



Decision and Reasons for Decision

Citation:	<i>O99 and Fraser Coast Regional Council [2025] QICmr 17 (1 April 2025)</i>
Application Number:	317959
Applicant:	O99
Respondent:	Fraser Coast Regional Council
Decision Date:	1 April 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - access to personal information of private individuals - personal information and right to privacy - whether disclosure of information 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 applied¹ to Fraser Coast Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**). The applicant referred to a report which was presented at a Council meeting on 8 November 2017, about the outcomes of consultation in relation to site opportunities for recreational vehicles (**RV**)² in Bauple (**Consultation Report**). The applicant sought access to information referred to in the Consultation Report, namely:
 - documents relating to two meetings with representatives of the Bauple Progress Association Inc (**BPA**)
 - documents relating to a meeting with BPA representatives on 29 September 2017;³ and
 - information relating to an attachment to the Consultation Report titled '[BPA] – Response Report to RV Opportunities in Bauple Report' (**BPA Report**).⁴

¹ On 2 February 2024.

² Titled 'Outcomes of Consultation – Independent Report – RV site opportunities at Bauple' (#3436737).

³ Which the applicant notes might be one of the two meetings referred to in his first dot point.

⁴ In particular, the applicant was seeking access to information that demonstrated how the BPA Report was received by Council, who registered the BPA Report in eDocs and who accessed and edited the BPA Report. I note Council disclosed information to the applicant addressing each of these issues.

2. Council located 39 pages of information and decided⁵ to refuse access to parts of 14 pages.⁶
3. The applicant applied for internal review of Council's decision.⁷ Council decided to affirm its original decision.⁸
4. The applicant applied⁹ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.
5. For the reasons set out below, I affirm Council's decision and find that access to information on parts of 13 pages may be refused on the ground that disclosure would, on balance, be contrary to the public interest.¹⁰

Background

6. Council commissioned an independent report in relation to the viability of various sites for overnight RV camping in Bauple.¹¹ The resulting viability report was tabled at a Council meeting on 27 September 2017. At this time, Council resolved that consideration of this viability report would be deferred to enable consultation with the community on the findings and recommendations in the report.¹²
7. Subsequently, on 8 November 2017, the Consultation Report was presented at a Council meeting. The Consultation Report refers to two meetings with representatives of the BPA and a report received from the BPA – that is, the BPA Report.¹³ The BPA Report stated that the preferred site in Bauple, as referred to in the independent report obtained by Council, was not accepted or supported by community groups. Instead, the BPA Report suggested that improvements should be made to an existing site in the centre of Bauple and one located outside of Bauple.
8. I understand the applicant considers the views of the BPA, as set out in the Consultation Report and the BPA Report, are contrary to the views of the applicant and what the applicant considers to be the majority view of the BPA. The applicant has submitted that the BPA Report is '*fraudulent*' as it was '*not sent from the BPA and, no record exists in BPA Minutes or computer records available*'.¹⁴ He believes that Council relied on the BPA Report to '*deny economic progress in Bauple*'. He has also stated that he had notified Council that he considered the BPA Report to be fraudulent, however Council officers have not '*corrected their "performance" and document registration system*'.¹⁵

Reviewable decision

9. The decision under review is Council's internal review decision dated 11 April 2024.

⁵ In a decision dated 4 March 2024.

⁶ While Council's decision referred to information being refused on 14 pages, one of those pages (page 9) only contains redactions for irrelevant information under section 73 of the RTI Act. Two further pages (pages 10 and 23) contain redactions for both irrelevant and contrary to the public interest information. On 21 May 2024, OIC wrote to the applicant informing the applicant that OIC was proceeding on the basis the applicant did not seek review of any information marked as irrelevant.

⁷ On 15 March 2024.

⁸ Internal review decision dated 11 April 2024.

⁹ On 19 April 2024.

¹⁰ Under section 47(3)(b) of the RTI Act.

¹¹ In July 2017.

¹² Council's letter to the applicant dated 4 April 2024, provided to OIC by the applicant on 30 June 2024.

¹³ Agenda for Council's Ordinary Meeting on 8 November 2017 at pages 106 to 109. See Council's website - [FCRC - Public Sharing - Ordinary Meeting No. 15-17 Agenda - 081117.pdf - All Documents](#) (accessed on 13 March 2025).

¹⁴ Email to OIC dated 19 April 2024.

¹⁵ Email to OIC dated 19 April 2024.

Evidence considered

10. Significant procedural steps relating to the external review are set out in the Appendix. In addition, during the external review the applicant sent correspondence to Council on a range of issues and copied OIC into that correspondence.¹⁶
11. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes and the Appendix). I have taken into account all information provided by the applicant to OIC to the extent that it relates to the issue in this review.
12. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁷ I consider a decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹⁸ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations of Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁹ '*it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act*'.²⁰

Information in issue

13. The information refused by Council (**Information in Issue**) appears on parts of 13 pages and comprises:
 - names
 - contact information; and
 - other identifying information

about individuals other than the applicant, including representatives of the BPA and other local members of the community.²¹

Issue for determination

14. During the external review the applicant identified documents he considered existed but had not been located by Council. This issue was resolved during the external review and will not be addressed in this decision.
15. The sole issue for determination in this decision is whether access to the Information in Issue may be refused because its disclosure would, on balance, be contrary to the public interest.

¹⁶ On 6 and 11 July 2024 and 29-31 January 2025.

¹⁷ Section 21(2) of the HR Act.

¹⁸ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Judicial Member McGill saw 'no reason to differ' from OIC's position).

¹⁹ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

²⁰ *XYZ* at [573].

²¹ The information provided to OIC by Council comprises 39 pages, although I note that the 39 pages comprise duplicate copies of some documents. For the purposes of this decision the page numbers referred to relate to the 39-page PDF provided by Council. The Information in Issue can be located at pages 1 to 5, 10 to 11, 16, 18, 21, 23 to 24 and 29 of 39.

Relevant law

16. The primary object of the RTI Act is to give a right of access to information in the government's possession or under the government's control.²² This right is subject to other provisions of the RTI Act,²³ including grounds on which access may be refused.²⁴ One of these grounds (which are to be interpreted narrowly and with a pro-disclosure bias)²⁵ permits an agency to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.²⁶
17. The steps to be followed in determining whether disclosure of information would, on balance, be contrary to the public interest, are prescribed in section 49 of the RTI Act. In summary, a decision-maker must:
 - 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 would, on balance, be contrary to the public interest.
18. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have not identified or considered any irrelevant factors in this matter.

Findings

Applicant's submissions

19. As noted at paragraph 8 above, the applicant considers that Council has relied on a '*fraudulent*' report to make decisions in relation to the viability of RV sites and in doing so has denied '*economic progress in Bauple*'.²⁷ I have summarised the applicant's further submissions below:²⁸
 - Council has falsely claimed that it conducted community consultation
 - Council has not followed certain required processes, has breached legislation²⁹ and engaged in corrupt conduct
 - further investigation into Council's conduct ought to occur; and
 - the applicant is concerned about collusion and/or a conspiracy that he believes has occurred '*in order to prevent transparency and accountability in [Council]*'.
20. During the external review, OIC conveyed a preliminary view to the applicant that, given the nature of the Information in Issue, access to it may be refused on the ground that its disclosure would, on balance, be contrary to the public interest.³⁰
21. In response the applicant submitted:³¹

²² Section 3(1) of the RTI Act.

²³ Section 23(1) of the RTI Act.

²⁴ Section 47 of the RTI Act.

²⁵ Section 47(2)(a) of the RTI Act.

²⁶ Sections 47(3)(b) and 49 of the RTI Act.

²⁷ Email to OIC dated 19 April 2024.

²⁸ Applicant's emails to OIC dated 19 April 2024, 5 May 2024 and 30 June 2024.

²⁹ Including the *Local Government Act 2009* (Qld) (**LG Act**).

³⁰ Letter to the applicant dated 5 November 2024.

³¹ Attachment to the email to OIC dated 18 November 2024.

Your views appear without foundation and appear to have not fully considered the public interests of the Bauple community.

...

The relative importance of the public interest factors for determination by your office have not been balanced against the extent of public interest harm with today's acknowledgement of government's assistance to residents [sic] cost of living issues, there is no indication why a factor would not advance the public interest given the harm that has been curiously done to the Bauple community. ... lapse of time has not been considered as this has been an ongoing issue as the [Community Development Plan] has not been updated since 2013 and [Council] has been less than diligent in achieving this; circumstances have also changed in so far as RV site land has been offered to [Council] for purchase or lease and the CEO and Mayor are still failing to act in the public interest as these additional customers would allow the shop to reopen and assist the communities cost of living pressures.

Factors favouring disclosure

22. The applicant submitted that total transparency and accountability is required in relation to the '*Fraudulent Document*' (that is, the BPA Report) and it would be contrary to Council's resolution to consult with the community to '*not know the options for economic progress for Bauple and who was responsible to frustrate and deny the proper execution of Council's intent when it directed [Councillor Name] to appoint a community committee to explore all economic options for Bauple*'.³²
23. This submission appears to suggest that the Information in Issue should be disclosed, so that the applicant could identify who Council met with when it had the meetings with representatives of the BPA referred to in the Consultation Report; and which individual community members the BPA stated it consulted with, as referred to in a list provided to Council from the BPA generic email address.³³ In this regard, I note that while there is a broad public interest in disclosing information about Council's processes to enhance Council accountability and transparency, this public interest does not extend to promoting the accountability and transparency of the BPA, which I understand is a non-government organisation. The public interest favouring disclosure of information regarding the actions of the BPA only arises insofar as that information provides background or context to Council's processes.
24. In furtherance of his submissions regarding accountability and transparency, the applicant also submitted that disclosure of the Information in Issue would be in compliance with various sections of the LG Act.³⁴ Noting the nature of the Information in Issue – which is limited to the personal information³⁵ of private individuals – I do not accept the applicant's submission in this regard.
25. I do accept that public interest factors in relation to accountability and transparency of Council, including providing background or contextual information that informed Council's decision-making processes, apply regarding the Information in Issue.³⁶ In determining the weight that should be afforded to these factors, I consider that the extent to which Council has already discharged its obligation, by the information already disclosed, is relevant.

³² Email to OIC dated 19 April 2024.

³³ The list was attached to an email to Council sent on 16 October 2017.

³⁴ Email to OIC dated 18 November 2024. In particular, the applicant refers to sections 3, 4, 12 and 13 of the LG Act.

³⁵ Schedule 5 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**) defines 'personal information' as '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.'

³⁶ Schedule 4, part 2, items 1 and 11 of the RTI Act.

26. Council has fully disclosed the BPA Report, the email providing the BPA Report to Council which shows it was sent from the BPA's generic email address, the emails between BPA members and Council officers,³⁷ a Briefing Note in relation to the meeting with the BPA on 29 September 2017 (**Briefing Note**), and an internal Council email³⁸ following the meeting on 13 October 2017. Given this, I am satisfied Council has significantly discharged the abovementioned public interest by its disclosure of this information.
27. In contrast, the Information in Issue comprises the personal information of private individuals. It does not show Council's decision-making process in relation to the viability of RV sites within the area, nor does it comprise routine work information of Council employees or elected representatives as suggested by the applicant.³⁹ As such, I consider that the abovementioned public interest factors will only be marginally further advanced by disclosure of the Information in Issue. Accordingly, I afford low weight to these factors.
28. Throughout his submissions, the applicant has outlined various allegations of corrupt conduct and/or conspiracy by Council officers. I have therefore considered whether disclosure of the Information in Issue could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official; or reveal or substantiate that an agency or official has engaged in misconduct or negligent, improper or unlawful conduct.⁴⁰
29. On the material before me there is no evidence that any Council officer has engaged in corrupt conduct and/or conspiracy. What I must consider is whether disclosure of the specific Information in Issue itself could reasonably be expected to reveal or substantiate any misconduct or negligent, improper or unlawful conduct; or allow or assist inquiry into possible deficiencies of conduct or administration. There is no evidence before me to suggest that disclosing the Information in Issue—which entirely comprises the personal information of *private* individuals—would reveal any misconduct, or negligent, improper or unlawful conduct, or allow inquiry into any possible deficiencies of conduct, of Council, any Council officers, any Councillors or any other government agency or official. Accordingly, I am satisfied that neither of these factors are enlivened by the Information in Issue and no weight applies to these factors.
30. Given the applicant's submissions in relation to the economic interests of the Bauple community as noted at paragraph 22 above, I have also considered whether disclosure of the Information in Issue could reasonably be expected to contribute to positive and informed debate on important issues⁴¹ or inform the community of Council's operations.⁴²
31. As noted above the Information in Issue comprises the personal information of individuals other than the applicant, given this I am satisfied that disclosure of it is not capable of contributing to positive and informed debate on important issues, or informing the community of Council's operations. Insofar as the applicant suggests that lapse of time should be considered as the Community Development Plan has not been updated since 2013, I do not consider this has any relevance to the disclosure of the Information in Issue, given its nature. Accordingly, I have not attributed any weight to either of these factors.

³⁷ With only the Information in Issue being redacted.

³⁸ Email dated 16 October 2017.

³⁹ Email to OIC dated 30 June 2024.

⁴⁰ Schedule 4, part 2, items 5 and 6 of the RTI Act.

⁴¹ Schedule 4, part 2, item 2 of the RTI Act.

⁴² Schedule 4, part 2, item 3 of the RTI Act.

32. I have not identified any other factors favouring disclosure of the Information in Issue.

Factors favouring nondisclosure

33. As noted above, the Information in Issue is entirely the personal information of private individuals (as distinct from government employees or elected representatives). The RTI Act recognises that disclosing an individual's personal information to someone else can reasonably be expected to cause a public interest harm and prejudice the protection of their right to privacy.⁴³ As the Information in Issue is entirely the personal information of individuals other than the applicant, these two public interest factors favouring nondisclosure are enlivened for consideration.
34. In relation to the public interest harm factor, the applicant referred to the exception to this factor which states:⁴⁴

However, subsection (1) does not apply if what would be disclosed is only personal information of the person by whom or on whose behalf, an application for access to a document containing the information is being made.

35. In this respect, the applicant submitted that the BPA Report is anonymous⁴⁵ and therefore it is 'impossible' to suggest that personal private information is in jeopardy.⁴⁶ It is pertinent to note here, that the Information in Issue is not comprised within the body of the BPA Report itself. It comprises the names and contact details of BPA representatives in emails with Council officers, the Briefing Note and a list of community members that the BPA stated it consulted with, together with the contact details of those community members. Taking into account the nature of the information and the context in which it was provided to Council (both as evident at the time, and as subsequently apparent from the applicant's submissions), I consider that its disclosure could reasonably be expected to cause a public interest harm and I afford moderate weight to this public interest harm factor.
36. The concept of 'privacy' is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others.⁴⁷ Given the differing opinions within this small community as to the preferred site for a RV facility, I consider that disclosure of the personal information of private individuals in this matter would interfere with those individuals' right to preserve their personal sphere free from interference from others. I am satisfied that disclosing the Information in Issue to the applicant in these circumstances would prejudice the protection of those individuals' right to privacy and afford high weight to this factor.

Balancing the public interest

37. I have applied the pro-disclosure bias intended by Parliament. Favouring disclosure, I note the low weight of the public interest factor regarding Council transparency and accountability.⁴⁸ Against disclosure, I note the moderate weight of the public interest harm factor regarding personal information of individuals other than the applicant, and the high weight of the public interest factor regarding prejudice to the right to privacy of

⁴³ Schedule 4, part 4, section 6(1) and schedule 4, part 3, item 3 of the RTI Act.

⁴⁴ Schedule 4, part 4, section 6(2) of the RTI Act. Email to OIC dated 19 April 2024.

⁴⁵ While the applicant submits the BPA Report is anonymous the information disclosed to the applicant by Council appears to suggest that Council requested any personal references be removed from the BPA Report – see page 9 of 39.

⁴⁶ Email to OIC dated 19 April 2024.

⁴⁷ Paragraphing 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.

⁴⁸ Schedule 4, part 2, item 1 of the RTI Act.

individuals.⁴⁹ On balance, I am satisfied that the nondisclosure factors are determinative, given the limited nature of the Information in Issue – being the personal information of individuals other than the applicant and external to Council. Accordingly, I find that access to the Information in Issue may be refused as disclosure would, on balance, be contrary to the public interest.⁵⁰

DECISION

38. For the reasons outlined above, I affirm Council's decision and find that access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act because disclosure would, on balance, be contrary to the public interest.
39. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

A Rickard
Assistant Information Commissioner

Date: 1 April 2025

⁴⁹ Schedule 4, part 4, section 6 and schedule 4, part 3, item 3 of the RTI Act.

⁵⁰ Sections 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
19 April 2024	OIC received the application for external review from the applicant and OIC requested preliminary documents from Council.
22 April 2024	OIC received the preliminary documents from Council.
5 May 2024	OIC received submissions from the applicant.
21 May 2024	OIC advised the applicant and Council that the application for external review had been accepted and requested information from Council. OIC received further information from Council.
30 June 2024	OIC received submissions from the applicant.
1 July 2024	OIC received submissions from the applicant.
7 July 2024	OIC received submissions from the applicant.
13 August 2024	OIC provided the applicant with an update and received submissions from the applicant.
22 August 2024	OIC received a request for an update from Council.
27 August 2024	OIC provided an update to Council.
30 October 2024	OIC requested further information from Council about the searches it conducted for documents responsive to the access application.
31 October 2024	OIC received submissions from Council.
5 November 2024	OIC conveyed a preliminary view to the applicant.
18 November 2024	OIC received submissions from the applicant.
9 January 2025	OIC received submissions from the applicant.
16 January 2025	OIC received submissions from the applicant.
23 January 2025	OIC received a request for an update from Council.
28 January 2025	OIC provided Council with an update.
12 March 2025	OIC advised the applicant the external review would be finalised by a formal decision.
16 March 2025	OIC received further information from the applicant.