



Decision and Reasons for Decision

Citation:	<i>O98 and Logan City Council [2025] QICmr 91 (4 December 2025)</i>
Application Number:	318944
Applicant:	O98
Respondent:	Logan City Council
Decision Date:	4 December 2025
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - EXEMPT INFORMATION - applicant seeks access to information concerning the identity of a complainant - whether disclosure could reasonably be expected to enable the existence or identity of a confidential source of information in relation to the enforcement or administration of the law, to be ascertained - whether information is exempt from disclosure under sections 47(3)(a) and 48 and schedule 3, section 10(1)(b) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Logan City Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**)² for all documents concerning complaints about a specific address.
2. Council located 43 responsive pages. Council decided³ to refuse access to information on 19 pages on the ground disclosure that information would be, on balance, contrary to the public interest.⁴ Council also deleted information on two pages as it was irrelevant to the scope of the application.⁵
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.⁶ On external review, the applicant only contested one aspect of Council's decision: Council's decision to refuse him access to several

¹ Application dated 23 April 2025. Council originally refused to deal with this application. That decision was set aside: *D69 and Logan City Council [2025] QICmr 55* (26 August 2025).

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting significant changes to, relevantly, the RTI Act. References in this decision to the RTI Act, however, are to that Act **as in force prior to 1 July 2025**. This is in accordance with chapter 7, part 9 of the RTI Act, comprising transitional provisions requiring that access or amendment applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. The access application in this review was made under the RTI Act prior to these changes being enacted.

³ The **reviewable decision** dated 22 September 2025.

⁴ Sections 47(3)(b) and 49 of the RTI Act.

⁵ Section 73 of the RTI Act.

⁶ On 24 September 2025.

segments of information comprising the personal particulars of an individual who reported suspected litter or waste dumping to Council. That information appears on a single page: the second page of a three-page Council 'Customer Service Request'⁷ (the **Information in Issue**).⁸

4. For the reasons outlined in this decision I have decided to vary Council's decision as it relates to the Information in Issue.⁹ I find that Council may refuse access to that information, on the basis it comprises exempt information, disclosure of which could reasonably be expected to enable the identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.¹⁰
5. In making this decision I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the applicant's right to seek and receive information.¹¹ I consider that in observing and applying the law prescribed in the RTI Act an RTI decision-maker will be '*respecting and acting compatibly with*' this right and others prescribed in the HR Act,¹² and that I have done so in making this decision, as required under section 58(1) of the HR Act. In this regard, I note Bell J's observations on the interaction between the Victorian analogues of Queensland's RTI Act and HR Act:¹³ '*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 1982.*'¹⁴

Relevant law

6. The RTI Act grants a right of access to documents of an agency or Minister, subject to the limitations of this right of access in the RTI Act itself.¹⁵ One such limitation is that an agency may refuse access to a document to the extent it comprises exempt information.¹⁶ Relevantly, information is exempt if its disclosure could reasonably be expected to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained.¹⁷
7. Information will be exempt under schedule 3, section 10(1)(b) of the RTI Act where:
 - there exists a confidential source of information¹⁸
 - the information which the confidential source has supplied is in relation to the enforcement or administration of the law; and

⁷ The balance of which document was released to the applicant.

⁸ Applicant's application for external review dated 24 September 2025. See also my letter to the applicant dated 2 October 2025, confirming the scope of this external review.

⁹ Section 110(1)(b) of the RTI Act and noting that section 105(1) of the RTI Act gives the Information Commissioner power to decide any matter in relation to an access application that could, under the RTI Act, have been decided by an agency.

¹⁰ Section 47(3)(a) and schedule 3, section 10(1)(b) of the RTI Act.

¹¹ As embodied in section 21 of the HR Act.

¹² *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]. OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by Queensland Civil and Administrative Tribunal Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw '*no reason to differ*' from our position ([23]).

¹³ *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹⁴ *XYZ* at [573].

¹⁵ Section 23(1) of the RTI Act.

¹⁶ Section 47(3)(a) and 48 of the RTI Act.

¹⁷ Section 47(3)(a) and schedule 3, section 10(1)(b) of the RTI Act.

¹⁸ A '*confidential source of information*' is a person has supplied information on the understanding, express or implied, that their identity will remain confidential: *McEniery and Medical Board of Queensland* (1994) 1 QAR 349, [21]-[22] (**McEniery**). *McEniery* considered the application of section 42(1)(b) of the repealed *Freedom of Information Act 1992* (Qld), identical in terms to schedule 3, section 10(1)(b) of the RTI Act.

- disclosure of the information in issue could reasonably be expected¹⁹ to enable the existence or identity of the confidential source of information to be ascertained (**Confidential Source Exemption**).²⁰
8. In considering this exemption, a decision maker must also have regard to the exceptions outlined in schedule 3, section 10(2) of the RTI Act.²¹
 9. Schedule 3, section 10(2) of the RTI Act provides that information is not exempt information if it consists of:
 - (a) *matter revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or*
 - (b) *matter containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or*
 - (c) *a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or*
 - (d) *a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption under the Crime and Corruption Act 2001); or*
 - (e) *a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.*

Preliminary view

10. As noted, the Information in Issue consists of several segments of information redacted from a single page, comprising the personal particulars of an individual who reported suspected litter or waste dumping to Council.
11. Council, as mentioned above, refused access to the Information in Issue on the grounds its disclosure would, on balance, be contrary to the public interest. On reviewing that information, I formed the view it may attract exemption under the Confidential Source Exemption.
12. I obtained advice²² from Council both that:
 - the Information in Issue related to Council's administration and/or enforcement of the *Waste Reduction and Recycling Act 2011* (Qld);²³ and

¹⁹ The phrase 'could reasonably be expected' requires a decision-maker to 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] QICmr 1, [154]-[160] (a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld)). 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, [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19, [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180, [190].

²⁰ *McEniery and Medical Board of Queensland* (1994) 1 QAR 349 (**McEniery**) at [16]. *McEniery* considered the application of section 42(1)(b) of the repealed *Freedom of Information Act 1992* (Qld), identical in terms to schedule 3, section 10(1)(b) of the RTI Act, and has been relied upon in subsequent decisions applying schedule 3, section 10(1)(b) of the RTI Act, including *94HQRW and Queensland Police Service* [2014] QICmr 45 (10 November 2014) at [16]-[31] and *Shirrone Pty Ltd and Department of Agriculture, Fisheries and Forestry* [2014] QICmr 46 (18 November 2014) at [13]-[45].

²¹ As per Chief Justice Holmes's reasoning in *Commissioner of the Police Service v Shelton* [2020] QCA 96 at [47], to determine whether information is exempt under section 47(3)(a) and schedule 3, section 10(1) of the RTI Act it is necessary to consider the documents the subject of the application to ascertain whether they fall within schedule 3, section 10(2) of the RTI Act.

²² Email dated 23 October 2025.

²³ Specifically, sections 103 and 104 of that Act, concerning the dumping of items.

- Council's general position in relation to information of the kind in issue – complainant particulars - is to refrain from disclosing or disseminating such information; essentially, to keep such information confidential.²⁴

13. I then wrote to the applicant by letter dated 24 October 2025, explaining my preliminary view that the Information in Issue comprised exempt information, to which access may be refused. My letter relevantly advised as follows:²⁵

The 'Information in Issue' comprises segments of information redacted from a single page, comprising the personal particulars of an individual who reported suspected litter or waste dumping. Council refused you access to this information, on the grounds its disclosure would, on balance, be contrary to the public interest.

I am satisfied Council was entitled to refuse access on the basis that it did. The information in issue is the personal information of someone other than you, disclosure of which could reasonably be expected to give rise to public interest harm and result in other adverse public interest outcomes. I cannot identify any public interest considerations that may favour disclosure of this information; to the extent any did exist, they would in my view be readily displaced by those favouring nondisclosure.

It is not, however, strictly necessary to consider public interest arguments in this case. This is because I consider that the Information in Issue comprises exempt information to which access may be refused, as information disclosure of which could reasonably be expected to identify a confidential source of information

14. After setting out the three requirements for establishing the Confidential Source Exemption (set out in paragraph 7 above), my 24 October 2025 letter continued:²⁶

All three requirements are met in this case.

As regards the first, I am satisfied that the Information in Issue was communicated to Council by the source subject to an implicit shared understanding the source's identity would be kept confidential. The Information Commissioner has identified various considerations that may be relevant to establishing the existence of an implicit shared understanding of confidence:

The determination of whether the relevant information was supplied by the informant and received by the respondent on the implicit understanding that the informant's identity would remain confidential ... requires a careful evaluation of all the relevant circumstances including, inter alia, the nature of the information conveyed, the relationship of the informant to the person informed upon, whether the informant stands in a position analogous to that of an informer ..., whether it could reasonably have been understood by the informant and recipient that appropriate action could be taken in respect of the information conveyed while still preserving the confidentiality of its source, whether there is any real (as opposed to fanciful) risk that the informant may be subjected to harassment or other retributive action or could otherwise suffer detriment if the informant's identity were to be disclosed, and any indications of a desire on the part of the informant to keep his or her identity confidential ...

The above considerations are relevant. Council has advised that its general position is to refrain from disclosing complainant personal information of the kind in issue. In this case,

²⁴ Email dated 13 October 2025. Council outlined its obligations to protect personal information under its Customer Charter, Privacy Statement, and the Queensland Privacy Principles (QPP) in the *Information Privacy Act 2009* (Qld) (IP Act) (formerly described as Information Privacy Principles (IPP) and National Privacy Principles (NPP) prior to the changes effected to the IP Act on 1 July 2025 by the IPOLA Act).

²⁵ Footnotes omitted.

²⁶ Footnotes omitted. The quoted passage is an extract from *McEniery*, [50]. Footnote 20 of my letter noted that the relevant law in this case comprised 'sections 103 and 104 of the *Waste Reduction and Recycling Act 2011*(Qld), which regulate litter and illegal dumping.'

the nature of the information communicated and the context of its communication are such that I consider both source and Council appreciated the former's identity should be kept confidential (as, indeed, Council has done). Importantly, the nature of that information was such that it was reasonable for both parties to understand that Council could take appropriate action – independently assess the allegations communicated by the source – whilst maintaining confidentiality of the source's identity.

Having regard to all relevant circumstances, I am satisfied there existed a common implicit understanding between the source and Council that the former's identity would be treated confidentially by Council.

As for the second and third requirements:

- *the Information in Issue relates to the enforcement or administration of the law, and*
- *disclosure of this information – which directly identifies the source – would reveal information that could reasonably be expected to enable the source's identity to be ascertained.*

15. My 24 October 2025 letter then canvassed the exceptions to the Confidential Source Exemption,²⁷ noted that none applied in this case, and concluded: *'the Information in Issue comprises exempt information under schedule 3, section 10(1)(b) of the RTI Act, to which access may be refused under sections 47(3)(a) and 48 of the RTI Act'.*

Applicant's submissions

16. The applicant contested my preliminary view and made submissions in support of his position.²⁸ The applicant's submissions essentially comprise speculation as to the identity of the confidential source,²⁹ together with:
- explanations as to why he seeks access to that information,
 - submissions as to why, in the applicant's view, disclosure of the Information in Issue would be in the public interest; and
 - his view that the complaint made by the confidential source was 'false'.³⁰
17. While I have carefully considered the applicant's submissions, they contain nothing to cause me to reconsider the preliminary view detailed above. Indeed, I addressed the substance of these submissions in my 24 October 2025 letter setting out that preliminary view. The irrelevance of public interest arguments, when considering exempt information, was explained at the outset of my preliminary view: as noted in that letter,³¹ exempt information is information disclosure of which Parliament considers would, on balance, be contrary to the public interest.³² If information falls within one of the categories of exempt information in schedule 3 of the RTI Act – such as the Confidential Source Exemption – a conclusive presumption exists that its disclosure would be

²⁷ Set out in paragraph 9 above.

²⁸ Emails dated 24 October 2025 and 14 November 2025.

²⁹ Repeating and developing submissions to this effect raised in his application for external review, and based on inferences he draws from those parts of the document in which the information in issue appears otherwise released to him.

³⁰ This latter contention made in the applicant's submissions dated 14 November 2025, in which he disputed aspects of the information released to him. In these latter submissions, the applicant also stated that he *'deserved procedural fairness and justice'*. My preliminary view letter dated 24 October 2025, and the invitation to make submissions in reply to same, ensured he was afforded same in this review.

³¹ See footnotes 13 and 14 of my 24 October 2025 letter.

³² Sections 47(3)(a) and 48(2) of the RTI Act. As OIC has noted in similar circumstances, *'...once it has been determined that the confidential source exemption applies, public interest arguments cannot be used to mitigate the effect of the exemption. Exempt information under the RTI Act is a category of information that Parliament decided would, in all instances, be contrary to the public interest to release...'*: *Shirirone Pty Ltd and Department of Agriculture, Fisheries and Forestry* [2014] QICmr 46, [42].

contrary to the public interest.³³ Accordingly, OIC cannot take public interest arguments into account in considering exempt information.

18. As for speculation regarding the identity of the source, my 24 October 2025 letter stated as follows:³⁴

I acknowledge your submissions in your external review application speculating as to the identity of the confidential source. As the Information Commissioner has previously noted, '[i]t is not the role of the Information Commissioner to confirm or dispel an applicant's suspicions or guesswork' in cases of this kind. It is sufficient to reiterate my preliminary view as explained above: the information in issue satisfies the requirements of schedule 3, section 10(1)(b) of the RTI Act. It therefore comprises exempt information, to which access may be refused.

19. Turning finally to the applicant's 14 November 2025 submission that the complaint itself was 'false', there is nothing before me substantiating this submission. In any event, the Confidential Source Exemption is '*...not concerned with whether the confidential source of information supplies information which is false or erroneous*'.³⁵ Similarly, a source's '*...motives are irrelevant in considering the application of schedule 3, section 10(1)(b) of the RTI Act; the provision is "...clearly designed to protect the identity of informers and does not differentiate between the good, the bad or the indifferent.*'"³⁶

Conclusion

20. I am satisfied that the Information in Issue meets the requirements of the Confidential Source Exemption: it directly identifies a confidential source of information, in relation to the administration or the enforcement of the law. I am satisfied the applicant has no knowledge of the identity of that source and am further satisfied that none of the exceptions to this exemption apply in the circumstances of this case.
21. The Information in Issue therefore comprises exempt information, to which access may be refused.

DECISION

22. For the reasons set out above, I vary the reviewable decision³⁷ and find that Council may refuse access to the Information in Issue, on the basis it comprises exempt information under section 47(3)(a) and schedule 3, section 10(1)(b) of the RTI Act.
23. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.



Jim Forbes
Assistant Information Commissioner

Date: 4 December 2025

³³ *Dawson-Wells v Office of the Information Commissioner & Anor* [2020] QCATA 60 at [17].

³⁴ Footnotes omitted. The passage cited in this quotation is from *Ainsworth & Ainsworth Nominees Pty Ltd and Criminal Justice Commission* (1999) 5 QAR 284, [70]. See also the Information Commissioner's comments in *Bayliss and Queensland Health* (1997) 4 QAR 1, at [32]. As with *McEnery*, these decisions concerned section 42(1)(b) of the repealed *Freedom of Information Act* 1992 (Qld), worded identically to schedule 3, section 10(1)(b) of the RTI Act.

³⁵ *Bussey and Bowen Shire Council* (1994) 1 QAR 530, [36].

³⁶ *JA 14YM and Crime and Misconduct Commission* [2014] QICmr 13 at [28].

³⁷ Under section 110(1)(b) of the RTI Act.