



Decision and Reasons for Decision

Citation: *2LFF0D and Lockyer Valley Regional Council [2017] QICmr 10 (22 March 2017)*

Application Number: 313021

Applicant: 2LFF0D

Respondent: Lockyer Valley Regional Council

Decision Date: 22 March 2017

Catchwords: ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LAW ENFORCEMENT OR PUBLIC SAFETY INFORMATION - request for environmental audit report held by Council - whether the information comprises exempt information - whether disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation - section 47(3)(a) and schedule 3, section 10(1)(d) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - request for environmental audit report held by Council - accountability and transparency - inform public about local planning processes - prejudice to business and commercial affairs of entities - prejudice to future supply of information to Council - whether disclosure would, on balance, be contrary to the public interest - whether access may be refused under section 47(3)(b) of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Lockyer Valley Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a range of documents relating to the development approval for Black Duck Valley Moto Park (**Moto Park**).
2. Council located relevant documents and decided¹ to release 63 pages and refuse access to 26 pages, on the ground that their disclosure would, on balance, be contrary to the public interest.

¹ Decision dated 26 September 2016.

3. The applicant applied² to the Office of the Information Commissioner (**OIC**) for external review of Council's decision, seeking full disclosure of the refused information.
4. On external review, Council accepted OIC's preliminary view that the information in issue in the review could not be refused under the RTI Act.
5. OIC considered that a third party (**Third Party**) may be concerned about disclosure of the information and, therefore, consulted with the Third Party about disclosure under section 37 of the RTI Act.³ The Third Party raised objections⁴ about disclosure of the information, on the basis that disclosure would lead to serious harassment and intimidation and/or would, on balance, be contrary to the public interest.
6. OIC invited the Third Party to participate in the review. The Third Party did not apply to participate in the external review but maintained their objections to disclosure.
7. For the reasons set out below, I set aside Council's decision and find that access to the information in issue in this review may not be refused under the RTI Act, as it is not exempt information and nor would its disclosure, on balance, be contrary to the public interest.

Background

8. Significant procedural steps relating to the external review are set out in the Appendix.

Reviewable decision

9. The decision under review is Council's decision dated 26 September 2016.

Evidence considered

10. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

11. The information in issue in this review (**Information in Issue**) comprises 26 pages, being an environmental audit report and associated correspondence.

Issues for determination

12. The issues for determination in this review are whether access to the Information in Issue may be refused under the RTI Act on the basis that:
 - it is exempt information; or
 - its disclosure is, on balance, contrary to the public interest.
13. The Third Party provided OIC with a number of submissions regarding grounds for refusal of access to the Information in Issue.⁵ These submissions are based on the Third Party's assumption about the identity of the access applicant, which has not been disclosed on external review. The Third Party's submissions also address their

² On 19 October 2016.

³ By letter dated 12 January 2017.

⁴ By email dated 18 January 2017.

⁵ As set out in the Appendix.

dissatisfaction with the consultation process and the release of information by Council.⁶ To the extent the Third Party's submissions are relevant to the issues for determination, I have addressed them below.

Exempt Information

Relevant law

14. Under the RTI Act, a person has a right to be given access to documents of an agency.⁷ The RTI Act is administered with a pro-disclosure bias, meaning that access should be given to a document unless giving access would, on balance, be contrary to the public interest.⁸ The RTI Act also sets out certain grounds on which access to information may be refused.⁹ It is Parliament's intention that these grounds are to be interpreted narrowly.¹⁰
15. The RTI Act permits an agency to refuse access to documents to the extent they comprise exempt information.¹¹ Relevantly in this review, information will be exempt if its disclosure could reasonably be expected to result in a person being subjected to a serious act of harassment or intimidation.¹²
16. In relation to the serious harassment and intimidation exemption, Thomas J of the Queensland Civil and Administrative Tribunal observed as follows in the matter of *Watson v Office of the Information Commissioner Queensland & Ors*:¹³

For the exemption to apply, it must be reasonably expected that a person would be subject to a serious act [of] harassment or intimidation as a result of the disclosure of the information, rather than independently or from any other circumstance.

17. Accordingly, for this exemption to apply, I must be satisfied that:
 - there is a reasonable expectation of harassment and intimidation arising as a result of disclosure,¹⁴ rather than from other circumstances;¹⁵ and
 - the expected harassment or intimidation is serious in nature.
18. The term '*could reasonably be expected to*' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,¹⁶ nor merely a possibility.¹⁷ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.¹⁸ It is not necessary for a decision-maker '*to be satisfied upon a*

⁶ The Third Party contends that Council disclosed information, including the Information in Issue, before a January 2016 Council meeting. If such disclosure occurred, it occurred outside the RTI Act process.

⁷ Section 23 of the RTI Act.

⁸ Section 44(1) of the RTI Act.

⁹ Section 47(3) of the RTI Act.

¹⁰ Section 47(2)(a) of the RTI Act.

¹¹ Sections 47(3)(a) and 48 of the RTI Act.

¹² Schedule 3, section 10(1)(d) of the RTI Act.

¹³ [2015] QCATA 095 (*Watson*) at [19].

¹⁴ As noted in *Watson* and also as discussed by OIC in *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009) (*Sheridan*) at [191]. The decision in *Sheridan* concerned section 42(1)(ca) of the repealed *Freedom of Information Act 1992* (Qld). Schedule 3, section 10(1)(d) of the RTI Act is drafted in substantially the same terms as this provision. Therefore, the Information Commissioner's findings in *Sheridan* are relevant in interpreting schedule 3, section 10(1)(d) of the RTI Act.

¹⁵ *Murphy and Treasury Department* (1995) 2 QAR 744 (*Murphy*) at [54] and *Seven Network (Operations) Limited and Redland City Council* (Unreported, Queensland Information Commissioner, 30 June 2011) at [19]. Refer also to 6ZJ3HG and *Department of Environment and Heritage Protection; OY76VY (Third Party)* [2016] QICmr 8 (24 February 2016).

¹⁶ *Attorney-General v Cockcroft* (1986) 64 ALR 97 (*Cockcroft*) at 106.

¹⁷ *Murphy* at [44], citing *Re B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [160].

¹⁸ *Murphy* at [45]-[47].

balance of probabilities that disclosing the document will produce the anticipated prejudice, or, as in this case, serious harassment or intimidation.¹⁹

19. Factors that might be relevant in considering whether an event could reasonably be expected to occur include, but are not limited to:²⁰
 - past conduct or a pattern of previous conduct
 - nature of the information in issue
 - nature of the relationship between the parties and/or relevant third parties; and
 - relevant contextual and/or cultural factors.
20. The RTI Act does not define harassment or intimidation. Therefore, the terms are given their ordinary meanings.²¹ In this regard, the Information Commissioner has previously accepted²² the following definitions:
 - *'harass'* includes *'to trouble by repeated attacks, ... to disturb persistently; torment'*; and
 - *'intimidate'* includes *'to make timid, or inspire with fear; overawe; cow ... to force into or deter from some action by inducing fear'*.²³
21. Also, the exemption is not invoked if the expected harassment or intimidation does not meet the serious threshold. The exemption's reference to a **'serious act of harassment or intimidation'** indicates that it was Parliament's intention, when passing this provision, that some degree of low level harassment or intimidation would be tolerated before the exemption could be invoked.²⁴

Analysis

22. The Third Party's submissions raise **Past Conduct**, which can be generally described as 'hounding', over several years, by certain individuals seeking to close down the Moto Park. In summary, the Third Party submits that the Past Conduct amounts to harassment and intimidation and disclosure of the Information in Issue will result in a reoccurrence of the Past Conduct.
23. On consideration of the submissions and evidence provided by the Third Party, it appears that pre-existing acrimony exists within the local community as a consequence of differing views regarding the operation of the Moto Park.
24. In these circumstances, I consider that there is insufficient evidence to be satisfied that the Past Conduct could reasonably be expected to reoccur **as a result of** disclosing the Information in Issue. On the information before me, I am unable to identify a correlation or nexus between disclosure of the Information in Issue and the reoccurrence of the Past Conduct.
25. In other words, on the evidence provided, I consider that such Past Conduct may, in all likelihood, occur or reoccur regardless of whether or not the Information in Issue is

¹⁹ *Cockcroft* at 106, cited in *Sheridan* at [192].

²⁰ *Sheridan* at [193] and *Richards and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 28 March 2012) (**Richards**) at [19].

²¹ *Sheridan* at [188].

²² *Richards* at [13] and *Ogawa and Queensland Police Service* (Unreported, Queensland Office of the Information Commissioner, 21 June 2012) at [13] applying the *Macquarie Dictionary Online* (Fourth Edition) definitions referred to in *Sheridan* at [194]-[195].

²³ *Sheridan* at [194]-[195].

²⁴ *Sheridan* at [187].

disclosed.²⁵ There is insufficient evidence before me to conclude that disclosing the Information in Issue, rather than the nature of the pre-existing relationship between relevant parties, could reasonably be expected to cause a reoccurrence of these types of Past Conduct.

26. I am also unable, on the evidence before me, to conclude that the Past Conduct meets the threshold of **serious** harassment or intimidation. I acknowledge the significance of these submissions for the Third Party and recognise that the Past Conduct raised by the Third Party has felt very serious for them. However, on an objective assessment of the Past Conduct, I am satisfied that this conduct is not sufficiently weighty, critical or concerning to meet the legal threshold to amount to serious harassment or intimidation for the purpose of the exemption.
27. Accordingly, based on the information before me, and for the reasons set out above, I am not satisfied that the Information in Issue is exempt under schedule 3, section 10(1)(d) of the RTI Act and the ground for refusing access in section 47(3)(a) of the RTI Act cannot, therefore, apply.

Contrary to the public interest

Relevant law

28. An agency may refuse access to information under the RTI Act if disclosure of the information would, on balance, be contrary to the public interest.²⁶ In assessing the balance of the public interest, the RTI Act identifies many factors that may be relevant to deciding the balance of the public interest²⁷ and explains the steps that a decision-maker must take²⁸ in deciding the public interest as follows:
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of non-disclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.

Analysis

Irrelevant factors

29. The Third Party raised concerns:
- about how the access applicant may construe Information in Issue; and
 - that the Information in Issue will be used to attack Council.
30. The RTI Act specifically precludes a decision maker from taking into account any 'mischievous conduct by the applicant'²⁹ in deciding the public interest. Further, the RTI Act also prevents me from taking into account the likelihood of the applicant

²⁵ See *Watson* at [22].

²⁶ Sections 47(3)(b) and 49 of the RTI Act. The term public interest refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

²⁷ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive; in other words, factors that are not listed may also be relevant.

²⁸ Section 49(3) of the RTI Act.

²⁹ Schedule 4, part 1, item 3 of the RTI Act.

misinterpreting or misunderstanding the information.³⁰ I have not taken into account these, or any other, irrelevant factors.

Factors favouring disclosure

Accountability and transparency

31. The RTI Act gives rise to factors favouring disclosure in circumstances where disclosing information could reasonably be expected to:
 - promote open discussion of public affairs and enhance the Government's accountability³¹
 - contribute to positive and informed debate on important issues or matters of serious interest³²
 - inform the community of the Government's operations, including, in particular, the policies, guidelines and codes of conduct followed by the Government in its dealings with members of the community,³³ and
 - reveal the reason for a government decision and any background or contextual information that informed the decision.³⁴
32. The applicant submits³⁵ that disclosure of the Information in Issue will enable the community to scrutinise how Council monitors compliance with development conditions intended to minimize the impact of the commercial operations on the local community.
33. Council is responsible for ensuring that owners and operators of commercial sites comply with applicable legislative requirements and development approval conditions. On the information before me, it is evident that the relevant development approval conditions required submission of an annual environmental audit to Council. The Information in Issue comprises a report of this nature, prepared more than 12 months ago. Given these circumstances, I consider that disclosure of the Information in Issue would enhance Government accountability and transparency by enabling public scrutiny of Council's decisions regarding the operation of the Moto Park.
34. As noted in paragraph 23 above, differing views exist within the local community about the operation of the Moto Park and I therefore consider that disclosing the Information in Issue could also reasonably be expected to:
 - inform the community about how Council manages commercial development; and
 - contribute to a positive and informed debate about the nature of development approval conditions that Council uses to minimize the impact of those commercial operations on local residents and the manner in which Council monitors compliance with those conditions.
35. The Third Party submits that the access applicant already possesses a copy the Information in Issue and provided information to OIC supporting that position (**Supporting Material**).³⁶ I have taken this submission to mean that the Third Party considers that the accountability and transparency factors deserve little to no weight because the applicant is already in possession of a copy of the Information in Issue.

³⁰ Schedule 4, part 1, item 2 of the RTI Act.

³¹ Schedule 4, part 2, item 1 of the RTI Act.

³² Schedule 4, part 2, item 2 of the RTI Act.

³³ Schedule 4, part 2, item 3 of the RTI Act.

³⁴ Schedule 4, part 2, item 11 of the RTI Act.

³⁵ External review application.

³⁶ Generally, the Supporting Material refers to matters raised in Council's 20 January 2016 meeting.

36. I have carefully considered the Third Party's submissions. I accept that there is some correlation between parts of the Supporting Material and the Information in Issue. However, those parts of the Supporting Material also differ from the Information in Issue in some major respects, including that they:
- reference a report prepared on a different date by a different author to the report within the Information in Issue; and
 - contain commentary about matters which are not dealt with in the Information in Issue.
37. As the Supporting Material, on its face, references a different report and I have no evidence before me that the access applicant has previously obtained a copy of the Information in Issue from Council via another form of access, I am unable to accept the Third Party's submissions that the access applicant already possesses a copy of the Information in Issue. Accordingly, the Third Party's submissions have not caused me to consider that the weight attributable to the accountability and transparency factors favouring disclosure should be reduced on this basis.
38. Taking these circumstances into consideration, I afford significant weight to the public interest factors favouring disclosure which relate to enhancing Council's accountability and transparency, informing the community about Council's compliance activities and contributing to the debate on important issues.

Factors favouring nondisclosure

Business, professional, commercial or financial affairs of entities

39. In its decision, Council decided that disclosure of the Information in Issue could reasonably be expected to prejudice the private, business, professional, commercial and financial affairs of entities. Council submits³⁷ that the Information in Issue contains private and commercially sensitive information.
40. The RTI Act recognises public interest factors favouring nondisclosure where disclosing information could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities;³⁸ and
 - cause a public interest harm because it would disclose information concerning the business, professional, commercial or financial affairs of an agency or another person and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government.³⁹
41. Although the two nondisclosure factors relating to business affairs are based on different concepts—one mentions 'prejudice to', while the other refers to an 'adverse effect on'—the Information Commissioner has previously recognised that these factors require a '*reasonable expectation of similar harm*'.⁴⁰ Therefore, I consider whether this harm arises for both factors together below.

³⁷ By letter dated 11 November 2016.

³⁸ Schedule 4, part 3, item 2 of the RTI Act.

³⁹ Schedule 4, part 4, section 7(1)(c) of the RTI Act.

⁴⁰ *Seven Network (Operations) Limited and the Board of Trustees of the State Public Sector Superannuation Scheme* [2015] QICmr 33 (14 December 2015) at [33], citing *Kalinga Woolloowin Residents Association Inc and Brisbane City Council; City North Infrastructure Pty Ltd (Third Party); Treasury Department (Fourth Party)* (Unreported, Queensland Information Commissioner, 9 May 2012) at [89].

42. An adverse effect to business affairs ‘*will almost invariably be pecuniary in nature, whether directly or indirectly*’,⁴¹ and the Information Commissioner has previously considered the following to constitute an adverse effect:
- a loss of business reputation or goodwill which is ‘*feared ultimately for its potential to result in loss of income or profits, through loss of customers*’;⁴² and
 - competitive harm.⁴³
43. The Information in Issue relates to an environmental audit report of the Moto Park. On this basis, I accept that the Information in Issue relates to the business and commercial affairs of the Moto Park owner.
44. However, on the information before me, I am not able to conclude that the disclosure of the Information in Issue could reasonably be expected to have an adverse effect on the business and commercial affairs of the Moto Park owner—that is, I am unable to identify any causal link between disclosure of the Information in Issue and a resulting reasonable expectation of:
- competitive harm to the Moto Park owner
 - a reduction in the business reputation of the Moto Park owner
 - a reduction in the Moto Park’s goodwill; or
 - prejudice to the Moto Park’s commercial activities.
45. In considering the impact on the Moto Park’s business and commercial affairs, I have taken into account the nature and content of the Information in Issue. The submission of an annual environmental audit report is required to satisfy Council’s development approval for the Moto Park. The applicant submits⁴⁴ that Council allowed the Moto Park to reopen based on an internal audit which ‘*was based on Council’s adoption and acceptance of*’ the Information in Issue. It therefore appears there is already some general awareness within the local community of the environmental audit conclusion.
46. In these circumstances, I am unable to identify any causal link between disclosure of the Information in Issue and any prejudice or adverse effect on the business and commercial affairs of the Moto park owner. Accordingly, I consider that the nondisclosure factors relating to the protection of business and commercial information do not apply in this review. However, even if I accepted that there were reasonable grounds for expecting that disclosure of the Information in Issue would result in prejudice or an adverse effect on the business and commercial affairs of the Moto Park owner, I would afford these factors low weight in balancing the public interest in recognition of the regulatory nature of the Information in Issue and the general awareness of the audit conclusions that exists within the local community.
47. Finally, in considering whether disclosure of the Information in Issue could reasonably be expected to prejudice the future supply of information of this type, the appropriate question to consider is whether it is reasonable to expect that a substantial number of parties would refrain from supplying such information in the future, not whether the particular supplier of information would refuse to do so.⁴⁵ In this case, the Information in

⁴¹ *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 (**Cannon**) at [82]. These comments were made in the context of section 45(1)(c) of the repealed FOI Act, but they provide useful guidance on the interpretation of schedule 4, part 4, item 7(1)(c) of the RTI Act given the substantially similar wording of these provisions.

⁴² *Cannon* at [82].

⁴³ *Cannon* at [84].

⁴⁴ External review application.

⁴⁵ *Cannon* at [85], citing *B and BNRHA* at [161].

Issue was prepared to satisfy relevant development approval conditions which require ongoing submission of annual environmental audits to Council. Given this, I do not consider that disclosure of the Information in Issue could reasonably be expected to prejudice the future supply of similar information to Council.

Prejudice flow of information

48. The applicant submits⁴⁶ that Council had resolved in a 20 January 2016 Council meeting to release the Information in Issue to parties represented at the meeting.
49. Council submits⁴⁷ that:
- the Information in Issue was financially commissioned by the Moto Park owner and it contains private, confidential and commercially sensitive information;⁴⁸ and
 - Council resolved on 10 February 2016 to ensure that the disclosure of all information and documents compiled by or provided to Council on behalf of the owner occurred in accordance with law.
50. The RTI Act recognises public interest factors favouring nondisclosure where disclosing information could reasonably be expected to:
- prejudice the flow of information to the police or another enforcement or regulatory agency⁴⁹
 - prejudice an agency's ability to obtain confidential information;⁵⁰ and
 - cause a public interest harm if the information consists of information of a confidential nature that was communicated in confidence and its disclosure could reasonably be expected to prejudice the future supply of information of this type.⁵¹
51. It is generally recognised that there is a very strong public interest in protecting the free flow of information to regulatory agencies. However, for the reasons identified in paragraph 47 above, I do not consider that disclosure of the Information in Issue could reasonably be expected to prejudice the flow of similar information to Council.
52. In terms of confidentiality considerations favouring nondisclosure, I note that Council:
- initially resolved on 20 January 2016 to release information to Councillors and all parties who attended the closed session consideration of Council item 6 titled '*East Haldon Development Compliance Concerns*'; and
 - subsequently resolved, on 10 February 2016, to ensure that the disclosure of '*all information and documents compiled by or provided to Council on behalf of the owner occurs in accordance with law*'.⁵²
53. On the information before me, I am not satisfied that the Information in Issue comprises confidential information. The Information in Issue, on its face, does not identify any particular contents as being confidential or that it, or any part of it, was submitted to Council on a confidential basis.

⁴⁶ External review application.

⁴⁷ By letter dated 11 November 2016.

⁴⁸ The Third Party made similar submissions by email dated 18 January 2017.

⁴⁹ Schedule 4, part 3, item 13 of the RTI Act.

⁵⁰ Schedule 4, part 3, item 16 of the RTI Act.

⁵¹ Schedule 4, part 4, item 8(1) of the RTI Act.

⁵² Refer to Council's meeting minutes for 20 January 2016 and 10 February 2016, which are available at <http://lockyervalley.infocouncil.biz/>.

54. While the discussion at a closed meeting may be treated as confidential, the documents tabled may not be. The fact that a copy of the Information in Issue may have formed part of the documents considered at a closed Council meeting is not evidence that it was initially provided or communicated to Council on a confidential basis.
55. Further, and as discussed at paragraph 47 above, given the content of the Information in Issue and the purpose for which it was submitted to Council, I consider that its disclosure would not prejudice the future supply of similar information to Council, particularly given the existing approval conditions for the Moto Park will require submission of further annual audit reports.
56. In these circumstances, I am satisfied that the nondisclosure factors relating to Council's ability to obtain information do not arise.

Prohibited by an Act

57. The applicant submits that the Information in Issue should be disclosed because Council resolved on 20 January 2016 to disclose information, which included the Information in Issue, to all parties who attended the closed session meeting.
58. Council submits that, after the 20 January 2016 meeting:
- it received an objection to the 20 January 2016 resolution from the Moto Park owner, requesting that Council not release information, including the Information in Issue, to persons other than Councillors
 - a legal representative, on behalf of the Moto Park owner, submitted to Council that:
 - i. where a meeting has been closed to members of the public under section 275(1)(h) of the *Local Government Regulation 2012 (Qld)* (**LG Regulation**), all information in relation to the matters discussed during the closed portion of the meeting are regarded as confidential unless stated otherwise
 - ii. Councillor Confidentiality Procedure (November 2013) and section 171(3) of the *Local Government Act 2009 (Qld)* (**LG Act**) prohibit councillors from releasing information they know or should reasonably know is information that is confidential to the local government; and
 - iii. information considered in the closed meeting on 20 January 2016, including the Information in Issue, should only be disclosed in accordance with the law and the RTI Act; and
 - Council subsequently resolved, on 10 February 2016, to ensure that the disclosure of information, including the Information in Issue, occur in accordance with the law.
59. Given these submissions, I have considered the public interest factor favouring nondisclosure where disclosure is prohibited by an Act.
60. Section 6 of the RTI Act makes clear Parliament's intention that the RTI Act overrides the provisions of other Acts prohibiting disclosure of information. However, schedule 3, section 12 of the RTI Act identifies a number of limited circumstances in which this general rule does not apply. Section 171 of the LG Act and section 275 of the LG Regulation are not listed in schedule 3, section 12 of the RTI Act and therefore do not fall within the limited circumstances identified by Parliament in which release is prohibited under schedule 3, section 12.
61. Section 275 of the LG Regulation empowers Council to close a meeting to the public to discuss certain matters. It does not, however, provide that information considered in the

closed meeting is to be treated as confidential or otherwise prevent or prohibit disclosure of such information. Additionally, of relevance in this review, Council did resolve, at the closed meeting, to disclose information to all parties who attended the closed meeting.

62. The Councillor Confidentiality Procedure does impose certain nondisclosure obligations on Councillors and section 171 of the LG Act prohibits a Councillor from releasing information which the Councillor knows, or should reasonably know, is confidential to Council. However, those provisions do not prohibit or prevent disclosure of information under the RTI Act.
63. As discussed under the 'Prejudice flow of information' heading, I consider that the Information in Issue was not provided to Council on a confidential basis but rather in compliance with a regulatory obligation. Thus, the Information in Issue cannot be characterised as confidential information to which the nondisclosure obligations referred to in paragraph 62 above would apply.
64. For these reasons, I am satisfied that the public interest factor favouring nondisclosure where disclosure is prohibited by an Act does not apply in the circumstances of this review.

Other factors

65. I can, in this review, identify no other public interest considerations telling in favour of nondisclosure of the Information in Issue. I cannot see how disclosure of such information could, for example, prejudice a deliberative process of government⁵³ or the fair treatment of individuals.⁵⁴

Balancing the public interest

66. In terms of balancing the relevant public interest factors against one another, I consider disclosing the Information in Issue could reasonably be expected to enhance Council's accountability and transparency, inform the community and contribute to public debate by enabling the public to scrutinise Council's decisions and how Council monitors compliance with conditions that are intended to minimize the impact of commercial operations on local residents. I consider that these public interest factors relating to transparency, accountability, informing the community and contributing to a positive and informed debate warrant significant weight and that, in the circumstances of this review, the applicable nondisclosure factors relating to the protection of business, professional, commercial or financial information are insufficient to outweigh the factors favouring disclosure.

Conclusion

67. For the reasons outlined above, I am satisfied that access to the Information in Issue cannot be refused under the RTI Act, as its disclosure would not, on balance, be contrary to the public interest.

DECISION

68. I set aside Council's decision and find that access to the Information in Issue may not be refused under the RTI Act, as it is not exempt information and nor would its disclosure, on balance, be contrary to the public interest.

⁵³ Schedule 4, part 3, item 20 and schedule 4, part 4, section 4 of the RTI Act.

⁵⁴ Schedule 4, part 3, item 6 of the RTI Act.

69. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Assistant Information Commissioner Corby

Date: 22 March 2017

APPENDIX

Significant procedural steps

Date	Event
22 August 2016	Council received the access application.
26 September 2016	Council issued its decision to the applicant.
19 October 2016	OIC received the external review application.
1 November 2016	OIC notified the applicant and Council that it had accepted the external review application and asked Council to provide additional information.
11 November 2016	OIC received the requested information from Council.
12 December 2016	OIC conveyed a preliminary view to Council that access to the Information in Issue could not be refused under the RTI Act. OIC invited Council to provide submissions by 13 January 2017.
12 January 2017	<p>OIC conveyed a preliminary view to the Third Party that access to the Information in Issue could not be refused under the RTI Act and sought the Third Party's views about disclosure. OIC asked the Third Party to provide submissions by 2 February 2017 if they objected to disclosure of the Information in Issue.</p> <p>OIC confirmed to Council its understanding that Council accepted the preliminary view and asked Council to provide the Third Party with a copy of the Information in Issue.</p>
18 January 2017	OIC received submissions from the Third Party objecting to disclosure of the Information in Issue.
3 February 2017	OIC conveyed a preliminary view to the Third Party that access to the Information in Issue could not be refused under the RTI Act. OIC invited the Third Party to apply to participate in the external review and asked the Third Party to provide further submissions by 17 February 2017 if they maintained their objection to disclosure of the Information in Issue.
3 February 2017	OIC received further submissions from the Third Party, reaffirming their objection to disclosure but not applying to participate in the review.
9 February 2017	OIC confirmed to the Third Party that they maintained their objection but have not applied to participate in the review.