



Decision and Reasons for Decision

Citation:	<i>H46 and Barcaldine Regional Council; K87 (Third Party) [2022] QICmr 45 (13 October 2022)</i>
Application Number:	316375
Applicant:	H46
Respondent:	Barcaldine Regional Council
Third Party:	K87
Decision Date:	13 October 2022
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - SCOPE OF APPLICATION - documents related to engagement of applicant by council - applicant contended scope should be interpreted to exclude some documents - construction of scope of access application under section 24 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DISCLOSURE DECISION - CONTRARY TO THE PUBLIC INTEREST - documents related to engagement of applicant by council - whether disclosure would prejudice business affairs - whether disclosure would ensure effective oversight of expenditure of public funds - whether disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p>

Summary

1. On 1 July 2021 an application was made (**Access Application**)¹ to Barcaldine Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for 'documents, contracts or invoices relating to any engagement by council' of the external review applicant (**ER Applicant**) between July 2019 and June 2021.
2. While processing the application, Council consulted with the ER Applicant, as a relevant third party under section 37 of the RTI Act. The ER Applicant objected to the disclosure of all information located by Council. After considering these objections, Council decided to disclose some of the information to the third party (**Access Applicant**).²

¹ The third party originally applied to Council on 11 June 2021, but the Access Application was not compliant until 1 July 2021.

² Council's decision dated 23 September 2021.

3. The ER Applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision to disclose information contrary to his objections.³
4. For the reasons set out below, I affirm Council's decision to disclose the information in issue. I am not satisfied that access to the information in issue may be refused under section 47(3)(b) of the RTI Act, on the ground that its disclosure would, on balance, be contrary to the public interest.

Background

5. The ER Applicant is a contractor and has been engaged by Council to provide a range of services.
6. Significant procedural steps in this external review are set out in the Appendix.

Reviewable decision

7. The decision under review is Council's decision dated 23 September 2021.

Information in issue

8. On external review, the Access Applicant agreed to narrow the number of documents to which they sought access to only those pages that contain the total sum of monies paid by Council to the ER Applicant within the timeframe of the Access Applicant, being July 2019 – June 2021. This information is comprised in 23 documents titled '*EFT Remit Details*', which evidences payments made by Council to the ER Applicant. Three of these *EFT Remit Details* documents are not legible, and as a result I have identified for disclosure parts of 10 further pages of Council's accounting records that demonstrate the amounts paid and recorded in these three illegible *EFT Remit Details*.
9. The information in issue therefore consists of summary descriptions of the work the ER Applicant provided to Council⁴ and the total payment made by Council to the ER Applicant for that work (**Information in Issue**)⁵ within parts of 33 pages.⁶ Where descriptions of the work may reveal specific charge out rates, this information is not in issue.⁷

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including the footnotes and the Appendix).
11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.⁸ I consider a decision-maker will be '*respecting*,

³ External review application dated 20 October 2021.

⁴ Except where the summary of the work would reveal the hourly rate or individual unit price the applicant charged to Council, which I consider is contrary to the public interest to disclose.

⁵ At pages 1, 3, 9, 15, 21, 27, 33, 39, 44, 47, 57, 77, 81, 88, 93, 102, 188, 210, 274, 289, 326, 354, 361, 371, 405, 446, 490, 503, 558, 583, 604, 620 and 637 of the documents located by Council.

⁶ As noted at paragraph 8, the Access Applicant had agreed to reduce the number of pages that they are seeking to access to 23 pages, however the information on pages 1, 44 and 77 is illegible as the copies are of poor quality. Accordingly, I consider that a further ten pages may be disclosed to the Access Applicant, being pages 3, 9, 15, 21, 27, 33, 39, 47, 81 and 88, that provide the specific amounts of payments made by Council on the illegible pages.

⁷ During the external review, OIC identified some information (hourly rates or unit prices that the ER Applicant charged for services to Council), that should not be released on the ground that disclosure would, on balance, be contrary to the public interest. OIC conveyed a preliminary view to Council and the Access Applicant in this respect. Both parties accepted OIC's preliminary view as confirmed by an email from Council dated 10 February 2022 and during a telephone conversation with the Access Applicant on 16 February 2022.

⁸ Section 21(2) of the HR Act.

and acting compatibly with that right and others prescribed in the HR Act, when applying the law prescribed in the *Information Privacy Act 2009 (Qld) (IP Act)* and the RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act. I also note the observations made by Bell J on the interaction between equivalent pieces of Victorian legislation:¹⁰ *it is perfectly compatible with the scope of that positive right in the Charter for it to be observed by reference to the scheme of, and principles in, the Freedom of Information Act.*¹¹

Issues for determination

12. The ER Applicant contends that some of the Information in Issue falls outside the scope of the Access Application and that disclosure of all of the Information in Issue could reasonably be expected to prejudice the ER Applicant's business or commercial affairs.
13. Accordingly, the first issue for determination is whether some of the Information in Issue falls outside the scope of the Access Application. The second issue is whether access to all of the Information in Issue may be refused on the ground that, on balance, disclosure would be contrary to the public interest pursuant to sections 47(3)(b) and 49 of the RTI Act.

Out of scope information

14. On external review, the Information Commissioner conducts a merits review, that is, an administrative reconsideration of a case which can be described as 'stepping into the shoes' of the primary decision-maker to determine what is the correct and preferable decision. As such, the Information Commissioner has the power to decide any matter in relation to an application that could have been decided by the agency under the RTI Act.¹² Accordingly, I consider that, on external review, it is open to me to consider whether any information falls outside the scope of the Access Application.¹³

Relevant law

15. Section 24(2)(b) of the RTI, provides that an access applicant must:

give sufficient information concerning the document to enable a responsible officer of the agency ... to identify the document[.]

16. Under the RTI Act, a person has a right to be given access to documents of an agency.¹⁴ However, if an entire document does not contain *any* information which responds to the terms of an access application, it is outside the scope of the access application and the agency need not consider it as part of the application. Equally, once OIC determines that a document is outside the scope of an application, OIC cannot further consider the document in an external review arising from that application.¹⁵

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

¹⁰ *Freedom of Information Act 1982 (Vic)* and the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

¹¹ **XYZ** at [573].

¹² Section 105 of the RTI Act.

¹³ In accordance with *NBN Co Ltd v Information Commissioner* [2021] QCATA 40 at [21] (**NBN**), in which Sheridan J found that section 89 of the RTI Act does not place any limits on the grounds of a review.

¹⁴ Section 23 of the RTI Act.

¹⁵ **NBN** at [22], in which Sheridan J found that the Information Commissioner may not give access to documents not sought in an application.

Findings

17. Under the RTI Act, I must not disclose or reveal information claimed to be contrary to the public interest in the reasons for my decision.¹⁶ In practical terms, given the review rights available to the ER Applicant in this case, I am also prevented from disclosing information in this decision that may disclose the information which the ER Applicant contends is outside the scope of this decision. I am therefore limited in the extent to which I can elaborate on my reasoning. I confirm that I have given consideration to all of the submissions the ER Applicant has made to OIC in reaching my decision.
18. In interpreting the scope of the Access Application, Council located documents other than those in which the ER Applicant was named individually. As noted at paragraph 12, the applicant objected to the release of this information on the basis that it is not relevant to the Access Application. The ER Applicant's submissions focus on his view that the scope only encompasses documents in which he is individually named.¹⁷
19. The Information Commissioner has previously found that the scope of an access application should not be interpreted narrowly or with the same degree of precision as a piece of legislation.¹⁸
20. I have carefully considered the scope of the Access Application and given that I am not to interpret the scope of the Access Application narrowly, or with the same degree of precision as a piece of legislation, I consider the reference in the Access Application to '**any engagement**' of the ER Applicant, is sufficiently broad to include documents located by Council in which the ER Applicant has been contracted by Council in any capacity, whether directly or indirectly.
21. During the review, the Access Applicant provided OIC with submissions in relation to their intention when making the Access Application to Council. While I am limited in the level of detail I can provide in this decision about those submissions,¹⁹ I am satisfied that, in making the Access Application to Council, the Access Applicant's intention was to seek access to documents relating to Council's engagement of the ER Applicant in any capacity.
22. While the invoices the ER Applicant submitted to Council are no longer in issue in this review, those invoices support a finding that the ER Applicant was either the individual submitting the invoices for services provided to Council, or the ER Applicant was the beneficiary of any invoices submitted in another capacity. In particular, all invoices submitted to Council contain the ER Applicant's trade licence number and contractors licence number.
23. In view of the above, I am satisfied, as a finding of fact, that all of the Information in Issue, being evidence of payments made by Council to the ER Applicant as an individual, or where the ER Applicant would receive the benefit of Council's payment, falls within the scope of the Access Application. Given my finding in this regard, I will now consider whether access to the Information in Issue may be refused on the ground that, on balance, disclosure would be contrary to the public interest under section 47(3)(b) of the RTI Act.

¹⁶ Section 108(3) of the RTI Act.

¹⁷ ER Applicant's submissions to OIC dated 23 March 2022 and 31 May 2022.

¹⁸ *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [35].

¹⁹ Pursuant to section 108(3) of the RTI Act.

Refused Information

Relevant law

24. As noted at paragraph 16, under the RTI Act, a person has a right to access documents of an agency,²⁰ however, this right is subject to certain limitations, including grounds for refusal of access.²¹ Parliament intends for the grounds of refusal to be interpreted narrowly.²² Relevantly, access may be refused where disclosure would, on balance, be contrary to the public interest.²³
25. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:²⁴
- identify any irrelevant factors and disregard them
 - identify any relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosure would, on balance, be contrary to the public interest.
26. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of public interest lies in a particular case. I have considered these lists,²⁵ together with all other relevant information, in reaching my decision. I have applied the RTI Act's pro-disclosure bias²⁶ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.²⁷
27. As the decision on external review is a *disclosure decision*, the ER Applicant bears the onus of establishing that a decision not to disclose the Information in Issue is justified or that the Information Commissioner should give a decision adverse to the Access Applicant.²⁸ For the following reasons, I am satisfied that the ER Applicant has not discharged this onus in relation to the Information in Issue.

Findings

ER Applicant's submissions

28. The ER Applicant submitted that he disagreed with disclosure of the total payments made by Council as there was enough information being supplied with the total amounts '*... to link in with other more detailed documents to disclosure [sic] information on pricing for specific jobs, hourly rates and unit pricing*'.²⁹ Given that the Access Applicant has now narrowed the information to which they are seeking access to only the total sums of payment, I do not consider it is necessary for me to address the ER Applicant's submission in this respect as the '*more detailed documents*' referred to by the ER Applicant are no longer in issue in this review.
29. In relation to the reduced scope of Information in Issue, the ER Applicant has not provided any submissions as to why he considers that access to the information should

²⁰ Section 23(1)(a) of the RTI Act.

²¹ As set out in section 47 of the RTI Act.

²² Section 47(2)(a) of the RTI Act.

²³ Section 47(3)(b) of the RTI Act.

²⁴ Section 49(3) of the RTI Act.

²⁵ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act, and any relevant factors are discussed below.

²⁶ Section 44 of the RTI Act.

²⁷ Section 47(2) of the RTI Act. In deciding whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

²⁸ Section 87(2) of the RTI Act.

²⁹ ER Applicant's submission to OIC dated 23 March 2022.

be refused, other than to state that Council should redact this information before any documents are released to the Access Applicant.³⁰

Irrelevant factors

30. In considering whether disclosure of the Information in Issue would, on balance, be contrary to the public interest, I have not taken any irrelevant factors into account.³¹

Factors favouring disclosure

31. While the ER Applicant is of the view that the Information in Issue should not be disclosed, I consider that the following public interest factors in favour of disclosure of the Information in Issue are relevant in the circumstances of this review:
- disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability³²
 - disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest;³³ and
 - disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.³⁴
32. Government agencies, including Council, are accountable to the public for the decisions they make in awarding contracts for the performance of work which would otherwise be undertaken by government. Similarly, it is also necessary for Council to properly inform ratepayers about work carried out on their property and the basis for charges imposed for that work. Council is required to undertake business in an open, accountable and transparent way. To this end, the Information Commissioner has previously found that individuals or private sector businesses wishing to contract with government to perform public services must accept an appropriate level of scrutiny of their dealings with government and their performance, including service delivery and invoicing.³⁵
33. As the Information in Issue relates to the payment of public funds for the performance of services to Council, I consider that disclosure of the information could reasonably be expected to enhance Council's transparency and accountability, contribute to positive and informed debate, and ensure effective oversight of public fund expenditure.
34. Taking these circumstances into consideration, I am of the view that there is a significant level of community interest about whether Council has effectively spent public money. I consider that the public interest in Council's performance of services that are paid from ratepayer funds can be achieved by disclosing the summary of the work undertaken by the ER Applicant for Council,³⁶ together with the total amount paid by Council to the ER Applicant for that work.
35. I afford significant weight to the above public interest factors in favour of disclosure of this information.
36. I have considered the other public interest factors in schedule 4, part 2 of the RTI Act and am satisfied that no further factors favouring disclosure apply.

³⁰ ER Applicant's submission to OIC dated 23 March 2022.

³¹ Including those listed at schedule 4, part 1 of the RTI Act.

³² Schedule 4, part 2, item 1 of the RTI Act.

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

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

³⁵ *Huang and Redland City Council* (Unreported, Queensland Information Commissioner, 8 September 2010) at [27].

³⁶ With the exception of where disclosure of the summary of the work would reveal the hourly rate or individual unit price the applicant charged to Council which I consider is contrary to the public interest to disclose.

Factors favouring nondisclosure

37. I consider the circumstances of this matter raise specific nondisclosure factors which arise where disclosure could reasonably be expected to:
- prejudice the private, business, professional, commercial or financial affairs of entities³⁷
 - prejudice trade secrets, business affairs or research of an agency or person;³⁸ and
 - cause a public interest harm because disclosure of the information 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 affairs³⁹ (together, the **Business Affairs Factors**).
38. I accept that pricing information has a degree of commercial sensitivity for suppliers of goods and services operating in a competitive market. I also accept that generally, there are reasonable grounds for expecting that disclosing a contractor's hourly rate or individual unit price costs under the RTI Act could be expected to allow competitors to undercut that contractor by offering a lower price to the government agency in future, thus causing prejudice to the business, commercial or financial affairs of the contractor.⁴⁰ However, the Information in Issue is not of this type but comprises summary descriptions of the work undertaken and the total price paid to the ER Applicant by Council for that work. The ER Applicant has not provided any submissions arguing how disclosure of information of this nature could reasonably be expected to cause the requisite prejudice or adverse effect to his affairs.
39. Given the nature of the Information in Issue, I am not satisfied that its disclosure could reasonably be expected to significantly prejudice or have a significant adverse effect on the ER Applicant's business affairs. Therefore, to the extent the Business Affairs Factors apply to the Information in Issue, I find they deserve low weight when balancing the public interest.
40. The RTI Act also gives rise to a number of factors favouring nondisclosure which relate to the protection of personal information and privacy (**Personal Information Factors**).⁴¹
41. I acknowledge that the Information in Issue comprises the personal information of the ER Applicant, given that it details payments made to the ER Applicant by Council. However, given the nature of the Information in Issue (being payments made to the ER Applicant by Council, rather than, for example, the ER Applicant's medical records which would attract a high level of privacy), I consider that any prejudice or public interest harm arising from disclosure of the Information in Issue would be low. As noted at paragraph 32, individuals or private sector businesses wishing to contract with government to perform public services must accept an appropriate level of scrutiny of their dealings with government and their performance.

³⁷ Schedule 4, part 3, item 2 of the RTI Act.

³⁸ Schedule 4, part 3, item 15 of the RTI Act.

³⁹ Schedule 4, part 4, section 7(1)(c) of the RTI Act. Section 7(1) effectively contains three mutually exclusive public interest harm factors, at subsections (a)-(c). Given the nature of the Information in Issue, I do not consider it necessary to address sections 7(1)(a) or 7(1)(b).

⁴⁰ *Re Dalrymple Shire Council and Department of Main Roads* (1998) 4 QAR 474 at [41]-[42]. However, I note that the degree of commercial sensitivity of the information and prejudice to the contractor will vary from case to case, depending on the circumstances of the particular matter.

⁴¹ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act. *Personal Information* is defined in section 12 of the IP Act as 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

42. I have considered the other public interest factors listed in schedule 4, parts 3 and 4 of the RTI Act and am satisfied no further factors favouring nondisclosure apply.⁴² I also note that the ER Applicant, who bears the onus of demonstrating that access can be refused in this case, has not raised any further nondisclosure factors or grounds of refusals.

Balancing the public interest

43. For the reasons set out above, I find that the factors favouring disclosure carry significant weight. Disclosure of information relating to Council's payments to private contractors would enhance Council's accountability and transparency, contribute to positive and informed debate, and ensure effective oversight of expenditure of public funds.
44. With respect to the nondisclosure factors, being the Business Affairs Factors and Personal Information Factors, I consider that they are deserving of low weight because I am not satisfied that there is a reasonable expectation of prejudice or harm, as anticipated by those factors, arising from disclosure of the Information in Issue.
45. On balance, I am satisfied that the public interest factors favouring disclosure outweigh the factors favouring nondisclosure.⁴³ Accordingly, I find that disclosure of the Information in Issue would not, on balance, be contrary to the public interest.

DECISION

46. For the reasons set out above, I affirm Council's decision to disclose the Information in Issue. I am not satisfied that access to the Information in Issue may be refused under section 47(3)(b) of the RTI Act, on the ground that its disclosure would, on balance, be contrary to the public interest.
47. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

S Martin
Assistant Information Commissioner

Date: 13 October 2022

⁴² In the event that further relevant factors exist in favour of nondisclosure, I am satisfied that there is no evidence before me to suggest that any would carry sufficient weight to outweigh the significant weight that I have afforded to the public interest factors that favour disclosure of the Information in Issue.

⁴³ Section 47(3)(b) and 49 of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
20 October 2021	OIC received the application for external review. OIC requested preliminary documents from Council.
27 October 2021	OIC received the preliminary documents from Council. OIC notified the Access Applicant of the external review application.
1 November 2021	OIC notified the ER Applicant and Council that the external review application had been accepted. OIC requested the information in issue from Council.
30 November 2021	OIC received the information in issue from Council.
11 December 2021	The Access Applicant requested an update.
21 December 2021	OIC provided the Access Applicant with an update.
22 December 2021	OIC conveyed a preliminary view to Council. OIC provided the ER Applicant with an update.
10 February 2022	OIC received correspondence from Council advising that they agreed with OIC's preliminary view.
18 February 2022	OIC conveyed a preliminary view to the ER Applicant. OIC provided an update to Council and requested they provide documents to the ER Applicant.
28 February 2022	The ER Applicant advised that he had not received the documents from Council.
1 March 2022	Council provided OIC with correspondence between Council and the ER Applicant.
4 March 2022	The ER Applicant advised that he still had not received the documents from Council.
10 March 2022	The ER Applicant requested an extension of time to respond to OIC's preliminary view. OIC granted the ER Applicant an extension of time.
23 March 2022	OIC received submissions from the ER Applicant in response to OIC's preliminary view.
15 May 2022	The Access Applicant requested an update.
18 May 2022	OIC conveyed a preliminary view to the ER Applicant.
27 May 2022	The Access Applicant requested an update.
31 May 2022	OIC received submissions from the ER Applicant in response to OIC's preliminary view.
9 June 2022	OIC provided an update to the Access Applicant.
21 July 2022	OIC conveyed a preliminary view to Council.
4 August 2022	OIC received correspondence from Council advising that they agreed with OIC's preliminary view.

Date	Event
26 August 2022	OIC conveyed a preliminary view to the Access Applicant. OIC invited the Access Applicant to apply to participate in the external review.
30 August 2022	OIC received submissions from the Access Applicant in response to OIC's preliminary view. The Access Applicant became a participant in the external review.
8 September 2022	OIC provided an update to the Access Applicant.
9 September 2022	OIC provided an update to the ER Applicant and Council.