



## Decision and Reasons for Decision

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Citation:	<i>Hof and Rockhampton Regional Council</i> [2015] QICmr 8 (15 April 2015)
Application Number:	312011
Applicant:	Hof
Respondent:	Rockhampton Regional Council
Decision Date:	15 April 2015
Catchwords:	ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO THE PUBLIC INTEREST INFORMATION – information relating to complaints the applicant made to Council – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)

### REASONS FOR DECISION

#### Summary

1. The applicant applied to the Rockhampton Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a wide range of information including information about a number of complaints the applicant made to Council.
2. Council refused access to some of the requested information and the applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.
3. The remaining information for consideration on external review relates to Council's handling of complaints the applicant made about:
  - other individuals and their businesses complying with Council regulations; and
  - Council officers accessing his property.
4. For the reasons set out below, access to this information is refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

#### Background

5. Significant procedural steps relating to the external review are set out in the appendix.

## Reviewable decision

6. The decision under review is Council's internal review decision dated 27 March 2014.

## Evidence considered

7. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and appendix).

## Issues for determination

8. A number of issues were informally resolved on external review.<sup>1</sup> The remaining issue for consideration is whether access to the Category A and B information (identified at paragraphs 13 and 35 below) can be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.<sup>2</sup>
9. The applicant provided OIC with extensive submissions in support of his case in relation to the Category A and B information which I have carefully considered.<sup>3</sup> To the extent these submissions are relevant to the issues for determination, I have addressed them below.

## Relevant law

10. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>4</sup> However, this right is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.<sup>5</sup> Access to a document may be refused if its disclosure would, on balance, be contrary to the public interest.<sup>6</sup>
11. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>7</sup> and explains the steps that a decision-maker must take<sup>8</sup> in deciding the public interest as follows:
- identify any irrelevant factors and disregard them
  - identify relevant public interest factors favouring disclosure and nondisclosure
  - balance the relevant factors favouring nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.

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<sup>1</sup> Council located and agreed to release additional information to the applicant on external review. The applicant also accepted OIC's preliminary view in relation to a number of refusal of access and sufficiency of search issues. As these issues have been resolved informally, they are no longer in issue on external review and are not dealt with in these reasons for decision.

<sup>2</sup> The Category A and B information appears in 63 pages. The specific page numbers were identified in correspondence to the applicant dated 19 December 2014 and 25 February 2015.

<sup>3</sup> The applicant made submissions on various occasions as identified in the appendix to these reasons. The submissions which relate to the Category A and B information are primarily set out in the applicant's internal review application, external review application and correspondence to OIC dated 30 January 2015 and 17 March 2015.

<sup>4</sup> Section 23 of the RTI Act.

<sup>5</sup> As set out in section 47 of the RTI Act.

<sup>6</sup> Sections 47(3)(b) and 49 of the RTI Act. The term *public interest* refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>7</sup> Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive; in other words, factors that are not listed may also be relevant.

<sup>8</sup> Section 49(3) of the RTI Act.

## Findings

12. No irrelevant factors arise in relation to the Category A and B information and I have not taken any into account. I will now consider the relevant factors favouring disclosure and nondisclosure of this information.

### Category A information

13. The Category A information comprises information about Council's handling of a number of complaints the applicant made about other individuals and/or their businesses, including identifying information and correspondence between Council and the subject individuals/businesses.

### Accountability and transparency

14. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:<sup>9</sup>
- promote open discussion of public affairs and enhance the Government's accountability<sup>10</sup>
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;<sup>11</sup> and
  - reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>12</sup>
15. In summary, the applicant submits that significant weight can be afforded to these factors and that Council has discriminated against him because Council required him to lodge a Material Change of Use Application, at considerable cost, but has not required other landholders to do so. The applicant relevantly submits that:<sup>13</sup>
- his complaints relate to Council's decisions to not require other business operators to lodge these applications notwithstanding that their companies did not hold the relevant approvals to undertake certain business activities from the relevant premises
  - Council has failed to resolve the applicant's concerns to his satisfaction and the information disclosed to date has been insufficient and does not demonstrate the factors which Council took into account when making its decisions
  - the information directly relates to Council's decision in relation to compliance issues and Council should be transparent in such decisions and directly accountable to the public; and
  - disclosing the documents will demonstrate the factors Council took into account when making its decisions, inform the public of Council's operations, policies and guidelines and contribute to public confidence in Council's integrity.

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<sup>9</sup> The term 'could reasonably be expected to' requires that the expectation be reasonably based, that it is neither irrational, absurd or ridiculous, nor merely a possibility. The expectation must arise as a result of disclosure, rather than from other circumstances. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the document will produce the anticipated prejudice. See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at paragraph 31.

<sup>10</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>11</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>12</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>13</sup> Submissions dated 29 April 2014, 30 January 2015 and 17 March 2015.

16. Council must be transparent and accountable in how it deals with complaints. I acknowledge that disclosing the Category A information may provide the applicant with a more comprehensive understanding of how Council handled his complaints and the reasoning behind its decisions. This would advance these factors to some degree and I consider that these factors are relevant. However the requirement for Council to be accountable and transparent in complaints handling does not, in my view, oblige Council to provide the applicant with access to its entire complaint files nor reveal all of the information it gathered in dealing with the complaints.
17. I understand that the applicant initiated the complaints and would like to know both the outcome of the complaint and how Council dealt with the issues he raised. Information regarding Council's handling of the applicant's complaints has been released to the applicant and reveals the steps Council took to investigate the complaints, the information provided by the subjects of the complaints and the outcomes.<sup>14</sup> The disclosure of this information to the applicant significantly advances these public interest factors in relation to these complaints.
18. The applicant refers to the decision in *Huang and Redland City Council*<sup>15</sup> and submits that:<sup>16</sup>
  - the Category A information relates to companies who operate businesses and provide services to Council
  - government agencies are required to undertake their duties and business in an open, accountable and transparent way; and
  - private sector businesses wishing to contract with government to perform public services accept an appropriate level of scrutiny of their dealings with government and their performance.
19. The information in issue in *Huang* was a tender submission provided to Council by a company and is not similar to the Category A information in this review. The complaints in this review are unrelated to the provision of services to Council – they relate to other aspects of the business operations and compliance with Council regulations. Therefore, I do not consider the comments in *Huang* are relevant to the Category A information and they do not add weight to these factors.
20. For the reasons set out above, I afford limited weight to these factors.

### **Applicant's personal information**

21. A factor favouring disclosure will arise where the relevant information is the applicant's personal information.<sup>17</sup> Personal information is 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.<sup>18</sup>
22. The applicant submits that the information does relate to him as it relates to his complaints.<sup>19</sup> The Category A information is not about the applicant and the applicant's

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<sup>14</sup> Pages 1-6, 9-13, 103-105 and 117-124.

<sup>15</sup> (Unreported, Queensland Information Commissioner, 8 September 2010) (*Huang*).

<sup>16</sup> Submissions dated 17 March 2015.

<sup>17</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>18</sup> Schedule 6 of the RTI Act and section 12 of the *Information Privacy Act 2009 (Qld)*.

<sup>19</sup> Submission dated 30 January 2015.

identity cannot reasonably be ascertained from that information.<sup>20</sup> The fact that the applicant made a complaint to Council does not necessarily mean that information about how Council dealt with those issues comprises the applicant's personal information. As the Category A information does not comprise the applicant's personal information, this factor does not apply.

### **Personal information and privacy of other individuals**

23. The RTI Act also recognises that:

- a factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy;<sup>21</sup> and
- disclosing information could reasonably be expected to cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>22</sup>

24. The applicant relevantly submits that:<sup>23</sup>

- the information relates to companies that operate businesses and contract to Council but it does not comprise the private information of specific individuals; and
- the decision in *Mahoney* supports the applicant's view that information of significance to land owned by an individual does not necessarily constitute personal information and, in some circumstances, there is an insufficient connection between the information sought and the individual's personal information.

25. The Category A information identifies the individuals who operate the businesses which are the subject of the complaints. The information is also about the individuals as it relates to how they operate the businesses and their personal circumstances. I am therefore satisfied the Category A information comprises the personal information of these individuals and the nondisclosure factor relating to personal information identified above is relevant.

26. The information appears in the context of Council compliance investigations. It includes information these individuals provided to Council for the purpose of those investigations. As a result, I consider the Category A information is sensitive and its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals. I am satisfied that the extent of the public interest harm that could be anticipated from disclosure is significant. For the reasons set out above, I afford both of these factors favouring nondisclosure significant weight.

### **Balancing the relevant public interest factors**

27. The RTI Act is to be administered with a pro-disclosure bias meaning that access to information should be granted unless giving access would, on balance, be contrary to the public interest.<sup>24</sup> I have taken into account the pro-disclosure bias in balancing the relevant factors.

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<sup>20</sup> *Mahoney and Ipswich City Council* (Unreported, Queensland Information Commissioner, 17 June 2011) (***Mahoney***) at paragraphs 18 and 19.

<sup>21</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>22</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>23</sup> Submission dated 17 March 2015.

<sup>24</sup> Section 44 of the RTI Act.

28. Disclosing the Category A information may provide the applicant with a more comprehensive understanding of how Council handled his complaints and the reasoning behind its decisions. However, the release of information about the complaints to the applicant significantly furthers these public interest factors. I afford limited weight to each of the three public interest factors favouring disclosure of the Category A information.
29. The Category A information comprises the personal information of other individuals and its disclosure could reasonably be expected to prejudice the protection of their right to privacy. Given the nature of the Category A information and the context in which it appears, I afford significant weight to the two public interest factors favouring nondisclosure.
30. Accordingly, I find that the factors favouring nondisclosure of the Category A information outweigh the factors favouring disclosure. For these reasons, access to the Category A information is refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

### **Third party consultation**

31. The applicant raised a procedural issue in submissions to OIC which can be summarised as follows:<sup>25</sup>
  - some of the Category A information relates to a particular individual
  - the applicant has been in contact with that individual and considers that the individual may consent to disclosure of the information if OIC consults them as a third party
  - OIC undertook third party consultation with other individuals on external review and it is unclear why this individual has not been consulted
  - if this individual consents to disclosure of the relevant information, the public interest factors favouring nondisclosure would not apply; and
  - the RTI Act does not prevent OIC from undertaking third party consultation in these circumstances.
32. Section 97(4) of the RTI Act provides that if the Information Commissioner has decided not to notify a person of the review, and it later becomes apparent that documents in which the person has an interest are likely to be released, the Information Commissioner must take reasonable steps to notify the person of the likely release if the release may reasonably be expected to be of concern to the person.
33. OIC consulted with other third parties on external review to notify them of the likely release of certain information. This was because OIC had reached the view that the information was likely to be disclosed under the RTI Act. However, I am satisfied that access to the Category A information can be refused for the reasons previously addressed. Accordingly, it is not necessary for me to undertake third party consultation with the relevant individual in relation to this information, despite the applicant's view.
34. The applicant submits that the RTI Act does not prevent OIC from undertaking third party consultation in these circumstances.<sup>26</sup> The procedure to be followed on external review is, subject to the RTI Act, within the discretion of the Information

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<sup>25</sup> Submissions dated 29 April 2014, 30 January 2015 and 17 March 2015.

<sup>26</sup> Submissions dated 17 March 2015.

Commissioner.<sup>27</sup> As I am satisfied that access to the relevant information can be refused under section 47(3)(b) of the RTI Act, I have decided not to consult with the relevant third party in the circumstances of this review.<sup>28</sup>

### **Category B information**

35. The Category B information relates to Council's handling of a complaint the applicant made about Council officers accessing his property, including file notes of the investigator's interviews with the officers and the recommended action to be taken against the officers as a result of the complaint being substantiated.

### **Accountability and transparency**

36. The applicant submits that the factors relating to accountability and transparency should be afforded significant weight and provided extensive submissions which can be summarised as follows:<sup>29</sup>
- he has a general right of access to documents held by the government and an open and accountable government is enhanced by the provision of access to documents
  - refusing access to information, which directly relates to the applicant's complaint that Council has exceeded its powers of entry, is contrary to the intent and purpose of the RTI Act, particularly as the applicant's complaint was substantiated
  - if the statements and opinions expressed by Council officers are truthful and accurate there is no reason for access to be refused
  - the applicant wants to understand why the unauthorised access took place, the reasoning behind Council's approach to the complaint and the steps taken by Council to prevent future unauthorised access; and
  - disclosure could reasonably be expected to contribute to public confidence in the integrity of Council and the statements by Council officers should be disclosed so that the functions and actions of the government can be accountable and transparent.
37. There is no evidence to suggest that the statements and opinions expressed by Council officers are not truthful and accurate. As noted above at paragraph 10, the general right of access to information under the RTI Act is subject to limitations and access to information may be refused if its disclosure would, on balance, be contrary to the public interest. The factors favouring disclosure of the Category B information must be considered together with any countervailing nondisclosure factors.
38. I have considered whether disclosing the Category B information could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability<sup>30</sup>
  - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community;<sup>31</sup> and

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<sup>27</sup> Section 95(1)(a) of the RTI Act.

<sup>28</sup> As a delegate of the Information Commissioner.

<sup>29</sup> Internal review application and submissions to OIC dated 29 April 2014, 30 January 2015 and 17 March 2015.

<sup>30</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>31</sup> Schedule 4, part 2, item 3 of the RTI Act.

- reveal the reason for a government decision and any background or contextual information that informed the decision.<sup>32</sup>
39. As I have explained at paragraph 16 above, Council must be transparent and accountable in how it deals with complaints and I acknowledge that disclosing the Category B information may provide the applicant with a more comprehensive understanding of how Council handled his complaint and the reasoning behind its decision. However, Council is not obliged to provide the applicant with access to its entire complaint file nor reveal all of the information it gathered in dealing with the complaint.
40. Council has released a considerable amount of information to the applicant relating to this complaint, including a summary of the investigation findings and recommendations, and specifically:
- the investigation report by Council's Ethics and Integrity Officer which details the issue, relevant legislation, background, methodology, conclusions, risks and recommendations<sup>33</sup>
  - a letter from the Manager of Corporate Support and Risk to the CEO attaching the investigation report and the draft outcome letter to the applicant<sup>34</sup>
  - a letter from the CEO to the applicant which summarises the findings and recommendations from the investigation<sup>35</sup>
  - internal Council documents which reveal the specific issues which the investigating officer considered as part of the investigation process, information about the training each of the subject officers undertook and information about scheduling interviews with the subject officers;<sup>36</sup> and
  - correspondence between the applicant and Council and other internal Council correspondence relating to the complaint.<sup>37</sup>
41. The release of this information to the applicant significantly advances these public interest factors and reveals how Council handled the complaint and the reasons for its decision. The Category B information is limited to information provided by the subject officers to the investigator and information about the recommended action to be taken against them. Given the extent of the information previously released to the applicant about his complaint, I do not consider that disclosing the Category B information, which is limited in nature, would further these public interest factors significantly and I afford each of them only moderate weight.

### **Applicant's personal information**

42. A factor favouring disclosure will arise if the information is the applicant's personal information.<sup>38</sup>
43. The applicant submits that the information comprises his personal information as it relates to him and his property and that significant weight should be afforded to this factor because:<sup>39</sup>

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<sup>32</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>33</sup> Pages 228-241.

<sup>34</sup> Pages 255-256.

<sup>35</sup> Pages 252-254 and 257-259.

<sup>36</sup> Pages 170-173, 184 and 202.

<sup>37</sup> Pages 13, 149-154, 183, 185-187, 213, 223, 314 and 316-319.

<sup>38</sup> Schedule 4, part 2, item 7 of the RTI Act. The definition of 'personal information' is set out at paragraph 21 above.

<sup>39</sup> Submissions dated 30 January 2015 and 17 March 2015.



- property is one of the most important assets that an individual has and any interference with the land has the potential to significantly alter an individual's personal and financial affairs; and
  - the information may adversely affect the applicant as it may include adverse comments about him.
44. The information provided by the subject officers generally relates to the applicant and his complaint made to Council about access to his property. I am satisfied that it comprises the applicant's personal information and I afford significant weight to this factor in relation to that part of the Category B information.
45. Information about the recommended action to be taken against Council officers is not information about the applicant and the applicant's identity cannot reasonably be ascertained from that information.<sup>40</sup> This information does not comprise the applicant's personal information. The fact that the recommended action arises as a result of the applicant's complaint, does not mean the information comprises the applicant's personal information. This factor does not apply in relation to that part of the Category B information.

### **Personal information and privacy of other individuals**

46. I have considered whether disclosing the Category B information could reasonably be expected to:
- prejudice the protection of an individual's right to privacy;<sup>41</sup> and
  - cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>42</sup>
47. The Category B information is about the conduct of Council officers in the context of their employment. I am satisfied that the Category B information is about the Council officers and their identities can reasonably be ascertained from the information. Accordingly, I am satisfied that the Category B information clearly comprises their personal information.
48. The applicant submits that the Category B information is not the personal information of Council officers and has provided extensive submissions supporting his case which I have summarised as follows:<sup>43</sup>
- the information was generated because the Council officers purportedly undertook a compliance inspection which is part of their day-to-day work duties and responsibilities
  - the information provided by the Council officers relates to their professional opinions given in a wholly professional capacity and these officers have a reasonable expectation that their official duties will be subject to review from time to time; and
  - the information does not relate to the personal affairs of a Council officer, it relates to their views about the applicant formed whilst purportedly undertaking their local government functions.

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<sup>40</sup> Mahoney at paragraphs 18 and 19.

<sup>41</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>42</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>43</sup> Internal review application and submissions to OIC dated 29 April 2014, 30 January 2015 and 17 March 2015.

49. I acknowledge that information relating to the day-to-day work duties and responsibilities of a public sector employee may generally be disclosed under the RTI Act, despite it falling within the definition of personal information. This is because the potential harm from disclosing routine personal work information is, in most circumstances, minimal or nonexistent.<sup>44</sup> However, agency documents can also contain personal information of employees which is not *routine* work information even though the information arises in a work context. I am satisfied that the Category B information in this case is personal information of this kind. Although the personal information appears in a workplace context, it comprises:
- the opinions, observations and experiences of the relevant individuals obtained in the context of an investigation into their conduct; and
  - recommendations about the action to be taken as a result of the complaint being substantiated against them.
50. As a result, I consider such information is not related wholly to the routine day-to-day work activities of these individuals and is not their routine personal work information. It is therefore relevant to consider the extent of the harm that could result from disclosing the personal information of other individuals under the RTI Act. The information is sensitive and personal in nature. I consider its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals and the extent of the public interest harm that could be anticipated from disclosure is significant. As a result, I afford both of these public interest factors favouring nondisclosure significant weight in relation to the Category B information.
51. The applicant submits that the names of the relevant individuals can be deleted from the Category B information, so that the Council officers cannot be identified, and also any personal views expressed by the officers about other Council officers. The applicant submits that excluding this information would remove the grounds for nondisclosure.<sup>45</sup> However the applicant is aware of the identity of the subject officers given that he initiated the complaint to Council and has had previous dealings with these Council officers. The information which Council has previously released to the applicant would also enable him to identify these individuals in the Category B information. Given the nature of the Category B information and the way in which it is presented, it is not possible to de-identify the Council officers by deleting this information from the documents. I am satisfied that the identities of these officers would be reasonably ascertainable despite the deletion of their names (and any views about other Council officers) from these documents.

### **Prejudice management function**

52. The RTI Act gives rise to factors favouring nondisclosure where disclosing information could reasonably be expected to prejudice an agency's management function<sup>46</sup> or its ability to obtain confidential information.<sup>47</sup>
53. Staff usually supply information to workplace investigators on the understanding that it will only be used for the investigation or any subsequent disciplinary action. It is

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<sup>44</sup> In *Australian Broadcasting Corporation and Psychologists Board of Australia* (Unreported, Queensland Information Commissioner, 3 January 2012) the Assistant Information Commissioner explained (at paragraph 20) that this is due to a number of factors including that: (i) public service officers are employed in the business of government which delivers services to the public and the public is generally entitled to know the identity of the service deliverers, advice givers and decision-makers and (ii) a reasonable public service officer would expect that information that is solely their routine personal work information would be made available to the public.

<sup>45</sup> Submissions dated 30 January 2015 and 17 March 2015.

<sup>46</sup> Schedule 4, part 3, item 19 of the RTI Act.

<sup>47</sup> Schedule 4, part 3, item 16 of the RTI Act.

reasonable to expect staff to cooperate with an investigative process. As noted previously, the Category B information is information the Council officers have provided in the context of an investigation into their conduct and relates to the action taken against them. In my view, disclosing this type of information outside of the investigation process and under the RTI Act, where there can be no restriction on its use, dissemination or republication, could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of information to investigators. This, in turn, could reasonably be expected to adversely impact Council's ability to conduct workplace investigations and manage staff.<sup>48</sup>

54. The applicant submits that the factors favouring disclosure outweigh any concerns regarding Council's management functions and that Council officers have a reasonable expectation that their official duties will be subject to review from time to time.<sup>49</sup> As I have explained above at paragraphs 49 and 50, the Category B information does not, in my view, comprise the routine personal work information of these officers even though the information arises in a work context. I do not agree that the officers would have a reasonable expectation that this type of information would be released under the RTI Act.
55. The applicant also submits that deleting the names of the Council officers from the Category B information would avoid any prejudice to Council's management function as the officers would not be identifiable and would continue to cooperate with investigators without fear of their identity being released.<sup>50</sup> As I have explained at paragraph 51 above, I am satisfied that the identities of these officers would be reasonably ascertainable despite the deletion of their names from these documents.
56. For these reasons, I afford both of these nondisclosure factors significant weight in relation to the Category B information.

### **Balancing the relevant public interest factors**

57. I have taken into account the pro-disclosure bias in balancing the relevant factors.
58. Disclosing the Category B information may provide the applicant with a more comprehensive understanding of how Council handled his complaint and the reasoning behind its decision. However Council has released a considerable amount of information to the applicant relating to this complaint, including a summary of the investigation findings and recommendations, and the remaining information is limited in nature. I afford moderate weight to each of these three factors favouring disclosure of the Category B information.
59. To the extent the Category B information comprises the applicant's personal information, I afford significant weight to the factor favouring disclosure. However, the Category B information also comprises the personal information of Council officers and its disclosure under the RTI Act would be a significant intrusion into the privacy of these individuals. I afford significant weight to the factors relating to the protection of the personal information and privacy of these individuals.
60. Disclosing the Category B information outside of the investigation process and under the RTI Act could reasonably be expected to make staff reluctant to fully participate in future investigations and prejudice the future flow of information to investigators. I

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<sup>48</sup> 8A3BPQ and Queensland Police Service [2014] QICmr 42 (30 October 2014) at paragraph 42.

<sup>49</sup> Submissions dated 30 January 2015 and 17 March 2015.

<sup>50</sup> Submissions dated 30 January 2015 and 17 March 2015.

afford significant weight to both of these factors favouring nondisclosure of the Category B information.

61. Accordingly, I find that the factors favouring nondisclosure of the Category B information outweigh the factors favouring disclosure. For these reasons, access to the Category B information is refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.

## **DECISION**

62. As Council located additional documents on external review which it had not previously considered, I vary Council's decision and find that access to the Category A and B information can be refused under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
63. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

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**Tara Mainwaring**  
**A/Assistant Information Commissioner**

**Date: 15 April 2015**

## APPENDIX

### Significant procedural steps

Date	Event
26 November 2013	Council received the access application.
31 January 2014	Council issued its decision to the applicant.
28 February 2014	The applicant applied for internal review of Council's decision.
27 March 2014	Council issued its internal review decision to the applicant.
29 April 2014	The applicant applied to OIC for external review of Council's internal review decision.
1 May 2014	OIC notified Council that the external review application had been received and requested relevant procedural documents.
5 May 2014	OIC received the requested documents from Council.
12 May 2014	OIC received a copy of the documents in issue from Council.
19 May 2014	OIC received additional procedural documents from Council.
22 May 2014	OIC notified the applicant and Council that the application had been accepted for review. OIC requested that Council provide additional procedural documents.
3 June 2014	OIC received the requested documents from Council.
11 July 2014	OIC asked the applicant to provide submissions clarifying a number of issues raised in the external review application.
29 July 2014	OIC received the applicant's submissions.
9 September 2014	OIC requested that Council clarify a number of issues and provide submissions on the searches it had conducted for the requested documents by 23 September 2014.  OIC conveyed its preliminary view to the applicant on a number of issues and invited him to provide submissions supporting his case by 23 September 2014.
18 September 2014	Council requested an extension of time until 30 September 2014 to provide the requested information to OIC. OIC agreed to Council's request.
23 September 2014	OIC received the applicant's submissions.
25 September 2014	OIC requested that Council provide submissions on a number of issues raised in the applicant's submissions by 30 September 2014.
1 October 2015	OIC received Council's submissions.
3 October 2014	OIC received further submissions from Council.
16 October 2014	OIC received further submissions from Council.
10 November 2014	OIC consulted a third party about the likely release of information to the applicant. The third party notified OIC that they did not object to the release of the information.  OIC conveyed a preliminary view to Council on various issues and requested further submissions in relation to a number of sufficiency of search issues by 1 December 2014.
1 December 2014	OIC received Council's submissions. Council also notified OIC that it agreed to release additional information to the applicant.
19 December 2014	OIC conveyed a preliminary view to the applicant and invited him to provide

Date	Event
	<p>submissions supporting his case by 16 January 2015 if he did not accept the preliminary view.</p> <p>OIC asked Council to release the additional information to the applicant by 22 December 2014.</p>
14 January 2015	The applicant requested an extension of time until 30 January 2015 to provide submissions in response to the preliminary view. OIC agreed to the applicant's request.
30 January 2015	OIC received the applicant's submissions.
4 February 2015	OIC requested that Council provide submissions on a number of issues raised in the applicant's submissions.
5 February 2015	OIC received Council's submissions.
18 February 2015	OIC consulted a third party about the likely release of information to the applicant. The third party notified OIC that they did not object to the release of the information.
19 February 2015	OIC consulted a third party about the likely release of information to the applicant. The third party notified OIC that they did not object to the release of the information.
25 February 2015	<p>OIC confirmed the preliminary view on a number of issues and invited the applicant to provide any further and final submissions supporting his case by 12 March 2015.</p> <p>OIC asked Council to release additional information to the applicant by 4 March 2015.</p>
10 March 2015	The applicant requested an extension of time until 17 March 2015 to provide final submissions. OIC agreed to the applicant's request.
17 March 2015	OIC received the applicant's submissions.