14 August 2018

New Generation Rollingstock Train Commission of Inquiry
PO Box 15106
City East QLD 4002

commissioner@traininquiryngr.qld.gov.au

Dear Commissioner,

I am the administrator of the public transport advocacy group RAIL Back On Track (https://backontrack.org/). We have had a long interest in the New Generation Rollingstock Trains, since 2010 (https://railbotforum.org/mbs/index.php?topic=3706.msg24818#msg24818). We became increasingly concerned with issues with the NGR trains and in April 2018 launched our own New Generation Rollingstock Public Inquiry (https://railbotforum.org/mbs/index.php?board=88.0) after a year or so of fruitless calls for an Inquiry.

As part of our inquiry I wrote to a number of former and present politicians and bureaucrats (https://railbotforum.org/mbs/index.php?topic=13112.msg208905#msg208905) with an invitation for a response to the key questions to be investigated in our inquiry, viz.

1. Why were non DDA non DSAPT compliant trains ordered? It has been a requirement since 2002 for new passenger rollingstock to be compliant.

2. Why was the order reduced from 100 to 75 six car trains?

3. Who signed off on the design?

4. Was Queensland Rail consulted on design of the new trains?

5. When did the ' State of Queensland ' first know they had acquired non compliant trains?

6. Why did it take till September 2017 for an application for a temporary exemption be made to AHRC when Disability Advocates and others had been warning of accessibility issues since 2015?

7. Who decided that new non compliant trains could be used on the network without the protection of an exemption? Did the Queensland Rail Board approve of this action?

I was then contacted by the former Premier of Queensland, Campbell Newman who discussed our inquiry with me. He then took steps to get the LNP to agree to the release of Cabinet documents, which then lead to the Deputy Premier (then acting Premier) agreeing to the same, and eventually an

inquiry - your Commission Of Inquiry. Here is a link to an interview with former Premier Campbell Newman on the 24th July 2018 on ABC Radio Brisbane Breakfast https://backontrack.org/docs/abcbris/abcbrisbane_24jul18.mp3 MP3 19.5 MB confirming this.

On the 28th July 2018 we released this statement:

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https://railbotforum.org/mbs/index.php?topic=13227.msg211803#msg211803

28th July 2018

RAIL Back On Track Next Generation Rollingstock Public Inquiry Resumed

Good Morning,

The Terms of Reference for the Forde Commission of Inquiry into the New Generation Rollingstock (NGR) have now been gazetted.

(https://publications.qld.gov.au/dataset/284f312c-b1f5-4bd2-814a-02a7ab9d0ddf/resource/e3927489-8506-4bc0-b78b-64b957bbd6f6/download/27.07.18---combined-new.pdf page 672)

As we previously indicated we suspended our own NGR Public Inquiry pending details of the terms of reference.

The Forde Commission of Inquiry is a welcome move. A Commission of Inquiry is what we have always wanted. The Inquiry has legal status and resources and is able to access information we cannot ever achieve. For that reason it is welcome it as it does explore a critical part of the NGR project.

However, there are some problems with the terms of reference in our view. We intend to continue to explore the issues of roll out of non-compliant (DDA & DSAPT) NGRs, and why the State took near on two years to apply for an exemption to the AHRC. We also make a request for the Forde Inquiry Report to be tabled in Parliament.

There is a fair bit of information on the NGR project in the public domain and we are able to try to get more via RTI processes.

Our inquiry is now resumed, and we will continue with a narrowed focus, and we will use any information we are able to piece together to form our report.

The reasoning behind this is as follows:

Quote

> Key Questions for the RBoT NGR Public Inquiry (https://railbotforum.org/mbs/index.php?topic=13112.0):
>
> 1. Why were non DDA non DSAPT compliant trains ordered? It has been a requirement since 2002 for new passenger rollingstock to be compliant.
>
> 2. Why was the order reduced from 100 to 75 six car trains?
>
> 3. Who signed off on the design?
>
> 4. Was Queensland Rail consulted on design of the new trains?
>
> 5. When did the ‘ State of Queensland ‘ first know they had acquired non compliant trains?
>
> 6. Why did it take till September 2017 for an application for a temporary exemption be made to AHRC when Disability Advocates and others had been warning of accessibility issues since 2015?
>
> 7. Who decided that new non compliant trains could be used on the network without the protection of an exemption? Did the Queensland Rail Board approve of this action?

Questions 1, 3, 4, 5 and possibly 2 will be examined by the Forde Inquiry.

That leaves key questions 6 & 7. That is our focus from here. We will also see if we can find out why the number of trains was reduced from 100 six car equivalents (originally 200 three car sets) to 75 six car trains.

We will make a submission to the Forde NGR Inquiry. Our final report will be made publicly available.

Best wishes,
Robert

Robert Dow
Administration
admin@backontrack.org
RAIL Back On Track https://backontrack.org

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As a result of this statement I was subsequently contacted by a Staff Member of the Premier and a Staff Member of the Minister for Transport who attempted to convince me that the TOR of the COI did in fact cover our concerns. The reasoning being as follows:

If you read the **Commission to report** (iv)

(C) complies with all relevant disability standards; considering changes implemented to date in response to the identified non-compliance with the Disability Legislation.

It does say to date, so that would cover the roll out till now in our view.

Furthermore **Appointment of commission**

3 b (iii) the design approval process under the contract, including review of scale mock-ups, engagement with the disability sector and processes adopted to ensure compliance with the Disability Legislation; and
(iv) decisions made by respective Governments, Statutory authorities and Departments which caused or contributed to non-compliance with Disability Legislation, and any reasons provided for those decisions.

I think our question 7 will also be covered.

On the 31st July 2018 we did make a statement calling for clarification on the Terms of Reference (https://railbotforum.org/mbs/index.php?topic=13227.msg211911#msg211911). There was no response.

Our submission then is narrow in focus but we believe covers an most important part of the procurement and roll out to service of the New Generation Rollingstock Trains.

Attached as Annexes to our submission are a number of RTI Decision Letters for applications that we made to support our own inquiry. We provide these as possible useful information sources as we expect you would be able to examine the unredacted documents. We were essentially not successful due to confidentiality and secrecy provisions.

Thank you.

Robert

Robert Dow
Administration
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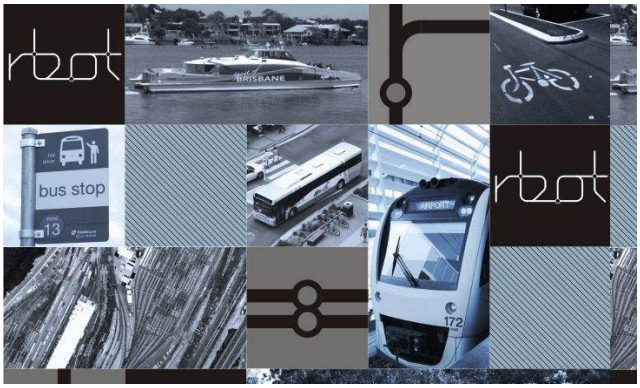
Attached documents:

1. Submission

Annexes:

A. Decision letter RTI 135/05810 MIN 6 July 2018
B. Decision letter RTI DOW869 6 August 2018
C. Decision letter RTI 135/05799 9 August 2018
D. Decision letter RTI 450 7 August 2018



14 August 2018
Submission to the Commission of Inquiry New Generation Rollingstock Trains

— RAIL Back On Track

Introduction

This submission should be read in conjunction with the accompanying letter of the same date. It is made by RAIL Back On Track (RBoT), the principal advocacy group for public transport users in South-East Queensland (SEQ). RBoT notes the Terms of Reference https://www.traininquiryngr.qld.gov.au/terms-of-reference.aspx

In our submission we will focus on:

Commission to report (iv)

(C) complies with all relevant disability standards; considering changes implemented to date in response to the identified non-compliance with the Disability Legislation.

Appointment of commission

3 b (iii) the design approval process under the contract, including review of scale mock-ups, engagement with the disability sector and processes adopted to ensure compliance with the Disability Legislation; and
(iv) decisions made by respective Governments, Statutory authorities and Departments which caused or contributed to non-compliance with Disability Legislation, and any reasons provided for those decisions.

ROBERT DOW – Administrator, RAIL Back On Track
14 August 2018

Failure to publicly acknowledge a lack of DDA DSAPT compliance and late application to the AHRC for an exemption

In our submission to the AHRC January 2018, we said the following:

What are the reasons in favour of granting an exemption?

In respect of this matter, the Commission should have regard to the stated position of TMR/QR about contingency plans both agencies say they propose to implement up to and during the staging of the Gold Coast Commonwealth Games over 11 days in April when 6000 athletes and officials from 70 Commonwealth nations, as well as hundreds of thousands of visitors, will require fast and efficient public transport access to the various Games venues, some of them in Brisbane. This will involve trains running at 10 minute intervals on the Gold Coast Railway Line (GCL) and special traffic management provisions applying to the M1 Motorway between Brisbane and the Gold Coast. The SEQ transport network will be stretched considerably, beyond what could be regarded as the normal capacity for the rail network.

A 'perfect storm' of calamity has befallen QR. Old train sets that it would have hoped to retire before now have been kept in service, with some having to be broken up for parts to keep other trains operable. The New Generation Rollingstock (NGR) trains have had design issues apart from those relating to the DDA and DSAPT, delaying their introduction to service. And a driver shortage, due to too few new drivers being trained, has meant that QR is forced to operate an ever-changing reduced timetable frequency on school holidays, on Fridays (where the timetable is different to Mon.-Thurs.) and on Saturday and Sunday, which are different again, and different to each other. This has created much confusion in the eyes of the travelling public, and has led to them lacking confidence in QR to run a reliable service. The media and the public have dubbed the juxtaposition of these three occurrences as 'RailFail'. As of 1 January 2018, RailFail had been experienced for 455 days.
These uncertainties that plague QR cannot occur during the period of the Gold Coast Commonwealth games in April, so much so that the Queensland Government has decided to run several non-compliant NGR trains in service, thereby risking legal action being brought against QR under the provisions of the DDA. We are aware of several impending actions being considered against QR.

TMR/QR have known of these predictable strains on the system and have relied on delivery of the 75 new NGR trains from India to begin to arrive in time to go into service on 10 suburban lines and three inter-urban lines across SEQ, but especially on the GCL, where it is proposed to ramp-up passenger train services to the 10 minute schedule during morning and evening peaks, and for much of the day while the Games are being staged.
Since the onset of RailFail, QR has cutback services generally on all lines and has implemented a reduced service timetable during school holidays, reducing service frequency from 30 minutes to one hour in many cases and, as stated, different timetables on a Friday than Monday to Thursday. These reductions are due mainly to the availability of train crew on any one day, due to sick leave, holidays and rostered days off. It is thought this reduced service timetable will be the template for train operating schedules during the period of the Commonwealth Games and immediately before and after the Games are staged on the Gold Coast. The services on other lines will be sacrificed to maintain maximum passenger train loadings, and reliability, on the Gold Coast Line.

QR has said that revised timetables will be announced 'well in advance of the Games'. Clearly TMR/QR are awaiting the Commission's deliberations on the exemption application for NGR trains before finalising the special Games timetable. It will be yet another timetable variation for the public to keep abreast of.
The *Sunday Mail* newspaper of 31 December 2017 carried an article quoting 'QR internal sources' as saying that the Shorncliffe Line would close for the duration of the Games, its trains diverted to the GCL, while buses and taxis would be deployed to move passengers along other rail corridors across the rail network, supplementing reduced train services.
In response, QR CEO, Mr Nick Easy, issued this statement:

> "There are no plans to close the Shorncliffe Line. There will inevitably be adjustments to some services given the scale of this international event and an increase in demand on the Gold Coast Line. An integrated transport model will be released well before the Games, which will best meet demand during the Commonwealth Games, and will ensure that public transport users will still be able to access services."

There was no categorical commitment that lines other than the Shorncliffe Line might need to close, with trains, most likely, operated by shuttle buses.

Our recommendation is as follows:

> It is clear that the ongoing impact of RailFail and the added burden of Commonwealth Games patronage during April will have an adverse impact on the convenience of the general travelling public and the functioning of the SEQ tourism industry and economy such that operation of those NGR trains passed as safe be allowed to operate till the conclusion of the Commonweatlh Games, and subject to stringent conditions outlined later in this paper.
>
> Notwithstanding the genuine concerns of the disability sector, these factors outweigh the impact on that particular group of people. RBoT in no way wishes to downplay or dismiss the issues people with a disability have concerning the NGR trains going into service in a non-compliant state. We share those concerns fully and have put forward a 'carrot and stick' plan for the Commission's consideration so that TMR/QR can bring the entire 75-train fleet to a compliant state within 18 months. We believe this is both responsible and achievable.

We reject utterly the applicants' request for a three-year exemption from the provisions of the DDA and DSAPT.

What will be the impact on individuals and others on the particular exemptions sought under sections 2.6, 2.8(1), 8.2, 15.3, 15.4(1)(a) and 15.4(1)(b) of the DSAPT?

The relevant sections of the *Disability Standards for Accessible Public Transport 2002* are as follows:

> **2.6 :** ..... An access path that allows continuous and unhindered passage must be provided with a minimum width of at least 850 mm.
> **2.8(1):** An access path must extend from the entrance of a conveyance to the facilities or designated spaces provided for passengers with disabilities.

8.2: A manual or power assisted boarding device must be available at any accessible entrance to a conveyance .....
15.3: If toilets are provided, there must be at least one unisex accessible toilet without airlock available to passengers using wheelchairs or mobility aids.
15.4(1): An accessible toilet must comply with the requirements set out in this section; and allow passengers in wheelchairs or mobility aids to enter, position their aids and exit.

RBoT is aware that the specifics of these provisions, and impacts, will be dealt with in other submissions to the Commission. The bottom line is that a new train designed from the ground up in the 21st Century should not require an exemption from the provisions of the DDA and the DSAPT. Something has gone horribly wrong with the management of this project. There were no technical, temporal or financial barriers preventing the NGR from being designed and constructed to a standard that would have offered an equality of service to all customers through an excellent, inclusive design.

QR prominently displays on its website — and through corporate policy literature that reflects a whole-of-government commitment to meeting the needs of people with disabilities — its goals and objectives to achieve those published outcomes. Yet, by applying for this exemption for the NGR trains, it seeks an exemption from the law while continuing to place greater emphasis on a confected image of protecting the rights and best interests of customers with a disability.

It wants to run brand new train sets that do not satisfy the DDA and the DSAPT on the GCL – complete with indigenous motif livery – to create an impression that papers over its duplicity.

The Queensland Government boasts that the 'inclusive' Gold Coast Commonwealth Games will proudly host the largest integrated Para-Sport program in Games history. GC2018 will set a new Commonwealth Games record by hosting up to 300 para-athletes and 38 medal events across seven sports — an increase of 45 per cent more athletes and 73 per cent more medals compared with the para-sport competition staged at the last Commonwealth Games at Glasgow in 2014.

TMR/QR proposes that these athletes, and the thousands of spectators with a disability travel to and around venues on trains that do not meet their specific needs. This is despite strong and prolonged representations by RBoT and bodies representative of the disability community over several years that the NGR design specifications were fundamentally flawed and in breach of the DDA.

The Queensland Government did not include persons with disabilities in consultation until 2014. This was after the design of the train's structure was finalised. Our experience is that TMR/QR enter into a public engagement process that is closely monitored and structured so as to achieve a pre-conceived outcome, rather than the consultation having its own dynamic leading to a superior result.

It beggars belief that QR is seeking an exemption for new NGR trains that don't conform with the DDA/DSAPT yet can operate successfully, on a narrow gauge track, the current Citytrain passenger fleet consisting mainly of Electrical Multiple Unit (EMU), Inter-urban Multiple Unit (IMU) and Suburban Multiple Unit (SMU) trains that have functioning toilets

(IMU) able to be used by people with disabilities, seating, vestibule space and aisle widths that meet the needs of all passengers.

What is your view regarding the applicants' submission that the post-rectified trains will ultimately have accessibility improvements that will exceed the requirements of the DSAPT?

In short, bunkum.

The record of Queensland Government transport agencies in implementing stated policy, fulfilling strategies worked up with industry and interest groups, or following agreed internal procedures, is not a good one. On the RBoT website, our members scoff at the well-produced policy documents, brochures, artistic mock-ups and fly-through video presentations associated with proposed new infrastructure, the project hyperbole and motherhood statements that are implemented in part at best, but almost always fail to come to fruition. To be fair, these thwarted outcomes are not always the result of lapses and structural failure within TMR, QR and TransLink. They arise also from rapid-changing government policy, sometimes within the one term of a government, or due to the changing priorities of different political parties in power over time – the Liberal National Party (LNP) and the Australian Labor Party (ALP).

Two examples of this are:

- The myriad design changes to Brisbane's Cross River Rail (CRR) Project from one government to the next and the argy-bargy that exists between opposing political parties in power at a federal and state level over its funding, and
- The NGR project itself, where design aspects were dealt with by TMR – according to the ideology of the government of the day being that QR would become the rail operator, primed for potential privatisation, and that Queensland's new train fleet, over time, would consist of walk-through six-car sets, without guards, and driver-only operated (DDO).

The way in which Queensland transport agencies fail to coordinate their functions and exercise their responsibilities effectively or to plan has caused RBoT to declare the current arrangements dysfunctional; to be overcome, we believe, through the breakout of public transport functions from TMR and, together with QR and TransLink, the formation of a new statutory organisation that we call Public Transport Queensland (based on a WA model that works).

We have also sought a commission of inquiry into the NGR mess. The current state government is resisting this. The Opposition, because of its involvement in approving the design of the NGR trains and their procurement, won't push this matter either.
This disjoint between the good intent of a published strategy document and abject failure to implement it has caught the eye of the Queensland Auditor-General, Mr Brendan Worrall. In his recent report on *Integrated Transport Planning in Queensland*, looking at the government's latest *Shaping SEQ* policy document, Mr Worrall documents siloed thinking and failure to coordinate across agencies that, together, have responsibility for co-ordinated policy implementation.

The audit, which was conducted to determine whether the state's approach to strategic transport planning enables effective use of transport resources and a transport system that is sustainable over the long term, said:

> "The government's *Shaping SEQ* plan finds journey lengths, trip times and the average kilometres people will travel each year will all fall, but includes no rationale for these assumptions."

In a follow-up editorial, the Courier-Mail newspaper said:

> "*Shaping SEQ* was penned by the Department of Infrastructure, and could easily have contested the Man Booker Prize for Fiction."

The assertion by TMR/QR that post-rectified trains ultimately will have accessibility improvements that will exceed the requirements of the DSAPT, we submit, is a sop — designed to have the Commission falsely believe that the granting of the exemption application will result in a superior outcome. It won't.

Our scepticism around this matter can best be demonstrated by publication on the QR website of the QR *Accessibility Action Plan 2014* that purports to activate policies to 'remove barriers and pioneer solutions that support inclusive communities'.

That document reads:

> "People with disabilities are entitled to the same rights, responsibilities and opportunities as other people. Queensland Rail understands the connective role it plays in peoples' lives and is committed to improving access to its passenger rail services.
>
> "At Queensland Rail, we strive to promote accessibility for all members of the community. We do this by working with our customers to remove barriers and pioneer solutions that support inclusive communities.
>
> "As a public transport operator, Queensland Rail's obligations under the DDA are specified in the *Disability Standards for Accessible Public Transport 2002* (Transport Standards) and the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards). Both the Transport and Premises Standards (collectively referred to as the Disability Standards) stipulate minimum requirements for the provision of accessible transport premises, services and facilities. Many of the standards rely on Australian Standards in setting out the requirements.
>
> "<u>All new services coming into operation after October 2002 must be fully compliant.</u>
>
> "Where practicable, <u>Queensland Rail has adopted the most up-to-date Australian Standards to provide a **higher** level of access than the minimum requirements</u>. The up-to-date Australian Standards reflect improved application and understanding of the needs of customers with disabilities and this approach assists Queensland Rail in creating a more sustainable rail environment capable of responding to changing circumstances and local community needs.
>
> "Our program of work continues to be shaped by the voice of our customers. We are

committed to capturing their feedback about accessibility issues and considering different perspectives.
"Infrastructure upgrades to stations and train overhauls remain the major focus for improving existing service accessibility. Providing an accessible network for a wide range of customers will be central to our decision making process."

Critically, QR knew that all services coming into operation after October 2002 needed to be fully compliant with the DDA and DSAPT. Despite this being Queensland Government policy at the time the NGR trains were designed and ordered, this policy was ignored.
The non compliant design was signed off by the then (LNP) Newman Government. The NGR project delivery was taken out of the hands of QR and handed to TMR, whose lack of expertise in rail-related matters has surfaced before in non compatible signalling being installed along the Redcliffe Line at the time it was built. This oversight delayed the line being brought into service and cost millions of dollars to rectify. A non-compliant pedestrian overbridge has been installed at Banyo Station. These breaches are indications of systemic problems perhaps best rectified by an employee education program discussed in the next section of this submission.

In 2014, QR was promising to 'provide a higher level of access than the minimum requirements'. Again, it has failed to deliver on rhetoric that, in the *Courier-Mail's* opinion is worthy of consideration for the Man Booker Prize for Fiction.
It defies credulity that this late application by TMR/QR, in the shadows of the Commonwealth Games, was based on the realisation only in June 2017 that there were significant issues for both agencies to address. These issues have been known at least since 2015 and probably before that. The request for the Commission to 'expedite' the process is a sham and an attempt to cover up the State's abject failure to order compliant NGR trains and then failure to act in a timely and decisive manner to fix known problems. They have had more than two years to get this right and they haven't – remembering this involves public investment of $4 billion.

Should the temporary exemption be granted and all changes made good as proposed, an ongoing discrimination will be inflicted. It is TMR/QR's continuing plan that the guard on NGR trains operate from a location at the back of the last carriage, as opposed to the centre of the train, as currently applies on all QR suburban passenger trains. The central guard's position coincides with the central platform location of all services for passengers with a disability, including so-called 'camel hump' raised sections of platform that allow wheelchairs easy access to the floors of trains.

The isolation of the guard by 70 metres from the mid-platform assisted boarding point will diminish service levels for people who require assistance to board or alight, especially on unstaffed platforms. This will be a permanent, unacceptable, consequence of the Commission granting an exemption and certainly is not a move towards providing a 'higher level of accessibility than the minimum requirements' (QR's own words). Despite what TMR/QR says about providing additional assistance staff at stations (at an estimated cost of $15 million annually), not all stations will have these staff. People with a disability will be required to board and leave trains not at their closest or most convenient railway station, but one some distance from their home or destination. They will be required to phone ahead to see whether a station is staffed, and they have no way of knowing whether the next train will have a guard positioned in the middle of the train or at the end.

TMR/QR's undertakings that post-rectified NGR trains 'ultimately will have accessibility improvements exceeding requirements' ring hollow.
The post-rectified NGR train fleet will be modified and split into a 'suburban fleet' (without toilets) and a long distance fleet with toilets. So whereas the original plan was to have 75 trains fully toilet-fitted, approximately half the fleet will be fitted thus. This will provide a lesser standard of service toilet-wise for the 30-year life of the entire NGR fleet. Another key objective intended at the outset will have been compromised.

In the event any of the exemptions sought are granted, should any conditions be imposed on the granting of an exemption in this matter?

Definitely, yes.

RBoT opposes absolutely the three-year exemption period being sought by TMR and QR in their joint submission. Our reasons for proposing an initial exemption covering the period of the Commonwealth Games are explained elsewhere in this paper.
A three-year exemption, in our view, would allow the Queensland Government to import all the train sets on order, with those trains potentially being non-compliant with respect to the DDA and DSAPT. Queensland then would be in a position to seek to have the exemption apply to the whole order by virtue of the fact that the importation of all NGR trains would have occurred in the three-year period during which an exemption was operable. It is likely that further exemptions would be sought.

RBoT is aware that submissions from groups representative of the disability sector will suggest that TMR/QR's request be rejected outright and that no exemption be granted under any circumstances until all NGR trains are made compliant. While respecting that viewpoint, and without diminishing the veracity of the arguments likely to be put, RBoT proposes a progressive compliance regime be applied as part of a binding order to a six-month exemption being granted immediately.

It is RBoT's view that the considerable disruption will likely flow should none of the NGR trains currently in Queensland be put into service during the period of the Commonweath Games. It will be severe, most likely requiring trains and crew to be re-allocated from other railway lines in SEQ, thereby severely affecting frequency of services and connectivity from elsewhere on the rail network to the GCL, where frequency will be ramped up considerably. While QR has denied categorically that it has 'no plans' to close one line (Shorncliffe) during the Games, it is obvious that buses and taxis will replace some services on lines other than the GCL. Trains that normally run to a 30-minute timetable most likely will run every hour, thereby inconveniencing passengers wanting to transfer to buses timed to run to and from bus-rail interchanges and co-located stops. In all probability, train frequency will be reduced to every two hours on the Sunshine Coast Line.

While giving consideration to allowing a temporary exemption for NGR trains to be put into service, our recommendation is that the Commission should consider the following binding conditions as a further imposition on TMR/QR.
Any further extension of the exemption period beyond the initial period should be subject to TMR/QR lodging with the Commission during the initial exemption period a costed rectification plan covering all 75 trains in the NGR order. The plan should require operating and compliant toilets being installed on <u>all</u> trains and must require abandonment of the current planning, which would see approximately half the fleet having toilets removed in

order to save costs to make toilets on remaining trains compliant with the provisions of the DDA and DSAPT. Failure to lodge such a rectification plan should result in no further exemption being considered until the plan is produced and funds identified for its implementation.

- The implementation plan must be for 18 months duration, during which time the Commission would consider further exemption applications subject to satisfactory progress being made to convert the full fleet.
- All toilets at the 105 toilet-equipped stations across QR's SEQ network be open and accessible to the public at all times during which trains are running to those stations; this to apply for the duration of the Commonwealth Games at least, but ideally for the exemption period if longer. (Usually, station toilets are locked when the stations are unmanned. Not all toilets meet the DSAPT specifications.)

- Staffing of all stations on the Airport and Gold Coast lines during the duration of the Commonwealth Games, from the operating of the first morning service until 8pm.Also, it is clear that, within the siloed structures of TMR, QR and TransLink, there has been a breakdown in corporate governance around policy-making, planning and implementation of provision of disability services and accessibility for all.

A further stipulation the Commission may consider imposing on the applicants as a condition of granting an exemption could be as follows:

- An exemption being granted upon TMR/QR entering into a binding obligation with the Commission to conduct a staff education program about the DDA/DSAPT – that program being rolled out within the first six months of an exemption being granted and must be completed within an 18-month period of the exemption being granted.

Both TMR and QR have shown in the past their willingness to 'talk the talk' around DDA compliance and disability access, but lacking follow-through in this regard. The most recent example of this is the provision of an overpass at the suburban Banyo station not designed to meet DDA/DSAPT requirements.

This recalcitrance must be stamped out through changed corporate culture. Leadership should start at the top.

Further matters for consideration

The evolution of this project should be noted and understood.

The former LNP Government approved procurement of the NGR trains as a Public-Private Partnership deal in December 2013, knowing the legislative requirements to be met under the DDA and DSAPT. Planning had begun more than a year earlier. The NGR trains are required to replace an ageing portion of the existing QR fleet known as EMUs (Electric Multiple Units), which had been upgraded to meet current DSAPT standards.

In September 2012, the Department of Transport and Main Roads (TMR) became the principal delivery agency for the NGR project and the responsibility for project procurement was handed to Projects Queensland (now Queensland Treasury Commercial Group).

The technical specification for the NGR train provided to Treasury Commercial Group at that time did not include a second toilet, calling for a six-car driver-only train, with one toilet in

the middle (to align with the platform assisted boarding point). The decision to include one toilet module (rather than two) was made at Cabinet level by the State Government at that time.
RBoT understand that the NGR designs were not signed off by QR. At that time, management of the project was the responsibility of TMR. This keeping of QR at arm's length was a crucial mistake.

The NGR design specifications were as follows:

- Single deck, electric train to operate on the SEQ suburban and interurban narrow-gauge rail network Six narrow body cars per train, with a train crew/drivers cab at each
- Two accessible cars (known as the MA and MB cars) in the middle of the six-car set
- Twelve allocated spaces (six in each accessible car) specifically for people with disabilities
- One unisex accessible toilet module in the MB car
- Four priority seats in each car.

Consideration of two unisex accessible toilets per train (in the MA and MB cars) was abandoned due to cost-cutting measures.

Organisations representing the Disability Community were not consulted during the design stages. They were presented with a mock-up carriage in August 2014 as a *fait accompli* and were told there was no opportunity for change. Also non-negotiable was the position of the guard (at the rear) in a six-car consist, despite protestations at the time.

The advice from disability groups was consistent with the DDA, DSAPT and QR's own *Accessibility Action Plan 2014.* It can be established categorically that TMR/QR were well aware of their obligations to meet disability standards in mid-2014. And probably well before then.

Consistently, since March 2015, QR's Accessibility Reference Group has been told that the structural design of the NGR train sets was 'non-negotiable'. The written response from government was that: "NGR design changes are not possible, as we are under contract and the cost of change would be prohibitive." Consultation was one-way, weighted towards TMR's 'push through' approach. We now know the financial cost of this attitude is $150 million (the government's own estimated cost of rectification of the NGR train sets.)
The trains when they landed from India, were non compliant, and were known to be so. A further 18 months passed during which time TMR did nothing, ignored representations and advice. Finally it acknowledged at the end of that period that the trains were not compliant.
There were other design issues, having to do with the cabin design.
These <u>were</u> rectified.

Then Acting QR CEO, Neil Scales, interviewed in ABC Radio 612, Brisbane, 2 November 2016 said:

> "On the NGR rolling stock, I actually met with the trade unions last year and their cab committee and sorted out a lot of the design issues because with any new [... so, you were aware] Oh yeah, I fixed them. The bottom line is that we were aware of all these issues on a cab mock-up. We got an independent ergonomist to have a look at the cab and they made five recommendations. Those five recommendations have been implemented. ... As far as I am concerned, I am making these trains work for the people of Queensland."

Follow-up action was not taken after similar meetings with disability groups. Why? Had they done so, TMR/QR would have had plenty of time to undertaken rectification work to get trains fully compliant before the Commonwealth Games. Instead, they have gone down the path of delay, then seeking an exemption from the Commission.
And they have put non-compliant trains into service. TMR/QR is betting that any action brought under the DDA legislation would take months, dragging the matter into the period where the exemption (if successful) would be in place — allowing for a stay of proceedings until after the exemption period expires.

In addition to issues about the configuration of the on-board toilet, the one accessible toilet per train creates problems for people in a wheelchair (or mothers with large prams, or people with a walking frame) to get past the non-compliant toilet module from the adjoining carriage.

Realising that legal action can be brought against QR through the Commission, the state government proposes a rectification process that will achieve savings while attempting to keep within the overall $4 billion budget. (A significant cost overrun would trigger an investigation by the Auditor-General.)

The now Palaszczuk Labor Government now proposes to split the 75 NGR trains into two fleets:

- Reconfiguration of the accessible toilet module to meet dimensions and improve functionality in line with DSAPT for an Interurban fleet of 35 trains (two toilet modules per six-car train) – adding a second unisex accessible toilet module to the MA car, so that allocated spaces and priority seats in both the MB and MA cars have an access path to a toilet module.
- A suburban fleet of 40 trains (no toilets). It is proposed to remove the unisex accessible toilet module from the MB car.

In addition, regarding train accessibility for people with disabilities, TMR/QR have adopted a platform based direct assistance solution to a rollingstock design problem. Over the expected 30+ year service life of the NGR train, the wages bill of the extra staff required is likely to be of $450 million

We submit this is not an outcome best serving taxpayers, nor is it consistent with QR's policy position of adopting the 'most up-to-date Australian Standards to provide a higher level of access than the minimum requirements.' Clearly, it is not consistent with TMR's assertion that 'the post-rectified trains will ultimately have accessibility improvements that will exceed the requirements of the DSAPT.'

Whereas the original plan was to have 75 new train sets with fully-accessible toilets, only 35 of the new trains will have toilets. This will lead to scheduling issues, as a distinction will need to be made between those NGR trains without toilets are run on shorter suburban runs, while long-distance services require toilet-equipped trains.

Having all 75 NGR trains' toilets compliant with DDA and DSAPT would overcome deficiencies of toilet design at stations. People with a disability 'needing to go' will be required to alight their suburban train, use the station toilets (assuming they are open and a wheelchair can fit inside) and must hope that the station concerned is manned to assist them on and off the train, or that the guard can help by running from the end of the train to the middle. This Heath Robinson arrangement is a patchwork of add-on changes that TMR/QR

says is temporary only, but which is likely to be in place for the 30-year lifespan of the NGR fleet. There is a strong possibility that people with a disability will be overlooked by a guard who will be situated at the end of the train and not in the middle, as currently is the situation for all other six-car trains, with guard and the passenger requiring assistance being within a metre or two of each other.

Summary

It was clear that the NGR trains had compliance issues in 2015, why was it it took till July 2017 for TMR to publicly acknowledge the non compliance? This delay put the rail network in SEQ at great risk, and still is.

Additionally it is very disturbing that the DG of TMR Mr Neil Scales still thinks the right trains were ordered and confirms that in Budget Estimates on the day the Queensland Government announces a Commission of Inquiry into the New Generation Rollingstock trains.

https://www.parliament.qld.gov.au/documents/hansard/2018/2018_07_27_EstimatesTPC.pdf page 37

Mr MINNIKIN: My question is to the director-general, Mr Scales. I refer to your previous public statements that, under the NGR contract, the right trains were ordered. That was on ABC Radio back in November 2016. You still stand by that statement?

Mr Scales: Thank you very much for the question. Yes, I do

ANNEX A

Queensland Government

Our ref 135/05810 MIN
Your ref
Enquiries Helen Adcock

Department of
Transport and Main Roads

6 July 2018

Mr Robert Dow
Rail Back on Track
13 Storr Circuit
GOODNA QLD 4300

Via Email: admin@backontrack.org

Dear Mr Dow

Right to Information Access Application - Decision Letter - Documents non-existent - 135/05810 MIN

I refer to your Information Access Application to the Minister for Transport and Main Roads (**Office of the Minister** requesting access to documents under the *Right to Information Act 2009* (Qld) (**RTI Act**), which was received on 30 May 2018 and validated on 4 June 2018 following payment of the statutory application fee.

In your application you requested access to:

> *Communication between Transport Minister's office (Minister and Ministerial Staff) and New Generation Rollingstock (NGR) project team, QR legal team, QR accessibility team and DG level of TMR and CEO of QR regarding approval of NGR for first revenue service.*
>
> *Date range: 01/07/2017 - 31/12/2017.*

Search Results

I have met with officers from the Minister's Office to discuss this application and the searches that were undertaken to locate documents relevant to the scope of the application.

I was advised that after conducting searches for documents relevant to the scope of the request, no documents were located.

In addition, and as advised in my correspondence dated 5 June 2018, it was confirmed that Minister Bailey, the current Minister for Transport and Main Roads was not the relevant Minister at the time of first revenue service for the NGR, which occurred on 11 December 2017.

Governance Branch
RTI, Privacy and Complaints Management
Floor 8
61 Mary Street Brisbane Queensland 4000
GPO Box 1549 Brisbane Queensland 4001

Telephone **07 3066 0709**
Website www.tmr.qld.gov.au
Email contactrti@tmr.qld.gov.au
ABN 39 407 690 291

Section 47(3)(e) of the RTI Act states:

> ***47 Grounds on which access may be refused***
>
> *(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 –*
>
> *(e) because the document is nonexistent or unlocatable as mentioned in section 52.*

Section 52(1) 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*
>
> *(b) the agency or Minister dealing with the application for access is satisfied-*
>
> *(i) the document has been or should be in the agency's or Minister's possession; and*
> *(ii) all reasonable steps have been taken to find the document but the document can not be found.*

I am satisfied that all reasonable steps have been undertaken to verify the existence of these documents. I consider the documents are nonexistent and in accordance with sections 47(3)(e) and 52(1)(a or b) of the RTI Act, access cannot be provided.

Decision

On 6 July 2018 and by delegation under section 31 of the RTI Act, I have decided under section 47 of the RTI Act, that I must refuse your application, as the Office of the Minister does not hold any documents responsive to your request.

Review Rights

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

Should you wish to discuss your application in any way, please contact me on 3066 0709.

Yours sincerely

Helen Adcock
A/Director (RTI, Privacy and Complaints Management)

ATTACHMENT A

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* (Qld) (**RTI 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. Any personal information you provide in your application for an internal review will be managed in accordance with the *Information Privacy Act 2009*.

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

By Post to:

Director
RTI, Privacy and Complaints Management
Department of Transport and Main Roads
GPO Box 1549
BRISBANE QLD 4001

OR

By Email to:

Director
RTI, Privacy and Complaints Management
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** can be forwarded to the Office of the Information Commissioner by the following methods:

In person:	Level 7, 133 Mary Street, Brisbane 4000
Post:	PO Box 10143, Adelaide Street, Brisbane Qld 4000
Email:	administration@oic.qld.gov.au
Telephone:	07 3234 7373
Online:	https://www.oic.qld.gov.au/about/right-to-information/apply-for-external-review-of-an-access-or-amendment-decision

ANNEX B

Queensland Government

Queensland Treasury

Our Reference: DOW869

6 August 2018

Mr Robert Dow
Rail Back on Track
13 Storr Circuit
GOODNA QLD 4300

Email: admin@backontrack.org

Dear Mr Dow

Application for access to documents under the *Right to Information Act 2009*

I refer to your Right to Information application made on 16 June 2018 seeking access to the following documentation pursuant to section 23 of the *Right to Information Act 2009* (RTI Act):

> *Communications (Documents, memos, letters, emails, meeting minutes, briefings and any attached post it notes, or other attachments (hand written or other)) between the then Transport Minister and NGR Project team, QR legal team, QR accessibility team and DG level of TMR and CEO of QR regarding approval of New Generation Rollingstock (NGR) for first revenue service.*
>
> *The type of documents:*
> *Documents, memos, letters, emails, meeting minutes, briefings and any attached post it notes, or other attachments (hand written or other).*
>
> *The date range: 1st July 2017 - 31st December 2017*

As required under section 24(2)(d) of the RTI Act, you identified Rail Back on Track as seeking to use or benefit from access to the documents.

Authority of the decision maker

I am authorised to deal with Right to Information applications made to the Office of the Deputy Premier.

1 William Street
GPO Box 611 Brisbane
Queensland 4001 Australia
Telephone +61 7 3035 1865
Website www.treasury.qld.gov.au
ABN 90 856 020 239

Searches conducted

To locate documents relevant to your request, the files and records (including electronic) of the Deputy Premier's Office was searched.

Consultation

There was formal consultation undertaken with third parties in the processing of this application.

Decision

For the reasons set out below, I have determined today to refuse access to all documents relevant to the RTI application.

Reasons for decision

Section 48 of the RTI Act – Exempt information

Section 48 of the RTI Act states that 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.

The documents in issue qualify for exemption under Schedule 3 (8) of the RTI Act, on the basis that disclosure of the documents would found an equitable action for breach of confidence.

In *Re "B" and Brisbane North Regional Health Authority* (1994) 1 QAR 279, the Information Commissioner considered in detail the elements which must be established in order for matter to qualify for exemption under section 46(1)(a) of the FOI Act (which is now contained in Schedule 3 (8) of the RTI Act). In that case it was said that the test of exemption is to be evaluated by reference to a hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring a suit to enforce an obligation of confidence said to be owed to that plaintiff, in respect of information in the possession or control of the agency or Minister faced with an application for access under section 25 of the FOI Act to the information in issue.

In *Re "B" and Brisbane North Regional Health Authority*, also established that when deciding whether the release of information would constitute an equitable breach of confidence, five cumulative criteria must be established:

1. It must be possible to specifically identify the information in issue, in order to establish that it is secret, rather than generally available information;
2. The information in issue must possess the "necessary quality of confidence"; i.e. the information must not be trivial or useless information, and it must possess a degree of secrecy sufficient for it to be the subject of an obligation of conscience, arising from the circumstances in or through which the information was communicated or obtained;
3. The information in issue must have been communicated in such circumstances as to fix the recipient with an equitable obligation of conscience not to use the confidential information in a way that is not authorised by the confider of it;
4. It must be established that disclosure to the applicant for access would constitute a misuse, or unauthorised use, of the confidential information in issue; and
5. It must be established that detriment is likely to be occasioned to the original confider of the confidential information in issue if that information were to be disclosed.

The documents responsive to the scope of the RTI application comprise two email chains.

These documents contain confidential information concerning contractual arrangements between the State/Queensland Rail and Qtectic/Bombardier.

Queensland Rail is a statutory authority established under the *Queensland Rail Transit Authority Act 2013 (Qld) (QRTA Act)* and is a statutory body for the purposes of the *Financial Accountability Act 2009 (Qld)* and the *Statutory Bodies Financial Arrangements Act 1982 (Qld)*. Queensland Rail discharges its statutory functions through its wholly-owned subsidiary Queensland Rail Limited (QRL).

Qtectic is the trading identity for the NGR Project Company Pty Ltd established in January 2014 to deliver the New Generation Rollingstock (NGR) Project by a consortium of Bombardier Transportation, John Laing, ITOCHU and Aberdeen Asset Management.

The State's confidentiality obligations in relation to the NGR Project are governed by a Project Deed between the State and Qtectic. Under the Project Deed, the State is required to keep confidential and not disclose any confidential information without Qtectic's prior written consent. Confidential information is defined to include information in relation to or in connection with the Project Documents. The information contained in the emails falls within that definition.

The information in the emails satisfy the requirements for an equitable breach of confidence because:

- the information in relation to the requirements for approval is secret and not known to anyone outside the NGR project, and is not in the public domain; -
- the information has the necessary quality of confidentiality – it is not trivial and relates to matters of significant importance, particularly to Qtectic/Bombardier who would not want the information disclosed to competitors;
- the information was communicated in the emails in circumstances importing an obligation of confidence – the State was at all times aware that it was confidential information, disclosure of which to third parties is not permitted under the confidentiality provisions of the project deed;
- disclosure of the information would constitute an unauthorised use of confidential information, in breach of the confidentiality provisions of the project deed; and
- the disclosure of the information would cause a detriment to the State as it is a breach of the confidentiality provisions of the project deed and would erode the trust between the State and Qtectic.

I am satisfied that the parties to the above leases and deeds of variations are identifiable individuals who would have standing to bring an action for breach of confidence, and that the information claimed to be confidential information can be identified with specificity.

I am therefore satisfied that all of the requisite elements necessary for exemption under Schedule 3 (8) are made out in respect of the information recorded in the document.

None of the defences to an action for breach of confidence, as discussed in the Information Commissioner's decision in *Re "B"* are applicable in the circumstances.

I have considered the pro-disclosure bias is section 44 of the RTI Act and I believe the confidentiality aspect attached to these documents supports the considerations of Parliament in setting out in schedule 3 (8) of the RTI Act that documents that would found an equitable action for breach of confidence are exempt information. I therefore consider that disclosure would be contrary to the public interest.

Accordingly, the documents identified qualify for exemption under schedule 3 (8) of the RTI Act and therefore access is refused.

Fees and charges

I note that an application fee of $48.00 has been paid, no further charges are payable.

Review Rights

If you are not satisfied with this decision you can apply for internal review under section 80 of the RTI Act. An application for internal review must be made to Queensland Treasury within 20 business days after the date of the written notice of the decision. Your application for internal review can be made to the agency in one of the following ways:

By email: rti@treasury.qld.gov.au

By post: Legal and Administrative Review Office
Queensland Treasury
GPO Box 611
Brisbane Qld 4001

The internal review will be undertaken by an officer more senior to the original decision maker.

Alternatively, you may apply for apply for an external review by the Information Commissioner. You do not however have to apply for an internal review to be eligible to apply for an external review by the Information Commissioner. However, using the internal review option provides an opportunity to consider additional evidence or information that is raised in an internal review application and conduct any further searches.

If you wish to apply for an external review by the Office of the Information Commissioner Queensland, the application must be must be made to the Information Commissioner Queensland within 20 business days after the date of the written notice of the decision.

You may also apply for an external reiew by the Office of the Information Commissioner if you are not satisfied with the decision that is made in the internal review.

Your application can be lodged with the Office of the Information Commissioner Queensland in one 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 questions regarding this decision or your rights under the RTI Act please contact me on (07) 3035 1865 quoting RTI reference **DOW869**.

Yours sincerely

Haidee Ellis
Senior Administrative Review Officer

ANNEX C

Queensland Government

Our ref 135/05799
Your ref
Enquiries Frank White

Department of
Transport and Main Roads

9 August 2018

Mr Robert Dow
RAIL Back on Track
13 Storr Circuit
GOODNA QLD 4300

By email: admin@backontrack.org

Dear Mr Dow

Right to Information Access Application - Decision Letter - 135/05799

I refer to your Information Access Application to the Department of Transport and Main Roads (**department**) requesting access to documents under the *Right to Information Act 2009* (Qld) (**RTI Act**). Your application, on behalf of RAIL Back on Track, was received by the department on 4 June 2018 and validated with payment of the $48.00 application fee.

In your application you requested access to:

> *"All Briefing Notes (excluding cabinet matter, commercial-in-confidence or legal professional privilege, duplicate documents or any draft versions) in relation to and referencing the Disability Discrimination Act (DDA) and/or Disability Standards Accessible Public Transport (DSAPT) compliance and rectification of New Generation Rollingstock.*
>
> *Time period for request: 01/01/2017 to 31/05/2018.*"

Decision

By delegation under section 30(2) of the RTI Act, I have decided to:

- provide **full** access to 3 documents (pages);
- provide **partial** access to 7 documents (pages) pursuant to Section 47(3)(a) and (b) and Schedule 3 and Schedule 4 of the RTI Act; and
- **refuse** access to 40 documents (pages) pursuant to Section 47(3)(a) and (b) and Schedule 3 and Schedule 4 of the RTI Act.

I made this decision on 9 August 2018. The reasons for my decision are set out in Attachment A.

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

Governance Branch
RTI, Privacy and Complaints Management
61 Mary Street Brisbane Queensland 4000
GPO Box 1549 Brisbane Queensland 4001

Telephone **07 3066 0721**
Website www.tmr.qld.gov.au
Email contactrti@tmr.qld.gov.au
ABN 39 407 690 291

Publication of released documents on the Disclosure Log

Under section 54(2)(a)(iii) and (iv) of the RTI Act, I am required to inform you of the obligations set out in the RTI Act and supporting Ministerial Guidelines, to publish Right to Information documents on a Disclosure Log. When the department makes a decision to grant access to document/s, the document/s will also be published on the department's Disclosure Log, which appears on the Department of Transport and Main Roads website.

Please note that the department may remove information from the documents before they are placed on the disclosure log. For example, the department may remove information the publication of which is prevented by law, information which may be defamatory, would unreasonably invade an individual's privacy, or would cause substantial harm to an entity[1].

Publication will occur as soon as practicable after you have accessed copies of the released documents. As you have requested access via email, access is considered to have occurred when the email is sent to you.

Should you wish to discuss your application in any way, please contact me on 07 3066 0721.

Yours sincerely

Frank White
Senior Advisor (RTI & Privacy)

[1] As required under section 78B of the RTI Act.

ATTACHMENT A

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

RTI Reference Number: 135/05799

Applicant: RAIL Back on Track

Decision Maker: Frank White
Department of Transport and Main Roads

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

Date of Decision:

The following is a Statement of Reasons for the decision to grant partial access to information under the *Right to Information Act 2009* (Qld) (**RTI Act**).

Legislation references

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

Scope of request

On 4 June 2018 the Department of Transport and Main Roads (**department**) received an application for access to:

> *"All Briefing Notes (excluding cabinet matter, commercial-in-confidence or legal professional privilege, duplicate documents or any draft versions) in relation to and referencing the Disability Discrimination Act (DDA) and/or Disability Standards Accessible Public Transport (DSAPT) compliance and rectification of New Generation Rollingstock.*
>
> *Time period for request: 01/01/2017 to 31/05/2018."*

Search results

As a result of searches of the department's records by the New Generation Rollingstock project team and the Cabinet Legislation and Liaison Office, I was provided with documents consisting of 77 pages.

I consider these documents to be relevant to the scope of the request and are identified as the “discovered documents”.

Irrelevant information

Upon inspection of these discovered documents, I determined that certain information contained within these documents was not relevant to the scope of the applicant's request. This irrelevant information is identified as:

- mobile telephone numbers
- information relating to matters other than the disability compliance and rectification of the New Generation Rollingstock trains

This information was removed under section 73(2) of the RTI Act as irrelevant information and is identified on the release and/or part release documents as "Not Relevant".

The remaining information in these documents is considered to be relevant to the scope of the applicant's request. These documents are identified as the "document in issue".

Section 37 consultation process

In accordance with section 37 of the RTI Act, consultation was undertaken with a third party to obtain their views on the proposed release of the information. You were advised of these consultation by the letter of 12 July 2018 and also the extension of time for consultation granted under the RTI Act.

The third party objected to the release of all the documents.

I considered this objection and decided not to uphold it. However, due to this objection and the requirements of the RTI Act, I must defer providing access to all documents until the third parties review rights under the RTI Act are exhausted (See ***Deferral of Access*** below).

Legislative time frames and extension of time

After making allowances for the time allowed for third party consultations, the due date for a decision on your application was 2 August 2018.

On 31 July 2018, you confirmed your agreement to a longer processing period making the new due date 9 August 2018.

GENERAL CONSIDERATIONS

Information Commissioner decisions

The Information Commissioner is an independent review body which conducts the review of decisions made under the RTI Act and the *Information Privacy Act 2009* (**IP Act)**. In addition to this, the Information Commissioner was also the review body for decisions made under the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**). In making a decision in this matter, I have had regard to the Information Commissioner's precedent decisions.

Release "to the world at large"

In the Information Commissioner decision *Re: Stewart and the Department of Transport*, the Commissioner made the following comment:

> *"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 RTI Act confers the same legally enforceable rights as section 21 of the FOI Act. Additionally, the RTI Act requires agencies to publish details of documents released under the RTI Act on a publicly available Disclosure Log.

Consideration of this fact may occur within the decision making process.

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

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

DECISION MAKER'S CONSIDERATIONS

Exempt information

Section 48 of the RTI Act, 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 RTI Act, sets out the types of information the disclosure of which would, on balance, be contrary to the public interest.

The exemption provisions considered in this application were:

- Schedule 3, Item 2(1)(b) – Cabinet information brought into existence on or after commencement.
- Schedule 3, Item 8 – Information disclosure of which would found action for breach of confidence

Cabinet information

The documents considered under this section of the RTI Act are identified as parts of the relevant documents which discuss Cabinet deliberations and decisions.

Schedule 3, Section 2(1)(a) and (b) of the RTI Act states:

> *(1) Information is exempt information for 10 years after its relevant date if—*
> *(b) its disclosure would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations;.*

Certain sections of the document discuss deliberations and decisions of the Cabinet Budget Review Committee (CBRC), and the specific outcomes of CBRC decisions.

Schedule 3, Section 2(5) of the RTI Act states:

> ***Cabinet** includes a Cabinet committee or subcommittee.*

The Cabinet Budget Review Committee is a committee of Cabinet and as such its deliberations and decisions are protected in the same way as Cabinet deliberations and decisions.

Based on my review of the documents in issue and the relevant information's direct connection to the Cabinet processes, I consider that this information qualifies as exempt matter under the RTI Act.

I consider the disclosure of this Cabinet information 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 RTI Act.

Breach of confidence

The annotated RTI Act published by the Office of the Information Commissioner (OIC) notes that there are five cumulative elements which must be satisfied in order to found an action in equity for breach of confidence. These five elements are drawn from Gummow J's judgment in *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)*.[2] The five elements are:

1. The confidential information is specifically identified
2. The information has the necessary quality of confidentiality
3. There were circumstances imposing an obligation of confidence
4. There is actual or threatened misuse of the information
5. To the detriment of the plaintiff

I will deal with each of these elements in turn.

[2] (1987) 14 FCR 434.

Confidential information specifically identified

The confidential information can be specifically identified as financial and commercial information of an entity outside the department. The information is found on pages 4, 29-36 and 50 of the relevant documents.

Quality of confidentiality

Information about the financial and commercial position of private sector entities would normally have the quality of confidentiality. Private sector entities, particularly those which operate in competitive industries, typically keep their financial and commercial information confidential. When reviewing the information in question, I formed the view that a reasonable person reading this information would consider it to be confidential and not for public dissemination, because of its sensitivity and the harm which could flow from release. On this basis, I am satisfied that the information has the necessary quality of confidentiality.

Circumstances imposing an obligation of confidence

The OIC's annotated legislation notes that an obligation of confidence will be established when the circumstances surrounding the provision of the information would lead a reasonable recipient to realise upon reasonable grounds that the information was being provided in confidence. There are two reasons why I consider that this element is satisfied.

Firstly, there is a contractual agreement between the department and this entity, imposing obligations of confidentiality on both parties. These obligations extend to this financial and commercial information. Secondly, the information is inherently sensitive and release of it could reasonably be expected to prejudice the competitive commercial activities of this entity. I am satisfied that a reasonable recipient of this information would realise that information of this kind would only be provided in confidence. For this reason, I have decided that there were circumstances imposing and obligation of confidence on the department.

Actual or threatened misuse of the information

In light of the circumstances imposing an obligation of confidence on the department, I am satisfied that disclosure of the information in response to an application under the RTI Act would be a misuse of the information.

Detriment to the confider

It is clear to me that disclosure of this information would be detrimental to the entity which confided the information in the department. The documents contain detailed information about the financial and commercial position of the entity. This information could be used by third parties (including the entity's competitors) to jeopardise the entity's position.

Breach of confidence – conclusion

On the basis of the discussion above, I have decided that parts of the documents are exempt, as disclosure would constitute a breach of confidence.

Public Interest Considerations

Section 49 of the RTI 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.

The documents considered under this section of the RTI Act are identified as pages 10-28, 37-49 and 52 and parts of pages 4-5, 50, 53-54.

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

Section 49(3)(a) of the RTI 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 RTI 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) of the RTI Act 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 RTI 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 contribute to positive and informed debate on important issues or matters of serious interest.

Step 3 – Identification of factors favouring nondisclosure

Section 49(3)(c) of the RTI Act 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 RTI 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 prejudice the private, business and commercial affairs of the department and other entities
- disclosure of the information could reasonably be expected to prejudice a deliberative process of government
- disclosure of the information could reasonably be expected to cause a public interest harm through disclosure of opinions and deliberation that have taken place in the course of the deliberative processes of government
- disclosure of the information could reasonably be expected to cause a public interest harm because disclosure of the information would disclose information concerning the business, commercial and financial affairs of the department and other entities and disclosure could reasonably be expected to have an adverse effect on those affairs.

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 balancing of the public interest factors

When considering the public interest factors, where there is a direct link between disclosure of the particular matter in issue and the advancement of the public interest, considerations may favour disclosure.

The New Generation Rollingstock project is the largest single investment by Queensland in trains. The Queensland Government will contribute $4.4 billion over 32 years to fund the project. This is clearly a major investment of public funds. Consequently, a high degree of scrutiny of this expenditure (including through applications under the RTI Act) is warranted and appropriate. It is for this reason that I have elected to release a significant amount of factual information about door faults and failures.

On the other hand, in any project of this size and timeframe, there will be unforeseen issues which will require resolution. When these matters arise, commercial discussions between the parties need to occur, and commercial decisions need to be made. The parties need time and space to engage in these discussions, in order to reach mutually acceptable agreements. It is highly likely that premature release of sensitive information would jeopardise the parties' ability to resolve the issues. Ultimately, such an outcome would be contrary to the public interest, as it would result in higher costs to taxpayers and make it more difficult for the government to achieve a favourable resolution. For this reason, I consider that the public interest is best served by disclosing certain factual information, while refusing access more sensitive commercial information.

Decision

I have decided to:

- provide **full** access to 3 documents (pages);
- provide **partial** access to 7 documents (pages) pursuant to Section 47(3)(a) and (b) and Schedule 3 and Schedule 4 of the RTI Act; and
- **refuse** access to 40 documents (pages) pursuant to Section 47(3)(a) and (b) and Schedule 3 and Schedule 4 of the RTI Act.

Deferral of Access

As a third party has objected to the release of the document, I must defer granting access to the documents until such time as they have exhausted their review rights. The third party has 20 business days to seek a review of my decision to release the document in question. I will advise you if such a review application is received.

In the event that the third party does not seek a review of my decision, the document will be forwarded to you on approximately 7 September 2018.

ATTACHMENT B

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* (**RTI 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 the RTI 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
RTI, Privacy and Complaints Management
Department of Transport and Main Roads
GPO Box 1549
BRISBANE QLD 4001

OR

By Email to:

Director
RTI, Privacy and Complaints Management
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 RTI 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 the RTI 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 RTI 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** can be forwarded to the Office of the Information Commissioner by the following methods:

In person:	Level 7, 133 Mary Street, Brisbane 4000
Post:	PO Box 10143, Adelaide Street, Brisbane Qld 4000
Email:	administration@oic.qld.gov.au
Telephone:	07 3234 7373
Online:	https://www.oic.qld.gov.au/about/right-to-information/apply-for-external-review-of-an-access-or-amendment-decision

ATTACHMENT C

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 of 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 of because of a decision of the entity conducting the review).

(4) The agency of 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.

ANNEX D

Level 8 Rail Centre 1
305 Edward Street
Brisbane QLD 4001

T 07 3072 8650
F 07 3072 8389
rti@qr.com.au
queenslandrail.com.au

Your ref:
Our ref: RTI-450

RAIL Back on Track
13 Storr Circuit
Goodna QLD 4300

Attention: Mr Robert Dow

By email: admin@backontrack.org

Dear Mr Dow

Decision Notice made under the *Right to Information Act 2009* (Qld)

I refer to your application made to Queensland Rail under the *Right to Information Act 2009* (Qld) (**RTI Act**) for:

> *'Minutes and associated documents of Queensland Rail Board Meetings*
> *Time Period: 1 January2015 to 30 April 2018'.*

By email dated 7 July 2018 you narrowed the scope of your application to:

> '*Queensland Rail Board Meeting minutes and associated documents concerning NGR and their introduction to service, period 1 July 2017 to 31st January 2018*'.

Based on the narrowed scope of your application, appropriate searches have been undertaken by the relevant business groups within Queensland Rail. The searches have revealed that Queensland Rail holds 339 pages in relation to your application (Documents In Issue).

Decision

I have on 7 August 2018 decided to give you:

- part access to 55 pages; and
- refuse access to 284 pages on the basis that the pages are comprised of exempt and contrary to the public interest information.

Deletion of Irrelevant Information

Additionally, I have deleted information which is irrelevant to your access application.[1]

Reasons for Decision

Access to information under the Right to Information Act 2009 (Qld)

The RTI Act gives an individual a right to access documents of an agency[2] and access is to be administered with a pro-disclosure bias.[3] Section 47(3) of the RTI Act operates as

[1] Pursuant to section 73 of the RTI Act.

an exclusion of the right of access set out in section 23 of the RTI Act, and provides grounds for refusal of access to documents. This right of access is subject to certain exclusions and limitations, including the grounds upon which an agency may refuse access to documents.

Relevantly, an agency may refuse access to a document or part of a document to the extent that the document comprises:

- exempt information;[4] or
- information which if disclosed, would on balance, be contrary to the public interest.[5]

Relevant law

Exempt information is information that Parliament has considered the disclosure of which would, on balance, be contrary to the public interest. The categories of exempt information are set out in Schedule 3 of the RTI Act. The following exemptions are relevant to information, as marked, contained in the Documents In Issue:

- Schedule 3 Section 2(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; or
  (c) it has been brought into existence in the course of the State's budgetary processes; and

- Schedule 3 Section 7: *Information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.*

Public Interest Test

Section 49 of the RTI Act prescribes that access must be granted unless disclosure is contrary to public interest. Section 49(3) of the RTI Act states that to determine whether the disclosure of the documents would, on balance, be contrary to the public interest I must:

1. identify and disregard any factor that is irrelevant to deciding whether the disclosure of information would, on balance, be contrary to the public interest;

2. identify any relevant factors favouring disclosure and non-disclosure of the information;

3. balance the relevant factors favouring disclosure and non-disclosure; and

4. decide whether disclosure of the information would, on balance, be contrary to public interest.

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[2] Section 23(1) of the RTI Act.
[3] Section 44 of the RTI Act.
[4] Sections 47(3)(a) and 48 of the RTI Act.
[5] Sections 47(3)(b) and 49 of the RTI Act.

The public interest factors are set out in Schedule 4, Parts 1-4 of the RTI Act. As decision-maker it is my role to consider relevant public interest factors and weigh them against the material considerations of your application.

I have considered whether any of the factors irrelevant to the public interest apply to the requested information. No irrelevant factors arise in the context of the Documents In Issue

Public interest factors favouring disclosure in the public interest relevant to this application:

- Schedule 4 Part 2 Section 2: *Disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest.*

Public interest factors favouring nondisclosure in the public interest relevant to this application:

- Schedule 4 Part 3 Section 2: *Disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities*; and

- Schedule 4 Part 3 Section 3: *Disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy.*

Factors favouring nondisclosure in the public interest because of public interest harm in disclosure:

- Schedule 4 Part 4 Section 3(d): *Disclosure of the information could reasonably be expected to cause a public interest harm if disclosure could have a substantial adverse effect on the conduct of industrial relations by an agency*;

- Schedule 4 Part 4 Section 4(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; and

- Schedule 4 Part 4 Section 6: *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.*

Conclusion

Based on the above, I have determined that the Documents In Issue contain exempt and contrary to the public interest information as described in the RTI Act.

I have considered whether it is possible to provide you with copies of the Documents In

Issue subject to the deletion of exempt and contrary to the public interest information and have decided to give you:

- part access to 55 pages; and
- refuse access to 284 pages on the basis that the pages are comprised of exempt and contrary to the public interest information.

Access

There are no applicable access or processing charges.

Defamation / Breach of Confidence

The information you have requested has been assessed against the RTI Act and released in accordance with this Act by an authorised officer of Queensland Rail. The decision has been made in the genuine belief that the access was required or permitted to be given under this Act. Section 170 of the RTI Act provides protection to Queensland Rail against actions for defamation or breach of confidence by giving you access as stated above.

Please note: These protections do not extend to you for any further release, e.g. where you release this information by posting it onto a social network forum on the internet. You may need to seek your own legal advice if you intend to release this information to a third party. Inappropriate release of this information by you could expose you to possible defamation or breach of confidence actions.

Right to Seek a Review

If you are not satisfied with my decision or any part of it you may exercise your review rights under the RTI Act.[6] An application for a review **must** be made within **20 business days** from the date of this decision.

Internal review

For an internal review, your application **must**:

- be made within **20 business days** after the date of the written notice of the decision;[7] and
- be in writing; and
- state an address to which Queensland Rail may correspond with you; and
- be lodged at the Queensland Rail office.[8]

You may lodge your application in one of the following ways:

Email:	rti@qr.com.au
Post:	GPO Box 1429 Brisbane Q 4001
Fax:	(07) 3072 8389
In person:	305 Edward Street, Brisbane Q 4000

[6] Sections 80 and 85 of the RTI Act.
[7] or within the further time QR allows (whether before or after the end of the 20 business days.
[8] Section 82 of the RTI Act.

When Queensland Rail receives a valid request for an internal review, a decision maker with the appropriate delegation of authority[9] (different from the original decision maker) will manage the internal review and make a decision as soon as practicable.[10]

However, if the decision maker does not make a decision and notifies the applicant of the decision within 20 business days after the internal review application is made, Queensland Rail is taken to have made a decision at the end of the 20 business days affirming the original decision.[11] Queensland Rail must give prescribed written notice of the decision to the applicant as soon as practicable.[12]

It is also worth noting that you are not required to apply for an internal review before applying for an external review. That is, you may choose to apply for an external review of my decision by contacting the Office of the Information Commissioner (**OIC**) within 20 business days of my decision.

External review:

For an external review, you may lodge an application with the OIC in one of the following ways:

In person:	Level 8, 160 Mary Street, Brisbane
Post:	PO Box 10143, Adelaide Street BRISBANE QLD 4000
Fax:	(07) 3405 1122
Email:	administration@oic.qld.gov.au
Online:	www.oic.qld.gov.au

To assist you and for your convenience, I have included a link to the OIC's guide for applicants relating to your review rights: **Explaining your review rights – a guide for applicants**.

Publication of released documents on the Disclosure Log

Under section 54(2)(a)(iii) and (iv) of the RTI Act, I am required to inform you of the obligations set out in the RTI Act and relevant Ministerial Guidelines, to publish Right to Information documents on a Disclosure Log.

When Queensland Rail makes a decision to grant access to document(s), the document(s) may also be published on Queensland Rail's Disclosure Log, which appears on Queensland Rail's corporate website located at: www.queenslandrail.com.au.

[9] Pursuant to section 30 of the RTI Act.
[10] Section 83(1) of the RTI Act.
[11] Section 83(2) of the RTI Act.
[12] Section 83(3) of the RTI Act.

Please note that we may remove information from the documents before they are placed on the Disclosure Log, for example information the publication of which is prevented by law, information which may be defamatory, would unreasonably invade an individual's privacy, or would cause substantial harm to an entity.

In the meantime, if you have any questions in relation to your RTI application, please feel free to contact me on (07) 3072 8650 or email rti@qr.com.au.

Yours sincerely

Tracy Duffill-Wilson

Tracy Duffill-Wilson
Senior Adviser RTI & Privacy

7 August 2018