



Decision and Reasons for Decision

Citation:	<i>C11 and Sunshine Coast Regional Council [2025] QICmr 20 (16 April 2025)</i>
Application Number:	317604
Applicant:	C11
Respondent:	Sunshine Coast Regional Council
Decision Date:	16 April 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - APPLICATION OUTSIDE SCOPE OF ACT - ENTITIES TO WHICH ACT DOES NOT APPLY IN RELATION TO A PARTICULAR FUNCTION - application for documents concerning the respondent's processing of an earlier access application - whether the agency decision maker is an entity to which the Act does not apply - whether the application is outside the scope of the Act - section 32 and schedule 2, part 2, item 7 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Sunshine Coast Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents in the following terms:

All documents (emails, pics, video all forms of information) related to complaints/conflicts or anything involving me and my person, and All documents (emails, pics, video all forms of information) related to complaints/conflicts or anything involving my property at [street address and real property address] that exist anywhere in Councils database, or any database that Council has access to...

*If complaints/conflicts/information exist in more than one spot, please include all areas where complaints/conflicts/information gets entered/registered. And please include everything that you have. The whole picture including all related documents and information.*¹

2. The scope of the application encompassed documents received or generated by Council in the course of processing and deciding a previous access application made to Council

¹ Application initially submitted to Council on 25 September 2023. An exchange of correspondence subsequently occurred between the applicant and Council about a variety of issues concerning the application, including scope. The scope set out in paragraph 1 above is as contained in Council's decision letter dated 10 October 2023 and stated to be taken from the applicant's email to Council on 5 October 2023.

by the applicant. Applying the principles set out in *T71 and Queensland Police Service*,² Council decided³ that the application was outside the RTI Act under section 32(1)(b)(ii) and schedule 2, part 2, item 7 of the RTI Act.⁴

3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.⁵
4. For the reasons set out below, I affirm Council's decision.

External review process

5. During the course of the review, following discussions with OIC, the applicant initially agreed to remove processing documents from the scope of his application. However, in an email to OIC on 19 March 2024, the applicant advised that he had re-considered his position on this issue and stated that he now wanted OIC to review Council's decision that his application was outside the RTI Act under section 32(1)(b)(ii). The applicant disputed that any quasi-judicial function was being exercised by Council's decision maker when they processed his previous access application, and argued that schedule 2, part 2, item 7 of the RTI Act had no application.
6. By letter dated 18 April 2024, OIC communicated a written preliminary view to the applicant about this issue, based upon OIC's decision in *T71*. In his response on 8 May 2024, the applicant rejected OIC's preliminary view and provided a submission in support of his position. He requested that OIC issue a formal determination of this issue.
7. In an effort to informally resolve the review, OIC discussed the application further with Council. Council was agreeable to OIC's proposal that the issue of access to processing documents be put to one side while the remainder of the access application was dealt with.⁶
8. At the conclusion of that process, and with no issue remaining for determination other than the question of access to processing documents, the applicant reiterated that he required a formal decision from OIC on this issue.⁷

² [2022] QICmr 10 (4 March 2022) (**T71**). This decision applied the comments made by Hoebe J of the Queensland Civil and Administrative Tribunal (**QCAT**) in *Carmody v Information Commissioner & Ors* (5) [2018] QCATA 18 (**Carmody**) regarding applications that seek access to documents created or received by an agency decision maker in the course of processing and deciding an access application under the RTI Act. It decided that such an application is outside the scope of the RTI Act because:

- the Information Commissioner is a quasi-judicial entity
- the Information Commissioner's external review functions are quasi-judicial functions; and
- an agency decision maker who processes an access application and makes a reviewable decision on the application is 'connected with' the Information Commissioner in relation to the Information Commissioner's quasi-judicial functions.

³ Decision dated 10 October 2023.

⁴ In accordance with the Guideline published by OIC regarding how to deal with applications that include a partial request that falls outside the scope of the RTI Act (i.e., 'mixed applications'), Council asked the applicant to consider removing his request for access to processing documents so as to allow Council to process the remaining (valid) parts of the application. The applicant declined to do so. In those circumstances, the Guideline provides that the agency is entitled to give a decision under section 32 of the RTI Act in respect of the entire application - [Applications outside the scope of the Act | Office of the Information Commissioner Queensland](#).

⁵ By email on 13 December 2023.

⁶ As communicated to the applicant in OIC's letter dated 9 May 2024. While OIC's Guideline on mixed applications currently advises agencies that they are entitled to give a prescribed written notice under section 32(2) in respect of the entire application where one part of it is defective and the applicant refuses to remove the defective part, OIC noted to the applicant and Council that amendments to the RTI Act, anticipated to take effect later in 2025, will amend section 32 of the RTI Act to permit an agency to continue to deal with that part of the application that is not defective (see section 92 of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld)). The proposal in this review to deal with the valid part of the applicant's application was made in recognition of this future change to the RTI Act, and with Council's agreement. See also section 95(1)(a) of the RTI Act - the procedure to be followed on external review is, subject to the Act, within the discretion of the Information Commissioner.

⁷ Email from the applicant on 12 August 2024.

What I do want please before any of this is closed though is a formal decision from your Office about the original problem of [Council's] decision to refuse the application based upon [the] processing documents being outside the scope of the Act.

...

That one would seem to be a glaring abuse of the ACT [sic] that, and for the sake of any future people trying to secure information from an Agency, via that Agency's designated contact (the rti officer), is one that needs to be clarified by proper legal consideration. At the moment, your decision makes any information created by that Agency's contact, outside of the reach of the requestor, effectively hiding any actions they perform which could have a tendency to veil what they do, and reduce their requirement for objectivity. A dangerous precedent that an Information Act should not be subject to.

So please do not close this without issuing the formal decision that is reviewable for everyone to see.

9. By email on 24 September 2024, OIC advised the applicant that it had come to OIC's attention that there was an appeal currently before QCAT in which the applicant had sought to challenge OIC's decision in T71 and to argue that the reasoning in T71 involved an error of law. OIC stated as follows:

The Information Commissioner is not a party to that appeal, and we are unaware of when QCAT might be expected to deliver its decision. However, both Council and OIC are mindful of the continuing delay that would be experienced in finalising this review if we were to await QCAT's decision.

In light of this, and in the interests of resolving this remaining issue as soon as possible, Council has advised that it has no objection to giving you administrative access to the processing documents. I have asked Council to make the necessary access arrangements as soon as possible.

10. Council then released the bulk of the processing documents to the applicant administratively (that is, outside the scope of the RTI Act).⁸ However, the applicant continued to decline to resolve the review until the issue of access to processing documents under the RTI Act had been determined formally by OIC. He proposed that the review remain open until QCAT's decision on this issue was delivered.⁹
11. By email on 11 November 2024, I advised the applicant and Council that I had decided to exercise my discretion under section 90(3) of the RTI Act to suspend the review to await the publication by QCAT of its decision in the relevant appeal.
12. On 18 March 2025, Judicial Member D J McGill SC of QCAT delivered his decision in *Stella v Griffith University*¹⁰ (**Stella**) which involved an access application made under the *Information Privacy Act 2009* (Qld) (**IP Act**) that included a request for processing documents. In that decision, Judicial Member McGill found no error of law in OIC's decision in T71, and confirmed that T71's reasoning applied equally to applications made under the IP Act. Judicial Member McGill confirmed that an agency decision maker, on an application that is reviewable by OIC, is not an agency for the purposes of the RTI Act, or the IP Act (Chapter 3). This is because the decision maker falls within schedule 2, part 2, item 7 of the RTI Act as the holder of an office connected with a quasi-judicial entity (the Information Commissioner) in relation to the Information Commissioner's quasi-judicial functions. Accordingly, a request for access to documents created or obtained by the agency decision maker in the performance of that officer's decision

⁸ On 22 October 2024.

⁹ Email from the applicant on 30 September 2024.

¹⁰ [2025] QCATA 20.

making functions falls outside the RTI Act under section 32(1)(b)(ii)¹¹ and schedule 2, part 2, item 7.

13. A copy of QCAT's decision was provided to the applicant and Council.¹² However, the applicant disputed the application of the decision and provided further submissions in his email of 27 March 2025. He reiterated his request that OIC issue a formal decision to enable him to exercise his appeal rights.¹³

Reviewable decision

14. The decision under review is Council's decision dated 10 October 2023.

Evidence considered

15. Evidence, submissions,¹⁴ legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).
16. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁵ I consider that in observing and applying the law prescribed in the RTI Act, an RTI decision maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,¹⁶ 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.*'¹⁷

Issue for determination

17. The only issue remaining for determination is whether an application for access to an agency's processing documents is outside the RTI Act pursuant to section 32(1)(b)(ii) and schedule 2, part 2, item 7 of the RTI Act.

Relevant law

18. The relevant law is set out in OIC's decision in *T71*,¹⁸ and in QCAT's decision in *Stella*.¹⁹

Applicant's submissions

19. I have considered the submissions that the applicant has made throughout the review process. His central arguments may be summarised as follows:
 - Council's processing documents are only outside the scope of the RTI Act if they are connected to OIC *while* OIC is exercising a quasi-judicial function

¹¹ The equivalent provision in the IP Act is section 52.

¹² On 25 March 2025.

¹³ Email from the applicant on 27 March 2025.

¹⁴ Including the submissions made by the applicant in his external review application on 13 October 2023, and in his emails of 19 March 2024, 7 May 2024, 14 July 2024, 12 August 2024, 30 September 2024, and 27 March 2025.

¹⁵ As embodied in section 21 of the HR Act.

¹⁶ *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 further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by QCAT in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw '*no reason to differ*' from OIC's position).

¹⁷ *XYZ* at [573].

¹⁸ At [16] - [18].

¹⁹ At [74] - [78] and [93] - [100].

- OIC only gains a quasi-judicial status while it is performing its review functions under the RTI Act
- the processing documents created by Council while processing the applicant's earlier application are not documents that were created in relation to OIC while OIC was performing its quasi-judicial review function because they do not have a sufficiently relevant, direct or appropriate connection *'in the context of [the] actual performance of quasi-judicial functions'*
- the applicant did not seek review by OIC of the earlier decision by Council and so OIC at no stage exercised its quasi-judicial review functions in respect of that earlier application
- *'in relation to'* has been interpreted by the High Court as requiring a real and substantial connection,²⁰ thereby *'ensuring exemptions aren't overstretched'*:
There must be some "association" which is "relevant" or "appropriate". The question of the relevance or appropriateness of the connection is a question which cannot be divorced from the particular statutory context.
- in *Carmody*, Hoeben J was able to broaden the scope of the phrase *'in relation to'* because the subject matter of those cases *'involved actual judges and judicial processes'* and the judiciary is afforded greater protections due to the service it is providing: *'nothing like that sort of latitude should reasonably or justifiably exist for an officer (staff person) of an Agency tasked with processing applications'*
- processing documents are documents of an agency under section 12 of the RTI Act
- local councils are agencies for the purposes of section 14 of the RTI Act unless exempted, which they are not
- the object of the RTI Act in section 3 favours disclosure of government information unless it is contrary to the public interest to do so and the RTI Act must be applied and interpreted to further this primary object; and
- OIC's role as *'guardian'* of the RTI Act *'demands fidelity to its pro-disclosure ethos, not the adoption of an interpretation that pre-emptively excludes documents without clear statutory warrant'*.²¹

20. The applicant questioned whether it could reasonably have been the intention of the RTI Act *'to give full immunity and exemption to the only point of contact that a public person has with an Agency'*.²² He also argued that Hoeben J did not directly decide the issue in *Carmody* and that QCAT's decision in *Stella* *'isn't binding precedent outside QCAT, and the OIC has discretion to interpret the Act in line with its primary object rather than entrench a broad exclusion. The reliance on the determination by Justice Hoeben in many cases, fails to take into consideration that that case was very specifically dealing with the primary driver being the judiciary. Cases not involving judicial matters need to be taken on their own merit.'*²³

Findings

21. I acknowledge the applicant's clearly strong views about this issue. However, while Hoeben J's comments in *Carmody* may have been *dicta*,²⁴ QCAT's decision in *Stella* is determinative of the issue.²⁵ Contrary to the applicant's contention, I regard this decision as binding on OIC as a decision of the Appeal Tribunal which, pursuant to section 119

²⁰ The applicant cited reliance on *PMT Partners Pty Ltd v Australian National Parks and Wildlife Service* (1995) 184 CLR 301.

²¹ See the applicant's emails of 7 May 2024 and 27 March 2025.

²² Applicant's email of 27 March 2025.

²³ Applicant's email of 27 March 2025.

²⁴ I reject the applicant's contention in his submission of 27 March 2025 that Hoeben J's comments in *Carmody* are cited by OIC as *'determinative and binding'*. In OIC's email to the applicant on 9 May 2024, the comments were described as *'highly persuasive'*. I note that they were described similarly in *Stella* at [100].

²⁵ See *Stella* at [100].

of the RTI Act, hears and determines appeals of OIC decisions on a question of law.²⁶ I have considered all of the applicant's submissions made throughout the review. However, I am not persuaded that the applicant has identified any ground for departing from the findings made by QCAT in *Stella* and which affirmed as correct, OIC's approach to this issue in *T71*. I note particularly that *T71* found that it was not necessary for the earlier application to have proceeded to an external review by OIC in order for the processing documents to be excluded from the RTI Act. The decision in *Stella* confirmed that it is necessary only for the decision to be reviewable by OIC.²⁷

22. The applicant argues that the RTI Act does not evince a clear intention of Parliament to remove processing documents from the ambit of the Act. However, it is the role of courts and tribunals to interpret and apply the legislation enacted by Parliament. In *Stella*, QCAT has interpreted the relevant provisions contained in both the RTI and IP Acts as operating to provide that requests for access to agency processing documents are outside the Acts.
23. I do not accept the applicant's argument that Hoebe J's comments in *Carmody* should be confined to situations involving access to judicial documents because the judiciary is deserving of higher protection. The decision in *Stella*, which involved documents of a university, makes no such distinction and nor does it identify a ground upon which such a distinction could validly be made.
24. As to the applicant's argument that '*in relation to*' has been interpreted by the High Court in a way that the applicant considers requires a more direct connection to the exercise of quasi-judicial functions than that which exists when an agency decision maker is processing an access application, it is enough merely to note that, in *Stella*, QCAT considered the connection, and the relationship, between the university decision maker and OIC, as sufficient to fall within the wording used in schedule 2, part 2, item 7 of the RTI Act. There is no distinction that I am able to identify between the relationship in that case, and the relationship between Council's decision maker and OIC in the present case, such as to warrant applying a different interpretation to '*in relation to*' in schedule 2, part 2, item 7 than that applied by QCAT in *Stella*.
25. The applicant's reliance on sections 12 and 14 of the RTI Act is misconceived. QCAT decided in *Stella* that an agency decision maker on an application reviewable by OIC is not an agency pursuant to section 14(2) and section 17(b) of the RTI Act. The right of access under section 23(1)(a) of the RTI Act is a right to be given access to documents of an agency.
26. In response to the applicant's contention that the exclusion of processing documents from the RTI Act is inconsistent with the RTI Act's object (in section 3) and its pro-disclosure bias (in sections 39 and 44), I do not accept that the relevant principles contained in those provisions apply to access requests that are outside the scope of the RTI Act. Once the application is determined to fall outside the RTI Act, the Act does not apply to it. As was stated in *Stella*, section 64(4) of the IP Act (the equivalent of which is section 44(4) of the RTI Act) is concerned with the approach to determining if the information is exempt information, or information access to which is, on balance, contrary to the public interest. But if the RTI Act does not apply to the decision maker, it follows that these issues do not apply to the requested processing documents, so there is no relevant pro-disclosure bias: '*There is nothing to indicate that the scope of the Items in*

²⁶ Applying the doctrine of statutory precedent or *stare decisis* which requires that a lower court must follow the binding precedent of a court higher than it in the same judicial hierarchy: *Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) CLR 107 at [11]. See also *TAJ (costs)* [2023] QCAT 133 at [39] for a discussion of the application of the doctrine of precedent where the Appeal Tribunal decision is made by a judicial member of the Tribunal.

²⁷ See *Stella* at [75] - [78].

*Schedule 2 to the RTI Act is to be interpreted in a narrow or restrictive way, or with a pro-disclosure bias.*²⁸

27. Lastly, regardless of what the applicant may consider is OIC's role as '*guardian*' of the RTI Act, it remains my view that the decision in *Stella*, and the interpretation of the relevant statutory provisions decided by QCAT in that decision, are binding on OIC. I have already noted that I can identify no ground in this review upon which QCAT's decision could be distinguished. I therefore consider that I am required to follow it.

DECISION

28. For the reasons explained above, I decide to affirm the decision under review²⁹ by finding that the access application is outside the scope of the RTI Act pursuant to section 32(1)(b)(ii) and schedule 2, part 2, item 7 of the RTI Act.
29. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Stephanie Winson
Right to Information Commissioner

Date: 16 April 2025

²⁸ *Stella* at [83].

²⁹ Section 110(1)(a) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
13 October 2023	OIC received the application for review.
17 October 2023	OIC received the preliminary documents from Council.
30 October 2023	OIC advised the parties that the application had been accepted.
11 March 2024	OIC held a telephone conference with the applicant.
19 March 2024	OIC received an email from the applicant advising that he declined to narrow the scope of his application.
18 April 2024	OIC communicated a preliminary view to the applicant.
7 May 2024	OIC received a submission from the applicant.
9 May 2024	OIC advised the applicant that the remainder of his access application would be dealt with.
25 June 2024	OIC communicated a preliminary view to the applicant about the remainder of his application. OIC received confirmation from Council that it had released responsive documents to the applicant.
14 July 2024	OIC received a submission from the applicant.
17 July 2024	OIC communicated a preliminary view to the applicant. OIC requested that Council conduct additional searches for responsive documents.
30 July 2024	OIC received confirmation from Council that it had released additional documents to the applicant located through the further searches.
12 August 2024	OIC received a submission from the applicant.
24 September 2024	OIC advised the applicant that Council was agreeable to giving him administrative access to the processing documents.
30 September 2024	OIC received a submission from the applicant.
22 October 2024	OIC received confirmation from Council that it had given the applicant administrative access to the processing documents.
11 November 2024	OIC advised the applicant and Council that the review would be suspended to await QCAT's decision.
25 March 2025	OIC provided the applicant and Council with a copy of QCAT's decision.
27 March 2025	OIC received a submission from the applicant.