



Decision and Reasons for Decision

Citation:	<i>I16 and Scenic Rim Regional Council [2026] QICmr 51 (30 March 2026)</i>
Application Number:	318535
Applicant:	I16
Respondent:	Scenic Rim Regional Council
Decision Date:	30 March 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - personal information and privacy - commercial information - contrary to public interest - section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld) ADMINISTRATIVE LAW - RIGHT TO INFORMATION - reasonableness of searches - nonexistent or unlocatable documents - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Council under the *Right to Information Act 2009* (Qld) (**RTI Act**)² for access to the following information:

The documents I am seeking relate to the leases, management agreements, instruments of tenure, sublease arrangements, and negotiations with third parties for the old school site at Beechmont ... from 2009 to present day.
2. Council did not make a decision within the timeframe required under the legislation and was therefore, deemed to have refused access to all information.³ The applicant applied to OIC for external review of Council's deemed decision.⁴
3. On external review Council advised OIC that:
 - 286 pages had been located in response to the access application⁵

¹ Access application dated 28 January 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) came into force, effecting significant changes to the RTI Act. As the access application was made prior to 1 July 2025, references in this decision are to the RTI Act as in force prior to 1 July 2025 in accordance with the transitional provisions in Chapter 7, Part 9 of the RTI Act.

³ Under section 46 of the RTI Act. This is the *reviewable decision* for the purpose of the external review.

⁴ External review application dated 27 March 2025.

⁵ Submission to OIC dated 11 June 2025.

- it agreed to release a significant number of those documents to the applicant⁶, subject to the redaction of private information about other individuals and commercial information relating to another entity (**Refused Information**)⁷; and
 - certain documents⁸ were subject to copyright and therefore, could be accessed by way of inspection only.⁹
4. The applicant provided submissions to OIC in response to the released documents raising concerns about the redaction of personal and commercial information and questioning the adequacy of Council's searches.¹⁰ The applicant did not contest the issue of inspection access to copyright documents and therefore, that issue is not dealt with in this decision.
5. For the reasons set out below, I vary Council's deemed decision and find that:
- a. The Refused Information would on balance be contrary to the public interest to disclose, and therefore, access to it may be refused under section 47(3)(b) of the RTI Act; and
 - b. Council has taken reasonable steps to locate documents responding to the scope of the application and access to further documents may be refused on the basis they do not exist under sections 47(3)(e) and 52(1)(a) of the RTI Act.
6. In making this decision, I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**) particularly the right to seek and receive information.¹¹ A decision-maker will be 'respecting' and 'acting compatibly with' this right and others prescribed in the HR Act when applying the law prescribed in the RTI Act.¹² I have acted in this way in making this decision in accordance with section 58(1) of the HR Act.

Contrary to public interest information

Relevant law

7. Under the RTI Act, an individual has a right to be given access to documents in the possession or under the control of an agency.¹³ The legislation is to be administered with a pro-disclosure bias¹⁴ however, the right of access is subject to certain limitations, including grounds for refusing access.¹⁵
8. Access to information may be refused where disclosure would, on balance, be contrary to the public interest.¹⁶ In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must take certain steps as set out in section 49(3) of the RTI Act, including, identifying and disregarding irrelevant factors, identifying factors for and against disclosure, and deciding whether, on balance, disclosure of the information would be contrary to the public interest.¹⁷

⁶ 123 full pages and 97 part pages were released to the applicant on 16 February 2026.

⁷ Contained within 24 full and 97 part pages.

⁸ 42 pages comprising site plans and drawing prepared by a third party.

⁹ Due to the operation of section 68(4) of the RTI Act.

¹⁰ Submission to OIC dated 9 March 2026.

¹¹ Section 21(2) of the HR Act.

¹² See *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; and *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. OIC's approach to the HR Act was endorsed in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

¹³ Section 23 of the RTI Act.

¹⁴ Section 44 of the RTI Act.

¹⁵ Section 47 of the RTI Act. Those grounds are however, to be interpreted narrowly: section 47(2) of the RTI Act.

¹⁶ Section 47(3)(b) of the RTI Act.

¹⁷ Schedule 4 of the RTI Act lists factors that may be relevant in determining where the balance of the public interest lies.

9. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, generally, 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.

Submissions

10. The applicant submitted¹⁸ as follows in relation to the Refused Information:

Third, I object to the apparent redaction of names of office bearers of the ... Association where they were corresponding with Council in an official representative capacity. I do not seek private contact details such as personal mobile numbers, private email addresses, or residential addresses. However, where a person is corresponding as president, secretary, or other authorised office holder of an incorporated community association in relation to Council land, leases, management arrangements, or negotiations, the identity of that person should not be treated in the same way as private personal information. The identity of the office bearer is relevant to transparency, accountability, and authority, including who purported to act for the association in dealings with Council. As a member of the association, I seek clarity as to who authored or sent those communications in that representative capacity. On a proper application of the RTI Act public interest test, the names of office bearers acting officially should be disclosed, while private contact details may remain redacted.

Fourth, I maintain my concern about the breadth of the commercial redactions. I accept that genuinely sensitive pricing or commercial information may in some cases justify limited redaction. However, the fact that material is described as commercially sensitive, or marked commercial-in-confidence, is not conclusive under the RTI Act. The subject matter here concerns a Council-owned public asset, a community site, and proposed third-party occupation or use. In that context, the public interest in transparency and accountability is strong, and any commercial redactions should be narrowly confined to information for which prejudice is established on reasonable grounds.

Findings

11. The Refused Information appears within correspondence (including emails), Council meeting agenda and reports, and lease documentation as described in the table below:

Refused Information	Page numbers	Total
Private and identifying information of individuals other than the applicant, including private citizens and non public sector employees (Third Party Information)	20, 22, 23, 26, 29, 30, 31, 35, 36, 39, 40, 41, 45, 75, 76, 79, 81-83, 85, 110, 111, 126, 127-131, 148, 156, 158, 161-164, 169-190, 194, 210-220, 227, 235, 236, 244-252, 254-257, 277, 279.	87
Information relating to a commercial entity that engaged with Council on matters relevant to the scope of the application including details of lease agreements (Commercial Information)	86-109 (full pages)	24
	34, 61, 62, 74, 77, 80, 112, 113, 125, 133 (part pages)	10

12. In making the below findings on the Refused Information, I have considered the factors in schedule 4 of the RTI Act¹⁹ and not taken any irrelevant factors into account. I have

¹⁸ Submission to OIC dated 9 March 2026.

¹⁹ Relevant factors are discussed below. Some factors have no relevance, for example, the factor concerning enforcement of the criminal law.

also applied the RTI Act's pro-disclosure bias²⁰ and considered Parliament's intention that grounds for refusing access to information are to be interpreted narrowly.²¹

13. I have independently examined the Third Party Information and am satisfied that it comprises the personal information²² of other individuals as it comprises their names, identifying information (such as contact details or signatures) or is otherwise about those individuals. While the disclosure of this information may, to some extent, enhance Council's accountability and transparency, thereby raising factors favouring disclosure,²³ I consider disclosure will more greatly impact the right to privacy of the other individuals and cause a public interest harm by disclosing their private and identifying information.²⁴
14. I have also taken into account that the substance of the documents that contain Third Party Information has largely been released to the applicant and the Third Party Information reflects a comparatively small portion of information in those documents. In the circumstances, I afford the nondisclosure privacy factor and personal information harm factor significant weight, and the factors favouring disclosure moderate weight. On balance, I find the public interest favours nondisclosure of the Third Party Information and that access should therefore, be refused to it under section 47(3)(b) of the RTI Act.
15. Turning to the Commercial Information, I consider the following public interest factors apply in favour of disclosure:
 - promote open discussion of public affairs and enhance Council's accountability
 - contribute to positive and informed debate on important issues
 - inform the community of Council's operations
 - reveal the reason for a government decision and background or contextual information that informed the decision.²⁵
16. On the other hand, there are a number of factors which I consider favour nondisclosure of the Commercial Information, as listed below:
 - prejudice the business, commercial or financial affairs of an entity
 - prejudice Council's ability to obtain confidential information
 - cause a public interest harm by disclosing information of a commercial value to an entity
 - cause a public interest harm by disclosing the business, financial or commercial information of an entity
 - cause a public interest harm by revealing information communicated in confidence.²⁶
17. I am limited in the extent to which I can describe the particular nature of the Commercial Information²⁷ as it claimed to be contrary to public interest information. However, it generally relates to a proposed telecommunications facility at a location described as the Beechmont Community Hub. I accept that there is strong community interest in Council's decision making on this project and that the factors favouring disclosure listed at paragraph 15 would generally be afforded high weight. However, in affording weight to the pro-disclosure factors, I have also taken into account the significant amount of

²⁰ Section 44 of the RTI Act.

²¹ Section 47(2) of the RTI Act.

²² As defined in schedule 6 of the RTI Act and section 12 of the *Information Privacy Act 2009* (Qld).

²³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

²⁴ Schedule 4, part 3, item 3 and part 4, item 6 of the RTI Act.

²⁵ Schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act.

²⁶ Schedule 4, part 3, items 2 and 16 and part 4, items 7 and 8 of the RTI Act.

²⁷ Section 108 of the RTI Act.

information that Council has disclosed to the applicant under the RTI Act which I am satisfied, has already served to enhance Council's accountability and transparency in relation to this project, and reveal extensive background and contextual information including the substance of communications with other involved parties. Accordingly, I afford the factors favouring disclosure moderate weight.

18. Having independently assessed the Commercial Information, I consider there is significant weight to afford to the factors favouring nondisclosure listed at paragraph 16 above. The Commercial Information appears within leasing documentation, including terms of agreement, and within correspondence from the commercial entity Council was dealing with in relation to the facility and subject land. I am satisfied that the information concerns the commercial, business and/or financial affairs of the entity, is of a commercial value and a significant proportion of it was communicated confidentially to Council. I consider the entity's affairs would suffer prejudice and the future supply of such information would also be prejudiced if the Commercial Information was disclosed. On balance, I am satisfied that the public interest favours nondisclosure of the Commercial Information and that access should therefore, be refused to it under section 47(3)(b) of the RTI Act.

Nonexistent and unlocatable documents

Relevant law

19. Access to a document may also be refused if it is nonexistent or unlocatable.²⁸ A document will be nonexistent if there are reasonable grounds to be satisfied it does not exist.²⁹ A document will be unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find the document, but it cannot be found.³⁰
20. To be satisfied that a document does not exist, the Information Commissioner has previously identified key factors to consider, including the agency's structure, recordkeeping practices and procedures and the nature and age of requested documents.³¹ An agency may be able to account for the nonexistence of documents by providing an adequate explanation. However, searches may also be relied on to justify a decision that the documents do not exist, and if so, all *reasonable* steps must be taken to locate the documents. What constitutes reasonable steps will vary in each case, but it does not extend to '*all possible steps*'.³²
21. To determine whether a document exists, but is unlocatable, the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the document.³³ What constitutes reasonable steps will, as noted above, vary case by case as the search inquiry process an agency will be required to undertake will depend on which of the key factors are most relevant in the circumstances.³⁴

²⁸ Sections 47(3)(e) and 52(1)(a) of the RTI Act.

²⁹ Section 52(1)(a) of the RTI Act.

³⁰ Section 52(1)(b) of the RTI Act.

³¹ These factors are identified in *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) (*Pryor*) at [19], which adopted the Information Commissioner's comments in *PDE and the University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at [37]-[38]. These factors were more recently considered in *B50 and Department of Justice and Attorney-General* [2024] QICmr 33 (7 August 2024) at [15].

³² *Webb v Information Commissioner* [2021] QCATA 116 at [6] (*Webb*).

³³ In answering these questions, regard should be had to the circumstances of the case and the relevant key factors (*Pryor* at [21]).

³⁴ Such steps may include inquiries and searches of relevant locations identified after consideration of relevant key factors.

22. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.³⁵ The Information Commissioner has the power to require additional searches to be conducted. However, the Queensland Civil and Administrative Tribunal has confirmed³⁶ that the RTI Act '*does not contemplate that [the Information Commissioner] will in some way check an agency's records for relevant documents*' and that, ultimately, the Information Commissioner depends on the agency's officers to do the actual searching for relevant documents.
23. On an external review, the agency or Minister who made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.³⁷ However, where the issue of missing documents is raised, the applicant bears a practical onus of demonstrating that the agency has not discharged its obligation to locate all relevant documents.³⁸ Suspicion and mere assertion will not satisfy this onus.³⁹

Submissions

24. The revised application scope, as agreed between Council and the applicant⁴⁰ was in summary for:

Management Agreement Execution and Correspondence:

All documents, including emails, internal memos, reports, and meeting minutes, regarding the execution of the option period under the Management Agreement for Lot 3 on WD814531 (Beechmont Road).

Any legal advice, council resolutions, or directives relating to the delay or non-execution of the agreement between 30 June 2024 and December 2024.

Negotiations Leading to Lease Renewal:

Documents evidencing discussions, drafts, or internal deliberations regarding the renewal or extension of the lease between [Association] and [Council] before the lapse of the previous agreement on 30 June 2024.

Any council correspondence regarding the status of [Association] as the leaseholder during this period.

Subleasing and Third-Party Arrangements:

Any agreements, council resolutions, or internal correspondence regarding a sublease arrangement between [Association] and [Business], including the legal basis for such a sublease if [Association] was not a valid leaseholder during this period.

All records of discussions or proposals between [Council] and NBN Co regarding a sublease for a telecommunications tower at the old school site, including the timeline of such negotiations.

Any legal opinions or internal deliberations about whether the absence of a formally executed lease allowed [Council] to negotiate directly with third parties regarding subleasing.

Community Leasing Policies in Effect:

Confirmation of which community leasing policy (2009 Community Leasing Policy or the 2023 Community Tenure Over Council Property Policy) was in effect at the time of the lease renewal process.

Any correspondence between [Council] and [Association] regarding the implications of the 2023 policy, including required constitutional amendments related to management committee eligibility.

³⁵ Section 130(2) of the RTI Act.

³⁶ In *Webb* at [6].

³⁷ Section 87(1) of the RTI Act.

³⁸ See *Mewburn and Department Local Government, Community Recovery Resilience* [2014] QICmr 43 (31 October 2014) at [13].

³⁹ *Parnell and Queensland Police Service* [2017] QICmr 8 (7 March 2017) at [23].

⁴⁰ Email sent by the applicant to Council dated 31 January 2025.

All reviews of the Community Leasing Policy, particularly any documentation regarding the September 2017 review, including compliance with relevant legislation, policies, and regulations.

Community Consultation and Member Voting Rights:

Any records demonstrating how [Council] considered community consultation requirements when negotiating the lease renewal and sublease discussions.

Any documented requirements for [Association] to seek member approval for subleasing arrangements or significant changes to the management agreement.

Any council responses to the petition signed by approximately 400 residents opposing the NBN tower.

25. Council identified 286 pages in response to the above scope, comprising the following types of documents:

- Council policies titled Community Leasing and Community Tenure Over Council Property
- Site plans and drawings
- Council meeting agenda and reports
- Correspondence between Council and third parties
- Internal Council correspondence
- Documentation regarding a lease agreement between Council and a third party
- Management agreement between Council and an incorporated association.

26. Council confirmed⁴¹ that 4.5 hours of searches were undertaken as set out below, to locate the responsive documents:

- ECM – Council's recording keeping software.
 - Searches were undertaken using Land ID filtering with the search words *NBN* and *Management Agreement*.
 - Searches of the Correspondent (component of ECM) used the names of the entities named in the revised scope of the application
 - A document search in ECM was undertaken for *Community Leasing Policy*
- CECIL – Council's intranet.
 - Using the document search facility for a *Community Leasing Policy*.
- Infocouncil – Council's Meeting software
 - Searches were conducted using the words '*lease*', '*renewal*' and '*NBN*'.

27. Council also provided⁴² OIC with the following additional submission to support its position that reasonable searches had been conducted:

Councils Property and Projects Team is the business unit responsible for the management of Council's leases and related records. No other business units deal with these matters. Governance has no involvement in these matters. Therefore the search request went to that team as a whole. Any Council meeting reports etc are also created by that team and was captured in the searches.

The Property team has confirmed that searches were conducted of the records and systems reasonably expected to contain documents within scope of the application.

The whole of Council use the same record keeping software, ECM.

Based on that information, Council is satisfied that reasonable and appropriate searches have been undertaken.

⁴¹ Submission to OIC dated 12 March 2026.

⁴² Email to OIC dated 17 March 2026.

28. The applicant submitted⁴³ as follows in support of his concerns that all relevant documents have not been located:

First, search adequacy remains unresolved. My application was broad and expressly sought documents relating to leases, management agreements, instruments of tenure, sublease arrangements, and negotiations with third parties concerning the old school site at Beechmont from 2009 to the present. In those circumstances, the question is not whether 286 pages were released, but whether Council took all reasonable steps to locate all responsive documents. The RTI Act only permits refusal on the basis that documents do not exist or cannot be found after all reasonable steps have been taken. I remain concerned that the released material does not demonstrate that all obvious custodians and repositories were properly searched, including executive records, property and tenure files, governance records, and communications relating to third-party negotiations concerning the site.

Second, the completeness of the released set remains in issue. This matter concerns a Council-owned community site, management arrangements, lease and sublease issues, and negotiations affecting public land. Scenic Rim Regional Council's own planning material recognises that Council manages numerous tenure and management arrangements over community assets, including management agreements and leases. That context supports the need for a careful and transparent account of the searches undertaken before the review can properly be finalised.

Findings

29. Having reviewed the located information, and Council's submissions on its searches, I am satisfied that the searches conducted by Council were appropriately informed by the details provided by the applicant in the access application, the revised scope and Council's record-keeping practices as outlined in paragraph 27 of these reasons, in particular:
- Council's Property and Projects Team is the business unit responsible for the management of Council's leases and related records. No other business units deal with these matters.
 - Governance has no involvement in these matters.
 - The Property team has confirmed that searches were conducted of the records and systems reasonably expected to contain documents within scope of the application.
 - The whole of Council use the same record keeping software, ECM.
30. I acknowledge that the applicant has significant concerns around Council's handling of the telecommunications facility project and that the extent of documentation located has not met his expectations. Based on the information available to me, I am satisfied that Council directed its searches to appropriate areas having regard to its recordkeeping practices and undertook comprehensive searches of relevant systems. I am satisfied those searches resulted in the location of a significant number of documents responding to the terms of the application, the majority of which were released to the applicant.
31. In considering the reasonableness of Council's searches, I have also had regard to the fact that the Commercial Information includes leasing documentation and terms of agreements, and that these types of documents form part of the applicant's sufficiency of search concerns. While I acknowledge the applicant is somewhat disadvantaged by having limited information about the Commercial Information to which full access was refused, I have made findings on disclosure of those documents, as outlined in paragraph 18 of these reasons. I consider that the location of those documents by

⁴³ Submission to OIC dated 9 March 2026.

Council effectively addresses that particular component of the applicant's sufficiency of search concerns.

32. Given the terms of the original application, the revised scope, the nature and extent of searches that have been undertaken by Council, the documents located to date (including those to which access was refused) and Council's relevant recordkeeping systems, practices and business unit operations, I am satisfied that further documents responding to the application do not exist. Accordingly, access to further documents may be refused on the basis they do not exist, in accordance with section 47(3)(e) and 52(1)(a) of the RTI Act.⁴⁴

DECISION

33. For the reasons set out above, I vary the reviewable decision⁴⁵ and find that:
- a. The Refused Information would on balance be contrary to the public interest to disclose under section 49 of the RTI Act and therefore, access to it may be refused under section 47(3)(b) of the RTI Act; and
 - b. Council has taken reasonable steps to locate documents responding to the scope of the application and access to further documents may be refused on the basis they do not exist under sections 47(3)(e) and 52(1)(a) of the RTI Act.
34. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Katie Shepherd
Assistant Information Commissioner

Date: 30 March 2026

⁴⁴ Based on the information available to me, I do not consider the requirement for Council to conduct back up searches under section 52(2) of the RTI Act is enlivened.

⁴⁵ Under section 110(1)(b) of the RTI Act.