



Decision and Reasons for Decision

Applicant:	Ipswich City Council
Application number:	2001
Decision date:	11 March 2021
Catchwords:	ADMINISTRATIVE LAW – WAIVER APPLICATION – COMPLIANCE WITH THE PRIVACY PRINCIPLES – BALANCE OF THE PUBLIC INTEREST – applicant applied for waiver of obligations to comply with the privacy principles – publication of historical personal information on publicly available database – expenses incurred by former and current Councillors, council employees and Directors of Council controlled entities – whether the public interest in Council’s compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency’s compliance with the privacy principles under section 157(4) of the <i>Information Privacy Act 2009</i> (Qld).

SUMMARY

1. Ipswich City Council (**Council**) applied to the Office of the Information Commissioner (**OIC**) for an approval that waives Council’s obligation to comply with the privacy principles for publication of certain historical data on the Transparency and Integrity Hub (**Hub**) under the *Information Privacy Act 2009* (**IP Act**).
2. The application is refused. I am not satisfied that the public interest in Council’s compliance with the privacy principles is outweighed by the public interest in waiving or modifying Council’s compliance with the privacy principles in the particular circumstances of this case.¹

REASONS FOR DECISION

Background

3. The Hub, an online interactive digital portal that enables the publication of current and historic data about Council’s finances and services as contemporary open data, went live on Council’s website on 1 July 2020.
4. In June 2020, Council commissioned an independent Privacy Impact Assessment (**PIA**) from Ground Up Consulting Pty Ltd to inform the publication of data on the Hub.² The PIA report contains 19 recommendations and two observations.

¹ Section 157(4) of the IP Act.

² https://s3.amazonaws.com/delphius-rds-1/file_uploader/files/attacheds/000/143/356/original/Transparency_Hub_PIA_FINAL_30_06_2020.pdf?1593736805

Application

5. Council applied³ for approval to waive Council's compliance with the privacy principles for publication of data on the Hub for the period 1 July 2010 to 1 July 2020, to remain in place until revoked or amended under the IP Act.⁴
6. During the course of this process, the applicant clarified and narrowed the scope of the application, as set out in paragraph 14.
7. Significant procedural steps relating to the application are set out in the Appendix.

Relevant law

8. The primary objectives of the IP Act are to provide for the fair collection and handling of personal information in the Queensland public sector and to provide access and amendment rights for that personal information.⁵ The privacy principles set out in the IP Act establish the framework for dealing with personal information so that the objectives of the Act can be met.
9. Section 157(2) of the IP Act provides that the Information Commissioner can, by gazette notice, give an approval that waives or modifies an agency's obligation to comply with the privacy principles. The Commissioner can give an approval if she is satisfied that the public interest in the agency's compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency's compliance.⁶ While an approval is in force, the affected agency does not contravene the privacy principles if it acts in accordance with the approval.
10. The term 'public interest' refers to considerations affecting the good order and functioning of 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. Various factors may be relevant to deciding where the balance of the public interest lies.

Evidence considered

11. Council bears the onus of sufficiently identifying the personal information within scope of the waiver application⁷ and demonstrating how the public interest in granting the waiver outweighs Council's compliance with the privacy principles.
12. The evidence, submissions, legislation, and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and appendix).

³ Correspondence from Council dated 22 July 2020 and 9 February 2021; section 157(1) of the IP Act.

⁴ Correspondence from Council dated 7 September 2020. An approval can be given for a temporary period or until the approval is revoked or amended (see section 157(2) of the IP Act).

⁵ Section 3 of the IP Act.

⁶ Section 157(4) of the IP Act.

⁷ Personal information that is permissible to publish under the IP Act will fall outside the scope of Council's waiver application. While Council has highlighted in yellow on the Councillor expenses Hub Data excel spreadsheet dated 30 June 2020 (Cr Exp Hub Data to 30JUN2020 (OIC SoW.xlsx)) received by OIC on 22 October 2020 and the Controlled entity data 2012-2020 excel spreadsheet (ICC Integrity Hub – controlled entity data 2012-2020 (OIC comparison) – unlinked (A6510725).xlsx) received by OIC on 29 September 2020, Council has not provided supporting documentation verifying that the highlighted personal information is not permissible to publish under the IP Act. Subsequent correspondence has also varied the scope of the application to exclude some of the highlighted material. OIC has not undertaken an assessment of all the personal information sought to be published by Council to independently verify that each entry can fall within the scope of the waiver application. Council is also better placed to assess this on the basis of evidence at hand. Council confirmed, in email correspondence to OIC on 24 February 2021, that it has excluded the names of third parties.

13. I have also had regard to the *Human Rights Act 2019 (Qld) (HR Act)* and the rights enshrined therein and more broadly. Relevant human rights in this matter, including, in particular, the right to privacy and reputation, and right to seek and receive information, which are central to this decision, are discussed in detail in the reasons for the decision and considered carefully in determining the public interest below.

Personal Information in Issue

14. Since Council made the application, it has clarified and narrowed the scope of its application for a waiver to the following:⁸
- Personal information contained in the Councillor Expenses Dataset primarily the names of council employees⁹ and former and current Councillors, associated with various expenses incurred by each of these individuals for the period 1 July 2010 to 1 July 2020.¹⁰ This includes, for example, cab charge, newspaper subscriptions, Qantas club memberships, accommodation, airfares and business cards (**Category A personal information**); and
 - Personal information contained in the Controlled Beneficial Entities Dataset primarily the names of former and current Councillors, former Company Directors, Council or Company employees associated with various expenses incurred by each of these individuals for the period 1 July 2010 to 1 July 2020.¹¹ This includes for example, parking, lunch, catering, wages and superannuation expenses, memberships and subscriptions (**Category B personal information**).

Submissions

15. In summary, Council submits that the public interest of including the personal information of public office holders and Directors of former Council beneficial controlled entities is that disclosure is important for the community and stakeholders in ensuring the effective, efficient, fair, accountable and transparent operation of government, and to ensure effective oversight of the expenditure of public funds.¹²
16. Council further submits¹³ that *'the Local Government Act 2009 (Qld) applies during the period in which Council seeks the Commissioner's approval to grant the waiver and the historical data relating to the former councillors of the controlled entities (who were either senior executives of Council or former councillors), is not in the public domain, despite all the publicly available information about Council.....and even through the controlled entities are in the process of being wound up, or in some cases, they cease to exist, those entities are still subject to public scrutiny, when Council were the primary shareholder of those entities.'*

⁸ Correspondence from Council dated 28 September 2020 and 9 February 2021. In Council's correspondence to OIC on 9 February 2021, Council submitted that the basis of Council's application is *primarily* to publish on the Hub, the personal information of the former Councillors and former directors of the controlled entities. This would include the Category A personal information (former Councillor expenses dataset) and the Category B Personal Information (Controlled beneficial entities dataset). Council also specifically stated that it does not intend to publish on the Hub, the mobile phone numbers, the addresses and personal details of third parties, personal email addresses and home telephone numbers and fax numbers of former and current Council employees, or the former directors of the controlled entities (**sensitive personal information**).

⁹ It is not clear from the information contained in the Councillor Expenses Dataset whether the Council employees are current for former Council employees.

¹⁰ Councillor expenses Hub Data dated 30 June 2020 (Cr Exp Hub Data to 30JUN2020 (OIC SoW.xlsx) received by OIC on 22 October 2020. I note that the Councillor Expenses Dataset does not contain a complete dataset for this period of time. The first entry in the dataset is dated July 2014.

¹¹ 'ICC Integrity Hub – controlled entity data 2012-2020 (OIC comparison) – unlinked (A6510725).xlsx received by OIC on 29 September 2020'.

¹² Correspondence from Council dated 22 July 2020.

¹³ Correspondence from Council dated 9 February 2021.

17. Further, Council contends that *'the councillors and senior executive employees of Council, would be clearly aware that transparent and effective processes, and decision making in the public interest, are the principles underpinning the operation of local government'*.¹⁴ While Council accepts that incorporated entities have a separate legal existence, Council submits *'that the controlled entities were managed and under the control and operation of public officers, (councillors and former senior executives)*. Council also contends that *whilst this may be historical data it is Council's submission, that this information is consistent with the Council's ongoing responsibility to comply with the local government principles for transparent government.'*

Exceptions to compliance with the Privacy Principles

Express consent

18. Council can use or disclose personal information where an exception to relevant privacy principles applies, including where the individual has consented to the use or disclosure.¹⁵ Council is required to be satisfied that the individual has the capacity to consent and the consent is voluntary, informed, specific and current before relying on the individual's consent to publication of their personal information on the Hub. In summary, I note advice from Council¹⁶ that the following Current and Former Councillors and former Directors of controlled beneficial entities have either refused to consent to publish their personal information on the Hub or who have not provided consent to publication of their information.

- *Current Councillors*

Seven of the nine current Councillors¹⁷ have provided express consent with two current Councillors (who were also part of the former Council) providing consent for their personal information to be included in the Hub from the commencement of the current Council term (14 April 2020).¹⁸

- *Former Councillors*

Seven former councillors¹⁹ have expressly refused their consent to publication of their personal information on the Hub and four former counsellors did not provide their consent.

- *Former Councillors and Directors of controlled beneficial entities*

One former Councillor and Director has expressly refused consent while four former Councillors and Directors did not provide their consent.

- *Former Directors of controlled beneficial entities*

Five former Directors expressly refused to provide their consent while two former Directors did not provide their consent.

¹⁴ Correspondence from Council dated 9 February 2021 citing section 4(2) of the *Local Government Act 2009* (Qld).

¹⁵ IPP 10(1)(a) and IPP (11)(1)(b).

¹⁶ Correspondence from Council dated 11 and 18 December 2020.

¹⁷ Correspondence from Council dated 7 September 2020.

¹⁸ Correspondence from Council dated 11 December 2020 and 18 December 2020. Councillor Paul Tully expressly refused to provide consent for any period prior to 14 April 2020 and Councillor Sheila Ireland expressly refused to provide consent for any period prior to 13 April 2020.

¹⁹ This includes two current councillors, who were also part of the former Council.

19. Council, in its submissions,²⁰ seeks a waiver from its obligations to comply with the privacy principles, to allow Council to include in the Hub, the personal information, including the names of the individuals, who have either refused to consent or not provided consent to its use. In circumstances where Council has sought and not obtained consent from individuals to obtain their consent to publication of their personal information on the Hub, it would give greater weight to the public interest in Council's compliance with the privacy principles.
20. Information can be personal information even if an individual's identity is not apparent, as long as their identity can be reasonably ascertained by reference to other information.²¹ If the identity of current Councillors, or former Councillors and Directors of controlled beneficial entities, who expressly refused, or did not provide, their consent to publication of their personal information can be reasonably ascertained by information published on the Hub, Council may be in breach of the privacy principles, unless a relevant exception applies.
21. Reliance on consent can also be problematic where other exceptions to the privacy principles apply under the IP Act to use or disclose personal information. This can include where:
- the individual is reasonably likely to have been aware, or to have been made aware, that it is the agency's usual practice to disclose that type of personal information;²² and
 - the use or disclosure is authorised or required under a law.²³

I also note that the privacy principles do not apply to a generally available publication.²⁴

22. In the event such exceptions apply, Council would be able to review the information and decide to proceed without applying for a waiver from compliance with the privacy principles. During my consideration of the waiver application, I highlighted that Council should consider the dataset carefully, including the possibility that components of the broad dataset initially covered by the application may already be able to be published. I also suggested that Council consider how the data could be published in a de-identified way to minimise the privacy impact whilst maximising the data available on the Hub.
23. As outlined in paragraph 14, Council narrowed and clarified the scope of the relevant data.

Public interest considerations and analysis

Category A Personal Information

24. Council states on the Hub website:²⁵

²⁰ Correspondence from Council dated 11 and 18 December 2020.

²¹ Section 12 IP Act.

²² IPP (11)(1)(a).

²³ IPP 10(1)(c); IPP (11)(1)(d).

²⁴ Schedule 1, section 7(a) of the IP Act. A generally available publication includes information that is available on the internet, is available for purchase from a government agency, is contained in a model publication scheme, disclosure log, or an agency's published reports, or appears in a newspaper or magazine. However, agencies collecting information for inclusion in what will become a generally available publication are still subject to IPPs 1-3 and NPP 1. It is important to note that only the personal information contained in the generally available publication is exempt from the privacy principles. If additional information is added to it, or it is linked to other personal information, a new set of personal information will effectively have been created. This new personal information will no longer be the same personal information contained in the generally available publication, which means it will be subject to the privacy principles.

²⁵ [Councillor Expenses \(opengov.com\)](https://www.opengov.com).

On 27 April 2020, Ipswich City Council (Council) resolved to publish on a new Transparency and Integrity Hub:

'all Councillor related expenses, allowances and reimbursements for each month including contextual details of expenses incurred and purpose to enable benchmarking and comparison. Data will be published for the previous five financial years. Where travel costs have been absorbed by specific project costs, these should also be included'.

25. Council submits that, *even in an historical context, the Commissioner should place considerable weight to the public interest of transparency and open government and the basis of Council's application, when balancing compliance with the privacy principles.*²⁶
26. Council's submissions raise public interest considerations where disclosure of the personal information could reasonably be expected to enhance Council's transparency and accountability, ensure effective oversight of public funds, and inform the community of Council's operations.
27. Council is a public body set up to provide services to the local community and receives funding from ratepayers. Council is accountable to ratepayers for its decisions involving the expenditure of public funds. Local governments control large amounts of public funds. It is reasonable to expect that Council conducts itself in an open, accountable, and transparent way. Oversight and transparency of how public funds are disbursed is vital to maintaining public confidence in local government and informing the community of Council's operations.
28. I note that the personal information Council seeks to publish on the Hub is historical in nature and Council's management of public funds and its operations has been the subject of independent external oversight and scrutiny, including public reporting, with large volumes of information already in the public domain. Relevantly:
 - the Crime and Corruption Commission Queensland (**CCC**) commenced Operation Windage in October 2016 to investigate allegations of corruption related to Ipswich City Council. A number of people, including Council employees, two mayors, two Chief Executive Officers (CEOs) and one Chief Operating Officer, were charged with criminal offences, including official corruption, as a result of Operation Windage²⁷
 - the CCC tabled a report in Parliament entitled [Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council \(Operation Windage\)](#) on 14 August 2018
 - Operation Windage identified that council policies and procedures were either not followed, or were ignored or circumvented, including by Councillors and senior executive employees, resulting in the misuse of council funds and assets. The range of activities to which this applied included HR policies and decisions, community donations, travel, vehicle use and asset management. In many cases, the behaviour continued over a significant period of time but went unchallenged and unreported²⁸

²⁶ Correspondence from Council dated 9 February 2021.

²⁷ <https://www.ccc.qld.gov.au/corruption/outcome/allegations-corruption-related-ipswich-city-council-operation-windage>.

²⁸ <https://www.ccc.qld.gov.au/corruption/outcome/allegations-corruption-related-ipswich-city-council-operation-windage>.

- the Ipswich City Council was dismissed by the State Government and an administrator appointed on 21 August 2018²⁹
- proceedings conducted in open court for public officials charged with criminal offences
- the Interim Administrator's report to the community of Ipswich is publicly available;³⁰ and
- significant media reporting of Operation Windage, criminal charges and subsequent court proceedings and appointment of an administrator to Council.³¹

29. I accept there is a general public interest in disclosing information that enhances Council's transparency and accountability, ensures effective oversight of public funds and informs the community of Council's operations. Council must be accountable and transparent in its expenditure of public funds. I am satisfied that the volume of information in the public domain regarding Council's past behaviour concerning misuse of council funds and assets, including independent oversight and scrutiny by a range of bodies including the Courts and the CCC, discharges the above public interest factors to a significant extent. I consider that issues regarding Council's past behaviour have been well ventilated publicly.

30. Since 2018, the Queensland Government has been delivering a rolling reform agenda to strengthen the transparency, accountability and integrity measures that apply to the system of local government in Queensland, including strengthened complaint mechanisms and independent oversight of local government by designated bodies, such as the Office of the Independent Assessor. Drivers for reforms in the local government sector include the CCC Operation Belcarra report,³² Queensland Audit Office report,³³ and CCC Operation Windage report.³⁴

31. As outlined in Council's 2019-20 Annual Report, Council has also implemented a range of governance measures to strengthen accountability and transparency, including the development of new procedures and processes for grievance management, complaint management, risk management, fraud and corruption management.³⁵

32. I acknowledge that publishing the Category A personal information on the Hub would provide the community with greater detail around the expenses incurred by each of the named individuals in the past. However, I do not consider that publication of the Category A personal information could reasonably be expected to enhance Council's transparency and accountability, ensure effective oversight of public funds; and inform the community of Council's operations in the circumstances. I consider that the weight that can be attributed to these factors is significantly reduced by the volume of information in the public domain, the extent of independent oversight and scrutiny of Council's past operations, including financial expenditure, and the historical nature of the information. I

²⁹ <https://www.ccc.qld.gov.au/corruption/outcome/allegations-corruption-related-ipswich-city-council-operation-windage>.

³⁰ https://www.ipswich.qld.gov.au/_data/assets/pdf_file/0005/124646/Vision2020-Update-January-2020.pdf.

³¹ <https://www.9news.com.au/national/ipswich-council-triple-c-report-corruption/f1eac5cc-a9da-4435-9bc0-e61c0c1c3c90>;
<https://www.abc.net.au/news/2018-08-21/ipswich-council-dismissal-bill-passed-by-parliament/10146776>;
<https://www.brisbanetimes.com.au/national/queensland/ex-ipswich-mayor-paul-pisasale-gets-seven-year-jail-sentence-20200930-p560ix.html>.

³² <https://www.ccc.qld.gov.au/public-hearings/operation-belcarra-reforming-local-government-queensland#:~:text=Operation%20Belcarra%20%2D%20A%20blueprint%20for,a%20more%20stringent%20regulatory%20framework>.

³³ https://www.qao.qld.gov.au/sites/default/files/reports/managing_local_government_rates_and_charges_report_17-2017-18.pdf.

³⁴ <https://www.dlgrma.qld.gov.au/local-government-reform/background>.

³⁵ https://www.ipswich.qld.gov.au/_data/assets/pdf_file/0006/137247/ICC_Annual_Report_2019-2020.pdf at page 18.

am also satisfied that reform agenda delivered by Queensland Government since 2018 designed to strengthen the transparency, accountability and integrity measures that apply to the system of local government in Queensland, significantly enhance Council's transparency and accountability, reducing the weight of public interest factors relating to historical data and events. For these reasons, I afford these public interest factors minimal weight.

33. Having carefully considered the personal information Council seeks to publish, I also find that the utility of the Hub in aiding transparency and accountability of Council's expenditure of public funds, would not be reduced in any material way by the application of appropriate techniques to de-identify the historical personal information. De-identification of datasets containing personal information can be a useful tool that allows agencies to maximise the information they publish, supporting the 'push model' and the proactive disclosure aims of the *Right to Information Act 2009 (RTI Act)*, while meeting their obligations under the IP Act.³⁶ I also note that publication of personal information on the Hub is not the only mechanism to ensure openness, accountability, transparency and effective oversight of Council's expenditure of public funds. Exclusion of particular personal information in a dataset does not prevent access to information about, or the ability to raise queries or concerns, regarding Council's financial expenditure.
34. It is also important to note that while the Hub offers the community the opportunity to view, understand and interact with Council data, if members of the community cannot access personal information as a component of an existing open dataset because it is not appropriate to publish it in this way, they are still able to seek to understand the data in other ways. For example, they can approach Council with queries who may be able to provide broader context that satisfies their needs, make a formal application for access under the RTI or IP Acts and the specific information sought will be carefully considered, or other arrangements may be made depending on the circumstances, for example for research purposes.
35. Council raised in its submissions that the *Local Government Act 2009 (Qld) (LGA) applies during the period in which Council seeks the Commissioner's approval to grant the waiver.*³⁷ In the absence of further information provided by Council to support this submission, the basis of the submission is unclear. If Council is seeking to argue that there is legislative basis for the disclosure of the Category A (and Category B) personal information, then Council's application for a waiver from compliance with the privacy principles would be unnecessary. Use or disclosure of personal information authorised or required by law falls within one of the exceptions to compliance with the privacy principles and is therefore permitted under the IP Act.³⁸
36. For the sake of completeness, I have considered the relevant provisions of the LGA and *Local Government Regulation 2012 (Qld) (LGR)*. I note that the LGA contains principles that Councillors must comply with while performing their roles as elected representatives including transparent and effective processes, decision-making in the public interest and ethical and legal behaviour of councillors, local government employees and councillor advisors.³⁹ The LGA and LGR also contain legislated disclosure requirements including

³⁶ As outlined in OIC's recent Privacy and Public Data Audit Report: *Privacy and Public Data: Managing re-identification risk*, Report No. 1 to the Queensland Legislative Assembly for 2020-21, 14 July 202, agencies must adequately manage re-identification risks to protect the identity of individuals.

³⁷ Correspondence from Council dated 9 February 2021.

³⁸ IPP 11(1)(c); IPP(11)(1)(d).

³⁹ Section 4(1) and (2), LGA noting that section 4 was amended by section 94 of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* to insert 'councillor advisors'.

the requirements for an annual report⁴⁰ and the content of the annual report.⁴¹ I do not accept that a requirement for aggregated annual reporting of expenses incurred by, and the facilities provided to, each councillor during the financial year under the local government's expenses reimbursement policy can be equated with the retrospective publication of finance and expenditure data, containing personal information, spanning a ten year period on an interactive digital portal such as the Hub.

37. Against these public interest factors must be balanced the public interest in Council complying with the privacy principles. The IP Act recognises the importance of protecting the personal information of individuals and sets rules for how agencies must handle personal information. A breach of the privacy principles is an 'interference with the privacy of an individual'. Information privacy requirements foster responsible and fair management of personal information, assisting government agencies to meet changing community expectations about privacy.

Personal information and privacy

38. The concept of 'privacy' is not defined in the IP Act. It can, however, essentially be viewed as the right of an individual to preserve their personal sphere free from interference from others.⁴² The recent findings of the *Australian Community Attitudes to Privacy Survey 2020* conducted by the Office of the Australian Information Commissioner demonstrate changing community expectations around the handling of personal information. Meeting community expectations becomes critical for consumers, business and governments in building trust.
39. Council submits that *'the councillors and senior executive employees of Council, would be clearly aware that transparent and effective processes, and decision making in the public interest, are the principles underpinning the operation of local government'*.⁴³ In accordance with the IP Act, personal information may be disclosed where the individual is reasonably likely to have been aware, or to have been made aware, that it is the agency's usual practice to disclose that type of personal information to a third party.⁴⁴ As set out in the PIA, Council had not yet set clear expectations and made explicit the specific personal information Council intends to publish to enable the proactive disclosure approach envisaged by Council.
40. I note the PIA recommended Council take further action to improve privacy practices that would facilitate its ability to publish greater information on the Hub to give effect to Council's resolution moving forward. In particular, I note Recommendation 5 of the PIA states:
- a) *ICC documents relating to the appointment and responsibilities of ICC employees and elected officials to be updated to contain an explicit form of words regarding ICC's intent to publish specified contract and finance data that may include personal information.*⁴⁵

⁴⁰ Section 182 LGR.

⁴¹ Section 41 LGA (list of the beneficial enterprises that the local government conducted during the financial year); s201 LGA (total of all remuneration packages that are payable (in the year to which the annual report relates) to the senior management of the local government, s186(1)(a) LGR (total remuneration, including superannuation contributions, paid to the councillor during the financial year); s186(1)(b) LGR (expenses incurred by, and the facilities provided to, each councillor during the financial year under the local government's expenses reimbursement policy); s188 LGR sets out information required about any overseas travel made by a councillor or local government employee in an official capacity during the financial year.

⁴² Paraphrasing the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

⁴³ Correspondence from Council dated 9 February 2021 citing section 4(2) of the *Local Government Act 2009*.

⁴⁴ IPP11(1)(a).

⁴⁵ Recommendation 5(a) https://s3.amazonaws.com/delphi-us-rds-1/file_uploader/files/attacheds/000/143/356/original/Transparency_Hub_PIA_FINAL_30_06_2020.pdf?1593736805 at page 8.

b) *the explicit form of words should contain the information required to be included in a Privacy Notice under IPP2.*⁴⁶

41. It is therefore clear from recommendations contained in the PIA that Councillors and Council employees may not have expected that their personal information would be published in an open dataset in this way.
42. I accept that Councillors and Council employees would have a general awareness of the importance of transparency and effective processes and decision-making in the public interest. However, I do not consider a general awareness equates to Councillors and Council employees holding a reasonable expectation, or being reasonably likely to be aware, that their personal information of the types proposed would be published on a publicly available database such as the Hub. The Hub was only recently commissioned by Council and was not in existence or contemplation until the end of the period relevant to the application for a waiver. I also note that, as outlined in the PIA, Council did not envisage that the data sets published would include personal information.⁴⁷
43. In an April 2020 Ipswich First article, in response to the question '*Will the Hub share personal data?*' the Mayor expressly stated that '*No. Personal information will not be shared: the focus on the hub is on the financial transparency of Council operations*'.⁴⁸
44. While some of the personal information Council seeks to publish on the Hub could be considered routine personal work information, I note that the PIA stated that for the historical data in particular, there is some ambiguity around whether employees and/or elected officials would be reasonably likely to have been aware, or to have been made aware, that it is the usual practice of Council to disclose routine personal work information⁴⁹ of the types proposed for publication in the 1 July 2020 commissioning of the Hub.⁵⁰ I have also taken into account the report of the Administrator appointed to Council which raised a number of issues regarding Council's approach to the development of policies and procedures prior to administration, including Council policy documents that were ambiguous, lacking in clarity and provided limited guidance, leading to difficulties with adherence to these policies.
45. In circumstances where Council failed to set clear expectations and make explicit the specific personal information Council intends to publish on the Hub, it is appropriate to give greater weight to the Council's obligations to comply with the privacy principles. On the information before me, I am not satisfied that these individuals would be reasonably likely to have been aware, or to have been made aware, that it would be Council's intent to disclose their personal information on a publicly available database. For these reasons, I afford public interest considerations, relating to personal information and privacy, significant weight.

Prejudice fair treatment of individuals

46. Council submits that it has attempted to conduct an audit of Council employees (current and past) whose personal information may be contained in the financial information for

⁴⁶Recommendation 5 (b) https://s3.amazonaws.com/delphi-us-rds-1/file_uploader/files/attacheds/000/143/356/original/Transparency_Hub_PIA_FINAL_30_06_2020.pdf?1593736805 at page 8.

⁴⁷https://s3.amazonaws.com/delphi-us-rds-1/file_uploader/files/attacheds/000/143/356/original/Transparency_Hub_PIA_FINAL_30_06_2020.pdf?1593736805 at page 15.

⁴⁸<https://www.ipswichfirst.com.au/mayor-explains-reasoning-behind-transparency-and-integrity-hub/>

⁴⁹ The concept of routine personal work information applies to employees of agencies which are subject to the RTI Act or the IP Act. It is not limited to those employed under the *Public Service Act 2008* (Qld) and may be relevant for the employees of any agency subject to the legislation (such as local government, public authorities and ministerial staff). Routine personal work information, includes, for example, a work email address, a work phone number and a work responsibility,

⁵⁰https://s3.amazonaws.com/delphi-us-rds-1/file_uploader/files/attacheds/000/143/356/original/Transparency_Hub_PIA_FINAL_30_06_2020.pdf?1593736805 at page 22.

the applicable period of the waiver application. Council noted in its submission, that 'operational advice has been received that Council's records and systems, and the necessary manual interrogation of these, will not be able to provide a complete and reliable data set in respect of this category of Affected Persons'.⁵¹ Council further submits that '*with this advice in mind...the only means by which Council may publish this personal information...would be under the authority of the requested waiver*'.⁵²

47. Council's submission raises public interest considerations where disclosing personal information could reasonably be expected to prejudice the fair treatment of individuals. Given Council is unable to guarantee the data is accurate, complete and up to date, in these circumstances, I am satisfied that publication of this category of personal information prejudices the fair treatment of current and former Council employees. I am also satisfied that publication of potentially inaccurate or incomplete Council employee personal information may also adversely impact on the reputation of these individuals. The impact on current and former employees and Councillors' privacy and reputation is also an important consideration under the *Human Rights Act 2019*.
48. I also consider that the disclosure and publication of personal information on the Hub related to historical events, in the absence of any contextual information about the legislation, policies and procedures, including different requirements about expenditure and conduct, that were in place at a particular point in time, may prejudice the fair treatment of the individuals concerned. I consider that it would open to members of the community to infer illegality on behalf of Councillors and Council employees regarding expenses incurred and attendance at meetings, which could also be based on inaccurate historical data. Further, affected individuals could be disadvantaged in accessing relevant contextual information, checking accuracy of published information and having a fair and appropriate opportunity to respond to the innuendo or allegations.
49. In reaching my decision, I have had regard to the report by the Administrator appointed to Council in which he states that:
- Prior to administration, council's approach to the development of policies and procedures was ad-hoc, inconsistent and uncoordinated. Council leaders and staff lacked a common understanding of the definitions of policies and procedures across areas of council. There was a lack of clarity around the definition of councillors' roles with many operational items requiring council or councillor sign off. This was far from "the norm" when it comes to local government practice. Previous policy documents were unclear or ambiguous which brought about a lack of adherence, limited guidance, and little if any consequences for breaching these policies. Council policies also lacked a strong connection to the organisation's strategic priorities and included many historical documents that did not accurately reflect current or desired work practices. Across council, there was a lack of awareness or appreciation for the purpose of a policy and relevant policy processes, with limited resources available to guide development and ensure adherence.*⁵³
50. I also note that the CCC reported that between 2012 and 2018, while it was mandatory under the LGA for a council to have a code of conduct for its employees, there was no obligation for it to have one for Councillors.⁵⁴ This has now been addressed by recent

⁵¹ Correspondence from Council dated 7 August 2020.

⁵² Correspondence from Council dated 7 August 2020.

⁵³ https://www.ipswich.qld.gov.au/_data/assets/pdf_file/0005/124646/Vision2020-Update-January-2020.pdf

⁵⁴ <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Culture-and-corruption-risks-in-local-government-Lessons-from-Ipswich-City-Council-Operation-Windage-Report-2018.pdf> at page 23.

legislative amendments, and in 2018 the Ipswich City Council adopted a code of conduct for its Councillors.⁵⁵

51. I consider that the public interest factors in favour of waiving or modifying Council's compliance with the privacy principles are enhancing Council's transparency and accountability, ensuring effective oversight of the expenditure of public funds and informing the community of Council's operations. I am satisfied that public interest considerations regarding transparency and accountability, oversight of public funds and informing the community of Council's operations have been substantially discharged. In the context of the specific personal information contained in the Category A personal information, I afford these factors minimal weight. On the other hand, I afford the factors favouring the public interest in Council complying with the privacy principles, which relate to the protection of personal information and privacy, reputation and the fair treatment of individuals, significant weight.
52. On balance, I find that for the Category A personal information, the public interest in Council complying with the privacy principles is not outweighed by the public interest in waiving or modifying Council's compliance with the privacy principles.

Category B Personal Information

Transparency and accountability

53. Council seeks to publish Category B personal information associated with expenses incurred at the following controlled entities: Ipswich City Enterprises Pty Ltd, Ipswich City Enterprises Investments Pty Ltd, Ipswich City Properties Pty Ltd, Ipswich City Developments Pty Ltd,⁵⁶ Ipswich City Developments Enterprises Pty Ltd,⁵⁷ and the Ipswich Motorsports Park Pty Ltd. These controlled entities have either been de-registered or expected to be voluntarily deregistered,⁵⁸ or ceased operations and are currently in the process of being wound up by Council. Council submits that historical data relating to the former Directors of the controlled entities (who were either senior executives of Council or former Councillors), is not in the public domain, despite all the publicly available information about Council.⁵⁹
54. Council submits that it is unclear the extent to which it can publish relevant information due to ambiguity about Council's circumstances, including expectations understood by relevant individuals, as outlined throughout this decision. Council states '*expenses incurred by these Directors at ratepayers' expense is in the public interest, certainly to the broader Ipswich community at large*' on the grounds also set out in relation to the Category A information.⁶⁰
55. I note that significant concerns have been raised about openness, transparency and accountability regarding Council controlled entities, including by the CCC in Operation Windage which identified, and reported publicly, that the lack of oversight of expenditure by Ipswich City Council owned companies allowed senior members of the Council to circumvent Council processes and allegedly use Council funds at their own discretion for

⁵⁵ <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Culture-and-corruption-risks-in-local-government-Lessons-from-Ipswich-City-Council-Operation-Windage-Report-2018.pdf> at page 14.

⁵⁶ Ipswich City Developments operated between January 2012 and late 2014. The entity was deregistered in June 2015, and its activities were assumed by Ipswich City Developments Enterprises Pty Ltd.

⁵⁷ Following the de-registration of Ipswich City Developments Pty Ltd in June 2015, Ipswich City Developments Enterprises Pty Ltd was renamed to Ipswich City Developments Pty Ltd.

⁵⁸ Ipswich City Properties is expected to be voluntarily deregistered in late 2020.

⁵⁹ <https://stories.opengov.com/ipswichqld/published/mGKDZDFqw>

⁶⁰ Correspondence from Council dated 9 February 2021.

⁶⁰ Application for Waiver dated 22 July 2020 at para 9.11.

questionable purposes.⁶¹ Controlled entities were also not subject to Council policies, internal Council procedures, governance or oversight mechanisms, such as procurements processes and gifts and benefits, and their operations were not within the jurisdiction of the CCC,⁶² or within scope of the RTI Act.⁶³

56. I do not consider that disclosure of Category B historical personal information could reasonably be expected to enhance *Council's* transparency and accountability, ensure effective oversight of public funds, and inform the community of *Council's* operations in the circumstances. This is because:

- the controlled entities have been wound up with the exception of one remaining entity which is in the process of being voluntarily wound up by Council⁶⁴
- while the Directors of these controlled entities have included serving Councillors and Council employees, the controlled entities have a separate legal existence. Directors of controlled entities can make decisions about the expenditure of funds at their own discretion, although Directors are subject to obligations imposed by Corporations law; and
- controlled entities were required to submit financial reports to the Queensland Audit Office (QAO) to provide assurance to the public about how funding is managed and disbursed.⁶⁵ The results of financial audits conducted by QAO of Councils, and the entities they control, are available publicly in accordance with section 67 of the *Auditor-General Act 2009* (Qld).

57. Council submits that '*historical data relating to the former councillors of the controlled entities (who were either senior executives of Council or former councillors) is not in the public domain, despite all the publicly information about Council...*'⁶⁶ While I accept that the Category B personal information Council seeks to publish is not in the public domain, I consider that the former Councillors and Directors of the controlled entities would have held different expectations about transparency and accountability, including disclosure of financial data that contained these individuals personal information, on a publicly available Council database, such as the Hub, given these entities were established as separate legal entities and were not subject to Council policies, internal Council procedures or governance or oversight mechanisms. Oversight of financial expenditure of these entities was within the remit of the QAO and not Council. Further, Directors of these controlled entities were permitted to exercise their discretion in the making of decisions regarding the use of funds.

Personal information and privacy

58. I am not satisfied that the former Councillors and Directors of the controlled entities, given their establishment as separate legal entities, would have been reasonably likely to have been aware, or have been made aware, that it is Council's usual practice to disclose that type of personal information on a publicly available database such as the Hub.⁶⁷ I also

⁶¹ <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Culture-and-corruption-risks-in-local-government-Lessons-from-Ipswich-City-Council-Operation-Windage-Report-2018.pdf>

⁶² <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Culture-and-corruption-risks-in-local-government-Lessons-from-Ipswich-City-Council-Operation-Windage-Report-2018.pdf> at page 25.

⁶³ <https://www.oic.qld.gov.au/decisions/queensland-newspapers-pty-ltd-and-ipswich-city-council-2015-qicmr-30-26-november-2015>.

⁶⁴ <https://stories.opengov.com/ipswichqld/published/mGKDZDFqw>.

⁶⁵ Queensland Audit Office, Local government entities: 2015-16 results of financial audits (Report 13:2016-17), QAO, Brisbane, 2016.

⁶⁶ Correspondence from Council dated 9 February 2021.

⁶⁷ IPP 11(1)(a).

note that the controlled entities dataset does not contain a complete record of financial and expenditure data for the period 2010-2020, reducing the utility of this dataset.

59. The winding up of these controlled entities further reduces any public interest in publishing Category B personal information on the Hub, given these controlled entities have, or will cease to exist. I note Council's submission that although the controlled entities are being wound up, or in most cases, cease to exist, these entities are subject to public scrutiny, when Council, were the primary shareholder of these entities.⁶⁸

Prejudice fair treatment of individuals

60. I find that the incomplete, and potentially inaccurate, records contained in this dataset⁶⁹ prejudices the fair treatment of individuals.
61. Accordingly, I afford substantial weight to the public interest in Council complying with the privacy principles, which relate to the protection of personal information and privacy and the fair treatment of individuals.
62. On balance, I consider that for the Category B personal information, the public interest in Council complying with the privacy principles is not outweighed by the public interest in waiving or modifying Council's compliance with the privacy principles.

Conclusion

63. Based on the information before me, and for the reasons set out above, I am not satisfied that the public interest in Council's compliance with the privacy principles is outweighed by the public interest in waiving or modifying Council's compliance with the privacy principles in the circumstances of this case.

DECISION

64. I do not approve Council's application for an approval that waives or modifies Council's obligation to comply with the privacy principles. I am not satisfied that the public interest in Council's compliance with the privacy principles is outweighed by the public interest in waiving or modifying Council's compliance with the privacy principles.
65. I have made this decision under section 157(4) of the IP Act.

Rachael Rangihaeata
Information Commissioner

Date: 11 March 2021

⁶⁸ Correspondence from Council dated 9 February 2021.

⁶⁹ ICC Integrity Hub – controlled entity data 2012-2020 (OIC comparison) – unlinked (A6510725).xlsx received by OIC on 29 September 2020

APPENDIX

Significant procedural steps

Date	Event
22 July 2020	OIC received Council's application for a waiver under section 157 of the IP Act and accompanying submissions dated 22 July 2020
29 July 2020	OIC notified Council that the waiver application had been received and requested submissions and supporting documentation from Council on what, if any, consultation Council has undertaken with third parties
10 August 2020	OIC received submissions and supporting documentation from Council on 10 August 2020
24 August 2020	OIC responded to Council's submissions requesting further clarification regarding scope of Council's waiver application and sought additional information
7 September 2020	Council wrote to OIC requesting an extension until 28 September 2020 to respond to OIC's request for additional information
8 September 2020	OIC granted Council's request for an extension until 28 September 2020
29 September 2020	Council responded to OIC's request for additional information, confirmed Council's narrowed scope of waiver application and provided a progress update on Council's consultation with third parties
6 October 2020	OIC wrote to Council confirming Council's narrowed scope of waiver application and noting OIC was awaiting further advice from Council regarding outcome of Council's third-party consultation
22 October 2020	Council wrote to OIC providing additional information
26 November 2020	OIC wrote to Council requesting a progress update on the outcome of Council's consultation with third parties and sought confirmation of Council's continued request for a waiver under section 157 of the IP Act.
3 December 2020	Council responded to OIC's request confirming Council's advice that Council continues to seek the waiver in accordance with Council's narrowed scope and provided a progress update on consultation with third parties
8 December 2020	OIC wrote to Council confirming Council's advice and requested additional information from Council providing details of the specific personal information within scope of the waiver application
14 December 2020	Council responded to OIC's request for additional information providing a progress report on third party consultation
18 December 2020	Council wrote to OIC providing a further update on the results of third party consultation
22 January 2021	OIC conveyed a preliminary view to Council
9 February 2021	Council provided further submissions in response to OIC's preliminary view

Date	Event
23 February 2021	OIC sought clarification from Council regarding the scope of personal information subject to the waiver application provided 9 February 2021
24 February 2021	Council responded to OIC's request for further clarification