



## Decision and Reasons for Decision

---

**Application Number:** 310275

**Applicant:** Mahoney

**Respondent:** Ipswich City Council

**Decision Date:** 17 June 2011

**Catchwords:** ADMINSTRATIVE LAW - INFORMATION PRIVACY ACT – APPLICATION FOR ACCESS TO INFORMATION – REFUSAL OF ACCESS – applicant applied for information relating directly and indirectly to her property – agency refused access to documents – whether the access application can be made under the IP Act – whether the application is for personal information as defined by section 12 of the IP Act – whether information about the applicant’s property is information about the applicant

### Contents

REASONS FOR DECISION.....	2
Summary .....	2
Background.....	2
Reviewable decision .....	2
Issue in the review .....	2
Evidence considered .....	3
Findings .....	3
Can the access application be made under the IP Act? .....	3
What is personal information? .....	4
a) Can an individual be identified from the information sought? .....	4
b) Is the information sought <i>about</i> that individual? .....	4
Consideration .....	5
Conclusion .....	6
DECISION.....	6

## REASONS FOR DECISION

### Summary

1. The applicant applied to the Ipswich City Council (**Council**) for '*documents relating directly or indirectly to land located at 16-22 Ipswich-Boonah Road Purga and described in the relevant period as Lot 229 on RP 202963*'<sup>1</sup> (**access application**) under the *Information Privacy Act 2009* Qld (**IP Act**).
2. Council advised the applicant that her access application should be made under the *Right to Information Act 2009* (Qld) (**RTI Act**) because under the IP Act she was only entitled to access documents containing her personal information. The applicant contended that as she owned the relevant property, her application should proceed under the IP Act.
3. Council dealt with the application under the IP Act as if it were a request for documents relating *directly* to the applicant's land, issuing a decision refusing access on the basis that the documents sought did not exist.
4. For the reasons set out below, I am satisfied that the access application cannot be made under the IP Act because the application is for access to a document other than to the extent it contains the applicant's personal information.<sup>2</sup> In short, the information sought in the access application is not about the applicant and is therefore not her personal information.

### Background

5. Significant procedural steps relating to the application are set out in Appendix A.

### Reviewable decision

6. The decision under review is Council's decision dated 17 June 2010.<sup>3</sup>

### Issue in the review

7. Section 54 of the IP Act<sup>4</sup> sets out the procedure to be followed when an applicant seeks information under the IP Act which 'on its face' should be sought under the RTI Act.
8. Council assessed that 'on its face' the access application sought non-personal information. It therefore consulted with the applicant, with a view to her agreeing to modify her application or pay the application fee to have the request dealt with under the RTI Act.<sup>5</sup>
9. The applicant considered her application should be dealt with under the IP Act because the information she requested—information concerning land in which she has a proprietary interest—comprised her personal information. Council considered that only information relating directly to the property comprised the applicant's personal information. No agreement was reached on this issue.

---

<sup>1</sup> The application excluded '*rates notices, weed eradication notices, documents in Ipswich Southern Corridor Planning Study and Moreton Shire Planning Study*'.

<sup>2</sup> Section 54(5)(b) of the IP Act.

<sup>3</sup> Schedule 5 of the IP Act provides that a decision refusing access to a document under section 67 is a reviewable decision.

<sup>4</sup> See Appendix B.

<sup>5</sup> In accordance with section 54(2) of the IP Act.

10. As the applicant neither changed her application nor paid the application fee, Council was required to continue to deal with the application as one made under the IP Act and to consider again whether the application could be made under that Act. If satisfied that it could not, Council was required to issue a prescribed written notice of its decision.<sup>6</sup>
11. Council instead proceeded to process the application as if it were an application for documents relating directly to the applicant's property. Unable to locate any relevant documents (apart from those excluded from the application), Council issued a decision under section 68 of the IP Act refusing access to the documents sought on the basis that Council held no relevant documents.<sup>7</sup>
12. Although Council processed the application and issued an access decision under the IP Act, the threshold issue of whether the access application can be made under the IP Act remains to be determined in this review.<sup>8</sup>

### **Evidence considered**

13. Evidence, submissions, legislation and other material I have considered in reaching my decision is as disclosed in these reasons (including footnotes and appendix).

### **Findings**

14. The RTI Act and the IP Act form part of an information access scheme that allows individuals to access Queensland Government information,<sup>9</sup> unless, on balance, disclosure of the information is contrary to the public interest. This legislative scheme makes a clear distinction between access to personal and non-personal information. Access applications for personal information are processed under the IP Act and access applications for non-personal information or those seeking both personal and non-personal information are processed under the RTI Act.
15. Under the IP Act, an individual can access documents of an agency or Minister only to the extent they contain the individual's personal information.<sup>10</sup> An access application seeking non-personal information must be made under the RTI Act.

### **Can the access application be made under the IP Act?**

16. The answer to this question is 'no' for the reasons that follow.
17. The access application can only be made and dealt with under the IP Act if all of the documents sought in the application contain the applicant's personal information. This is because the legal right to access information under the IP Act applies only to documents of an agency or Minister to the extent they contain the individual's personal information. Therefore, if the applicant seeks access to documents other than those containing her personal information, the access application cannot be made under the IP Act.

---

<sup>6</sup> Within 10 days of deciding the issue.

<sup>7</sup> Under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) of the RTI Act.

<sup>8</sup> On external review the Information Commissioner can decide any matter in relation to an access application that could have been decided by an agency: section 118 of the IP Act. On external review the applicant made submissions regarding the sufficiency of Council's searches. The searches undertaken by Council are not relevant to the issues to be determined in this review.

<sup>9</sup> Subject to the provisions of the legislation.

<sup>10</sup> Section 40(1)(a) of the IP Act. Though this right is subject to the provisions of the IP Act.

### ***What is personal information?***

18. Personal information is:<sup>11</sup>

*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 [my emphasis]*

19. The following questions are relevant in determining whether information is a particular individual's personal information for the purposes of the IP Act.

- a) Can an individual be identified from the information sought?
- b) If so, is the information sought *about* that individual?

#### **a) Can an individual be identified from the information sought?**

20. Information about an individual which includes the individual's name will ordinarily be identifying. Information other than a name, such as a photograph, or a detailed description may also identify an individual.

21. Where an individual's identity is not apparent, the identity of the individual may be reasonably identifiable through additional information.<sup>12</sup> Whether the availability of additional information means that an individual's identity can be reasonably ascertained will depend upon a number of factors such as:

- how available the additional information is
- how difficult it is to obtain
- how many steps are required to identify the individual
- how certain the identification will be
- whether it will identify one specific individual or a group of people; and
- whether the individual receiving the information can use it to identify the individual.<sup>13</sup>

22. If the answer to question a) is 'no', the information does not comprise personal information and it is not necessary to consider question b).

#### **b) Is the information sought *about* that individual?**

23. The second question—whether the information is *about* the individual is a contextual one. As noted in a recent article on Australian privacy law, '[t]he issue of context is ... important to defining personal information given that any piece of information could be potentially classed as personal information.'<sup>14</sup>

24. This contextual approach has also been adopted in the United Kingdom (UK) where the Office of the Information Commissioner, UK published a guideline<sup>15</sup> to assist in

---

<sup>11</sup> Section 12 of the IP Act.

<sup>12</sup> *WL v La Trobe University* [2005] VCAT 2592.

<sup>13</sup> See OIC Guideline – What is personal information?

<sup>14</sup> Burdon, M, Telford, P, *The Conceptual Basis of Personal Information in Australian Privacy Law*. Elaw Journal: Murdoch University Electronic Journal of Law (2010) 17(1) at page 6.

<sup>15</sup> Data Protection Technical Guidance: Determining what is personal data.

[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_pr ef ace001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_pr ef ace001.pdf)

determining when information is about<sup>16</sup> an individual in the context of information access in the UK (**UK Guideline**).

25. In some cases, information is very obviously about an individual—for example information about an identified individual's medical details, health information, bank account details or salary.<sup>17</sup> In other cases, it is less clear.
26. When information sought is not obviously about an individual, for example, when it is about a piece of land, a boat, or a car, the question to consider is whether the information reveals anything about the individual. That is, whether the information reveals a fact or opinion about the individual. In other words, is there a sufficient link, or connection between the information sought and the identified individual, to make it that individual's personal information?
27. To illustrate<sup>18</sup>—if someone is seeking information about the market value of a property to identify trends in property values in a geographical area, with no reference to the owners of the property, that information will not be personal information because it is not linked to the owners of the property and it does not reveal information about the owners of the property. This is notwithstanding that the property owners' identities may be reasonably ascertainable. In this example, the information sought is about the property but not the property owner. However, if someone is seeking information about electricity usage at a property to determine the bill the property owners should pay, this may be personal information because the information is being collected in a context which is linked to, and reveals information about, the property owner. That is, the amount of electricity used by the property owner. As these examples illustrate, the context is critical to determining whether information is sufficiently linked to an individual to be their personal information.

### **Consideration**

28. The issue to be addressed is whether all Council documents which relate directly or indirectly to land located at 16-22 Ipswich-Boonah Road Purga and described in the relevant period as Lot 229 on RP 202963 necessarily contain the applicant's personal information. In essence—is information about the applicant's land necessarily the applicant's personal information?
29. To address this issue I must consider the questions posed at paragraph 19 above.
30. Can an individual be identified from the information sought? **Yes**. Where information does not identify an individual, regard can be had to extraneous material, such as databases.<sup>19</sup> In this case, a search of Council's databases would reveal that the applicant is an owner of the relevant property. In any event, the applicant told Council this during the consultation.
31. Is the information sought in the access application about the applicant? **No**. There is no information in the access application to suggest that the information sought is obviously about the applicant. I therefore need to consider whether the information being sought reveals a fact or opinion about the applicant. That is, whether there is a

---

<sup>16</sup> The UK definition of personal information uses the term 'relate' rather than 'about'. The definition derives from EU Directive 95/22. A Working Party comprised of representatives of the national supervisory authorities was established under article 29 of the Directive. The Working Party confirmed that information can be considered to relate to an individual when it is about that individual.

<sup>17</sup> See OIC Guideline – What is personal information?

<sup>18</sup> See UK Guideline – Data Protection Technical Guidance: Determining what is personal data.

<sup>19</sup> *WL v La Trobe University* [2005] VCAT 2592 at 45.

sufficient link, or connection, between the information sought and the applicant to make all of the information sought the applicant's personal information.

32. On this point the applicant makes the following submissions:<sup>20</sup>

- *information of significance to land owned by an individual constitutes personal information*
- *the land owned by an individual is indisputably one of the most important assets than an individual has; any interference with land has the potential to significantly alter that individual's personal and financial affairs*
- *the road proposed across my land represented a significant intrusion into my prospective plans for the land; one of the objects of the Act is to enhance access to precisely this type of personal information*
- *ownership of land is a proprietary right which cannot be differentiated from ownership of other assets.*

33. In processing the access application as it did Council took the view that information relating directly to the applicant's property comprised her personal information, but information relating indirectly to the property did not.<sup>21</sup>

34. In her submissions the applicant essentially argues that provided the information sought is of significance to the land, the fact of land ownership provides a sufficient link between the information and the owner to deem the information the owner's personal information.

35. Whilst I accept the applicant's contentions regarding the significance of land ownership and the substantial effect of the proposed road on her plans for the property, I do not accept that information of significance to land owned by an individual necessarily constitutes personal information. The information sought does not reveal a fact or opinion about the applicant and without more, there is an insufficient connection between the information sought and the applicant to make the information sought the applicant's personal information. In short, the information sought is *about* the applicant's land rather than the applicant.

## Conclusion

36. For the reasons set out above, I am satisfied that the access application is:

- for access to a document other than to the extent it contains the applicant's personal information; and
- not an application that can be made under the IP Act.

## DECISION

37. I set aside the decision under review by finding that, in accordance with section 54(5)(b) of the IP Act, the access application is not an application that can be made under the IP Act.

---

<sup>20</sup> The applicant's submission to OIC dated 30 August 2010 and 5 May 2011.

<sup>21</sup> Council's decision dated 17 June 2010.

38. I have made this decision as a delegate of the Information Commissioner, under section 139 of the *Information Privacy Act 2009* (Qld).

---

**Jenny Mead**  
**Right to Information Commissioner**

**Date: 17 June 2011**

**APPENDIX A****Significant procedural steps**

<b>Date<sup>22</sup></b>	<b>Event</b>
18 May 2010	The applicant applied to Ipswich City Council ( <b>Council</b> ) under the IP Act for access to documents relating directly or indirectly to an identified property.
17 June 2010	Council issued its decision under the IP Act ( <b>access decision</b> ).
25 June 2010	The applicant applied to OIC for external review of the access decision.
7 July 2010	OIC informed Council and the applicant that the external review application had been accepted for review. OIC also requested further submissions from Council.
12 July 2010	Council provided OIC with submissions on searches.
2 August 2010	OIC requested further submissions from Council.
12 August 2010	OIC received further submissions from Council.
24 August 2010	OIC conveyed an oral preliminary view to the applicant on the searches conducted by Council and invited the applicant to provide submissions in support of her case if she did not accept the preliminary view.
30 August 2010	OIC received submissions from the applicant in response to the preliminary view.
19 April 2010	OIC conveyed a final oral preliminary view to the applicant that the information she was seeking was not her personal information and the application could not be dealt with under the IP Act.
28 April 2011	OIC confirmed its oral preliminary view of 19 April 2011 to the applicant in writing and again invited the applicant to provide submissions in support of her case if she did not accept the preliminary view.
10 May 2011	OIC received submissions from the applicant in response to the preliminary view.

<sup>22</sup> Of correspondence or relevant communication unless otherwise stated.



## APPENDIX B

### 54 Access application not limited to personal information

- (1) *This section applies if, on its face, an access application purportedly made under this Act should have been made under the Right to Information Act because the application is for access to a document other than to the extent it contains the applicant's personal information.*
- (2) *The agency or Minister must make reasonable efforts to contact the applicant within 15 business days after the application is received and inform the applicant that—*
  - (a) *the application is not an application that can be made under this Act; and*
  - (b) *the application could have been made under the Right to Information Act upon payment of the fee payment under that Act; and*
  - (c) *the applicant may consult with the agency of Minister with a view to—*
    - (i) *making an application under this Act by changing the application; or*
    - (ii) *having the application dealt with under the Right to Information Act by paying the applicable fee.*
- (3) *An agency or Minister must not refuse to deal with an application purportedly made under this Act without first giving the applicant a reasonable opportunity to consult as mentioned in subsection (2)(c).*
- (4) *If the application fee is paid, the applicant is taken to have made the application under the Right to Information Act on the date of the payment.*
- (5) *However—*
  - (a) *the application continues to be dealt with as an application under this Act if, after the opportunity mentioned in subsection (3) is given and any consultation happens, the applicant does not either change the application, or pay the fee, as mentioned in subsection (2)(c); and*
  - (b) *the agency or Minister must again consider whether the application is an application that can be made under this Act and, within 10 days of deciding that matter, give the applicant prescribed written notice of the decision.*