



Decision and Reasons for Decision

Citation: *James and Cassowary Coast Regional Council; JLT Risk Solutions Pty Ltd (Third Party) [2020] QICmr 43 (31 July 2020)*

Application Number: 314950

Applicant: James

Respondent: Cassowary Coast Regional Council

Third Party: JLT Risk Solutions Pty Ltd ACN 009 098 864

Decision Date: 31 July 2020

Catchwords: **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - BREACH OF CONFIDENCE** - communications about insurance coverage of legal costs incurred by local council - whether disclosure would found an action for breach of confidence - whether access may be refused under sections 47(3)(a) and 48 and schedule 3, section 8 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - communications about insurance coverage of legal costs incurred by local council - whether information is exempt on the basis of legal professional privilege - whether access may be refused under sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO THE PUBLIC INTEREST INFORMATION - communications about insurance coverage of legal costs incurred by local council - accountability, transparency and expenditure oversight - 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 to the Cassowary Coast Regional Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for information about Council's insurance, including advice relating to insurance coverage for particular legal proceedings.¹ This application followed a statement made by the Mayor in a Council meeting² that legal costs incurred by Council in recent legal action would be covered by Council's insurers.³
2. Council located and released to the applicant an insurance overview report and meeting minutes.⁴ However, Council decided⁵ to refuse access to information it located in relation to legal proceedings on the basis it was subject to legal professional privilege and its disclosure would found an action for breach of confidence.⁶
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision⁷ to refuse access to the information concerning legal proceedings.⁸ On external review, Council submitted that access could be refused to the relevant information on the grounds that it comprises exempt information and disclosure would, on balance, be contrary to the public interest.⁹
4. During the review, the Third Party, Council's insurer,¹⁰ was joined as a participant.¹¹ The Third Party objected to disclosure and contended that relevant information is exempt and disclosure would, on balance, be contrary to the public interest.
5. For the reasons below, I set aside Council's refusal of access decision on the basis that the information is not exempt nor would it, on balance, be contrary to the public interest to disclose.

Evidence considered

6. Significant procedural steps relating to this review are set out in the Appendix. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and the Appendix).
7. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹² I consider a decision-maker will be '*respecting and acting compatibly with*' this right and other rights in the HR Act when applying the law prescribed in the RTI Act.¹³ I have acted in this way in making this decision in accordance with section 58(1) of the HR Act.

¹ Application dated 14 October 2019.

² On 26 September 2019.

³ These minutes can be accessed at <www.cassowarycoast.qld.gov.au/documents/1422210/47011632/2019-09-26%20Local%20Government%20Meeting%20Minutes>.

⁴ 11 pages. Council refused access to small portions of information on 5 pages on the ground that disclosure would, on balance, be contrary to the public interest under sections 47(3)(b) and 49 of the RTI Act.

⁵ Decision dated 23 October 2019.

⁶ Under sections 47(3)(a) and 48 and schedule 3, sections 7 and 8 of the RTI Act.

⁷ External review application dated 29 October 2019.

⁸ Confirmed by OIC to the applicant on 6 December 2019. Therefore, the partial redactions on 5 pages are not in issue in this review.

⁹ Under sections 47(3)(a) and 48, and sections 47(3)(b) and 49 of the RTI Act.

¹⁰ The Third Party, previously called Jardine Lloyd Thompson Pty Ltd, is the appointed manager of the Local Government Mutual Liability Scheme, a self-insurance scheme established for local government in Queensland.

¹¹ Under section 89(3) of the RTI Act. On 22 April 2020, the Third Party applied to participate, including on behalf of the Local Government Mutual (**LGM**).

¹² Section 21 of the HR Act.

¹³ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

Reviewable decision

8. The decision under review is Council's refusal of access decision dated 23 October 2019.

Information in issue

9. The information remaining in issue appears in email communications between Council and the Third Party (**information in issue**).¹⁴
10. The RTI Act limits the level of detail I can include in these reasons to describe the particular content of the information in issue.¹⁵ However, I can broadly describe it as communications between Council and the Third Party regarding insurance coverage, legal proceedings and the Mayor's statement referred to at paragraph 1 above.

Issues for determination

11. Council bears the onus of establishing that its decision refusing access to information was justified.¹⁶ Council maintains that the information in issue is exempt and also argues that its disclosure would, on balance, be contrary to the public interest.
12. The Third Party also objects to disclosure and contends that the information is exempt, on the basis its disclosure would found an action for breach of confidence, and that it would, on balance, be contrary to the public interest to disclose.
13. Therefore, the issues to be determined in this review are whether access may be refused to the information in issue on the below bases:
- it is exempt information as its disclosure would found an action for breach of confidence¹⁷
 - it is exempt information because it would be privileged from production in a legal proceeding on the ground of legal professional privilege;¹⁸ and/or
 - disclosure would, on balance, be contrary to the public interest.¹⁹
14. I have also dealt with a preliminary issue regarding scope, below, due to concerns raised by the Third Party.

Findings

Scope

15. As noted above, Council's insurer has been joined as the Third Party to this proceeding. In its submissions to OIC²⁰, the Third Party sought to argue that the information in issue fell outside the scope of the application because LGM is not an 'insurer' and the Local Government Mutual Liability Scheme which it operates is not an 'insurance policy'.

¹⁴ Emails between Council and the Third Party dated 23 and 25 September 2019 (7 pages), subject to the deletion of irrelevant information and certain third party personal information which the applicant agreed not to pursue.

¹⁵ Section 108(3) of the RTI Act.

¹⁶ Section 87(1) of the RTI Act.

¹⁷ Sections 47(3)(a) and 48 and schedule 3, section 8 of the RTI Act.

¹⁸ Sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

¹⁹ Sections 47(3)(b) and 49 of the RTI Act.

²⁰ Submissions dated 22 April 2020 provided also on behalf of LGM. LGM provides the vehicle by which Queensland Local Government has been able to collectively exercise control over the management of legal liability exposures confronting local government (refer to <https://lgms.jlta.com.au/pages/public/LGML_Public>).

16. Section 37 of the RTI Act limits the grounds for objection which may be raised by a consulted third party to the issues of exempt or contrary to public interest information²¹ and the Information Commissioner has previously found that a consulted third party is not entitled to object to the disclosure of information on the basis of scope.²²
17. Given the language used in section 37 of the RTI Act and the decision in *Campbell*, I find no merit to the Third Party's arguments regarding scope. In any event, I am satisfied there is sufficient evidence to support the view that the information in issue falls within scope in that Council has made several public statements about claiming reimbursement of legal costs from 'its insurers'.²³ Further, the Third Party's website confirms that, 'as the LGM appointed Managers', they provide a comprehensive range of services including claims management.²⁴
18. On the basis of the above, and taking an objective interpretation of scope, without undue technicality,²⁵ I am satisfied that the information in issue falls within scope.

Exempt information

Breach of confidence

19. Under the RTI Act, an individual has a right to access documents of an agency.²⁶ This right is subject to certain limitations, including grounds for refusal of access.²⁷ It is Parliament's intention that these refusal grounds are to be interpreted narrowly²⁸ and that the RTI Act be administered with a pro-disclosure bias.²⁹
20. One ground for refusal of access is where documents include exempt information.³⁰ Information will qualify as exempt where its disclosure would found an action for breach of confidence.³¹ This exemption encompasses actions for breach of contractual obligations of confidence as well as equitable actions for breach of confidence.³²
21. Although Council did not provide written submissions to OIC in support of this ground of refusal, it contends that the information in issue comprises confidential communications between Council and its insurance brokers³³ and disclosing it would 'be in face of' its insurers refusing to consent to the disclosure.³⁴ The Third Party also contends that this

²¹ Section 37 of the RTI Act provides that an agency may give access to a document that contains information the disclosure of which may reasonably be expected to be of concern to a government, agency or person only if the agency has taken the steps that are reasonably practicable to obtain the views of the relevant third party about whether the document is a document to which the RTI Act does not apply or the information is exempt information or contrary to the public interest information.

²² *Campbell and North Burnett Regional Council; Melior Resources Incorporated (Third Party)* [2016] QICmr 4 (29 January 2016) (*Campbell*) at [18].

²³ For example, Item 7.8 of Council's minutes for the meeting held on 22 August 2019 state 'Council holds appropriate insurance covers and claims have been lodged and are being processed under those covers to mitigate risk to Council and further reduce bottom line legal costs expenditure for 2018/19 and the current financial year' (these minutes can be accessed at <www.cassowarycoast.qld.gov.au/documents/1422210/47011632/2019-08-22%20Local%20Government%20Meeting%20Minutes>). The statement of the Mayor at the 26 September 2019 meeting, which is referenced in paragraph 1 above, also refers to Council's insurer covering legal costs. At a Financial Sustainability Committee Meeting on 13 February 2020, Council confirmed receipt of funds relating to incurred legal expenses from 'Council's insurers' and this statement was subsequently reported in the media (refer to <<http://www.cassowarycoast.qld.gov.au/documents/1422210/44741643/2020-02-13%20Financial%20Sustainability%20Committee%20Meeting%20Minutes>>).

²⁴ The website may be accessed at <<https://www.jlta.com.au/rsqnt/lgm.aspx>>.

²⁵ *Cannon and Australian Quality Egg Farms Ltd* (1994) 1 QAR 491 at [8] and *O80PCE and Department of Education and Training* (Unreported, Queensland Information Commissioner, 15 February 2010) at [33].

²⁶ Section 23 of the RTI Act.

²⁷ Set out in section 47(3) of the RTI Act.

²⁸ Section 47(2)(a) of the RTI Act.

²⁹ Section 44 of the RTI Act.

³⁰ Sections 47(3)(a) and 48 of the RTI Act.

³¹ Schedule 3, section 8(1) of the RTI Act. I note that schedule 3, section 8(2) contains an exception to this exemption, however, that exception does not arise in the circumstances of this matter and therefore, is not addressed in these reasons for decision.

³² *Ramsay Health Care Ltd v Information Commissioner & Anor* [2019] QCATA 66 (*Ramsay*) at [66].

³³ In a telephone conversation on 7 February 2020.

³⁴ Submissions dated 27 March 2020.

exemption applies because the insurance arrangements between Council and LGM are confidential.³⁵ Neither Council nor the Third Party accepted OIC's invitation to provide further information to support their contentions about confidentiality.

22. The information before me does not explain the basis upon which the Third Party's consent is required for disclosure of the information in issue under the RTI Act, or how disclosing this information would provide the applicant (and the public) with any confidential information about the insurance arrangements between Council and LGM.³⁶ There is also no evidence before me to indicate that disclosure of the information in issue under the RTI Act would breach any contractual obligation of confidence (whether under its insurance arrangements or otherwise). In these circumstances, I am not satisfied that that disclosing the information in issue would give rise to an action for breach of any contractual obligation of confidence.
23. In *Ramsay*,³⁷ Daubney J of the Queensland Civil and Administrative Tribunal, referred to the elements of a claim for breach of confidence *in equity* as follows:
- the information must be identifiable with specificity
 - it must have the necessary quality of confidence
 - it must have been received in circumstances importing an obligation of confidence; and
 - there must be an actual or threatened misuse of the information.
24. I accept that the information in issue meets the first requirement. As to whether it has the necessary quality of confidence, there is nothing before me to suggest that the particular information in issue has been reproduced in the public domain, however, as noted above, Council's meeting minutes publicly record statements made by the Mayor about insurance coverage for legal costs. Also, the information in issue is not marked as being confidential.³⁸
25. The information in issue appears to have been prepared for the purpose of assisting Council to track the progress of reimbursement claims lodged with Council's insurers and to inform the public statements which Council has made about the issue of legal fees incurred in legal proceedings which involve Council. Apart from generally contending that the information in issue is confidential, neither Council nor the Third Party has provided any evidence which indicates a mutual understanding of confidence was the basis of these communications, or that disclosure under the RTI Act constitutes an actual or threatened misuse of that information.
26. On the material before me and taking into account that Council bears the onus in this review, I am not satisfied that all of the requisite elements are established to give rise to an equitable action for breach of confidence.
27. Therefore, I find that the information in issue is not exempt under schedule 3, section 8 of the RTI Act and therefore, access may not be refused to it under section 47(3)(a) of the RTI Act.

³⁵ Submissions dated 22 April 2020.

³⁶ In this regard, I note that the information Council disclosed to the applicant includes a report titled '*Insurance Overview Report for 2017/18*' which relates to Council's insurance arrangements.

³⁷ At [94], adopting *Optus Networks Pty Ltd v Telstra Corporation Ltd* [2010] 265 ALR 281 and *Smith Kline & French Laboratories v Department of Community Services & Health* [1990] FCA 206.

³⁸ Though this is not determinative to a finding in favour of the second criterion.

Legal professional privilege

28. On external review, Council maintains that the information in issue is subject to legal professional privilege, on the basis it relates to litigation and Council sought advice from its insurer.³⁹ However, Council did not provide written submissions to OIC in support of this ground of refusal.
29. Information will be exempt if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.⁴⁰ At common law, legal professional privilege is generally divided into two categories, advice and litigation privilege.⁴¹ Advice privilege attaches to confidential communications between a legal adviser and client (and in some cases, third parties) that are made for the dominant purpose of obtaining or providing legal advice.⁴² Litigation privilege attaches to confidential communications between a legal adviser and client in relation to current or reasonably anticipated litigation.⁴³
30. The first difficulty faced in applying this exemption is that the communications are not between a lawyer and a client. While the relevant employee of the Third Party holds a law degree, it is apparent from the nature of the communications that the professional services being provided to Council are not provision of legal advice, nor representation in legal proceedings. I accept that the subject matter of the communications broadly relates to legal proceedings involving Council. However, this does not, of itself, give rise to legal professional privilege. The nature of the communications demonstrates that Council was, to an extent, seeking the views of the Third Party on particular actions Council was planning to take, however, that was not being done in the context of a lawyer-client relationship.
31. Given that the connection of the communications to legal proceedings, I have considered whether the arm of litigation privilege that extends to communications with certain third parties applies.⁴⁴ However, there is no evidence that the communications between Council and the Third Party were made at the request of Council's legal advisers, nor that they were made for the purpose of being put before their legal advisers to obtain advice or enable prosecution or defence of an action.⁴⁵ I am satisfied that privilege cannot be established in this regard.
32. On the material before me and taking into account that Council bears the onus in this review, I find that legal professional privilege does not apply to the information in issue.
33. Therefore, I find that the information in issue is not exempt under schedule 3, section 7 of the RTI Act and therefore, access may not be refused to it under section 47(3)(a) of the RTI Act.

Public interest

34. Under the RTI Act, access to documents may be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.⁴⁶

³⁹ In a conversation on 7 February 2020.

⁴⁰ Schedule 3, section 7 of the RTI Act.

⁴¹ *Mitsubishi Electric Australia Pty Ltd v Victorian WorkCover Authority* (2002) 4 VR 332 (*Mitsubishi Electric*) at [8]-[9].

⁴² *AWB v Cole (No.5)* (2006) 155 FCR 30 at [41]; *Waterford v Commonwealth* (1987) 163 CLR 54 at [95]; *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 136 FCR 357 (*Pratt Holdings*).

⁴³ *Mitsubishi Electric* at [16].

⁴⁴ *Trade Practices Commission v Sterling* (1979) 36 FLR 244 (*Sterling*) at 246. See also *Ensham Resources Pty Limited v AIOI Insurance Company Limited* [2012] FCAFC 191 at [51]. For the law in relation to 'advice' privilege and communications with third parties, see *Pratt Holdings*.

⁴⁵ Cf. *Sterling* at [246].

⁴⁶ Sections 47(3)(b) and 49 of the RTI Act. Section 47(2)(b) of the RTI Act requires the grounds to be interpreted narrowly.

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.⁴⁷

35. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁴⁸
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
36. 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

37. Council is a public body set up to provide services to the local community and receives funding from ratepayers. As such, it is reasonable to expect that Council conducts itself in an open, accountable and transparent way.⁴⁹ In this case, Council is specifically accountable to its local community for the actions that it has taken in commencing or defending legal proceedings and for the associated costs.⁵⁰
38. I am satisfied that disclosure of the communications between Council and the Third Party could reasonably be expected to:
- enhance the accountability of Council in terms of how it handles matters relating to insurance, legal proceedings and preparing associated public statements⁵¹
 - contribute to positive and informed debate on the important matter of Council's involvement in legal proceedings and associated insurance coverage⁵²
 - ensure effective oversight of Council's expenditure of public funds⁵³; and
 - provide background and contextual information to the public statement made by the Mayor, referred to in paragraph 1 above.⁵⁴
39. Council argues that transparency around expenditure of funds is achieved through internal and external review of its accounts and it does not believe that *'departure from this process on a selective basis would promote fully informed public debate'*.⁵⁵ It also contends that *'to allow fully informed scrutiny'* disclosure beyond the information in issue would be required.⁵⁶
40. There is a significant level of community interest in the amount of ratepayer funds being spent in various legal proceedings, as evidenced by a number of public statements Council has made concerning its expenditure on legal fees and related media

⁴⁷ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

⁴⁸ Section 49(3) of the RTI Act.

⁴⁹ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁰ Schedule 4, part 2, item 4 of the RTI Act.

⁵¹ Schedule 4, part 2, items 1 and 3 of the RTI Act.

⁵² Schedule 4, part 2, item 2 of the RTI Act.

⁵³ Schedule 4, part 2, item 4 of the RTI Act.

⁵⁴ Schedule 4, part 2, item 11 of the RTI Act.

⁵⁵ Submissions dated 27 March 2020.

⁵⁶ Ibid.

coverage.⁵⁷ I consider disclosure would ensure effective oversight of expenditure of ratepayer funds, and enable public scrutiny of, and discussion about, the extent of insurance coverage available for the costs incurred by Council in various legal proceedings. I also note that Council is not prevented by this decision under the RTI Act from disclosing any other information that it considers may add context or allow further scrutiny of the matters relating to its insurance and legal proceeding involvement.

41. Given the significant level of community concern and the need for scrutiny in relation to Council expenditure, I afford significant weight to the above public interest factors in favour of disclosure.

Factors favouring nondisclosure

Business and commercial affairs

42. The Third Party generally submits that the public interest favours nondisclosure due to the likely prejudice to its (and LGM's) business and commercial affairs.⁵⁸ Also, the Third Party submits⁵⁹ that:

- the indemnity arrangements offered by LGM to its pool members, including Council, are confidential business arrangements
- LGM competes on the open market with insurers for the service it offers; and
- disclosure of the scope of the indemnity arrangements offered by LGM could prejudice its competitive advantage.

43. The RTI Act recognises that public interest harm will arise where the disclosure of information:

- that has a commercial value to an agency or another person could reasonably be expected to destroy or diminish the commercial value of that information (**commercial value harm factor**); and
- concerning the business, professional, commercial or financial affairs of an agency or another person could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government (**business harm factors**).⁶⁰

44. The Third Party has not specified what particular information within the communications it considers would disclose the scope of LGM's indemnity arrangements, nor has it particularised the prejudice that could reasonably be expected⁶¹ to occur as a result of disclosure. I accept that the communications between Council and the Third Party are related to the Third Party's business and commercial affairs in terms of its insurance services and it communicating with a client, ie Council. However, based on the particular content of the information in issue,⁶² it is unclear how disclosure could reasonably be expected to cause any prejudice to, or adverse effect on, the business or commercial

⁵⁷ See also Item 7.8 of the minutes of Council's 22 August 2019 meeting and media coverage such as <<https://www.cairnspost.com.au/news/cassowary-coast-news/cassowary-coast-mayor-responds-to-rumours-of-spending-ratepayers-money-for-legal-battle/news-story/e79cad0afd381559cf0b8849f8ef265d>>.

⁵⁸ Schedule 4, part 3, items 2, 15 and 17 of the RTI Act.

⁵⁹ Submissions dated 22 April 2020.

⁶⁰ Schedule 4, part 4, sections 7(1)(b) and (c) of the RTI Act.

⁶¹ When assessing whether an outcome could reasonably be expected, I must distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*'. *B and Brisbane North Regional Health Authority* (1994) 1 QAR 279 at [154]-[160]. Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*'. See *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180 at [190].

⁶² Section 108(3) of the RTI Act, prevents me from providing a detailed description of the information in issue in my reasons for decision.

affairs of the Third Party, LGM or any other entity or individual. For this reason, I afford low weight to these factors.

45. While I do not have any evidence before me to establish that LGM is an agency so as to attain the benefit of particular nondisclosure and harm factors⁶³, the list of factors in schedule 4 of the RTI Act is not exhaustive. Given this, I have considered whether disclosure would prejudice LGM's competitive commercial activities. I am not satisfied there is sufficient evidence before me to establish an argument in favour of nondisclosure on this basis.
46. The information in issue appears in email communications between Council and the Third Party regarding insurance coverage in relation to legal proceedings. While I cannot describe it in detail, it is in the nature of general discussions of the status of proceedings and availability of coverage. It is unclear what commercial value it could have to Council, the Third Party, LGM or any other entity. However, even if this information does have commercial value, there is no evidence to indicate that its disclosure would destroy or diminish such commercial value. Accordingly, I do not consider the commercial value harm factor applies. Given the nature of the information in issue, I am also satisfied that disclosure could not reasonably be expected to prejudice the future supply of business information of this type to government and therefore, this aspect of the business harm factor does not apply.

Personal information and privacy

47. The RTI Act recognises that there is a public interest harm⁶⁴ in disclosing the personal information⁶⁵ of other individuals and also seeks to protect an individual's right to privacy from intrusion.⁶⁶
48. Given that the communications between Council and the Third Party are in relation to legal proceedings, the names of the litigants opposing Council in those proceedings are identified in the information in issue. Council has raised a concern about disclosing information about these individuals and submits that, as a result of recent developments in certain legal proceedings, the personal information and privacy factors apply and deserve significant weight.⁶⁷
49. The applicant is aware of the identities of those litigants. In addition to naming them in his application, it is a matter of public record that they are involved in legal proceedings with Council. While there are some further comments and observations about those individuals within the information in issue that may not be already known to the applicant, their identities and involvement in legal proceedings is public knowledge. Therefore, revealing their names in connection with the legal proceedings, under the RTI Act, would not amount to 'disclosure'⁶⁸ of that personal information. However, to the extent any information is not already known, I afford low weight to the public interest harm factor which seeks to safeguard personal information.
50. It is a matter of public record that certain procedural matters have been, or are being, dealt with in Council's legal proceedings.⁶⁹ I am satisfied that the information in issue

⁶³ Schedule 4, part 3, item 17 of the RTI Act.

⁶⁴ Schedule 4, part 4, section 6(1) of the RTI Act.

⁶⁵ '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'.

⁶⁶ Schedule 4, part 3, item 3 of the RTI Act.

⁶⁷ Submissions dated 27 March 2020.

⁶⁸ *Castley-Wright and Mareeba Shire Council* [2018] QICmr 25 (22 May 2018) at [24].

⁶⁹ A number of Council's published meeting minutes refer to legal proceedings in which Council is a party and the issue of legal fees being spent in those proceedings. Additionally, decisions made in legal proceedings involving Council may also be accessed

does not reveal additional private information about these individuals other than their involvement in the proceedings and peripheral observations about them in the communications. In these circumstances, I consider disclosure would only result in minimal prejudice to their right to privacy.

Confidential information

51. Council and the Third Party contend that the information in issue is confidential. Therefore, I have also considered whether:
- disclosing information could reasonably be expected to prejudice an agency's ability to obtain confidential information;⁷⁰ and
 - the information is of a confidential nature that was communicated in confidence and disclosure could reasonably be expected to prejudice the future supply of information of this type.⁷¹
52. As noted above, the information in issue is not marked as being confidential and neither Council nor the Third Party has provided information which reasonably indicates that the information in issue was communicated on a confidential basis. While the communications between Council and the Third Party, particularly in relation to discussion of the Mayor's public statement, appear to have a level of sensitivity, this does not necessarily mean the communications are confidential.
53. Even if some of the information in issue could be characterised as confidential, I must also be satisfied that disclosure could reasonably be expected to prejudice Council's ability to obtain confidential information or the future supply of this type of information. At best, the Third Party may, in future, be reluctant to engage with Council if approached for guidance on a particular course of action or to formulate a strategy to manage a certain situation. However, given the parties are in a commercial relationship, the likelihood of that outcome appears low. Accordingly, I afford these factors favouring nondisclosure low weight.

Impede the administration of justice

54. Factors favouring nondisclosure arise where disclosing information could reasonably be expected to impede the administration of justice, generally or for a person.⁷² Council asserts⁷³ that, due to material filed in certain legal proceedings involving Council and specified parties,⁷⁴ disclosure of any information about those proceedings could reasonably be expected to impede the administration of justice for a person.
55. I accept that Council is involved in ongoing legal proceedings. However, its submissions have not demonstrated a sufficient connection between disclosure of the particular information in issue and how the administration of justice in those proceedings (or for a person) could reasonably be expected to be impeded. Having considered the content of the communications in issue, they do not appear to go to the issues being disputed in the legal proceedings, rather, they are primarily concerned with the costs associated with

via <<https://www.sclqld.org.au/caselaw>> and <<https://www.fedcourt.gov.au/digital-law-library/judgments/latest>>. To avoid identifying specific content of the information in issue, I am unable to provide further details about these minutes and decisions in these reasons.

⁷⁰ Schedule 4, part 3, item 16 of the RTI Act.

⁷¹ Schedule 4, part 4, section 8(1) of the RTI Act.

⁷² Schedule 4, part 3, items 8 and 9 of the RTI Act.

⁷³ Submissions dated 27 March 2020.

⁷⁴ The information in support of this submission was initially referenced in Council's submissions of 27 March 2020. After being notified that the supporting information was not attached to those submissions, it was provided to OIC on 10 June 2020 (in connection with another external review). To avoid identifying the parties referenced in Council's submissions, I am unable to provide further details about the supporting material provided by Council, however, I have carefully considered that material.

those proceedings and Council's insurance coverage for those costs. Accordingly, I afford these factors only negligible weight.

Other factors

56. Council bears the onus of establishing that disclosure would, on balance, be contrary to the public interest. However, for completeness, I have considered all factors listed in schedule 4, parts 3 and 4 of the RTI Act, and I can identify no other public interest considerations favouring the nondisclosure of the information in issue.⁷⁵
57. As noted above, Council provided OIC with copies of material filed in legal proceedings involving Council. I do not however, consider Council has demonstrated a sufficient connection between disclosure of the information in issue and the matters discussed in that material. Therefore, I am not satisfied that the information regarding the legal proceedings raises any further factors favouring nondisclosure.⁷⁶

Balancing the public interest

58. For the reasons set out above, I find that the factors favouring disclosure carry significant weight. Disclosure of information regarding Council's insurance coverage for legal proceedings would enhance Council's accountability and transparency and promote public debate on a subject matter that is of serious interest to the local community. Further, I am satisfied disclosure would ensure effective oversight of expenditure of ratepayer funds and provide background and contextual information to the legal proceeding/insurance coverage issues generally, and to the formulation to Council's public statement. With respect to the nondisclosure factors, for the reasons outlined above, I have found that they are deserving of low weight. Essentially, this is because I am not satisfied that there is a reasonable expectation of prejudice, as anticipated by those factors, arising from disclosure of the communications between Council and the Third Party.
59. On balance, I am satisfied that the public interest factors favouring disclosure outweigh the factors favouring nondisclosure. Accordingly, I find that disclosure of the information in issue would not, on balance, be contrary to the public interest.

DECISION

60. I set aside Council's refusal of access decision and find that access to the information in issue may not be refused under section 47(3)(a) or (b) of the RTI Act.
61. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

K Shepherd
Assistant Information Commissioner

Date: 31 July 2020

⁷⁵ 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 the disclosure of the information in issue.

⁷⁶ I also note that Council, while providing copies of the relevant court records and orders, did not identify any specifically relevant public interest harm or nondisclosure factors.

APPENDIX

Significant procedural steps

Date	Event
29 October 2019	OIC received the application for external review.
5 December 2019	The applicant confirmed to OIC the information he wished to access on external review.
6 December 2019	OIC notified the applicant and Council that it had accepted the external review application and asked Council to provide information.
20 December 2019	OIC received the requested information from Council.
22 January 2020	OIC requested further information from Council.
7 February 2020	OIC received requested information from Council. OIC received Council's submissions in a conversation with a Council officer.
17 February 2020	OIC received the applicant's submissions in a conversation with the applicant.
28 February 2020	OIC conveyed a preliminary view to Council and invited Council to provide further submissions if it did not accept the preliminary view.
27 March 2020	OIC received Council's further submissions and its notification that the Third Party wished to be consulted.
8 April 2020	OIC sought the disclosure views of a third party and invited the Third Party to apply to participate in the review.
22 April 2020	OIC received the Third Party's disclosure objections and application to participate in the review.
4 June 2020	OIC conveyed a further preliminary view to Council and invited Council to provide further submissions if it did not accept the preliminary view. OIC wrote to the Third Party to grant its request to participate in the review and conveyed a preliminary view. OIC invited the Third Party to provide further submissions if it did not accept the preliminary view. OIC conveyed a preliminary view to the applicant and invited him to provide submissions if it did not accept the preliminary view.
6 June 2020	OIC received the applicant's further submissions.
17 June 2020	The applicant confirmed he accepted the preliminary view and provided further submissions.
10 June 2020	OIC received the supporting information referenced in Council's submissions dated 27 March 2020.