planning (file 5)
- North Brisbane Cycleway - Concept Design and Property Requirements (file 12)

Section 49 of the Act, states that an agency must give access to a document, unless disclosure would, on balance, be contrary to the public interest then goes on to set out the steps that must be followed when making public interest considerations.

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 of the Act, 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 of the Act. The factors favouring disclosure that I have identified as being relevant to the information at issue are:

- Disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability;

- 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;
- 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.

Additionally, I have considered that:

- Information in the government's possession or under government control is a public resource;
- Applicants have a right to access documents held by Queensland Government agencies.

Step 3 – Identification of factors favouring nondisclosure

Section 49(3)(c) 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 of the Act.

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 cause a public interest harm if disclosure would disclose personal information of a person, whether living or dead;
- Disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy;
- Disclosure of the information could reasonably be expected to prejudice a deliberative process of government.

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 Makers balancing of the Public Interest Factors

Personal Information

The first consideration concerning the documents in issue relate to the matter 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.

- *North Brisbane Cycleway – Concept Design Study and Staged Implementation Plan – Technical Report (file 4)*

I have determined that a number of pages contain specific address details involved with assessments/studies completed (please refer to Attachment C). This information relates to the private aspects of the lives of individuals and the Act recognises that there is a public interest in protecting the privacy of an individual.

In addition, a number of pages throughout the document contain information relating to the date/time details of cyclists' accidents; age, licence details, and injuries of individuals involved in cyclists' accidents (please refer to Attachment C). Similarly, this information relates to the private aspects of the lives of the individuals, and the combination of this information can clearly identify persons. This is particularly significant when the information in issue relates to individuals whose consent about the release of their personal information has not been obtained through a consultation process.

The Information Commissioner is an independent review body which conducts the review of decision made under the Act and *Information Privacy 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 his decision *Re: Stewart and the Department of Transport* (1993 unreported):

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."

Although the above quote refers to the now repealed FOI Act, section 23 of the Act confers the same legally enforceable rights as section 21 of the FOI Act.

As the above quote suggests, information disclosed under the Act is, in effect, information disclosed "to the world at large", and therefore should not be considered lightly. Consequently, I consider that disclosure of the information would be contrary to the public interest as it would reveal personal information about individuals, and this could constitute an unreasonable invasion of these individuals' right to privacy.

I have considered the balance of public interest factors for and against disclosure, and find that although there is a general public interest in applicants being able to exercise their rights of access under the Act, there are countervailing public interests served where the information in issue is about an individual's personal information.

As a result, I have decided that disclosure of the information would be contrary to the public interest, and therefore the information has been refused under Schedule 4, Part 4 Item 6 (personal information), and identified in the documents listed in Attachment B as "Part Refuse Sch 4, Part 4 s.6 Personal Information".

Deliberative Information

The Act recognises that there is potential public interest harm in the disclosure of deliberative process information. The Act states:

4 Disclosing deliberative information

(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*

In *Re Waterford and the Department of Treasury*, the Commonwealth Administrative Appeals Tribunal described (at paragraph 58-60) the term "deliberative process" as follows:

"As a matter of ordinary English the expression 'deliberative processes' appears to us to be wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency. "Deliberation" means "The action of deliberating; careful consideration with a view to decision": see the Shorter Oxford English Dictionary. The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action. Deliberations on policy matters undoubtedly come within this broad description".

As you may be aware, the North Brisbane Cycleway as a whole is still in the planning and design stages. Part of the deliberative processes associated with the cycleway has been to conduct necessary planning, studies, assessments, and costing etc to identify impacts/risks associated with options for the construction of the cycleway.

While I believe it is in the public interest to provide the public with the government's reasoning for not only the project as a whole but also the planning and design particulars, I have considered that some information form part of the deliberative processes of the department and therefore may cause a public interest harm if disclosed.

All three documents are considered (North Brisbane Cycleway – Concept Design Study and Staged Implementation Plan – Technical Report, North Brisbane Cycleway – Concept Design Study – Concept Planning, North Brisbane Cycleway - Concept Design and Property Requirements) are considered under this public interest factor of the Act.

Upon examination of these documents I have determined that the reports contain certain information, the disclosure of which would, on balance, be contrary to the public interest. This information relates to potential property impacts on properties (including maps and concept drawings) and design strategies (please refer to Attachment C).

Advice from the division provides that the information:

"...contains detailed land requirements and estimated values for all properties held in the Northern Transport Corridor – as well as private properties in the area potentially affected by the cycleway. Since there has been no consultation on this alignment, it would not be in the public interest to allow these details to be published."

"No consultation has been undertaken to date on this alignment – and therefore it may not be in the public interest to suggest that there will be impacts to private residential and commercial property should the project go ahead."

In light that the project is still under active consideration and no final decision has yet been made, the property impacts and design strategies identified in the documents may or may not take place. Consequently, the release of such information may have a negative impact for property owners/business (including possible financial implications) or risk speculative investment.

For these reasons, together with the information clearly representing the example described above (*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*), I consider that the disclosure of the potential property impacts and design strategies would be contrary to the public interest, pursuant to Schedule 4, Part 4, Item 4 of Act.

In addition, the report also presents estimates of costs and feasibility for the project (please refer to Attachment C for listing of pages concerning costs within the report), the disclosure of which would, on balance, be contrary to the public interest.

The division have advised the following:

...costs in this section have been revised – although the revised estimates are contained within the CBRC submission and as yet are not currently available. It may not be in the public interest to publish these superseded costs.”

In my view, if such information were made available, knowledge of the funding could lead to inflated tender prices from businesses planning to tender for this project, thus placing these businesses at a commercial advantage and overspending of public monies. I consider that the estimates are advice [as provided in Schedule 4, Part Item 4(1)(a)] obtained in the course of the department's deliberative processes in relation to this project.

Similarly, the release of this information would give property owners a detail of the funding available for this part of the project and may lead to inflated application prices based on this information, thus adversely affecting any future negotiations relating to property acquisitions or resumptions.

I consider that the public interest would not be served by the government making excessive payments to contractors involved in the project or inflated purchase prices from the public purse for resumed or acquired land. As a result, I believe that the information at issue is deliberative matter as listed in Schedule 4, Part 4, Item 4, of the Act.

Decision

I have decided to:

- provide **full** access to 1175 documents (pages);
- provide **full** access to three (3) documents (plans);
- provide **partial** access to 176 documents (pages) pursuant to Section 47(b) of the Act (Schedule 4, Part 4, Item 4 *deliberative processes*; and Schedule 4, Part 4, Item 4 *personal information*); and
- **refuse** access to 259 documents (pages) pursuant to Section 47(3)(a) and Schedule 3 Section 2(1) (*cabinet information*); and Section 47(b) and Schedule 4, Part 4, Item 4 (*deliberative processes*) of the Act.

Personal Information

Page No .	Description	Claim
	North Brisbane Cycleway – Concept Design Study and Staged Implementation Plan – Technical Report (<u>File 4</u>)	
275-309	Address details	<i>Part Refuse Personal Information</i>
343-412	Date/time, age and licence details and details of injuries	<i>Part Refuse Personal Information</i>

Deliberative Processes

Page No .	Description	Claim
North Brisbane Cycleway – Concept Design Study and Staged Implementation Plan – Technical Report (<u>File 4</u>)		
7	Property impacts	<i>Part Refuse Deliberative Processes</i>
141-143	Property impacts	<i>Part Refuse Deliberative Processes</i>
160	Property impacts	<i>Part Refuse Deliberative Processes</i>
168	Property impacts	<i>Part Refuse Deliberative Processes</i>
172-173	Property impacts	<i>Part Refuse Deliberative Processes</i>
175-179	Property impacts	<i>Part Refuse Deliberative Processes</i>
191-204	Property impacts	<i>Part Refuse Deliberative Processes</i>
210-212	Costs, property impacts, design concepts and strategies	<i>Refuse Deliberative Processes</i>
213	Costs	<i>Part Refuse Deliberative Processes</i>
216	Property impacts	<i>Part Refuse Deliberative Processes</i>
429-470	Property impacts, design concepts and strategies (including drawings and plans)	<i>Part Refuse Deliberative Processes</i>
479-486	Property impacts, design concepts and strategies (including drawings and plans)	<i>Refuse Deliberative Processes</i>
515-543	Property impacts, design concepts and strategies (including drawings and plans)	<i>Refuse Deliberative Processes</i>
545-546	Costs, property impacts, design concepts and strategies	<i>Refuse Deliberative Processes</i>
547-548	Costs	<i>Refuse Deliberative Processes</i>
589	Property impacts	<i>Refuse Deliberative Processes</i>
590-607	Property impacts, design concepts and strategies	<i>Refuse Deliberative Processes</i>
609-670	Costs	<i>Refuse Deliberative Processes</i>
North Brisbane Cycleway – Concept Design Study – Concept Planning (File 5)		
2-33	Property impacts, design concepts and strategies (including drawings and plans)	<i>Refuse Deliberative Processes</i>
North Brisbane Cycleway - Concept Design and Property Requirements (File 12)		
1	Concept map concerning property impacts	<i>Refuse Deliberative Processes</i>

Right to Information Act 2009

APPEAL RIGHTS

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

An application for internal review must be in writing (detailing your grounds for appealing), state an address to which notices under this Act may be sent and be lodged with the department within **20 business days** of the date of the written notice of this decision.

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

By Post to:

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

OR

By Email to:

Director
Legal and Prosecutions Services Branch
Department of Transport and Main Roads
contactrti@tmr.qld.gov.au

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 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 application for external review must be in writing (detailing your grounds for appealing), state an address to which notices under this Act may be sent and be lodged with the Information Commissioner within **20 business days** of the date of the written notice of this decision. Under the Act and the *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 8, 160 Mary Street, Brisbane 4000
Post: PO Box 10143, Adelaide Street, Brisbane QLD 4000
Fax: 07 3405 1122
Email: administration@oic.qld.gov.au
Online: <http://www.oic.qld.gov.au/external-review/application-external-review>

Right to Information Act 2009

23 Right to be given access to particular documents

- (1) Subject to this Act, a person has a right to be given access under this Act to—
(a) documents of an agency; and
(b) documents of a Minister.

Notes—

1 See part 2 for how to exercise this right to access.

2 Exclusions of the right are provided for under part 4 (which provides particular circumstances where an entity may refuse to deal with an application) and section 47 (which provides grounds on which an entity may refuse access).

3 A limitation on the right is set out in section 73 (which provides that, in particular circumstances, an entity may delete irrelevant information from a document before giving access).

- (2) Subsection (1) applies to documents even if they came into existence before the commencement of this Act.

Note—

Section 27 deems an access application to apply only to documents that are, or may be, in existence on the day the application is received.

30 Decision-maker for application to agency

- (1) An access application to an agency must be dealt with for the agency by the agency's principal officer.
(2) The agency's principal officer may delegate the power to deal with the application to another officer of the agency.

37 Contact with the relevant third party

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

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

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

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

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

(2) If disclosure of information may reasonably be expected to be of a concern to a person but for the fact that the person is deceased, subsection (1) applies as if the person's representative were a relevant third party.

(3) If -

(a) the agency or Minister obtains the views of the relevant third party and the relevant third party considers -

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

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

(b) the agency or Minister decides -

(i) the document is a document to which this Act does apply; or

(ii) the information is not exempt information or contrary to the public interest information;

the agency or Minister must -

(c) give prescribed written notice of the decision of the agency or Minister to the applicant and the relevant third party; and

(d) defer giving access to the document until after -

(i) the agency or Minister is given written notice by the relevant third party that it does not intend to make any application for review under this Act; or

(ii) if the notice is not given under subparagraph (i) and no application for review under this Act is made by the end of the review period-the end of the review period; or

(iii) if an application for review under this Act is made by the end of the review period-the review has ended (whether because of an informal resolution or because of a decision of the entity conducting the review).

(4) The agency or Minister must give the applicant written notice when access is no longer deferred under subsection (3)(d).

(5) In this section-

Representative, in relation to a deceased person, means the deceased person's eligible family member, or, if 2 or more persons qualify as the deceased person's eligible family member, 1 of those persons.

Review period means the period within which any application for review under this Act may be made.

44 Pro-disclosure bias in deciding access to documents

(1) *It is the Parliament's intention that if an access application is made to an agency or Minister for a document, the agency or Minister should decide to give access to the document unless giving access would, on balance, be contrary to the public interest.*

47 Grounds on which access may be refused

(1) *This section sets out grounds on which access may be refused.*

(2) *It is the Parliament's intention that—*

(a) the grounds are to be interpreted narrowly; and

(b) an agency or Minister may give access to a document even if a ground on which access may be refused applies.

(3) *On an application, an agency may refuse access to a document of the agency and a Minister may refuse access to a document of the Minister—*

(a) to the extent the document comprises exempt information under section 48; or

(b) to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49; or

(c) to the extent the document is sought under an application by or for a child and comprises the child's personal information the disclosure of which would not be in the child's best interests under section 50; or

(d) to the extent the document comprises an applicant's relevant healthcare information the disclosure of which might be prejudicial to the physical or mental health or wellbeing of the applicant under section 51; or

(e) because the document is nonexistent or unlocatable as mentioned in section 52; or

(f) because other access to the document is available as mentioned in section 53.

Note—

Only a principal officer, Minister or appointed healthcare professional may refuse access to a document of an agency as mentioned in paragraph (d)—see sections 30(5) and 31(2).

(4) *In this section—*

child means an individual who is under 18 years.

48 Exempt information

(1) *If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.*

(2) *Schedule 3 sets out the types of information the disclosure of which the Parliament has considered would, on balance, be contrary to the public interest.*

(3) *However, despite an agency or Minister being able, under section 47(3)(a), to refuse access to all or part of a document, the agency or Minister may decide to give access.*

(4) *In this Act—*

exempt information means the information that is exempt information under schedule 3.

49 Contrary to public interest

(1) *If an access application is made to an agency or Minister for a document, the agency or Minister must decide to give access to the document unless disclosure would, on balance, be contrary to the public interest.*

(2) *This section sets out the steps, and, in schedule 4, factors, the Parliament considers appropriate for deciding, for types of information (other than exempt information), whether disclosure would, on balance, be contrary to the public interest.*

(3) *If it is relevant for an agency or Minister to consider whether, on balance, disclosure of information would be contrary to the public interest, the agency or Minister must undertake the following steps—*

(a) identify any factor that is irrelevant to deciding whether, on balance, disclosure of the information would be contrary to the public interest, including any factor mentioned in schedule 4, part 1 that applies in relation to the information (an irrelevant factor);

(b) identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 4, part 2;

(c) identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 4, part 3 or 4;

(d) disregard any irrelevant factor;

(e) having regard to subsection (4), balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;

(f) decide whether, on balance, disclosure of the information would be contrary to the public interest;

(g) unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information subject to this Act.

(4) The factors mentioned in schedule 4, part 4 are factors where disclosure could reasonably be expected to cause a public interest harm (harm factors) but the fact that 1 or more of the relevant factors favouring nondisclosure is a harm factor does not of itself mean that, on balance, disclosure of the information would be contrary to the public interest.

(5) However, despite an agency or Minister being able, under section 47(3)(b), to refuse access to all or part of a document, the agency or Minister may decide to give access.

73 Deletion of irrelevant information

(1) This section applies if giving access to a document will disclose to the applicant information the agency or Minister reasonably considers is not relevant to the access application for the document.

(2) The agency or Minister may delete the irrelevant information from a copy of the document and give access to the document by giving access to a copy of the document with the irrelevant information deleted.