



## Decision and Reasons for Decision

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**Citation:** *Seven Network (Operations) Limited and Logan City Council* [2018] QICmr 21 (11 May 2018)

**Application Number:** 313404

**Applicant:** Seven Network (Operations) Limited ACN 052 845 262

**Respondent:** Logan City Council

**Decision Date:** 11 May 2018

**Catchwords:** ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LAW ENFORCEMENT AND PUBLIC SAFETY INFORMATION - footage of assaults captured on Council owned CCTV - whether disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety - whether disclosure could reasonably be expected to endanger a person's life or physical safety - whether access to information may be refused under sections 47(3)(a) and 48 and schedule 3, section 10(1)(c) and section 10(1)(g) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO PUBLIC INTEREST INFORMATION - whether pixelated CCTV footage contains the personal information of individuals - personal information - privacy - agency transparency and accountability - positive and informed debate - informing the community of Council's operations - whether disclosure, would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

## REASONS FOR DECISION

### Summary

1. The applicant applied<sup>1</sup> to Logan City Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to footage of assaults and other incidents against persons (such as a person being hit, kicked or punched) captured on Council owned closed circuit television (**CCTV**) and body worn cameras along with the 'related reports and request for transfer'<sup>2</sup> by Queensland Police Service (**QPS**).

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<sup>1</sup> Access application dated 12 May 2017.

<sup>2</sup> Council's process is to transfer CCTV footage to Queensland Police Service when it is requested in relation to an assault.

2. Council located 10 media files and decided<sup>3</sup> to refuse access on the basis that disclosure would, on balance, be contrary to the public interest.<sup>4</sup> The applicant applied to the Office of the Information Commissioner (**OIC**) seeking external review of this decision.<sup>5</sup>
3. During the external review, OIC confirmed with the applicant that it agreed to limit the scope of the review to the 10 media files located by Council, with faces pixelated, with file names showing the date and location of each incident (**Footage**).<sup>6</sup>
4. Council submits that disclosure of the Footage, even with faces pixelated, would, on balance, be contrary to the public interest, primarily because disclosure would reveal the personal information of the individuals shown and infringe their privacy.<sup>7</sup> It also submits that the Footage is exempt from release as disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety.
5. For the reasons set out below, I set aside Council's decision. In substitution, I find that access may not be refused to the Footage under section 47(3)(a) or 47(3)(b) of the RTI Act.

## Background

6. Significant procedural steps relating to the external review are set out in the Appendix.
7. The Footage in issue is sourced from Council's Logan Safety Camera Program. Council submits that this program records live footage from public spaces, and is operated by trained technicians. It is designed to *'provide the community with a sense of safety in public places by providing a response to anti-social behaviour as it occurs and preventing it from recurring by implementing necessary preventative measures around the area'*.<sup>8</sup>
8. CCTV is widely used by government in public spaces in Queensland, and use of this technology is increasing.<sup>9</sup> Recordings captured by these systems and held by public authorities are subject to the RTI Act, and as is the case here, access applications for these recordings often give rise to difficult competing considerations concerning transparency of agencies and privacy of citizens.

## Reviewable decision

9. The decision under review is Council's decision dated 7 July 2017.

## Evidence considered

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

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<sup>3</sup> Decision dated 7 July 2017.

<sup>4</sup> Under sections 47(3)(b) and 49 of the RTI Act.

<sup>5</sup> External review application dated 10 July 2017.

<sup>6</sup> As confirmed in OIC's letter to the applicant dated 14 December 2017.

<sup>7</sup> Council also raised nondisclosure factors concerning prejudice to security, law enforcement or public safety, and administration of justice.

<sup>8</sup> Submissions to OIC dated 8 September 2017.

<sup>9</sup> OIC, *Camera surveillance and privacy* (2012), report No. 2 of 2012/13 to the Queensland Legislative Assembly, available at <http://www.parliament.qld.gov.au/documents/TableOffice/TabledPapers/2012/5412T559.pdf>. Accessed on 3 April 2018.

## Information in issue

11. The only information in issue is the Footage,<sup>10</sup> which is comprised of 10 media files, averaging approximately 27 seconds in length. The Footage depicts assaults that have occurred in public places, and although the events depicted are discernible, the quality of the picture can generally be described as grainy, and in most cases, filmed at some distance. As noted at paragraph 3 above, the Footage is also edited so that individuals' faces are pixelated. Un-pixelated footage is not in issue in the review, and accordingly, I have not considered whether the Footage could be released in an unedited form.

## Issues for determination

12. During the review, the applicant raised concerns about the nature of the Footage located by Council, and the sufficiency of Council's searches.<sup>11</sup> These issues were resolved informally during the review, and OIC confirmed with the applicant that it:
- was seeking the Footage with faces pixelated
  - did not seek review of whether Council should have located different footage in response to the access application; and
  - did not require OIC to further consider whether Council should have located '*related reports and request for transfer*' with the Footage (provided that the file name of each clip included the date and location of each incident).
13. Accordingly the remaining issues for determination are whether:
- the Footage is exempt on the basis that disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety;<sup>12</sup> or
  - disclosure of the Footage would, on balance, be contrary to the public interest.<sup>13</sup>

## Exempt Information

### Relevant law

14. Under section 23 of the RTI Act a person has a right to be given access to documents of an agency. However, this right is subject to a number of exclusions and limitations, including grounds for refusal of access.<sup>14</sup>
15. Access can be refused under the RTI Act to the extent that a document comprises exempt information.<sup>15</sup> Schedule 3 of the RTI Act specifies the types of information the disclosure of which Parliament has determined is exempt because its release would be contrary to the public interest. Relevantly, under schedule 3, section 10(1)(g) of the RTI Act, information is exempt if its disclosure could reasonably be expected to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety.

<sup>10</sup> The applicant originally sought the '*first 10 incidents of footage whereby the physical assault is captured on camera located, along with the related reports and request for transfer by Qld Police*' for the period between 1 January 2016 to 12 May 2017.

<sup>11</sup> In the external review application dated 12 May 2017 and in a telephone conversation with OIC on 2 August 2017.

<sup>12</sup> Sections 47(3)(a), 48 and schedule 3, section 10(1)(g) of the RTI Act. Given the nature of Council's submissions, I have also considered schedule 3, section 10(1)(c) of the RTI Act.

<sup>13</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>14</sup> As set out in section 47(3) of the RTI Act.

<sup>15</sup> Sections 47(3)(a) and section 48 of the RTI Act.

16. For this provision to apply, the following requirements must be met:<sup>16</sup>

- there exists an identifiable lawful method or procedure for protecting public safety; and
- disclosure of the Footage could reasonably be expected to prejudice that method or procedure.

### Findings

17. In essence, Council contends that, because the Footage has not been provided to QPS, individuals depicted in the Footage have not experienced any consequences for the actions depicted and therefore release to the applicant and its eventual broadcasting could lead to those individuals repeating their violent behaviour or cause others to 'emulate or copy the activities shown in the footage'.<sup>17</sup>
18. I accept that the reporting of assaults captured on Council owned CCTV to QPS constitutes a lawful method or procedure for protecting public safety. I also accept that the use of CCTV as a crime prevention and detection strategy is a lawful method or procedure for protecting public safety. However, to satisfy the exemption set out in schedule 3, section 10(1)(g) of the RTI Act, disclosure must *reasonably be expected to* cause the relevant harm. The term '*could reasonably be expected to*' requires that the expectation be reasonably based—that it is neither irrational, absurd or ridiculous, nor merely a possibility. Whether the expected consequence is reasonable requires an objective examination of the relevant evidence. It is not necessary for a decision-maker to be satisfied upon a balance of probabilities that disclosing the information will produce the anticipated prejudice. Also, the expectation must arise as a result of disclosure, rather than from other circumstances.<sup>18</sup>
19. Council provides no evidence in support of its submission about repeat or copycat behaviour, and its submissions to OIC do not explain how disclosure of the Footage would prejudice either relevant lawful method or procedure. I do not consider that disclosure of the Footage would, in the future, prevent Council referring assaults captured on Council owned CCTV to QPS, or hinder Council's continued operation of its CCTV as a crime prevention or detection strategy. Accordingly, I am not satisfied that the Footage is exempt under schedule 3, section 10(1)(g) of the RTI Act.
20. For the sake of completeness, I have also considered whether the Footage comprises exempt information under schedule 3, section 10(1)(c) of the RTI Act. Under this provision, information is exempt if its disclosure could reasonably be expected to endanger a person's life or physical safety. While this exemption was not specifically raised by Council, its contention about repeat violence raises this factor for consideration. In addition, in submissions to OIC,<sup>19</sup> Council cites *Courier-Mail and Queensland Police Service (CM and QPS)*,<sup>20</sup> a decision that concerned suicides at a particular location, and the application of schedule 3, section 10(1)(c) of the RTI Act.
21. The Information Commissioner found in *CM and QPS* that disclosure of the information in that matter could reasonably be expected to lead to an increase in the number of people who either attempt or complete suicidal action at the specific location, and

<sup>16</sup> *Ferrier and Queensland Police Service* (1996) 3 QAR 350 at [27]-[37].

<sup>17</sup> Submission by Council dated 12 January 2018.

<sup>18</sup> See *Nine Network Australia Pty Ltd and Department of Justice and Attorney-General* (Unreported, Queensland Information Commissioner, 14 February 2012) at [31] citing *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106; *Murphy and Treasury Department* (1995) 2 QAR 744 at [45]-[47], [54]; *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009).

<sup>19</sup> Dated 12 January 2018.

<sup>20</sup> (Unreported, Queensland Information Commissioner, 15 February 2013).

therefore the information in issue was exempt from disclosure under schedule 3, section 10(1)(c) of the RTI Act. In that case QPS provided specific evidence in support of its contention that disclosure could reasonably be expected to lead to increased suicides or attempted suicides at the particular location. In contrast, Council has provided no evidence that disclosure of the Footage in this case could reasonably be expected to lead to an increase in assaults through the copying or repeating of behaviour depicted in the Footage.<sup>21</sup> In these circumstances, I am not satisfied that the Footage is exempt under schedule 3, section 10(1)(c) of the RTI Act.

## **Contrary to the public interest information**

### **Relevant law**

22. Access may be refused to a document to the extent it comprises information the disclosure of which would, on balance, be contrary to the public interest.<sup>22</sup>
23. 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, 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.
24. The RTI Act identifies various factors for and against disclosure that may be relevant to deciding the balance of the public interest and explains the steps a decision-maker must take<sup>23</sup> in deciding where the balance of the public interest lies, as follows:
  - 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 in issue would, on balance, be contrary to the public interest.

## **Findings**

### **Irrelevant factors**

25. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

### **Factors favouring disclosure**

26. There is a general public interest in advancing public access to government-held information, and the RTI Act is administered with a '*pro-disclosure bias*', meaning that an agency should decide to give access to information, unless giving access would, on balance, be contrary to the public interest.<sup>24</sup>
27. The applicant submits that refusing access to the Footage is contrary to the intention of the RTI Act, and that other local governments have recently released similar footage.<sup>25</sup>

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<sup>21</sup> Council bears the onus of establishing that its decision was justified, or that the Information Commissioner should give a decision adverse to the access applicant: section 87(1) of the RTI Act.

<sup>22</sup> Section 47(3)(b) of the RTI Act.

<sup>23</sup> Section 49(3) of the RTI Act.

<sup>24</sup> Section 44(1) of the RTI Act.

<sup>25</sup> In the external review application dated 12 May 2017 and in telephone conversations with OIC on 2 August 2017 and 7 September 2017.

Having considered these submissions, and the Footage, I am satisfied that disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance Council's accountability<sup>26</sup>
- contribute to positive and informed debate on important issues of serious interest, specifically, Council's overall strategy for managing street violence (including the contribution CCTV makes to this strategy) and the effectiveness of any relevant preventative measures implemented by Council;<sup>27</sup> and
- inform the community of the Government's operations, including, in particular, Council's CCTV operations, and how Council's Logan Safety Camera Program is implemented.<sup>28</sup>

28. There has been considerable growth in the use of CCTV in public places as a crime prevention strategy and also significant investment by local councils and other government agencies in CCTV infrastructure. Both the use of CCTV in public places, and the issue of violence in public places, are matters of serious interest and concern to the community. Furthermore, Council submits that CCTV *'is designed to provide the community with a sense of safety in public places by providing a response to anti-social behaviour as it occurs and preventing it from recurring by implementing necessary preventative measures around the area'*.<sup>29</sup> Within this context, release of the Footage would allow the community to consider the implementation of Council's Logan Safety Camera Program, and the practicality of how it operates in particular circumstances.
29. While I consider that release of the Footage would contribute to accountability, informed debate and community awareness of Council operations, I acknowledge that the nature of the information is limited to short pieces of Footage and therefore the weight to be attributed to these factors must be discounted to some extent. Accordingly, I afford moderate weight to the identified public interest factors favouring disclosure.

## Factors favouring nondisclosure

### *Personal information*

30. The RTI Act recognises that disclosure would cause a public interest harm if it would disclose personal information of a person, whether living or dead.<sup>30</sup>
31. The term *'personal information'* is defined as follows in the RTI Act:<sup>31</sup>

*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.*

<sup>26</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>27</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>28</sup> Schedule 4, part 2, item 3 of the RTI Act. Council has stated on its website that the Logan Safety Camera Program 'will continue to be developed and expanded to new areas across the city and implemented in tandem with crime prevention and community safety strategies, which address all aspects of crime, causes of crime and fear of crime.' Available at <<http://www.logan.qld.gov.au/community-support/safety/cameras>>. Accessed on 23 March 2018.

<sup>29</sup> Submission by Council dated 7 September 2017.

<sup>30</sup> Schedule 4, part 4, item 6(1) of the RTI Act.

<sup>31</sup> See schedule 5 of the RTI Act which refers to section 12 of the *Information Privacy Act 2009* (Qld).

32. In *Mahoney and Ipswich City Council (Mahoney)*,<sup>32</sup> the Information Commissioner established that the following questions are relevant in determining whether information is a particular individual's personal information:<sup>33</sup>
- Can an individual be identified from the information sought?
  - If so, is the information sought *about* that individual?
33. Information about an individual which includes their name will ordinarily be identifying, because the individual's identity is apparent from that information.<sup>34</sup> Information other than a name, such as a photograph (or moving footage), or a detailed identifying description may also identify an individual.
34. Even where a person's identity is not readily apparent, it may be possible with the assistance of additional information to identify a person. Whether an individual's identity can reasonably be ascertained will depend on a number of factors:<sup>35</sup>
- 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.
35. While I consider that the above factors apply equally to footage as to more traditional '*paper-based*' documents, I also acknowledge that footage is generally '*information-rich*' and as such, may require a nuanced analysis. The difficulties in relation to footage and information-access regimes is demonstrated by the differing approach taken in two recent decisions in other jurisdictions. Most recently, the Supreme Court of Western Australia (***WA Public Transport Case***) noted:<sup>36</sup>
- The issue is whether a person's identity can reasonably be ascertained. The question to be asked is whether, on an objective assessment of all relevant circumstances when examining CCTV footage, it can reasonably be said that at least one or more persons, including the person or persons whose image(s) are shown in CCTV footage, could have the necessary knowledge or contextual information to ascertain the identity of the individual or individuals.*
36. The Court further noted, '*individuals can recognise themselves or others they know well, by characteristics such as their stance, posture or body movements even when the face or image of an individual is not clear*'.<sup>37</sup> In contrast, the New South Wales Administrative Tribunal<sup>38</sup> recently considered footage taken in a hospital, and found that in the circumstances, provided that individuals' faces, heads and necks (and any identifying marks such as tattoos) were pixelated, their identities would not be reasonably ascertainable. Although not expressly considered in the decision, it is clear from the facts of that matter that the Tribunal did not consider identification by the patients and staff depicted *of themselves and each other* to be sufficient.

<sup>32</sup> (Unreported, Queensland Information Commissioner, 17 June 2011).

<sup>33</sup> *Mahoney* at [19].

<sup>34</sup> *Mahoney* at [20].

<sup>35</sup> *Mahoney* at [21].

<sup>36</sup> *Public Transport Authority* [2018] WASC 47 at [72]. This decision considered clause 3(1) of Schedule 1 to the *Freedom of Information Act 1992* (WA), and the definition of '*personal information*' in the glossary to that Act.

<sup>37</sup> At paragraph [66].

<sup>38</sup> *Seven Network Limited v South Eastern Sydney Local Health District* [2017] NSWCATAD 210. This decision considered Item 3(a) in the table to section 14 of the *Government Information (Public Access) Act 2009* (NSW), and the definition of '*personal information*' clause 4 of Schedule 4 of that Act.

37. In the circumstances of this matter, Council submits that even when faces are pixelated, a person's identity may be revealed by the '*physical attributes, outfits, demeanour and idiosyncrasy* [sic] *which cannot be easily redacted from the subject information.*'<sup>39</sup> In substance, this is a submission that individuals' identities can reasonably be ascertained from the Footage. In particular, it relies on identification by the individuals themselves, or identification by those who are sufficiently close to the individuals/events to successfully identify individuals by their outfit, idiosyncrasies etc. (without the benefit of viewing their face).
38. As a general proposition, I am satisfied that individuals in video footage may have certain attributes that allow for identification by stepping through a cross-referencing process (e.g. by identification of a particularly distinctive tattoo). However, as noted in the *WA Public Transport Case*, the determination of whether a person's identity is apparent, or can '*reasonably be ascertained*' must be made on an objective assessment of all relevant circumstances, on a case-by-case basis.
39. Given the decisions made within this jurisdiction to date,<sup>40</sup> including the factors identified in *Mahoney* and outlined at paragraph 34 above, whether self-identification, or identification by those close to the individual/incident is possible by a cross-referencing process will depend on *how available* the information is, and *how difficult* it is to obtain. This includes whether the additional information used for cross-referencing is available by way of *general knowledge* for a substantial segment of the community within which the relevant footage has been recorded, or whether it is only available through *specialist knowledge*.
40. Generally speaking, if certain individuals hold the relevant additional information by virtue of their particular relationship with a person or personal involvement in relevant events, and are able to use this specialist knowledge in order to identify the individual, this information is not sufficiently available, and is difficult to obtain. Accordingly, I do not consider that identification through this specialist knowledge is sufficient to demonstrate that an individual's identity can '*reasonably be ascertained*' from the information.
41. Those that hold additional information that is specialist knowledge may include family and friends, acquaintances, work colleagues of the individual depicted, or others who were present/involved in events at the time footage/information was recorded. For example, family members and friends of a particular individual may have particular specialist knowledge of:
  - an individual's physical attributes (including for example tattoos, height, weight, build and hairstyle), clothing, general demeanour and idiosyncrasies (for example, an usual gait or mannerism); and/or
  - events that the individual has been involved in (either through their own personal involvement, or through communication with the individual concerned).
42. It should be noted that, depending on the circumstances, the above matters may also be general knowledge in the broader community. The extent to which the broader community holds sufficient knowledge to reasonably ascertain the identity of a particular

<sup>39</sup> Submission by Council dated 7 September 2017.

<sup>40</sup> In Queensland and in relation to personal information in general (not limited to footage), it has not been considered relevant to determine whether individuals are able to identify *themselves* from the information, or whether those close to the person (eg. family or friends) are able to ascertain their identity. For example, most recently, in *Swiatek and The University of Southern Queensland* [2017] QICmr 57 (8 December 2017), the analysis did not turn on whether individual students would be able to identify their own Assignment Marks (or whether those close to them would be in a position to do so).



individual depends on the circumstances of the case. In relation to CCTV footage, factors relevant to this determination include:

- the length and quality of the footage<sup>41</sup>
- the relevant setting<sup>42</sup>
- any public attention concerning the incident/s, or whether there is ancillary information about the incident in the public domain or to be disclosed with the footage; and
- the manner in which the person is depicted,<sup>43</sup> and the public profile of the individual depicted.<sup>44</sup>

43. In this particular case, I acknowledge that individuals depicted in the Footage may be in a position to identify themselves and each other, and in addition, it is possible that individuals' family/friends who are familiar with their general demeanour and idiosyncrasies, or who were told of the incidents depicted, may be in a position to ascertain their identities. However, this identification relies upon specialist knowledge. In terms of whether a substantial segment of the community would be in a position to ascertain the identities of the relevant individuals, I note that the Footage is not particularly clear, and for the most part, it is filmed at some distance from the events. Further, the Footage captures images of individuals on suburban streets and roads in a large satellite city in South-East Queensland and does not depict individuals recognisable due to their public profile or as a result of media coverage of the incidents. The faces in the Footage are pixelated,<sup>45</sup> and there is no evidence before me that any other physical attributes shown in the Footage would be sufficient to allow for individuals' identities to reasonably be ascertained through general knowledge.
44. Accordingly, any additional knowledge required to identify the relevant individuals is not sufficiently available, and it is difficult to obtain. For the general community, it would be difficult to take steps to ascertain the individuals' identity, and even then, I am not satisfied that identification would be certain. For these reasons, I find that, considering the relevant factors outlined at paragraph 34 above, provided that all individuals' faces are pixelated, the identities of the individuals in the Footage are not apparent and cannot reasonably be ascertained. Accordingly, I am satisfied that the nondisclosure factor concerning personal information does not apply.
45. For completeness, I note that even if the approach taken in the *WA Public Transport Case* is to be preferred, and the nondisclosure factor concerning personal information is relevant, I consider that the weight to be attributed to this factor would be moderate to low, for the same reasons as are described in relation to the privacy nondisclosure factor at paragraphs 46 to 47 below. In summary, the Footage depicts images of individuals with their faces pixelated in public places. Accordingly, I am satisfied that any harm expected to flow from disclosure would be minimal.

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<sup>41</sup> For example, whether it is grainy or taken from a distance or from a certain angle that limits the clarity and content of the CCTV footage.

<sup>42</sup> For example, whether the camera captures images in a public space, a government institution (eg. a hospital) or a private space, and whether the broader setting is in a large densely populated urban setting or a small rural community.

<sup>43</sup> That is, the actions of the individual shown in the Footage may reveal their identity to a substantial segment of the community. For example, if an individual is depicted in their occupation, and there is only one (or a limited number) of individuals with that occupation in a particular community.

<sup>44</sup> For example, a substantial segment of the community may be familiar with the appearance, demeanour and characteristics of a member of government, a professional sportsperson or media personality.

<sup>45</sup> I note that Council's submissions dated 12 January 2018 appear to contend that 'necks, and any identifying marks such as tattoos' should also be pixelated in accordance with the decision in *Seven Network Limited v South Eastern Sydney Local Health District* [2017] NSWCATAD 210 (whilst maintaining that even then, the individuals would be identifiable). I do not accept this contention. Each case must be considered on its own merits, and in this case, I do not consider that the necks of the individuals depicted in the Footage, or any identifying marks, would be sufficient to allow for individuals' identities to reasonably be ascertained through general knowledge.

## Privacy

46. A separate factor favouring nondisclosure will arise where disclosing information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>46</sup> The concept of 'privacy' is not defined in 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.<sup>47</sup> Having considered the Footage, I am satisfied that individuals may be in a position to identify themselves, and others involved in the incidents, and those close to the individuals may also be in a position to identify them. There is a community expectation that, while CCTV systems are likely to operate in public places, the personal information they collect will be used for limited purposes only, and will not be subject to unrestricted dissemination.<sup>48</sup> Members of the community are entitled to expect that they will enjoy a reasonable degree of privacy and anonymity whilst traversing public spaces, at least as regards surveillance conducted by government agencies of those movements and interactions.<sup>49</sup> Accordingly, I am satisfied that disclosure of the Footage would interfere with the personal sphere of the individuals depicted, and could reasonably be expected to prejudice the protection of their right to privacy.
47. There are competing considerations to be taken into account when assessing the weight attributable to this factor favouring nondisclosure. The Footage depicts some individuals who appear to be minors, and are engaging in hostile and violent interactions, in some cases, as victims. To the extent this is the case, I consider that this increases the weight to be attributed to the factor. On the other hand, as noted above, the Footage depicts public spaces, and activities that occurred in these spaces. While individuals can expect some anonymity while traversing public spaces, the weight to be attributed to the prejudice is lower than, for example, events taking place within institutional or private settings. Also, as discussed above, given faces in the Footage are pixelated, only those with specialist knowledge would be in a position to identify the individuals involved. Finally, I note that Council has also made submissions to OIC about potential '*reprisals*' or '*guardian sanction*' that may arise from disclosure of the Footage.<sup>50</sup> I consider these submissions to be speculative rather than reasonably based, and it is not possible to know whether this would result in harm or otherwise.
48. In all the circumstances, I afford the factor concerning prejudice to an individual's right to privacy low to moderate weight.

## Prejudice security, law enforcement or public safety

49. The stated aim of the Logan Safety Camera Program operated by Council is to enhance community safety, and Council has publicly stated that its Safety Camera Program has '*significantly impacted on Council's capacity to provide a proactive and reactive response to crime, safety and antisocial behaviour*'.<sup>51</sup> In summary, Council submits that disclosure of the Footage, where there is no restriction on the public dissemination or republication of the information under the RTI Act, will likely reveal the operational and technical

<sup>46</sup> Schedule, 4, part 3, item 3 of the RTI Act.

<sup>47</sup> Paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56. Cited in *Balzary and Redland City Council; Tidbold (Third Party)* [2017] QICmr 41 (1 September 2017) at [28].

<sup>48</sup> Council submissions to OIC dated 7 September 2017. I note to the extent Council's submissions appear to raise concerns about breach of the information privacy principles (IPPs) under the *Information Privacy Act 2009* (Qld), this is misconceived. IPP 11 allows for disclosure of personal information that is authorised or required under a law, and this includes disclosure under the RTI Act.

<sup>49</sup> *Kalman and Queensland Police Service* [2015] QICmr 28 (8 October 2015).

<sup>50</sup> Council submissions to OIC dated 7 September 2017.

<sup>51</sup> Logan City Council, *Logan Safety Camera Program*, available at <<http://www.logan.qld.gov.au/community-support/safety/cameras>>. Accessed on 23 March 2018.

capability of the CCTV, including limitations such as blind spots, range of zoom and resolution of image capture, thus prejudicing security, law enforcement or public safety by allowing identified deficiencies in the CCTV system to be '*exploited by a person seeking to engage in anti-social behaviour or an unlawful act*'.<sup>52</sup>

50. The RTI Act recognises that a factor favouring nondisclosure will arise where disclosure of information could reasonably be expected to prejudice security, law enforcement or public safety.<sup>53</sup> However, there must be a reasonable expectation that prejudice to security, law enforcement or public safety will arise **as a result** of disclosing the information in issue.
51. I am satisfied that the Footage reflects the activities recorded on the CCTV cameras at 10 particular points in time. In each case, the nature of the Footage is such that it does not reveal operational and technical capability of the cameras involved (such as blind spots or zoom), except to the extent that this is already apparent by the location of a camera. The general camera locations (i.e. street addresses) are publicised by Council,<sup>54</sup> individuals are alerted to their presence by a collection notice,<sup>55</sup> and their precise location is apparent from the street.<sup>56</sup> I also note that some details about the technical capabilities of the CCTV is publicly available on Council's website including the range of zoom and type of CCTV camera.<sup>57</sup>
52. While some insight into picture quality and resolution may be revealed by disclosure of the Footage, I am not satisfied that this alone is sufficient to give rise to the relevant prejudice. Accordingly, I do not accept that disclosure of the Footage could reasonably be expected to prejudice security, law enforcement or public safety, and in the circumstances of the case, find this factor does not apply.

### ***Remaining factors***

53. Council submits that given the Footage shows incidents where people are causing physical harm to others, a person involved may be depicted as a wrongdoer.<sup>58</sup> On this basis, I have considered whether disclosing the Footage could reasonably be expected to impede the administration of justice for a person, or generally,<sup>59</sup> or whether it could reasonably be expected to prejudice fair treatment of individual and the information is about unsubstantiated allegations of unlawful conduct.<sup>60</sup>
54. The assaults captured in the Footage have not been provided to QPS and there is no evidence before me of any legal proceedings arising from the incidents. As outlined in paragraph 43, given the nature of the particular Footage in this case, I consider that identification of the individuals is uncertain. Further, I do not consider that the Footage itself can be said to be about 'unsubstantiated allegations'. It is raw footage of events that occurred, and does not, in itself, relate to any allegations.

<sup>52</sup> Submissions to OIC dated 7 September 2017 and 12 January 2018.

<sup>53</sup> Schedule 4, part 3, item 7 of the RTI Act.

<sup>54</sup> Logan City Council, *Logan Safety Camera Program*, available at <<http://www.logan.qld.gov.au/community-support/safety/cameras>>. Accessed on 23 March 2018.

<sup>55</sup> As noted in Council's submissions to OIC dated 7 September 2017.

<sup>56</sup> A photograph of a camera is provided in Council's Logan Safety Camera Program Fact Sheet, available at <[http://www.logan.qld.gov.au/\\_data/assets/pdf\\_file/0007/421936/Safe-City-Safety-Camera-Program-.pdf](http://www.logan.qld.gov.au/_data/assets/pdf_file/0007/421936/Safe-City-Safety-Camera-Program-.pdf)>. Accessed on 23 March 2018.

<sup>57</sup> Details of the type of CCTV camera and zoom are available online: Logan City Council, *Logan Safety Camera Program*, available at <<http://www.logan.qld.gov.au/community-support/safety/cameras>>. Accessed on 23 March 2018.

<sup>58</sup> Council's submissions to OIC dated 7 September 2017.

<sup>59</sup> Schedule 4, part 3, item 8 and 9 of the RTI Act.

<sup>60</sup> Schedule 4, part 3, item 6 of the RTI Act.

55. For these reasons, I am not persuaded by Council's submission and I find these factors favouring nondisclosure do not apply.

**Balancing the relevant public interest factors**

56. In addition to the RTI Act's pro-disclosure bias, I afford moderate weight to the factors favouring disclosure related to enhancing Council's accountability and informing the community of the operation of Council's Safety Camera Program, and contribution to public debate concerning street violence and government use of CCTV in public spaces.
57. On the other hand, I afford the nondisclosure factor concerning prejudice to privacy low to moderate weight, because while the Footage does show violent acts (in some cases committed by and against minors), the incidents took place in public spaces and the faces of the individuals concerned are pixelated.
58. On balance, I find that the factors favouring disclosure outweigh the nondisclosure factor concerning prejudice to individuals' right to privacy. I consider that even if the nondisclosure factor concerning personal information did apply, I am not satisfied that this would be sufficient to tip the balance in favour of nondisclosure.
59. Accordingly, I am satisfied that the disclosure of the Footage would not, on balance, be contrary to the public interest, and therefore access may not be refused under section 47(3)(b) of the RTI Act.

**DECISION**

60. For the reasons set out above, I set aside Council's decision and find that access to the Footage cannot 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.
61. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act

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L Lynch  
**Acting Right to Information Commissioner**

**11 May 2018**

## APPENDIX

### Significant procedural steps

| Date              | Event   |
|-------------------|---|
| 10 July 2017      | OIC received the external review application and requested relevant procedural documents from Council.  |
| 11 July 2017      | OIC received the requested procedural documents from Council.   |
| 14 July 2017      | OIC notified the applicant and Council that the external review had been accepted. OIC requested further information from Council.  |
| 19 July 2017      | OIC received the requested information from Council.  |
| 28 July 2017      | OIC received submissions from Council in writing and by telephone.  |
| 31 July 2017      | OIC provided the applicant with an update on the status of the review.  |
| 2 August 2017     | OIC spoke to the applicant and received submissions. OIC provided Council with an update on the status of the review and received further submissions.  |
| 1 September 2017  | OIC provided the applicant with an update on the status of the review.  |
| 8 September 2017  | OIC received submissions from Council.  |
| 11 September 2017 | OIC received further information from Council.  |
| 17 October 2017   | OIC spoke to the applicant and provided an update on the status of the review. OIC provided an update, a summary of the preliminary view and information to Council.  |
| 2 November 2017   | OIC spoke to Council and clarified its preliminary view concerning the Footage.   |
| 14 December 2017  | OIC provided the applicant with an update on the status of the review, confirmed the scope of the review and addressed ' <i>sufficiency of search</i> ' issues. OIC conveyed a written preliminary view to Council and requested submissions in response. |
| 15 December 2017  | OIC spoke to Council and clarified next steps in the review.  |
| 12 January 2018   | OIC received the requested submissions from Council.  |
| 23 January 2018   | OIC provided the applicant with an update on the status of the review.  |
| 25 January 2018   | OIC requested that Council provide further information.   |
| 9 February 2018   | Council sought, and OIC provided, clarification concerning the information sought.  |
| 13 February 2018  | OIC provided Council with further clarification concerning the information sought.  |
| 23 February 2018  | OIC provided Council with further clarification concerning the information sought.  |
| 27 February 2018  | OIC received additional information from Council.   |