



Decision and Reasons for Decision

Citation:	<i>U21 and Lockyer Valley Regional Council</i> [2024] QICmr 51 (15 October 2024)
Application Number:	318077
Applicant:	U21
Respondent:	Lockyer Valley Regional Council
Decision Date:	15 October 2024
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST - identity of complainant - accountability and transparency of Council - personal information and right to privacy of individuals other than the applicant - prejudice to flow of information to a regulatory agency - whether disclosure of complainant's identity would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ under the *Information Privacy Act 2009* (Qld) (**IP Act**) to Lockyer Valley Regional Council (**Council**) for all documents regarding Council's attendance on her property on a specified date, including the complaint that triggered Council's attendance.
2. Council located 10 pages and decided² to grant access to these pages apart from some information on two pages. Council also granted administrative access to some of the information requested by the applicant.³
3. The applicant applied⁴ to the Information Commissioner for external review of Council's decision. On external review the information in issue was narrowed to the identity of the complainant.⁵
4. For the reasons outlined below I affirm Council's decision and find that access may be refused to the complainant's identity as it would, on balance, be contrary to the public interest to disclose.⁶

¹ On 14 April 2024.

² On 21 May 2024.

³ Confirmed in Council's decision notice to the applicant dated 21 May 2024.

⁴ On 13 June 2024.

⁵ Based on the applicant's external review application received on 13 June 2024, and confirmed in correspondence on 19 July 2024 and 2 September 2024.

Background

5. Council attended the applicant's property following a complaint made to Council. Council issued a notice to the applicant to ensure compliance with the requirements of certain local laws relating to fencing at the property.⁷ The applicant seeks access to the name of the person/s who made this complaint.

Reviewable decision

6. The reviewable decision is Council's decision dated 21 May 2024.

Evidence considered

7. Significant procedural steps are set out in the Appendix to this decision.
8. The evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
9. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the applicant's right to seek and receive information.⁸ I consider that in observing and applying the law prescribed in the RTI Act and IP Act, an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,⁹ and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act: '*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.*'¹⁰

Information in issue

10. The information in issue comprises the complainant's name on two pages (**Complainant's Identity**).¹¹

Issue for determination

11. The issue for determination is whether disclosure of the Complainant's Identity would, on balance, be contrary to the public interest.

Relevant law

12. Under the IP Act an individual has the right to access documents of an agency to the extent the documents contain the individual's personal information.¹² This right of access is subject to the provisions of the IP Act itself and to some provisions of the RTI

⁶ Section 67(1) of the IP Act and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld) (**RTI Act**).

⁷ Page 10 of the located documents.

⁸ As embodied in section 21 of the HR Act.

⁹ *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]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

¹⁰ *XYZ* at [573].

¹¹ As confirmed to the applicant in our correspondence on 2 September 2024. The Complainant's Identity appears on pages 1 and 5 of the 10 pages located by Council.

¹² Section 40 of the IP Act.

Act.¹³ Relevantly access to information may be refused if its disclosure would, on balance, be contrary to the public interest.¹⁴

13. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:¹⁵
- 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. The grounds on which access may be refused are to be interpreted narrowly.¹⁶

Applicant's submissions

15. As part of the external review process, I conveyed my preliminary view to the applicant regarding her entitlement to access the Complainant's Identity under the IP Act.¹⁷ In response the applicant made submissions contesting this view and maintaining her request for access.¹⁸ In summary:
- the applicant seeks disclosure of the Complainant's Identity because of the poisoning and death of her four horses
 - she believes she knows who harmed her horses and they have not been charged
 - she has contacted agencies including the Queensland Police Service and the RSPCA, but they have not attended or taken any action; and
 - she requires the information for the proceedings she has underway for a protection order.
16. My understanding of the applicant's submissions is that she considers the person or persons who poisoned her horses to be the complainant in this matter, or to be connected in some way. The applicant's original request identified the individuals she considered may have made the complaint to Council, and her submissions to OIC also identify particular individual/s, however, nothing in this decision should be interpreted as confirming or denying the identity of the complainant/s.

Findings

Irrelevant factors

17. I have not identified or considered any irrelevant factors in this matter.

¹³ Section 40(1) of the IP Act which states '[s]ubject to this Act'. Section 67 of the IP Act provides that an agency or Minister may refuse access to a document in the same way and to the same extent under section 47 of the RTI Act were the document subject to an access application under the RTI Act.

¹⁴ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

¹⁵ Section 49(3) of the RTI Act.

¹⁶ Section 67(2)(a) of the IP Act.

¹⁷ On 2 September 2024.

¹⁸ On 3 September 2024. I have also considered the applicant's submissions in her external review application received on 13 June 2024.

Factors favouring disclosure

18. I acknowledge that disclosing information about Council's complaint processes will enhance Council transparency and accountability in relation to the handling of the matter.¹⁹ In considering the weight that should be afforded to this public interest factor, I have considered the extent to which Council has discharged its accountability and transparency by the information disclosed to date, as well as the fact that the information sought by the applicant is limited to the personal information of another individual. Council has disclosed the information demonstrating its assessment of the complaint, steps taken in response to the complaint and its communications about the complaint. In these circumstances, I consider Council's accountability and transparency will only be marginally advanced by disclosure of the Complainant's Identity, and I afford low weight to this factor favouring disclosure.
19. Given the applicant's submissions about the connection between this complaint and the poisoning of her horses, I have considered whether disclosing the Complainant's Identity could reasonably be expected to contribute to the administration of justice for a person.²⁰ In order to enliven the administration of justice factor, an applicant must demonstrate the following three elements:
- they have 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 would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.²¹
20. I accept the applicant has suffered a loss, as a result of the poisoning of her horses and acknowledge the applicant's submission that she has commenced proceedings for a protection order '*against these people*'.²² However, there is no information in the material before me, including in the material provided in this review by the applicant, confirming that the complainant in this matter is responsible for the poisoning. Even if the applicant had demonstrated this is the case (which I do not consider she has), the applicant has not explained, nor can I see, how disclosure of the identity of the person who made a complaint about the applicant is relevant to any action the applicant may have arising out of the poisoning. In the circumstances, I am not persuaded that disclosing the name of the complainant/s would assist the applicant to pursue any remedy regarding the poisoning of her horses. I afford no weight to this factor.
21. I have also considered whether disclosure of the Complainant's Identity could reasonably be expected to contribute to the enforcement of the criminal law.²³ For the same reasons outlined at paragraph [20], I consider that disclosure could not reasonably be expected to advance this public interest factor, especially noting the broad powers available to the Queensland Police Service to obtain relevant information to inform its investigations of reported matters. As such, I am satisfied this factor does not carry any weight in these circumstances.
22. I have not identified any other public interest factors applying to favour disclosure of the Complainant's Identity.²⁴

¹⁹ Schedule 4, part 2, item 1 of the RTI Act.

²⁰ Schedule 4, part 2, item 17 of the RTI Act.

²¹ *Willsford and Brisbane City Council* (1996) 3 QAR 368 at [17].

²² In the application for external review dated 13 June 2024.

²³ Schedule 4, part 2, item 18 of the RTI Act.

²⁴ For example, the Complainant's Identity does not contain the applicant's personal information (schedule 4, part 2, item 7 of the RTI Act) and could not reasonably be expected to reveal the reason for a government decision (schedule 4, part 2, item 11 of the RTI Act) or ensure effective oversight of expenditure of public funds (schedule 4, part 2, item 4 of the RTI Act).

Factors favouring nondisclosure

23. The Complainant's Identity comprises the personal information²⁵ of an individual other than the applicant. The context in which it arises is sensitive and relates to a complaint to Council about the applicant. This enlivens two factors favouring nondisclosure, where disclosure could reasonably be expected to prejudice the right to privacy and cause a public interest harm by disclosing personal information of other individuals.²⁶ The Information Commissioner has issued several decisions refusing access to information identifying a complainant, noting that this information is particularly sensitive and private.²⁷
24. In this case, the applicant asserts that she already knows the identity of the complainant.²⁸ Even if I were to accept that is the case (although nothing in this decision should be taking as confirming or denying the proposition), I do not consider that this would negate the weight to be given to these public interest factors. Even if the information were known to the applicant, disclosure under this process would give the applicant access to information that identifies and is about another individual, and therefore comprises that other individual's personal information. To do so results in public interest harm.²⁹
25. Privacy is not defined in the IP Act,³⁰ but is generally considered to be the right of one individual to preserve their personal sphere from interference from others.³¹ I consider that an individual's status as a complainant is inherently sensitive in nature and falling within their private sphere. Disclosure of information that confirms that individual's status as a complainant, particularly through an application under the IP Act where there is no limitation on the further dissemination of that information, would constitute a breach of that individual's reasonable expectation of privacy.
26. Given the sensitive circumstances in which this information was provided to Council (that is, in the context of a complaint), I consider significant weight applies to each of these nondisclosure factors.
27. A further factor favouring nondisclosure will arise if disclosure can reasonably be expected to prejudice the flow of information to Council regarding its regulatory functions.³² Local governments administer legislation including Local Laws and animal management legislation and rely on members of the community to report issues or concerns to aid its performance of its regulatory functions. The Information Commissioner has previously held:³³

I am satisfied that routinely disclosing information identifying a complainant would tend to discourage individuals from coming forward with information and cooperating with Council as they may consider that their personal information could be released to other

²⁵ Defined in section 12 of the IP Act 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 schedule 4, part 4, section 6 of the RTI Act.

²⁷ Including *Arthur and Council of the City of Gold Coast* [2017] QICmr 25 (13 July 2017) at [18], *Alsop and Redland City Council* [2017] QICmr 27 (2 August 2017) at [28]-[32] (**Alsop**), and *Y87 and Redland City Council* [2020] QICmr 24 (29 April 2020) at [24]-[26].

²⁸ Submission dated 3 September 2024.

²⁹ *Kelson v Queensland Police Service & Anor* [2019] QCATA 67 at [90]-[93] per Daubney J.

³⁰ Nor the IP Act.

³¹ *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [22] paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' *Australian Law Reform Commission Report No. 108* released 11 August 2008, at paragraph 1.56. The report is available at <https://www.alrc.gov.au/wp-content/uploads/2019/08/108_vol1.pdf>.

³² Schedule 4, part 3, item 13 of the RTI Act.

³³ *Alsop* at [33]-[34].

individuals, including to the person who is the subject of the complaint. This, in turn, could reasonably be expected to negatively impact Council's ability to obtain this information in future.

28. I am satisfied that the same reasoning applies here. In the circumstances of this case, Council's investigation and related actions related to animal management and associated legislation for restraining animals using appropriate fencing. I consider this to be an essential public safety function and as such, this factor carries significant weight.

Balancing the public interest

29. I am satisfied that disclosure of the Complainant's Identity would marginally advance Council's accountability and transparency and have afforded this factor low weight.³⁴
30. Weighing against this, I am satisfied that disclosing the Complainant's Identity could reasonably be expected to prejudice the protection of a third party's right to privacy and the flow of information to Council regarding its regulatory functions; and could reasonably be expected to cause a public interest harm by disclosing personal information of an individual other than the applicant.³⁵ Significant weight applies to each of these three factors.
31. The weight of the nondisclosure factors significantly outweighs the factor favouring disclosure of the Complainant's Identity and is determinative. Accordingly, I find that access may be refused to the Complainant's Identity as it would, on balance, be contrary to the public interest to disclose.³⁶

DECISION

32. I affirm Council's decision³⁷ and find that access may be refused to the Complainant's Identity under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act as it would, on balance, be contrary to the public interest to disclose.
33. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

J Williams
Assistant Information Commissioner

Date: 15 October 2024

³⁴ Schedule 4, part 2, item 1 of the RTI Act.

³⁵ Schedule 4, part 3, items 3 and 13; and schedule 4, part 4, section 6 of the RTI Act.

³⁶ Section 67(1) of the IP Act and section 47(3)(b) of the RTI Act.

³⁷ Section 123(1)(a) of the IP Act.

APPENDIX

Significant procedural steps

Date	Event
13 June 2024	OIC received the application for external review. OIC requested the preliminary documents from Council.
19 June 2024	OIC received the preliminary documents from Council.
19 July 2024	OIC accepted the external review application and notified the applicant and Council. OIC requested the located documents from Council.
2 August 2024	OIC received the located documents from Council.
2 September 2024	OIC conveyed a preliminary view to the applicant.
3 September 2024	OIC received submissions from the applicant contesting the preliminary view.
6 September 2024	OIC confirmed to the applicant the review would be finalised by a formal decision.