



Decision and Reasons for Decision

Application Number: 310001

Applicant: Black

Respondent: Brisbane City Council

Decision Date: 16 December 2010

Catchwords: RIGHT TO INFORMATION – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – NON-EXISTENT DOCUMENTS – applicant seeks access to CCTV footage of a workplace incident – applicant contends further CCTV footage should exist – whether there are reasonable grounds for agency to be satisfied that documents do not exist – whether agency has provided a reasonable explanation for why further documents do not exist - whether access to documents can be refused under sections 47(3)(e) and 52(1)(a) of the *Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant applied under the *Right to Information Act 2009* (Qld) (**RTI Act**) to Brisbane City Council (**BCC**) for documents, including CCTV footage, relating to an incident that occurred in the foyer of Green Square, a BCC building and the subsequent investigation by BCC.
2. Initially BCC refused access to all documents, but on internal review released CCTV footage to the applicant.
3. Subsequently in the course of considering the external review, BCC released further documents.
4. The outstanding issue relates to the CCTV footage. BCC submitted that there was no further footage in existence. The applicant submitted that there should be further footage available. The Right to Information Commissioner affirmed BCC's decision on the basis that the CCTV footage sought by the applicant does not exist.

Background

5. The significant procedural steps taken during the application process and external review are set out in the Appendix.

Decision under review

6. The decision under external review is BCC's decision to refuse access to documents under section 47 of the RTI Act.¹

Evidence Relied Upon

7. In making my decision in this matter, I have taken the following into consideration:
 - the Access Application, Initial Decision, application for internal review, internal review decision and External review Application;
 - file notes of telephone conversations with the applicant during the course of the review;
 - file notes of telephone conversations with BCC during the course of this review;
 - written correspondence from the applicant during the course of this review;
 - written correspondence from BCC during the course of this review;
 - relevant sections of the RTI Act;
 - previous decisions of the Information Commissioner of Queensland and decisions and case law from Australian jurisdictions or courts as identified in this decision.

Information in Issue

8. The Access Application described the subject matter of the documents sought as:

all documents and CCTV security camera footage relating to a complaint made by the applicant about an incident at the lift foyer GSQ on 06/08/09.

¹ As BCC made its internal review decision outside the statutory timeframe outlined in section 83(2) of the RTI Act, the decision under external review is a deemed affirmation of BCC's original decision of 23 September 2010.

9. The type of documents were described in the Access Application as:

all CCTV footage – security cameras at GSQ foyers GRND level and lower level and the time period specified for the CCTV footage was 05/08/09 to 07/08/09.

10. The Applicant received some CCTV footage covering the incident which was the subject matter of his application. He believes however, that there is further CCTV footage responsive to his application and it is this further footage that is the subject of this decision. The applicant also believes that the CCTV footage he received has been tampered with.

The Law

11. The RTI Act gives a person a right to access documents of an agency.² However, access may be refused where a document is nonexistent or unlocatable³

12. In making this decision, I have considered whether the documents are nonexistent or unlocatable in terms of sections 47(3)(e) and 52(1)(a) of the RTI Act.

13. The principles that apply when refusing access to nonexistent documents were detailed in *PDE and the University of Queensland (PDE)*⁴ a case which dealt with the equivalent provisions under the now repealed *Freedom of Information Act 1992 (Qld)*.

14. In PDE, the Information Commissioner stated that, in order to be satisfied that documents are nonexistent, agencies must rely on their particular knowledge and experience and have regard to various key factors including:

- administrative arrangements of government
- structure of the agency
- functions and responsibilities of the agency
- practices and procedures of the agency (including but not limited to its information management approach)
- other factors reasonably inferred from information supplied by the applicant including nature and age of the requested documents and nature of the government activity the request relates to.

Findings

15. The applicant submitted that further CCTV footage should exist and that BCC had failed to comply with its own policies regarding records. He submits that the further footage did exist at the time of the Access Application, 25 August, 2009 and that the BCC has deliberately prevented access to such footage.

16. BCC submits that there is no further CCTV footage in existence and has provided the applicant with an explanation regarding the allegation with respect to tampering.

17. BCC submitted that footage of the incident of 6 August 2009 was identified and isolated shortly after the event and stored separately by the Council's Ethical Standards Unit for the purposes of conducting an investigation.

² Section 23 of the RTI Act.

³ Section 47(3)(e) of the RTI Act.

⁴ Unreported, Queensland Information Commissioner, 9 February 2009.

18. BCC advises that CCTV footage is recorded over a four week period and any footage not identified and isolated would have been recorded over numerous times.
19. The only available footage that was retained by the Ethical Standards Standard Unit was supplied to the applicant.
20. BCC advises that the original footage was recorded using an older technology. When provided to the applicant, it was produced using a newer system which delivers a better quality vision. The CCTV footage as originally recorded would have been difficult for the applicant to view.
21. In making its Initial Decision, it is clear that the BCC considered the relevant CCTV footage as limited by the reference in the Access Application to the complaint made by the applicant about an incident in the foyer of Green Square. The CCTV footage relevant to this incident was retained and it is this that was released to the Applicant.
22. I am satisfied that this was an appropriate approach for the BCC to take and that the applicant has been provided with all CCTV footage responsive to his request..
23. I am satisfied that any CCTV footage recorded at times surrounding the incident that may have existed, has now been recorded over and does not exist.
24. On the basis of the BCC submissions, I am satisfied that there are reasonable grounds for BCC to be satisfied that the further CCTV footage sought by the applicant do not exist.
25. Accordingly, I find that access to further CCTV footage can be refused under section 47(3)(e) and 52(1)(a) of the RTI Act on the basis that the documents do not exist.

DECISION

26. I affirm BCC's decision to refuse access to the extent that further CCTV footage does not exist.
27. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Jenny Mead
Right to Information Commissioner

Date: 16 December 2010

Appendix

Significant Procedural Steps

Date	Event
25 August 2009	Applicant applies to BCC for documents relating to a workplace incident on 6/8/09 at Green Square, a BCC Building.
23 September 2009	BCC informs applicant of its decision to refuse access to the documents as they are exempt under Schedule 3 section 10(1)(a).
28 September 2009	Applicant applied to BCC for an internal review of its decision.
9 November 2009	BCC informed the applicant of its decision on internal review affirming the original decision with respect to some documents but varying it by granting access to the CCTV footage in issue.
1 December 2009	Applicant applied to Office of the Information Commission (OIC for external review on the basis that it was in the public interest to release documents relating to an investigation of the workplace incident. The applicant also applied for review on the basis that there should be further CCTV footage available and/or that the footage supplied has been tampered with.
15 January 2010	BCC provides OIC with documents and advise that no further CCTV footage was kept for the period, other than that already supplied to applicant.
19 February 2010	OIC conducts verbal consultation with third parties regarding release of documents.
19 February 2010	BCC advise that some third parties confused over role of OIC and purpose of consultation.
13 April 2010	Written consultation with third parties, by email.
23 June 2010	Letter advising BCC of preliminary view with respect to written documents and seeking submission regarding sufficiency of search for further CCTV footage.
6 July 2010	BCC provides OIC with written submissions regarding further CCTV footage and advises that it accepts the OIC preliminary view with respect to the release of written documents subject to the removal of personal information.
24 August 2010 – 6 September 2010	OIC contacts BCC on 4 separate occasions requesting that documents be provided to applicant as agreed.
9 September 2010	BCC supplies applicant with documents in accordance with preliminary view of 23/6/10.
28 September 2010	Applicant advised by telephone of BCC submissions regarding the existence of further CCTV footage. Applicant advised that he was satisfied with the documents provided by BCC on 9/9/10 and does not wish to pursue this aspect of the external review application. He does wish to pursue the issue of the CCTV footage.
5 October 2010	Letter from OIC to applicant advising of preliminary view with respect to CCTV footage and detailing BCC submissions in this regard. Applicant asked for further submissions in this regard by 20 October 2010.
19 October 2010	Applicant lodges submissions regarding CCTV footage.