



Decision and Reasons for Decision

Citation:	<i>K61 and Department of Transport and Main Roads [2024] QICmr 55 (23 October 2024)</i>
Application Number:	317842
Applicant:	K61
Respondent:	Department of Transport and Main Roads
Third Party:	Branded Financial Services Pty Ltd ACN 004 013 334
Decision Date:	23 October 2024
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - ONUS ON EXTERNAL REVIEW - agency consulted external review applicant as a third party under section 37 of the <i>Right to Information Act 2009 (Qld)</i> - external review applicant objected to disclosure - whether a decision not to disclose is justified - section 87(2) of the <i>Right to Information Act 2009 (Qld)</i></p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - registered garaging address of a vehicle - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i></p>

REASONS FOR DECISION

Summary

1. The access applicant (**Access Applicant**), a non-bank lender, applied under the *Right to Information Act 2009 (Qld)* (**RTI Act**) to the Department of Transport and Main Roads (**Department**) for access to the registered garaging address of a vehicle over which it holds a registered security interest.
2. The Department located a one page document containing the requested information. The Department consulted with the subject vehicle's current owner (the **Review Applicant** in this external review), seeking her views on the Department's proposed disclosure. The Review Applicant objected to disclosure, but the Department decided¹ to grant access to the registered garaging address,² contrary to the Review Applicant's objections.

¹ Decision dated 19 January 2024.

² The Department deleted the customer reference number, and the Review Applicant's name and birth date as irrelevant information under section 73 of the RTI Act.

3. The Review Applicant then applied to the Information Commissioner for external review of the Department's decision.³
4. For the reasons set out below, I affirm the Department's decision that disclosure would not, on balance, be contrary to the public interest under the RTI Act.⁴

Background

5. In line with the Information Commissioner's obligation to identify and promote opportunities for resolution of reviews,⁵ the external review was suspended⁶ for the parties to attempt to negotiate a settlement.⁷ However, settlement was not reached, and the Access Applicant confirms that it still seeks access to the information in issue.⁸

Reviewable decision

6. The decision under review is the Department's decision dated 19 January 2024.

Evidence considered

7. Significant procedural steps relating to this review are set out in the Appendix. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and the Appendix).
8. Decision makers must have regard to the *Human Rights Act 2019* (Qld) (**HR Act**), as section 11(1) of the HR Act provides that '[a]ll **individuals** in Queensland have human rights' (my emphasis). While the HR Act does not apply to the Access Applicant (as it is a company), I have had regard to the HR Act as it relates to the Review Applicant, particularly the right to property, and the right to privacy and reputation.⁹ I consider a decision-maker will be '*respecting and acting compatibly with*' these rights and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹⁰ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.¹¹

Information in issue and issue for determination

9. The information in issue in this review is part of one page, which records the current registered garaging address of the subject vehicle (**registered garaging address**).
10. The issue for determination is whether disclosure of the registered garaging address would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.

³ External review application dated 5 February 2024.

⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁵ Section 90(1) of the RTI Act.

⁶ Section 90(3) of the RTI Act.

⁷ On 30 July 2024.

⁸ By email dated 30 August 2024.

⁹ Sections 24 and 25 of the HR Act.

¹⁰ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from this position).

¹¹ I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*'

Relevant law

11. Under the RTI Act, a person has a right to be given access to documents of an agency.¹² However, this right is subject to certain limitations, including grounds to refuse access. One ground of refusal is where disclosure would, on balance, be contrary to the public interest.¹³
12. The RTI Act identifies various factors that may be relevant to deciding the balance of the public interest¹⁴ and explains the steps that a decision maker must take when deciding whether disclosure would, on balance, be contrary to the public interest as follows:¹⁵
 - identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
13. It is Parliament's intention that the RTI Act be administered with a pro-disclosure bias¹⁶ and the grounds to refuse access are to be interpreted narrowly.¹⁷
14. Where an agency has made a decision to give access to a document, the participant in the external review who opposes disclosure has the onus of establishing that a decision not to disclose the information is justified.¹⁸

Applicant submissions

15. The applicant submits:¹⁹
 - the Department's decision puts her personal information at risk, and there are circumstances which heighten the considerations relating to her personal information and privacy
 - she obtained the vehicle from a friend, and she was not aware of the debt
 - she is uncomfortable about having strangers on her property (to repossess the vehicle); and
 - if the review is not decided in her favour, she would like to be advised of a time and location where the vehicle can be collected.

Onus

16. As the Department decided to disclose the registered garaging address and the Review Applicant opposes this decision, the Review Applicant bears the onus of establishing that the information should not be disclosed.²⁰

¹² Section 23 of the RTI Act.

¹³ Section 47(3)(b) of the RTI Act.

¹⁴ Schedule 4 of the RTI Act sets out a non-exhaustive list of factors relevant to deciding whether disclosing information would, on balance, be contrary to the public interest.

¹⁵ Section 49 of the RTI Act.

¹⁶ Section 44 of the RTI Act. Noting that, in accordance with section 105(2) of the RTI Act, if it is established that a document is an exempt document or a contrary to the public interest documents, the Information Commissioner does not have power to direct that access to the document is to be given.

¹⁷ Section 47(2) of the RTI Act.

¹⁸ Section 87(2) of the RTI Act.

¹⁹ External review application dated 5 February 2024.

²⁰ Section 87(2) of the RTI Act.

Irrelevant factors

17. None of the irrelevant factors set out in schedule 4, part 1 of the RTI Act arise in this case, and I have taken none into account.

Factors favouring disclosure

18. I have identified one factor favouring disclosure of the registered garaging address, that is, disclosure could reasonably be expected to contribute to the administration of justice.²¹ This factor was considered in *Willsford and Brisbane City Council*,²² where the Information Commissioner found that it will arise if:

- an access applicant has suffered loss or damage or some kind of wrong, in respect of which a remedy is, or may be, available under the law
- they have a reasonable basis for seeking to pursue the remedy; and
- disclosing the information in issue would assist the applicant to pursue the remedy or to evaluate whether a remedy is available or worth pursuing.²³

19. Having considered the evidence provided by the Access Applicant,²⁴ I am satisfied that:

- the previous owner of the subject vehicle entered into a loan contract with the Access Applicant to purchase the vehicle, which includes a condition that the Access Applicant holds a security interest over the vehicle
- the previous owner of the vehicle failed to make loan repayments in accordance with the terms of the loan contract, resulting in the Access Applicant suffering loss
- in these circumstances, the Access Applicant has a reasonable basis to pursue a legal remedy, including recovery of the vehicle; and
- disclosure of the registered garaging address would enable the Access Applicant to pursue any remedy available to it, or to consider whether a remedy is worth pursuing.

20. I acknowledge that the Review Applicant is not the party that entered into the contract, and that she has explained that she had no knowledge of the encumbrance over the vehicle at the time that she obtained the vehicle. While I acknowledge the Review Applicant's situation, it is clear on the information before me that the legal rights of the Access Applicant pre-exist the Review Applicant's possession of the vehicle and that processes are available (such as a search of the Personal Property Security Register) to identify such legal rights and to prevent these situations arising. It is unfortunate that the Review Applicant did not make herself aware of the vehicle's encumbrance and the applicable law regarding registered security interests, but her ignorance in that regard is not a valid reason to deprive the Access Applicant of its ability to enforce the loan contract.

21. Despite the circumstances described by the Review Applicant, I am satisfied that my findings at paragraph 19 mean that the administration of justice factor applies in favour of disclosure.

²¹ Schedule 4, part 2, item 17 of the RTI Act.

²² (1996) 3 QAR 368 (*Willsford*), which applied the equivalent provisions under the repealed *Freedom of Information Act 1992* (Qld).

²³ *Willsford* at [17]. *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011) at [16] and *C98 and Cairns and Hinterland Hospital and Health Service* [2021] QICmr 46 (9 September 2021) at [26].

²⁴ Including default notice, vehicle contract of sale, Personal Property Securities Register search and the loan agreement.

22. Turning to the weight to be attributed to this factor, the Information Commissioner has previously found that the weight will be influenced by the magnitude of the loss, damage or wrong and the strength of the prospects for successfully pursuing the available remedy. In this instance, the loss is not insignificant, and the Access Applicant appears to have a reasonable prospect of success. In addition, disclosure would appear to be the only way that the Access Applicant can locate the vehicle and enforce its rights under the loan contract. As such, this factor carries substantial weight in favour of disclosure.

Factors favouring nondisclosure

23. Disclosure of the registered garaging address to the Access Applicant will reveal the Review Applicant's address, giving rise to two factors favouring nondisclosure, relating to the protection of personal information²⁵ and an individual's right to privacy.²⁶
24. The applicant submits that there are certain circumstances in this case which mean that these factors should be of paramount concern.²⁷ Although this decision has been de-identified for publication, the Access Applicant does not know these details about the Review Applicant, and so I will not set these submissions out in detail here. I will note however that I have carefully considered the concerns that the Review Applicant raised and also note that attempts were made during the review process²⁸ to resolve the matter so that the Access Applicant would no longer seek access to the registered garaging address.²⁹ Unfortunately, these attempts were unsuccessful. I note that the contact details for the Access Applicant were provided to the Review Applicant during this review, so it remains open to the Review Applicant to contact the Access Applicant to make arrangements for the collection of the vehicle if she does not want the Access Applicant to attend her property.
25. I accept that the circumstances described by the Review Applicant are serious and require special consideration. I also accept that the protection of the Review Applicant's personal information and privacy would attract significant weight if the registered garaging address was going to be released in a way that linked it to the Review Applicant's identity. In this case however, I am only considering release of the registered garaging address, and not any further information such as the Review Applicant's name. In these circumstances, I do not consider that the registered garaging address, on its own, is particularly sensitive as the Review Applicant submits. As such, I afford these factors moderate weight.
26. I also recognise that disclosure of the registered garaging address is likely to result in the Access Applicant taking steps to recover the vehicle or pursue another remedy, which will have a detrimental impact on the Review Applicant's private or financial affairs.³⁰ In considering the weight to give this factor, I acknowledge that the Access Applicant repossessing the vehicle is likely to have a fairly significant impact on the Review Applicant and again acknowledge the Review Applicant's submission that she was unaware that the vehicle was encumbered. However, as noted above, there are processes available to determine if second hand vehicles are encumbered (such as a

²⁵ Section 12 of the *Information Privacy Act 2009* (Qld) defines personal information as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*'

²⁶ Schedule 4, part 3, item 3 and part 4, item 6 of the RTI Act.

²⁷ The specifics of this submission are explained in the application for external review.

²⁸ Letters to the Review Applicant dated 21 March 2024, 25 June 2024 and 30 July 2024.

²⁹ Including, as noted at paragraph 5, the suspension of this review to allow the participants to negotiate a settlement.

³⁰ A nondisclosure factor will arise when disclosure of the information could reasonably be expected to prejudice the private, business, professional, commercial or financial affairs of entities, schedule 4, part 3, item 2 of the RTI Act.

search of the Personal Property Security Register). This reduces the weight of this factor somewhat and I find that it carries moderate weight in favour of non-disclosure.

Balancing the public interest

27. I am satisfied that the substantial weight attributed to the administration of justice factor favouring disclosure outweighs the moderate weight afforded to the nondisclosure factors relating to protecting the Review Applicant's personal information and privacy and preventing prejudice to her financial affairs.
28. I find that the administration of justice factor is determinative in this matter and disclosure of the registered garaging address would not, on balance, be contrary to the public interest.

DECISION

29. I affirm the Department's decision that disclosure of the registered garaging address would not, on balance, be contrary to the public interest.³¹
30. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Jane Williams
Assistant Information Commissioner

Date: 23 October 2024

³¹ Sections 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
20 February 2024	<p>OIC received an application for external review from the Review Applicant.</p> <p>OIC advised the Department that the external review had been received and requested preliminary procedural documents.</p>
26 February 2024	<p>OIC received the requested procedural documents from the Department.</p>
29 February 2024	<p>OIC asked the Access Applicant whether it still sought access to the registered garaging address. The Access Applicant confirmed that access was still sought.</p>
21 March 2024	<p>OIC informed the Department that the external review had been accepted and asked it to provide a copy of the registered garaging address and other supporting documents.</p> <p>OIC informed the Review Applicant that the external review had been accepted and conveyed a preliminary view that access may be given to the registered garaging address. OIC also encouraged the Review Applicant to make contact with services that may be able to assist her to negotiate an acceptable outcome with the Access Applicant.</p>
25 March 2024	<p>OIC received a copy of the registered garaging address and supporting documents from the Department.</p>
24 April 2024	<p>OIC asked the Access Applicant whether it still sought access to the registered garaging address. The Access Applicant confirmed that access was still sought.</p> <p>OIC requested further loan documents from the Access Applicant and asked the Access Applicant whether they want to be joined as a participant in the external review.</p>
30 May 2024	<p>OIC provided the Review Applicant with an update on the progress of the external review.</p>
4 June 2024	<p>OIC received the requested loan documents from the Access Applicant and confirmation that they wish to be joined as a participant in the external review.</p>
25 June 2024	<p>OIC provided the Access Applicant with an update on the progress of the external review.</p> <p>OIC wrote to the Review Applicant to propose an opportunity to resolve the review.</p>
3 July 2024	<p>OIC received a phone call from a person purporting to be the previous owner of the vehicle.</p>
16 July 2024	<p>OIC received a phone call from the Review Applicant to discuss the preliminary view and the proposed informal resolution.</p>
30 July 2024	<p>OIC advised the parties that the external review had been suspended for one month to allow the parties to negotiate a settlement.</p>
30 August 2024	<p>OIC received an update from the Access Applicant that no settlement had been reached.</p>

Date	Event
3 September 2024	<p>OIC contacted the Review Applicant to reiterate the preliminary view.</p> <p>OIC provided the Access Applicant with an update on the progress of the external review.</p> <p>OIC advised the Department that the external review had been resumed and provided an update on the progress of the external review.</p>
4 September 2024	OIC requested final submissions from the Review Applicant.
6 September 2024	OIC received advice from the Access Applicant that contact with the Review Applicant was ongoing and no resolution had been reached.