



Decision and Reasons for Decision

Application Number: 310227

Applicant: Seven Network (Operations) Limited

Respondent: Redland City Council

A third party

Decision Date: 30 June 2011

Catchwords: RIGHT TO INFORMATION – REFUSAL OF ACCESS – applicant sought information about failed food safety audits of a food business held by Redland City Council – third party objects to disclosure – whether disclosure of information would, on balance, be contrary to the public interest – section 47(3)(b) and 49 of *the Right to Information Act 2009* (Qld)

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REASONS FOR DECISION

Summary

1. The applicant applied to Redland City Council (**Council**) for documents about failed health and safety audits in relation to a food business.¹
2. After consulting with the food business as an interested third party Council refused access to the documents on the grounds that their release would, on balance, be contrary to the public interest.²
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the Department's decision.
4. On external review, OIC issued a preliminary view to Council and to the food business that releasing the documents was not, on balance, contrary to the public interest.
5. Council accepted OIC's preliminary view and no longer objects to releasing the documents.³
6. On 20 May 2011, the food business applied to participate in the external review,⁴ and provided submissions in response to OIC's preliminary view. In summary the food business contends that the prejudice to its business and privacy outweigh any other factors favouring disclosure in the public interest and access to the information should therefore be refused.
7. For the reasons set out below, I set aside Council's decision refusing access to the information in issue, substituting a decision that the information in issue is to be released, as its disclosure would not, on balance, be contrary to the public interest.

Significant procedural steps

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

Reviewable decision

9. The decision under review is Council's decision dated 10 May 2010 refusing access to information under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest.

Information in Issue

10. The information in issue⁵ in this review is 20 pages comprising one Improvement Notice⁶ and an accompanying assessment report with photographs relating to the food

¹ As the name of the food business forms part of the information in issue, I cannot reveal it in this decision. See section 108(3) of the *Right to Information Act 2009* (Qld) (**RTI Act**).

² Council's decision dated 10 May 2010.

³ In an email dated 4 May 2011.

⁴ Under section 89 of the RTI Act.

⁵ Council's preliminary searches located 57 pages of information. Council subsequently decided that 37 of those pages were outside the scope of the application. I have examined these pages and am satisfied that they do not fall within the scope of the application.

⁶ Issued under section 209 of the *Food Act 2006* (Qld).

business. It does not include a small amount of information about the food business' employee, which the applicant does not seek to access.⁷

Evidence considered

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

Findings

12. Under the RTI Act, a person has a right to be given access to documents of an agency.⁸ However, this right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.⁹ Relevantly, access may be refused where disclosure would, on balance, be **contrary to the public interest**.¹⁰

What is the public interest?

13. 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.

How is the balance of the public interest determined?

14. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest. It also explains the steps that a decision-maker must take in deciding the public interest. To decide whether disclosure of the information in issue would be contrary to the public interest, I must:¹¹
 - 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, on balance, would be contrary to the public interest.

Where does the balance of the public interest lie in this matter?

15. I am satisfied that release of the information in issue would not, on balance, be contrary to the public interest for the reasons that follow.
16. I have examined the irrelevant factors in schedule 4 of the RTI Act and do not consider that any irrelevant factors arise here.
17. I consider that there are a number of factors favouring disclosure and nondisclosure in this case. I discuss these and their relative weight below.

⁷ This information appears on folios 27, 28, 29 and 30. The applicant confirmed this on external review in a telephone discussion on 25 May 2011.

⁸ Section 23 of the RTI Act.

⁹ As set out in section 47 of the RTI Act.

¹⁰ Sections 44, 48 and 49 of the RTI Act.

¹¹ Section 49(3) of the RTI Act.

Accountability and positive and informed debate¹²

18. If disclosure of the information **could reasonably be expected to** promote open discussion of public affairs and enhance the Government's accountability, it will be relevant to apply these factors in balancing the public interest.
19. The term 'could reasonably be expected to' requires that the expectation is reasonably based, that it is neither irrational, absurd or ridiculous,¹³ nor merely a possibility.¹⁴ Whether the expected consequence is reasonable requires an objective examination of the relevant evidence.¹⁵ It is not necessary for a decision-maker 'to be satisfied upon a balance of probabilities' that disclosing the document will produce the anticipated prejudice, or, as in this case, a public good.¹⁶ Importantly, the expectation must arise as a result of disclosure, rather than from other circumstances.¹⁷
20. In this review the particular information under consideration comprises an assessment report and an Improvement Notice relating to the food business issued under the *Food Act 2006* (Qld) (**Food Act**). The Food Act is intended to ensure that food is safe and suitable for human consumption, to prevent misleading conduct relating to the sale of food and to apply the food standards code.¹⁸ These objectives are achieved by, among other things, local Councils monitoring and enforcing compliance with the Food Act.¹⁹
21. The food business argues that:

*...public scrutiny of Council would **not** be enhanced by publication of **this** information. The information requested is specific in that it relates to 'all failed health and or safety issues audits'. It does not seek information upon for example how council performs its functions and if this information was sought, a request could have been made to that effect. Consequently any scrutiny of council as a result would be minimal and it is submitted that little weight should be attributed to this factor.²⁰*

22. The food business goes on to contend that:

...the likely scrutiny capable of being undertaken is of our client in circumstances where it has attended to the requests of council and not the regulation of the food industry, or the operation of the Food Act.²¹

23. I accept the food business' contention that releasing the information in issue may increase public scrutiny of its business, but this does not detract from the opportunity for public scrutiny of how Council is discharging its responsibilities under the Food Act. While the food business is just one of many businesses which Council monitors under the Food Act, the information in issue provides a 'snapshot' of how Council undertakes its regulatory functions. Further, although the information in issue provides just one example of how Council performs its regulatory role, I consider that this information would allow a member of the public to have a greater understanding of the way in which Council conducts audits and associated compliance activities mandated under the Food Act. That disclosure may increase public scrutiny of the food business is a

¹² Schedule 4, part 2, item 1 and item 2 of the RTI Act.

¹³ *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

¹⁴ *Murphy and Treasury Department* (1995) 2 QAR 744.

¹⁵ *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraphs 45-47.

¹⁶ *Sheridan and South Burnett Regional Council (and Others)* (Unreported, Queensland Information Commissioner, 9 April 2009).

¹⁷ *Murphy and Treasury Department* (1995) 2 QAR 744 at paragraph 54.

¹⁸ See section 8 of the Food Act.

¹⁹ See section 9 of the Food Act.

²⁰ Food business' submission to OIC dated 20 May 2011.

²¹ Food business' submission to OIC dated 20 May 2011.

separate issue which is more appropriately considered as part of the potential prejudice to the food business's business affairs in the factors favouring nondisclosure.

24. In a previous decision relating to information about the regulatory functions of the Queensland Building Services Authority, the then Information Commissioner stated:

I consider it is essential that they [the public] have confidence in the functions performed by the Authority of ensuring that licensed builders perform building work properly, or if they do not, that the Authority will ensure that any problems are remedied.²²

25. I consider that it is equally essential for the public to have confidence in the way in which Councils undertake their regulatory obligations under the Food Act.
26. As releasing the information in issue could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability, I now consider the weight to be attributed to these factors.
27. In its decision, Council²³ contends that as the information in issue is from 2007, its release is not in the public interest. I agree that the age of the information potentially lessens its utility for the purposes of public discussion. However, as the regulatory regime under the Food Act has remained substantially the same from when the information was recorded until now, the information still sheds light on how Council performs its functions in this regulatory context. Under the Food Act, Council plays an important role in effectively regulating relevant food businesses to ensure that food is handled and prepared in a way that does not jeopardise the health of consumers. Public scrutiny and discussion cannot occur in an information vacuum. Disclosure of the information in issue would allow the public to 'see' and discuss how Council discharged its responsibilities in relation to the food business.
28. Given the above, I am satisfied that these two factors must be given significant weight.

Revealing environmental or health risks or measures relating to public health and safety²⁴

29. If disclosure of the information in issue could reasonably be expected to reveal environmental or health risks or measures relating to public health and safety, it will be relevant to apply this factor in balancing the public interest.
30. The food business submits that disclosure of the information in issue could not reasonably be expected to reveal environmental or health risks because the information in issue is from 2007 and therefore cannot reveal current risks.
31. As explained above, for this factor to arise, the expectation must be reasonably based, neither irrational, absurd or ridiculous,²⁵ nor merely a possibility.²⁶ In this case, the information is about breaches of the Food Act. The Food Act is focused on ensuring that food businesses sell food that is safe and suitable for human consumption. I consider that releasing the information could reasonably be expected to reveal health risks, even if the information is from several years ago.

²² *Kenmatt Projects Pty Ltd and Building Services Authority* (unreported Queensland Information Commissioner, 27 September 1999) at paragraph 47.

²³ The food business relies on Council's decision dated 10 May 2010 and submission dated 16 June 2010 as well as its own submissions – the food business' submission dated 21 May 2011.

²⁴ Schedule 4, part 2, item 14 of the RTI Act.

²⁵ *Attorney-General v Cockcroft* (1986) 64 ALR 97 at 106.

²⁶ *Murphy and Treasury Department* (1995) 2 QAR 744.

32. While release of the information may reveal health risks, the fact that the information is from several years ago and there have been subsequent satisfactory inspections²⁷ means that the weight to be attributed to this factor is low.

Safe, informed and competitive markets

33. Competitive markets require not only multiple service providers but also an informed marketplace where consumers can make choices on a range of criteria including reputation of the supplier, price, safety, value and quality. The reputation of a supplier is affected by many factors including the customer's own experience, word of mouth, information in the marketplace about the supplier's compliance and prosecution history and the way the business is known to have responded to issues in the past. If disclosure of the information in issue could reasonably be expected to inform consumers about the marketplace so they are able to make more informed decisions about products, this public interest factor will arise.
34. The food business contends that as this factor is not a factor listed in the RTI Act, I cannot rely on it. Further, that the issue of a competitive marketplace is a matter for organisations such as the Australian Competition and Consumer Commission (**ACCC**), not the RTI Act.²⁸
35. I have explained at paragraph 14 above how the public interest balancing test must be applied. Schedule 4 of the RTI Act sets out the factors that Parliament has decided are irrelevant factors, relevant factors favouring disclosure and relevant factors favouring nondisclosure. These are not exhaustive lists. This is evident from the wording of section 49, which requires a decision-maker, for example, to 'identify any factor favouring disclosure that applies in relation to the information, **including** any factor mentioned in schedule 4, part 2. This is consistent with Australian and international case law and decisions on determining public interest. For example, it has been observed that:

*[t]he categories of public interest are not closed, and must alter from time to time whether by restriction or extension as social conditions and social legislation develop*²⁹

and;

*the authorities approach the issue by identifying particular issues that lie inside or outside the public interest while never drawing the boundary between the two. That approach reflects the changing qualities of the issues that arise in the community.*³⁰

36. That the ACCC has significant responsibilities in relation to promoting competition and fair trade in markets and ensuring compliance with relevant competition and consumer legislation does not alleviate me of my responsibility under the RTI Act to determine whether the applicant has a legal entitlement to access the information in issue by identifying and considering relevant factors when applying the public interest test.
37. I am therefore satisfied that I am not precluded from considering this factor in this review.
38. As to whether the factor applies in this instance, the Honourable Justice E W Thomas³¹ argues in his essay 'Secrecy and Open Government' that:

²⁷ Council's submission dated 16 June 2010.

²⁸ Food business' submission dated 20 May 2011.

²⁹ *D v National Society for the Prevention of Cruelty to Children* [1977] UKHL 1 at 13 per Lord Hailsham.

³⁰ *Robinson and Department of Employment and Workplace Relations* [2002] AATA 715 at [38] per Deputy President Forgie.

³¹ At the time of writing this essay, Justice Thomas was a member of the New Zealand Court of Appeal.

A great deal of social and economic activity is regulated by government, the purpose of which is to protect and further the public interest. In undertaking that regulation, the government acquires information that is utilised by the government or government agencies to make decisions which will directly affect the interests of the public as consumers. If the information on which those decisions are based is not disclosed, consumers are not in the most advantageous position to make informed decisions affecting their own safety, health or welfare. If, for example, there is a risk associated with a particular product, the consumer is entitled to know of that risk. Without access to official information relevant to the consumer's decision, the public interest, which is the object of the regulation, is not being fully served. Not only is the consumer unable to make an informed decision about the product or service, but the public is not in a position to assess the performance of the government or government agency in regulating the particular industry, trade, profession or commercial activity.³²

39. The information in issue in this review was created by an authorised officer upon forming a reasonable belief that the Food Act had been contravened. This information is reliable and credible. Releasing the information would more fully inform members of the public about the way the food business operates so they are able to make more informed consumer choices. It follows that if the information in issue is known to the public, consumers will have a more informed understanding of how the food business discharges its responsibilities in relation to the safe handling and production of food and risks that may be relevant to making purchasing decisions.
40. The Information Commissioner has previously decided there is a public interest in the public receiving information about the performance of builders they may choose to engage³³ and a public interest in consumers being able to make informed choices about health care. In *Coulthart and Princess Alexandra Hospital and Health Services District*,³⁴ the then Information Commissioner stated:

In my view, it is obviously in the public interest that consumers should be able to make informed choices about services or products they may wish to purchase.³⁵

41. I consider that this reasoning is applicable in the circumstances of this case. Presently consumers are making decisions based on incomplete information. Releasing the information in issue will not give consumers a full picture, but it will expand or broaden the picture and could therefore reasonably be expected to inform consumers about the marketplace so they are able to make more informed decisions about products.
42. In determining the weight to be attributed to this factor, I must consider the extent to which disclosing the information in issue will further this public interest factor.
43. In the essay referred to above, Thomas J observed that while governments should fully disclose official information on which they base regulatory decisions, confidential or commercially sensitive information may have to be exempted from disclosure. The food business has not submitted that the information is confidential or commercially sensitive. I have examined the information in issue and I see no evidence to suggest that the information is confidential or commercially sensitive. The food business has argued that releasing the information would prejudice its business affairs, by for

³² Essays on Law and Government: Volume 1: Principles and Values: Chapter 8: Secrecy and Open Government: The Hon Justice E W Thomas at 196. The UK Information Commissioner has also relevantly said that the 'the public has a right to know what health inspectors discover' Daily Mail, 13 July 2006.

³³ *Kenmatt Projects Pty Ltd and Building Services Authority* (unreported Queensland Information Commissioner, 27 September 1999) at paragraph 48.

³⁴ (Unreported, Queensland Information Commissioner, 10 August 2001).

³⁵ *Coulthart and Princess Alexandra Hospital and Health Services District* (Unreported, Queensland Information Commissioner, 10 August 2001) at paragraph 69.

example, damaging its reputation. This is a separate consideration and is discussed below in relation to factors favouring nondisclosure.

44. I consider that in relation to this factor, the public interest will be significantly furthered by disclosing the information in issue. In addition to the public interest benefit to be derived from consumers having additional information on which to make consumer choices, the food business and others within the industry will be on notice that information relating to the way they meet their obligations under the Food Act may be published and this may increase compliance.³⁶ This anticipated benefit is supported by a study of a scheme in Los Angeles where restaurants were made to display health inspection scores on their doors and on the internet. There was a 13.1 percent decrease in the number of food borne hospitalisations in the year following implementation of the scheme and the number of businesses receiving 'A grades' rose from 58 percent at the beginning of the scheme to 83 percent five years later.³⁷
45. In view of the above, I am satisfied that significant weight must be attributed to this public interest factor.

Personal information and privacy³⁸

46. The information in issue includes the food business' company name and business address. Council decided that releasing this information and information about an employee of the food business was contrary to the public interest on privacy grounds.³⁹
47. In a preliminary view conveyed to the food business during the review, OIC indicated the weight to be accorded to the personal information was low and on balance, the information in issue should be released. The food business provided submissions in response to this preliminary view.
48. Subsequently, the applicant indicated that it did not seek information about the employee. The remaining information in issue does not contain any personal information as business information of a corporation is not personal information.⁴⁰
49. I am therefore satisfied that these factors favoring nondisclosure do not apply in this case.

Prejudice the business, commercial or financial affairs of an entity or a person⁴¹

50. Where release of information could reasonably be expected to prejudice the business, commercial or financial affairs of a person, there is a public interest in nondisclosure of that information.

³⁶ Consumer Focus UK (previously known as the National Consumer Council), in their publication 'Regulation and Reputation' has stated 'we believe that consumers have a right to know when businesses break the rules of fail to meet performance targets. And those firms would be more likely to meet their obligations if their successes and transgressions were likely to be public knowledge' at page 3. Consumer Focus UK is established under the *Consumers, Estate Agents and Redress Act 2007* and has powers to investigate consumer complaints, open up information from providers, conduct research and to make an official complaint about failing services. Consumer Focus UK receives a large proportion of its funding from the Department for Business, Innovation and Skills, UK

³⁷ See Impact of Restaurant Hygiene Grade Cards on Foodborne-Disease Hospitalizations in Los Angeles County, Simon et al, *Journal of Environmental Health*, volume 67, number 7, 2005.

³⁸ Schedule 4, part 3, item 3 and schedule 4, part 4, section 6 of the RTI Act.

³⁹ On the basis that it could reasonably be expected to cause a public interest harm because this would disclose personal information of a person, whether living or dead (schedule 4, part 4 item 6 of the RTI Act) and that disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy (schedule 4, part 3 item 3 of the RTI Act).

⁴⁰ The definition of personal information in section 12 of the *Information Privacy Act 2009* (Qld) requires personal information to be about an individual. An individual is a natural person and does not include a corporation: section 36 of the *Acts Interpretation Act 1954* (Qld).

⁴¹ Schedule 4, part 3, items 2 and 15 of the RTI Act.

51. The food business submits that releasing the information in issue could reasonably be expected to prejudice its business affairs.
52. Given that the information in issue relates to breaches of the Food Act, I am satisfied that releasing the information could reasonably be expected to prejudice the business affairs of the food business, by, for example, damaging the food business' reputation.
53. As I am satisfied that this factor applies, I must consider the extent of the prejudice and therefore the weight to be attributed to this factor.
54. I consider that the food business' submissions in relation to the prejudice to its privacy are most appropriately addressed in relation to this factor. As explained at paragraphs 46 to 49 above, there are no privacy interests in the information in issue. However, I do consider that releasing the information in issue could reasonably be expected to prejudice the food business' commercial reputation by revealing its identity in connection with the information in issue. This is likely to increase public scrutiny on the food business.
55. In response to a reference in OIC's preliminary view letter to the system in New South Wales (**NSW**) known as the 'name and shame' system⁴² which releases information about breaches of the *Food Act 2003* (NSW) (**NSW Food Act**) according to guidelines set out in that legislation, the food business submits that information released under the NSW scheme is limited to unchallenged penalty notices, noting that there is no equivalent system in Queensland.⁴³
56. I acknowledge the food business' submission that Queensland does not have a legislative system in place to release information of this type⁴⁴ and I consider that, in the absence of such a system, the piecemeal release of small amounts of information about individual businesses under the RTI Act may result in an increased level of scrutiny and adverse effects on the affected business' reputation and business. However, it is not the function of the RTI Act to consider the implementation of such a system. The RTI Act gives individuals a right to access information held by government, unless, on balance, it is contrary to the public interest to give access.⁴⁵
57. From its submissions, I understand the food business to be contending that release of the information in issue would be contrary to the public interest as it would be going further than the system currently in place in NSW, as the information in issue is an assessment report and an improvement notice issued under the Food Act, which is not the same as a penalty notice.
58. The NSW and Queensland Food Acts include a range of monitoring and enforcement mechanisms. Both Acts provide for improvement notices, prohibition orders⁴⁶ and the ability to prosecute food businesses for breaches of the relevant Food Act. Generally, improvement notices are issued first, with additional mechanisms such as prohibition orders and prosecution being employed as a next step. The NSW Food Act also includes penalty notices as part of its monitoring and enforcement regime. Penalty notices are pursued as an alternative to prosecution. All of these enforcement

⁴² <http://www.foodauthority.nsw.gov.au/penalty-notices/>.

⁴³ Food business' submission dated 20 May 2011.

⁴⁴ Although I note that Queensland does publish a summary of convictions under the Food Act, except where a conviction has not been recorded, a court has made a non-publication order, or the case is within the appeal period or subject to appeal – see <http://www.health.qld.gov.au/industry/food/prosecutions.asp>.

⁴⁵ Section 3 of the RTI Act.

⁴⁶ In the Queensland Food Act, orders which have the same effect as prohibition orders under the NSW Food Act are made under the emergency powers of the chief executive power in Part 4 of the Act and are simply called orders.

mechanisms require an authorised person to believe on reasonable grounds there has been a breach of the relevant Food Act. The Queensland Food Act does not provide for penalty notices.

59. The information in issue in this review is an assessment report and an Improvement Notice issued under the Food Act.⁴⁷ An Improvement Notice is issued when an authorised person reasonably believes that a person carrying on a food business is contravening a provision of the Food Act, the matter can be remedied and it is appropriate to give the person an opportunity to remedy the matter.⁴⁸
60. I acknowledge that a penalty notice under the NSW scheme is a more final form of enforcement than an Improvement Notice, as a penalty notice does not give an opportunity to improve. A recipient must pay a fine or be liable to proceedings under the NSW Food Act.⁴⁹ An Improvement Notice focuses on an earlier stage of the regulatory process, where the regulator is satisfied that there is room for improvement and that the individual or company in question has the capacity to improve. As I mentioned above, the Queensland Food Act does not include penalty notices, so it is not possible to disclose them. Crucially though, both penalty notices and Improvement Notices require an authorised person (in this case an accredited auditor) to form a reasonable belief that an offence has been committed under the relevant Food Act.
61. The assessment report comprises the authorised person's record of inspection of the premises and is presumably the information used to form a reasonable belief that there has been a contravention of the Food Act as recorded in the Improvement Notice. I am satisfied that given the manner in which assessment reports and Improvement Notices are created, the information in issue contains credible information, which although not a matter for prosecution, amounts to significantly more than an unsubstantiated allegation. I consider that releasing this information would not unfairly prejudice the food business, because the information is reliable and credible.

62. Consumer Focus UK has stated that:

*'As a rule of thumb, we favour disclosure when a regulator, or other organisation in the regulatory framework has imposed a formal sanction or has evidence that a business has failed to meet acceptable performance standards.'*⁵⁰

63. The information in issue in this review demonstrates that the food business has failed to meet the standards imposed by the Food Act.

64. Council submits⁵¹ that:

*...releasing the information in issue could have an adverse effect on the commercial affairs of the food business. The failed food safety inspection was undertaken in 2007 and proactive measures have been taken in conjunction with Council to rectify the issues identified in the failed report. It should be noted that several subsequent inspections have been undertaken by Council's Environmental Health Unit, of which, all have passed in accordance with the requirements of the Food Act.'*⁵²

⁴⁷ See section 209 of the Food Act (Qld).

⁴⁸ Section 209 of the Food Act (Qld).

⁴⁹ See section 120 of the Food Act NSW.

⁵⁰ The UK National Consumer Council, Booker, 'Regulation and Reputation' at 15.

⁵¹ The food business relies on Council's decision and submissions as well as its own submissions – the food business' submission dated 21 May 2011.

⁵² Council submission to OIC dated 16 June 2010.

65. The food business also submits that:

The passage of time does not lessen the prejudice of release of the information. Any prejudice sustained is upon its release, whereas the relevance to those factors relating to Council's maintenance of the Food Act compliance procedures (to the extent that they are a relevant consideration) dissipates with the passage of time.

66. I acknowledge that the information in issue is from 2007 and there have been subsequent satisfactory inspections. I accept that the food business will likely experience some prejudice as a result of the information in issue being released.
67. In OIC's preliminary view, we suggested that it was open to Council or the food business to publicise the fact that there have been subsequent satisfactory inspections, or to provide this contextual information to the applicant on the release of the documents. The food business submits that it does not see any basis where it is open to Council to provide subsequent satisfactory inspections or voluntarily provide contextual information to the applicant.⁵³
68. Whilst I accept that Council may be limited in this regard, I do consider that it is open to the food business to release this information. In any event, this decision has publicised the fact that there have been subsequent satisfactory inspections by referring to Council's submission. The public can take this fact into account, along with the information in issue and any other information available to them, when making purchasing choices.
69. Given the above, I consider that releasing the information in issue could reasonably be expected to moderately prejudice the food business' business affairs.

Disclosing business affairs—public interest harm⁵⁴

70. Disclosure of information could reasonably be expected to cause a public interest harm if the information disclosed concerns the business or commercial affairs of a person and the disclosure could reasonably be expected to have an adverse affect on those affairs, or to prejudice the future supply of this type of information to government.
71. Although Council identified this factor in its decision, no reasons were provided to explain the relevance of the factor. This factor raises similar issues to those discussed above in relation to possible prejudice to the food business' business affairs. I consider that this factor applies for the same reasons; ie that release could reasonably be expected to damage the food business' reputation by revealing business affairs of the food business. I do not, however, consider that release would prejudice the future supply of food compliance information to Council, as compliance with the Food Act is mandatory.⁵⁵

⁵³ As suggested in OIC's preliminary view dated 21 April 2011.

⁵⁴ Schedule 4, part 4, item 7 of the RTI Act.

⁵⁵ The Information Commissioner has previously made a number of observations about the term 'prejudice the future supply of information' in the context of provisions regarding confidentiality under the now repealed *Freedom of Information Act 1992* (Qld). Although made in a different context, the following comments from the decision in *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 (at paragraph 161) are nevertheless relevant in relation to this factor:

... the test is not to be applied by reference to whether the particular confider whose confidential information is being considered for disclosure, could reasonably be expected to refuse to supply such information in the future, but by reference to whether disclosure could reasonably be expected to prejudice future supply of such information from a substantial number of the sources available or likely to be available to an agency ... [and] ... [w]here persons are under an obligation to continue to supply such confidential information (e.g. for government employees, as an incident of their employment; or where there is a statutory power to compel the disclosure of the information) or persons must disclose information if they wish to obtain some benefit from the government (or they would otherwise be disadvantaged by withholding information) then ordinarily, disclosure could not reasonably be expected to prejudice the future supply of such information.

72. As I am satisfied this factor applies, I must consider the extent of the harm in releasing the information. For the reasons already outlined at paragraphs 54 to 69 above, I consider disclosure of this information would cause moderate harm to the food business' business affairs.

Conclusion

73. I consider that in the circumstances of this review, the public interest in Council's accountability, promoting public discussion about the way in which Council performs its role under the Food Act and the public interest in having safe, informed and competitive marketplaces must be given significant weight in this case. However, the public interest in revealing health risks is relatively low in this review due to the age of the information. Weighing against these public interests in favour of disclosure is the prejudice and harm to the food business' commercial and business affairs. I consider that moderate weight attaches to these factors, but that they do not outweigh the disclosure factors.
74. I am therefore satisfied that releasing the information in issue would not, on balance, be contrary to the public interest.

DECISION

75. I set aside Council's decision to refuse access to the information in issue under section 47(3)(b) of the RTI Act and find that disclosure would not, on balance, be contrary to the public interest.
76. I have made this decision as a delegate of the Information Commissioner, under section 145 of the *Right to Information Act 2009* (Qld).

Jenny Mead
Right to Information Commissioner

Date: 30 June 2011

APPENDIX

Significant procedural steps

Date ⁵⁶	Event
15/03/2009 (should be 2010)	The applicant applied to Redland City Council (Council) under the RTI Act for documents about failed health and safety audits in relation to a food business.
16 April 2010	Council consulted the food business (third party) regarding the release of the information requested by the applicant.
30 April 2010	Solicitors for the third party responded objecting to release of the information requested by the applicant.
10 May 2010	Council issued its decision (access decision).
21 May 2010	The applicant applied to OIC for external review of the access decision.
4 June 2010	OIC informed Council and the applicant that the external review application had been accepted for review.
16 June 2010	Council provided OIC with submissions.
21 April 2011	OIC conveyed a written preliminary view to Council and the third party and invited them to provide submissions in support of their respective cases if they did not accept the preliminary view.
4 May 2011	Council informed OIC that it accepted the preliminary view.
20 May 2011	OIC received submissions from the solicitors for the third party in response to the preliminary view.

⁵⁶ Of correspondence or relevant communication unless otherwise stated.