Mr Stuart Vaccaneo

PO Box 323

Tiaro QLD 4650

stuvac@bigpond.com

Dear Mr Vaccaneo

# Notice of internal review decision under the *Right to Information Act 2009* (Qld)-

RTIPSC40IR

I refer to your Internal Review Application received on 5 July 2022 by the Public Service Commission (**PSC**) under the *Right to Information Act 2009* (Qld) (**RTI Act**). Your application sought review of the access decision on application RTIPSC40 made, under delegation, by Ms Narelle Haling on 5 July 2022.

I am delegated under the RTI Act to make internal review decisions.

Under section 80(2) of the RTI Act, I must make a new decision as if the reviewable decision had not been made. I have decided to uphold Ms Haling’s original decision for the reasons outlined below.

# Background



Our reference:

*RTI & PRIVACY/SD – RTIPSC40IR – DOC/22/137197*

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 August 2022

Your original Right to Information (RTI) application made to the PSC on 17 May 2022, sought access to:

*Revised scope 18 May 2022:*

1. *The formal response sent from the PSC to the Coal Workers’ Pneumoconiosis Select Committee on 21 August 2017, regarding the Black Lung, White Lies (Coal Workers’ Pneumoconiosis Select Committee) report, relating to Recommendation 67.*
2. *Any response from the Select Committee acknowledging receipt of the formal response.*
3. *Any correspondence between the PSC and the Ethics Committee in relation to Recommendation 67.*

*Date range: 14 August 2017 to 17 September 2017.*



Your application was processed, under delegation, by the Department of the Premier and Cabinet (**department**). Ms Haling’s access decision on your application on 5 July 2022, was to:

* refuse access to two pages of documents responsive to Part 1 of the request, pursuant to Sections 47(3)(a) and 48 of the RTI Act, as the information is *exempt* information under Schedule 3, section 6(c)(i) of the RTI Act (information disclosure of which would infringe the privileges of Parliament).

* refuse access to documents relevant to parts 2 and 3 of your request, under Section 52(1)(a) of the RTI Act on the basis that the documents do not exist.

# Your application for internal review: matters in issue

By email on 5 July 2022, you advised you wanted to lodge an internal review. You spoke with Ms Haling on 6 July 2022 and clarified you are requesting a review on the basis of the decision to refuse access, and also on the sufficiency of PSC’s searches.

Further, by email dated 7 July 2022, you advised:

*As part of the Review I am seeking information on how the PSC*

*Correspondence to the Black Lung White Lies (BLWL) Committee was delivered and proof of receipt by the Committee.*

*For example*

1. *Was it via email directly to the Committee members? or*
2. *Was it delivered by Australia Post or Courier? or*
3. *Was the Correspondence delivered via Parliamentary Servicers or similar route?*
4. *What process and proof exists that the BLWL Committee received the PSC Correspondence?*

# Right of access

The RTI Act states:[[1]](#footnote-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.*

I note that the access provisions under the RTI Act are for access to documents, and not for answers to specified questions. However, in making my decision regarding access, I will provide any supporting evidence available to me which may, to some degree answer your queries.

# Internal review decision and reasons for decision

I have decided to uphold Ms Haling’s original decision for the reasons outlined below.

In making my decision, I have considered:

* documents relating to your original application including the document search responses, information provided by PSC, the relevant documents located, third party consultation responses and the decision.
* further information provided by PSC during the internal review process including responses to requests for additional searches  the relevant provisions of the RTI Act.

# *Scope part 1: Exempt information: Infringe the privilege of Parliament*

Part 1 of the scope of your application requested access to:

*1. The formal response sent from the PSC to the Coal Workers’ Pneumoconiosis Select Committee on 21 August 2017, regarding the Black Lung, White Lies (Coal Workers’ Pneumoconiosis Select Committee) report, relating to Recommendation 67.*

The information in issue (**Information in Issue**) for this internal review comprises the 2 pages relevant to point 1 of the scope of your application. These 2 pages comprise a

letter dated 21 August 2017 to the Chair of the Coal Workers’ Pneumoconiosis Select Committee (**Committee**) from Mr Robert Setter, Public Service Commission Chief Executive.

An agency may refuse access to documents if they comprise exempt information.[[2]](#footnote-2) Exempt information is information the disclosure of which the Queensland Parliament has considered would, on balance, be contrary to the public interest.

Relevantly, Schedule 3, Section 6(c)(i) of the RTI Act provides:

## 6 Information disclosure of which would be contempt of court or Parliament

Information is exempt information if its public disclosure would, apart from this Act and any immunity of the Crown—

……

(c) infringe the privileges of—

 (i) Parliament; ……

For information to meet the requirements of this exemption:

1. the information needs to be subject to parliamentary privilege; and
2. disclosure will infringe the privileges of parliament.

In making my decision I have considered:

* the nature of the Information in Issue
* relevant third party consultation advice
* the relevant provisions of the *Parliament of Queensland Act 2001* (Qld) (**PoQ Act**)[[3]](#footnote-3) and the RTI Act (above)
* the original decision on the documents.

I am satisfied that:

* The Committee was established by Parliament and was in existence in the time period relevant to your RTI application.
* The Information in Issue, being a letter from PSC to the Committee can be classified as *a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry.*4

I am also satisfied that disclosure under the RTI Act would not be in accordance with parliamentary processes and would infringe the Parliament’s privilege.

I have no evidence the letter has been otherwise published and therefore I uphold Ms Haling’s decision to refuse access to the two pages in issue under sections 47(3)(a) and 48, and schedule 3(6)(c)(i) of the RTI Act.

# *Scope part 2: documents nonexistent*

Part 2 of your application sought access to:

*2. Any response from the Select Committee acknowledging receipt of the formal response.*

Under the RTI Act, a person has a right to be given access to documents of an agency.

However, this right is subject to limitations, including grounds for refusal of access. Sections 47(3)(e) and 52 of the RTI Act provide that access to a document may be refused if the document is nonexistent or unlocatable.

A document is unlocatable if it has been or should be in the agency’s possession and all reasonable steps have been taken to find the document but it cannot be found.[[4]](#footnote-4) There is nothing before me to indicate that relevant document/s exist but cannot be located.

An agency may refuse access to documents on the basis the document is nonexistent[[5]](#footnote-5) if the agency is satisfied the document does not exist.[[6]](#footnote-6)

Relevantly section 52(1)(a) of the RTI Act states:

# *52 Document nonexistent or unlocatable*

*(1) For section 47(3)(e), a document is nonexistent or unlocatable if—*

*(a) the agency or Minister dealing with the application for access is satisfied the document does not exist; or*

*Example—*

*a document that has not been created*

**…**

In conducting this internal review I sought from PSC, further information and document searches for documents relevant to point 2 of the scope of your application.

In response, PSC provided the following:

* confirmation that the signed letter (responsive to the scope part 1) was posted on 22 August 2017
* it is standard practice for outgoing mail to be sent via a regular Australia Post service: there is no record of the use of registered post or a courier service.
* confirmation that no further documents exist in relation to the request and that PSC has no record of a response from the Select Committee.

I have considered the information provided and I am satisfied that the search processes were comprehensive and sufficient. I am also satisfied that the searches reflect the PSC’s particular knowledge and experience and recordkeeping practices.

I confirm that there are no records held by PSC that respond to the second part of the scope of your application.

I am satisfied that all reasonable steps have been undertaken to verify the existence of the information being sought. I consider the documents are nonexistent and in accordance with sections 47(3)(e) and 52(1)(a) of the RTI Act, access cannot be provided as they are non-existent.

# *Scope part 3: documents nonexistent*

The third part of your scope requested access to:

*3. Any correspondence between the PSC and the Ethics Committee in relation to Recommendation 67.*

Ms Haling advised in her decision dated 5 July 2022:

*PSC advised, in relation to the scope point 3, that PSC did not write to the ethics committee – as that would be a matter for the CWP committee.*

In considering the application of the provisions in section 52 of the RTI Act, the Assistant Information Commissioner in *Mewburn and Department of State Development*[[7]](#footnote-7) adopted the Information Commissioner’s comments in *PDE and The University of Queensland* (PDE).[[8]](#footnote-8) The Assistant Information Commissioner stated:

*… an agency may ascertain that a particular document was not created because, for example, its processes do not involve creating the specific document. In such instances, it is not necessary for the agency to search for the document. It is sufficient that the relevant circumstances to account for the nonexistent document are explained.*

I have considered the nature of the request, as well as the document search response and advice from PSC. I am satisfied with this response, and there is nothing before me to suggest that relevant documents exist but cannot be located.

I am satisfied that all reasonable steps have been undertaken to verify the existence of the information being sought in part 3 of the application. I consider the documents are nonexistent and in accordance with sections 47(3)(e) and 52(1)(a) of the RTI Act, access cannot be provided as they are non-existent.

## Decision

For the reasons stated above, I have decided to uphold Ms Haling’s original decision to refuse access to documents relating to your application.

I made this decision on 2 August 2022.

## External review rights

If you are dissatisfied with my decision, the RTI Act provides you with a right to seek an external review by the Information Commissioner.

There are requirements under the RTI Act for lodging an application for an external review including the procedures to be followed for exercising your review rights and the time within which an application for review must be made. Your application must:

* be in writing
* specify an address of the applicant to which notices may be sent  give particulars of the decision for review  be made within the time period.

An external review application must be made to the Information Commissioner within 20 business days after the day of written notice of this decision.

Your application can be lodged with the Information Commissioner in any of the following ways:

|  |  |
| --- | --- |
| **In person:**  | Level 7, 133 Mary Street  |
|    | BRISBANE QLD 4000  |
| **Post:**  | PO Box 10143  |
|   | Adelaide Street  |
|   | BRISBANE QLD 4000  |
| **Email:**   | administration@oic.qld.gov.au  |
| **Online:**  | www.oic.qld.gov.au  |

If you have any queries in relation to your application, please do not hesitate to contact me on telephone 3003 2978.

Yours sincerely

*Issued electronically by Sharon Dryden, Director, Governance and Integrity on 2 August 2022*

Sharon Dryden

## Director, Governance and Constitutional Services Governance and Integrity

1. Section 44 of the RTI Act. [↑](#footnote-ref-1)
2. Sections 47(3)(a) and 48 of the RTI Act. Exempt information is [↑](#footnote-ref-2)
3. Section 8 and section 9 of the PoQ Act. 4 Section 9(2)(d) of the PoQ Act. [↑](#footnote-ref-3)
4. Section 52(1)(b) of the RTI Act. [↑](#footnote-ref-4)
5. Section 47(3)(e) of the RTI Act. [↑](#footnote-ref-5)
6. Section 52(1)(a) of the RTI Act. [↑](#footnote-ref-6)
7. [2015] QICmr 9 (21 April 2015) (*Mewburn*) at paragraphs 18 to 20. [↑](#footnote-ref-7)
8. [2009] QICmr7 (9 February 2009) at paragraphs 34 and 35. Although these comments relate to a decision made under the repealed *Freedom of Information Act 1992* (Qld), the relevant statutory framework is equivalent to that in the RTI Act and accordingly, the principles are equally applicable. [↑](#footnote-ref-8)