



Decision and Reasons for Decision

Citation: Z23 and City of Moreton Bay [2026] QICmr 24 (16 February 2026)

Application Number: 319185

Applicant: Z23

Respondent: City of Moreton Bay

Decision Date: 16 February 2026

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - applicant seeks access to information concerning the identity of a complainant - whether disclosure could reasonably be expected to enable the existence or identity of a confidential source of information in relation to the enforcement or administration of the law, to be ascertained - whether information is exempt from disclosure under sections 47(3)(a) and 48 and schedule 3, section 10(1)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to City of Moreton Bay (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for all documents concerning a complaint about flashing lights.
2. Council located one responsive page. Council decided² to refuse access to several segments of identifying information on this page – the '**Information in Issue**' – on the ground disclosure of those segments would, on balance, be contrary to the public interest.³
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.⁴
4. For the reasons stated below, I have decided to vary Council's decision.⁵ I find that Council may refuse access to the Information in Issue, on the basis it comprises exempt information, disclosure of which could reasonably be expected to enable the identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.⁶

¹ Application dated 24 November 2025.

² By decision dated 8 December 2025 - the '**Reviewable Decision**'.

³ Sections 47(3)(b) and 49 of the RTI Act. The balance of the page was released to the applicant.

⁴ External review application dated 11 December 2025.

⁵ Section 110(1)(b) of the RTI Act and noting that section 105(1) of the RTI Act gives the Information Commissioner power to decide any matter in relation to an access application that could, under the RTI Act, have been decided by an agency.

⁶ Section 47(3)(a) and schedule 3, section 10(1)(b) of the RTI Act.

5. 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.⁷ 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,⁸ 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:⁹ '*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 1982.*'¹⁰

Relevant law

6. The RTI Act grants a right of access to documents of an agency or Minister, subject to the limitations.¹¹ One such limitation is that an agency may refuse access to a document to the extent it comprises exempt information.¹²
7. Relevantly, information is exempt if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained: schedule 3, section 10(1)(b) of the RTI Act.
8. Information will be exempt under schedule 3, section 10(1)(b) of the RTI Act where:
- there exists a confidential source of information¹³
 - the information which the confidential source has supplied is in relation to the enforcement or administration of the law; and
 - disclosure of the Information in Issue could reasonably be expected¹⁴ to enable the existence or identity of the confidential source of information to be ascertained (**Confidential Source Exemption**).¹⁵
9. In considering this exemption, a decision maker must also have regard to the exceptions outlined in schedule 3, section 10(2) of the RTI Act. Schedule 3, section 10(2) of the RTI Act provides that information is not exempt information if it consists of:

(a) *matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or*

⁷ As embodied in section 21 of the HR Act.

⁸ *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 Queensland Civil and Administrative Tribunal Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

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

¹⁰ XYZ at [573].

¹¹ Section 23(1) of the RTI Act.

¹² Section 47(3)(a) and 48 of the RTI Act.

¹³ A '*confidential source of information*' is a person who has supplied information on the understanding, express or implied, that their identity will remain confidential: *McEniery and Medical Board of Queensland* (1994) 1 QAR 349, [21]-[22] (**McEniery**). *McEniery* considered the application of section 42(1)(b) of the repealed *Freedom of Information Act 1992* (Qld), identical in terms to schedule 3, section 10(1)(b) of the RTI Act.

¹⁴ The phrase '*could reasonably be expected*' requires a decision-maker to distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* [1994] 1 QAR 279, [154]-[160] (a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld)). Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*': See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21, [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19, [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180, [190].

¹⁵ *McEniery and Medical Board of Queensland* (1994) 1 QAR 349 (**McEniery**) at [16]. *McEniery* considered the application of section 42(1)(b) of the repealed *Freedom of Information Act 1992* (Qld), identical in terms to schedule 3, section 10(1)(b) of the RTI Act, and has been relied upon in subsequent decisions applying schedule 3, section 10(1)(b) of the RTI Act, including *94HQWR and Queensland Police Service* [2014] QICmr 45 (10 November 2014) at [16]-[31] and *Shirrone Pty Ltd and Department of Agriculture, Fisheries and Forestry* [2014] QICmr 46 (18 November 2014) at [13]-[45].

- (b) *matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or*
- (c) *a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or*
- (d) *a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the Crime and Corruption Act 2001); or*
- (e) *a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.*

Preliminary view

10. By letter dated 22 January 2026, I wrote to the applicant explaining my preliminary view that access to the Information in Issue may be refused on the grounds it comprised exempt information under the Confidential Source Exemption. Having set out the three requirements for exemption stated in paragraph 8 above, I advised as follows:¹⁶

All three requirements are met in this case.

As regards the first, I am satisfied that the Information in Issue was communicated to Council by the source, subject to an implicit shared understanding the source's identity would be kept confidential. The Information Commissioner has identified various considerations that may be relevant to establishing the existence of an implicit shared understanding of confidence:

The determination of whether the relevant information was supplied by the informant and received by the respondent on the implicit understanding that the informant's identity would remain confidential ... requires a careful evaluation of all the relevant circumstances including, inter alia, the nature of the information conveyed, the relationship of the informant to the person informed upon, whether the informant stands in a position analogous to that of an informer ..., whether it could reasonably have been understood by the informant and recipient that appropriate action could be taken in respect of the information conveyed while still preserving the confidentiality of its source, whether there is any real (as opposed to fanciful) risk that the informant may be subjected to harassment or other retributive action or could otherwise suffer detriment if the informant's identity were to be disclosed, and any indications of a desire on the part of the informant to keep his or her identity confidential ...

The above considerations are relevant. As explained in Council's 'Light Pollution Fact Sheet' (enclosed), Council keeps complainant particulars of the kind in issue in this case confidential. This fact, together with the type of information communicated, and the context of its communication, are such that I consider both the source and Council intended that the source's identity should be kept confidential. Importantly, the nature of the complaint was such that it was reasonable for both parties to understand that Council could take appropriate action - independently assess that complaint - whilst maintaining the confidentiality of the source's identity.

Having regard to all relevant circumstances, I am satisfied there existed a common implicit understanding between the source and Council that the former's identity would be treated confidentially by Council.

¹⁶ Footnotes omitted. The quoted passage is an extract from *McEnery*, [50]. The 'Light Pollution Fact Sheet' referred to in this letter had been supplied to OIC by Council. A copy of this document, which also states that light pollution complaints are dealt with by Council under the *Environmental Protection Act 1994* (Qld), was enclosed with my letter.

11. I went on in my 22 January 2026 letter to explain my view that the second and third requirements for establishing the Confidential Source Exemption were satisfied. I then canvassed the exceptions to the Confidential Source Exemption,¹⁷ noted that none applied in this case, and stated: *'the Information in Issue comprises exempt information under schedule 3, section 10(1)(b) of the RTI Act, to which access may be refused under sections 47(3)(a) and 48 of the RTI Act'*.

Applicant's submissions

12. The applicant replied to my preliminary view by way of brief submissions dated 5 February 2026. Those submissions essentially comprise speculation as to the identity of the confidential source, reiterating submissions made in her application for external review.

Findings

13. While I have considered the applicant's submissions, they contain nothing to cause me to reconsider the preliminary view outlined above. As I advised the applicant in my 22 January 2026 letter, *'[i]t is not the role of the Information Commissioner to confirm or dispel an applicant's suspicions or guesswork'* in cases of this kind.¹⁸
14. I am satisfied that the Information in Issue meets the requirements of the Confidential Source Exemption. For the reasons explained at paragraph 10, there exists a confidential source of information. The information supplied by that source relates to the enforcement or administration of the law, being the *Environmental Protection Act 1994* (Qld). It is not *'irrational, absurd or ridiculous'*¹⁹ to expect that release of the identifying particulars comprising the Information in Issue would permit identification of the confidential source. Accordingly, disclosure of the Information in Issue could reasonably be expected to enable the source's identity to be ascertained. Finally, none of the exceptions to the Confidential Source Exemption apply in this case.
15. The Information in Issue therefore comprises exempt information, to which access may be refused.

DECISION

16. For the reasons set out above, I vary the Reviewable Decision²⁰ and find that Council may refuse access to the Information in Issue, on the basis that it comprises exempt information under section 47(3)(a) and schedule 3, section 10(1)(b) of the RTI Act.
17. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Jim Forbes
Assistant Information Commissioner

Date: 16 February 2026

¹⁷ Set out in paragraph 9 above.

¹⁸ *Ainsworth & Ainsworth Nominees Pty Ltd and Criminal Justice Commission* (1999) 5 QAR 284, [70].

¹⁹ See note 14.

²⁰ Under section 110(1)(b) of the RTI Act.