



Decision and Reasons for Decision

Application Number: 311518

Applicant: I69VLS

Respondent: Sunshine Coast Regional Council

Decision Date: 3 September 2013

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST – applicant seeks access to letter of complaint – whether disclosure would, on balance, be contrary to the public interest – sections 47(3)(b) and 49 of the *Right to Information Act 2009 (Qld)*

REASONS FOR DECISION

Summary

1. The applicant sought access¹ from the Sunshine Coast Regional Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) to a letter of complaint received by Council from a recruitment agency about herself (**Letter**).
2. Council neither confirmed nor denied the existence of the Letter sought by the applicant.²
3. On external review Council agreed that, in the circumstances, it was not appropriate for Council to maintain the position of neither confirming nor denying the existence of the Letter.
4. Council's decision is varied by finding that disclosure of the Letter is, on balance, contrary to the public interest.

Background

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

Reviewable decision

6. The decision under review is Council's decision dated 11 April 2013.

¹ By access application dated 4 March 2013.

² By decision dated 11 April 2013.

Evidence considered

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

Information in issue

8. The information under consideration in this external review is the Letter, which consists of one page.

Relevant law

Right to access information

9. Under section 23 of the RTI Act, a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access. These grounds are contained in section 47 of the RTI Act.

Findings

Does the Information in Issue comprise information the disclosure of which would, on balance, be contrary to the public interest?

10. Yes, for the reasons that follow.
11. An agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.³
12. 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.
13. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁴ and explains the steps that a decision-maker must take⁵ 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 disclosure and nondisclosure; and
 - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.⁶

³ Sections 47(3)(b) and 49 of the RTI Act.

⁴ 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 in a particular case.

⁵ Section 49(3) of the RTI Act.

⁶ As to the correctness of this approach, see *Gordon Resources Pty Ltd v State of Queensland* [2012] QCATA 135.

Irrelevant factors

14. No irrelevant factors arise on the information before me.

Factors favouring disclosure and nondisclosure

15. Some of the information contained within the Letter is the applicant's personal information.⁷ This creates a public interest factor favouring disclosure.⁸
16. Disclosure is also favoured where disclosure could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.⁹
17. The public interest factors favouring nondisclosure include that disclosure of the Letter could reasonably be expected to:
- prejudice the protection of an individual's right to privacy¹⁰ or cause a public interest harm if disclosure would disclose personal information of a person¹¹
 - prejudice an agency's ability to obtain confidential information;¹² and
 - prejudice the management function of an agency.¹³

Balancing the public interest

18. The Letter comprises the applicant's personal information as well as the personal information of a third party including the third party's emotional responses to particular situations.¹⁴
19. I am satisfied that the disclosure of the Letter could reasonably be expected to cause a public interest harm by revealing the personal information of the third party and prejudicing that person's privacy. Given the nature of the information, I consider that significant weight should be given to these factors favouring nondisclosure.
20. The applicant submits¹⁵ that the whole entirety of the Letter is directed at her and it is therefore relevant to her. While some of the information in the Letter can be said to be the applicant's personal information, that information is interwoven with the personal information of the third party in such a way that it cannot be separated and is properly characterised as 'mutual personal information'. As this information cannot be separated, the applicant's personal information cannot be released without also releasing the personal information of the third party. Therefore this factor favouring disclosure should be given minimal weight.
21. Council submits¹⁶ that revealing complainant identities will affect the willingness of people to make complaints or report concerns to Council in the future. This raises the factor in favour of nondisclosure relating to an agencies ability to obtain confidential

⁷ Personal information is defined in section 12 of the *Information Privacy Act 2009* as "information or an opinion... whether true or not... about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion".

⁸ Schedule 4, part 2, item 7 of the RTI Act.

⁹ Schedule 4, part 2, items 16 of the RTI Act.

¹⁰ Schedule 4, part 3, item 3 of the RTI Act.

¹¹ Schedule 4, part 4, section 6(1) of the RTI Act.

¹² Schedule 4, part 3, item 16 of the RTI Act.

¹³ Schedule 4, part 3, item 19 of the RTI Act.

¹⁴ I am unable to discuss the content of the information in detail without revealing information the disclosure of which is claimed to be contrary to the public interest – see section 108(1) of the RTI Act.

¹⁵ Submission dated 4 July 2013.

¹⁶ By correspondence to OIC dated 2 July 2013.

- information.¹⁷ Individuals who raise concerns about the conduct of others in the workplace usually only do so on the understanding that it will only be used for an investigation or any subsequent disciplinary action and that it will be held in confidence.
22. The applicant submits¹⁸ that the Letter is not confidential as she has read the entire contents and that if she were to receive a copy of the Letter, this would not have any effect on the willingness of others to make complaints or report concerns to Council in the future.
 23. While I acknowledge that the contents of the Letter have been discussed¹⁹ with the applicant and that she was given an opportunity to read it, Council's Complaints Management Process²⁰ states that details of complaints '*...will be treated with appropriate respect for the confidentiality and privacy of the complainant...*'²¹
 24. In addition, the material before me evidences that the third party was of the understanding that the material they provided would remain confidential. The third party has also expressed concern that given Council have discussed the contents of the Letter with the applicant, they have no confidence that Council will not disclose confidential information again in the future.
 25. The third party's reaction to the disclosure of the contents of the Letter by Council to the applicant is in my view indicative of the reaction that members of the broader community would have to such a situation. On this basis, I am satisfied that it is reasonable to expect that Council's ability to obtain confidential complaint information in the future would be prejudiced if the Letter is disclosed under RTI. Therefore, I consider that significant weight should be given to this factor favouring nondisclosure.
 26. The complaint information contained within the Letter arose in the context of the workplace. Council submits that disclosure of the Letter would prejudice Council's ability to manage staff and obtain confidential complaints regarding staff conduct. This raises the factor in favour of nondisclosure relating to the management functions of an agency.²²
 27. When Council receives complaint information regarding staff conduct, Council commences an investigation in accordance with Council's Complaints Management Process to identify whether any disciplinary action is warranted. Given that details of complaints are to be treated confidentially by Council, I am satisfied that if the Letter is disclosed under RTI, it is reasonable to expect that receipt of confidential complaint information would be diminished as the third party's reaction to the disclosure of the contents of the Letter by Council is indicative of the broader community response. The flow-on effect of the broader community being discouraged from providing information of a confidential nature to Council is that Council may not receive information about the conduct of its staff. On this basis, it is reasonable to expect that Council's ability to manage its staff would be prejudiced. Therefore, I consider that significant weight should be given to this factor favouring nondisclosure.
 28. The applicant's submission raises the public interest in ensuring that procedural fairness requirements are met in a grievance process.²³ I consider that this public interest was satisfied by Council when it provided the applicant with an opportunity to

¹⁷ Schedule 4, part 3, item 16 of the RTI Act.

¹⁸ Submission dated 4 July 2013.

¹⁹ In a meeting with relevant Council staff on 14 December 2012.

²⁰ Available at http://www.sunshinecoast.qld.gov.au/addfiles/documents/policies/complaints_man_process.pdf

²¹ Council's Complaints Management Process at page 8.

²² Schedule 4, part 3, item 19 of the RTI Act.

²³ Schedule 4, part 2, item 16 of the RTI Act.

read the Letter and respond to any allegations it contained. Thus, the public interest in the facilitation of the administration of justice, which includes procedural fairness, will not be advanced by providing the applicant with a copy of the Letter. Therefore this factor favouring disclosure should be given minimal weight.

29. Given the above, I am satisfied that in the circumstances of this review, the public interest factors favouring nondisclosure of the Letter outweigh the public interest factors favouring disclosure and accordingly, disclosure would, on balance, be contrary to the public interest.

DECISION

30. I vary Council's decision dated 11 April 2013 by finding that Council is entitled to refuse access to the Letter pursuant to sections 47(3)(b) and 49 of the RTI Act.
31. I have made this decision as a delegate of the Acting Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 3 September 2013

APPENDIX**Significant procedural steps**

Date	Event
4 March 2013	Council receives the applicant's application for access.
14 March 2013	The access application becomes valid.
11 April 2013	Council neither confirms nor denies the existence of the Letter.
16 May 2013	OIC receives the applicant's request for external review.
4 June 2013	OIC informs the applicant and Council that the external review application has been accepted.
17 June 2013	Council provides a submission.
20 June 2013	OIC conveys a view to Council that, in the present circumstances, it is not appropriate for Council to maintain that it neither confirms nor denies the existence of the Letter.
2 July 2013	Council provides a copy of the Letter to OIC and submits that its disclosure would, on balance, be contrary to the public interest.
3 July 2013	OIC conveys a view to the applicant that disclosure of the Letter would, on balance, be contrary to the public interest.
4 July 2013	The applicant provides a submission.
22 July 2013	The applicant provides an oral submission.