



## Decision and Reasons for Decision

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<b>Citation:</b>	<i>P54 and Brisbane City Council [2024] QICmr 54 (23 October 2024)</i>
<b>Application Number:</b>	318266
<b>Applicant:</b>	P54
<b>Respondent:</b>	Brisbane City Council
<b>Decision Date:</b>	23 October 2024
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - legal costing information - prejudice to business, commercial or financial affairs - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009 (Qld)</i> and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009 (Qld)</i></b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to Brisbane City Council (**Council**) for access under the *Information Privacy Act 2009 (Qld)* (**IP Act**) to all documents between 23 November 2023 and 13 February 2024 concerning a complaint made to the Queensland Human Rights Commission (**QHRC**), and that was subsequently referred to the Queensland Civil and Administrative Tribunal.
2. In its initial decision,<sup>2</sup> Council decided to give the applicant full access to 291 pages, partial access to 68 pages, and to refuse access in full to 329 pages. Access to information was refused either because it comprised exempt information, or because its disclosure would, on balance, be contrary to the public interest.
3. The applicant applied for internal review.<sup>3</sup> An internal review was not completed within the timeframe specified in the IP Act and Council was therefore deemed to have affirmed the original decision.<sup>4</sup>
4. The applicant applied<sup>5</sup> to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.

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<sup>1</sup> Application received by Council on 13 February 2024.

<sup>2</sup> Dated 2 April 2024.

<sup>3</sup> On 5 April 2024.

<sup>4</sup> Section 97(2) of the IP Act.

<sup>5</sup> On 3 June 2024.

5. For the reasons explained below, I affirm the decision under review.

### Reviewable decision

6. The decision under review is Council's deemed internal review decision.

### Evidence considered

7. Significant procedural steps relating to the external review are set out in the Appendix.

8. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken account of the applicant's submissions to the extent that they contain information that is relevant to the issues for determination in this review.<sup>6</sup>

9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>7</sup> I consider a decision-maker will be '*respecting and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the IP Act and the *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>8</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:<sup>9</sup> '*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.*'<sup>10</sup>

### Information in issue

10. The only information to which the applicant continues to pursue access comprises parts of a two page '*Matter Cost Summary Report*' generated by Council's legal division, Brisbane City Legal Practice (**BCLP**). The Report contains details of the legal fees generated by BCLP in dealing with the QHRC complaint. Council gave the applicant access to the total amounts of legal costs contained in the Report, but refused access, on public interest grounds, to information revealing the charge-out rate for each officer involved in working on the matter (**Information in Issue**).

### Issue for determination

11. The issue for determination is whether access to the Information in Issue may be refused because its disclosure would, on balance, be contrary to the public interest.

### Relevant law

12. Under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.<sup>11</sup> This right is subject to other provisions of the IP Act and the RTI Act, including the grounds on which an

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<sup>6</sup> Contained in the external review application dated 3 June 2024, and in an email on 11 September 2024.

<sup>7</sup> Section 21 of the HR Act.

<sup>8</sup> *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].

<sup>9</sup> *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>10</sup> **XYZ** at [573].

<sup>11</sup> Section 40 of the IP Act.

agency may refuse access to information.<sup>12</sup> One ground of refusal is where disclosure would, on balance, be contrary to the public interest.<sup>13</sup>

13. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:<sup>14</sup>
  - identify factors irrelevant to the public interest and disregard them
  - identify factors in favour of disclosure of information
  - identify factors in favour of nondisclosure of information; and
  - decide whether, on balance, disclosure of the information would be contrary to the public interest.
14. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these lists,<sup>15</sup> together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias<sup>16</sup> and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.<sup>17</sup>

## Findings

15. As noted, Council gave the applicant access to the total amounts of costs charged by BCLP, in accordance with the principles explained by the Information Commissioner in previous decisions dealing with these types of documents.<sup>18</sup> In *Price and Department of Justice and Attorney-General*,<sup>19</sup> the Information Commissioner found that disclosure of information about lawyers' billing structure and hourly charge-out rates might reasonably be expected to assist the lawyers' competitors to compete with them more effectively in the legal services market generally. In that case, the Information Commissioner decided that disclosing information of this nature could reasonably be expected to have an adverse effect on the business, professional, commercial or financial affairs of that entity, given the commercially competitive legal services field, and would be contrary to the public interest.<sup>20</sup> The same principles apply to the fees charged by government lawyers where, as in BCLP's case, they operate on commercial terms and charge the agency for the legal services provided.<sup>21</sup>
16. For these reasons, I consider that disclosure of the Information in Issue could reasonably be expected to prejudice the competitive commercial, and financial, affairs of BCLP/Council.<sup>22</sup> I afford these nondisclosure factors moderate weight in balancing the public interest.
17. I am unable to identify factors favouring disclosure of this information beyond the general public interest in accessing information held by government, and in the accountability of Council for its expenditure of public funds.<sup>23</sup> The applicant argues<sup>24</sup>

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<sup>12</sup> Section 67(1) of the IP Act and section 47 of the RTI Act.

<sup>13</sup> Section 47(3)(b) of the RTI Act.

<sup>14</sup> Section 49(3) of the RTI Act.

<sup>15</sup> I have considered each of the public interest factors outlined in schedule 4 of the RTI.

<sup>16</sup> Section 64 of the IP Act.

<sup>17</sup> Section 67(2) of the IP Act and section 47(2) of the RTI Act. In deciding whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

<sup>18</sup> See *Murphy and Treasury Department* (1998) 4 QAR 446 at [20]; *Ellis and Department of Environment* (Unreported, Queensland Information Commissioner, 20 October 1998) at [20]-[32] and *VSC and Public Trustee of Queensland* (Unreported, Queensland Information Commissioner, 30 June 2008) at [49]-[51].

<sup>19</sup> (Unreported, Queensland Information Commissioner, 12 March 2002).

<sup>20</sup> *Ibid* [44], applying section 45(1)(c) of the now repealed *Freedom of Information Act 1992* (Qld).

<sup>21</sup> The relevant principles have been explained to the applicant in previous OIC decisions.

<sup>22</sup> Schedule 4, part 3, items 2 and 17 of the RTI Act.

<sup>23</sup> Schedule 4, part 2, items 1 and 4 of the RTI Act.

<sup>24</sup> Email of 11 September 2024.

that disclosure would be in the public interest because it could reasonably be expected to allow other law firms to offer legal services to Council at a more economical hourly rate, thereby saving Council costs. I consider that the applicant's assertion about potential cost-saving is speculative in nature. Council already engages external law firms to perform legal work for Council. As I understand it, these lawyers are appointed by Council to an approved legal panel following an open tender process in which the law firms nominate their fees and charges. Council is therefore already aware of the fees charged by external lawyers in undertaking legal work for Council and how they compare with BCLP's fees. I am not satisfied that disclosing the hourly rates for BCLP's staff under the IP Act could reasonably be expected to result in significant cost-saving for Council.

18. For these reasons, I afford the two factors favouring disclosure of the Information in Issue low weight in balancing the public interest.
19. I also do not accept the applicant's submission that, because the legal costs/fees are associated with her QHRC matter, they '*come under* [the applicant's] *personal information*'.<sup>25</sup> Information concerning the hourly rates charged by BCLP's lawyers in providing legal advice and assistance to Council is not '*about*' the applicant within the meaning of section 12 of the IP Act. I am therefore satisfied that the public interest factor favouring disclosure to an applicant of their personal information<sup>26</sup> does not apply.
20. In summary, I afford moderate weight to the public interest factors favouring nondisclosure of the Information in Issue, and low weight to the factors favouring disclosure. After balancing those factors, I am satisfied that the factors favouring nondisclosure outweigh those favouring disclosure. As such, access to the Information in Issue may be refused because its disclosure would, on balance, be contrary to the public interest.

## DECISION

21. I affirm the decision under review by finding that access to the Information in Issue may be refused section 67(1) of the IP Act and sections 47(3)(b) and 49 of the RTI Act as information the disclosure of which would, on balance, be contrary to the public interest.
22. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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R Moss  
Principal Review Officer

**Date: 23 October 2024**

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<sup>25</sup> Ibid.

<sup>26</sup> Schedule 4, part 2, item 7 of the RTI Act.

**APPENDIX**

**Significant procedural steps**

Date	Event
3 June 2024	OIC received the application for external review.
25 June 2024	OIC received preliminary documents from Council.
8 July 2024	OIC advised the parties that the application for review had been accepted.
1 August 2024	OIC received copies of the Information in Issue from Council.
7 August 2024	OIC communicated a preliminary view to the applicant.
26 August 2024	OIC received a request from the applicant for an extension of time to respond to OIC's preliminary view.
27 August 2024	OIC granted the applicant's request for an extension of time.
11 September 2024	OIC received a submission from the applicant.