



Decision and Reasons for Decision

Citation:	<i>H78 and Brisbane City Council [2026] QICmr 31 (25 February 2026)</i>
Application Numbers:	318571, 318578 and 318807
Applicant:	H78
Respondent:	Brisbane City Council
Decision Date:	25 February 2026
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DOCUMENTS OF AN AGENCY - DOCUMENTS TO WHICH ACT DOES NOT APPLY - information relating to external legal and consultant costs incurred in defending the applicant's complaint - whether requested documents are 'documents of an agency' - section 12 of the <i>Right to Information Act 2009 (Qld)</i> - whether documents subject to <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant made three separate access applications¹ to Brisbane City Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**).²
2. In the first and third applications the applicant sought access to documents relating to the fees charged to Council by any external law firms (**External Legal Costs**) and any time-recording of Council's internal lawyers in relation to the applicant's complaint about Council to the Queensland Human Rights Commission (**QHRC**) and its subsequent referral to the Queensland Civil and Administrative Tribunal (**QCAT**).³
3. In the second application, the applicant sought access to information relating to the time recording of work done by non-legal Council staff in response to the applicant's complaint and the total cost figure for the external consultants (excluding lawyers) that were engaged in the QHRC and QCAT matters (**External Consultant Costs**).⁴

¹ The first two applications were made on 18 January 2025, and the third application was made on 20 June 2025.

² On 1 July 2025 key parts of the *Information Privacy and Other Legislation Act 2023 (Qld)* (**IPOLA Act**) came into force, effecting changes to the RTI Act and *Information Privacy Act 2009 (Qld)*. As the applicant's application was made before this change, the RTI Act **as in force prior to 1 July 2025** remains applicable to it. This is in accordance with transitional provisions in Chapter 7, Part 9 of the RTI Act, which require that applications on foot before 1 July 2025 are to be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the RTI Act in this decision are to the Act **as in force prior to 1 July 2025**. This may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>>.

³ For the first application, the timeframe was 27 March 2024 to 18 January 2025; and for the third application, the timeframe was 19 January 2025 to 20 June 2025.

⁴ For the timeframe 1 March 2023 to 18 January 2025.

4. In relation to the first application, Council located a one-page document, comprising information relating to Council's internal legal costs (**Matter Cost Summary Report**) and decided⁵ to refuse access to some of the information on the page on the ground that its disclosure would, on balance, be contrary to the public interest.⁶ The applicant applied for internal review of Council's decision.⁷ Council varied its original decision and decided⁸ that that the information in question may be refused on the ground it is exempt information, namely information subject to legal professional privilege.⁹
5. In relation to the second application, Council decided¹⁰ to refuse access to the information on the ground that the information is nonexistent.¹¹
6. In relation to the third application, during processing Council sought an extension of time to process the access application from the applicant,¹² however the applicant refused.¹³ The effect of this is that Council is deemed to have made a decision refusing access to the information.¹⁴
7. The applicant then applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decisions.¹⁵
8. For the reasons set out below, I vary Council's decisions and find that access to the External Legal Costs and the External Consultant Costs may be refused on the ground that they are not documents of Council for the purposes of section 12 of the RTI Act and there is therefore no right of access to them under section 23(1)(a) of the RTI Act.

Reviewable decisions

9. The decisions under review are:
 - for external review 318571 - Council's internal review decision dated 1 April 2025
 - for external review 318578 - Council's decision dated 24 February 2025; and
 - for external review 318807 - Council's deemed decision on 25 July 2025.

Evidence considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are set out in these reasons (including footnotes). I have taken into account the applicant's submissions to the extent they are relevant to the issue for determination in these reviews.

⁵ Decision dated 10 March 2025.

⁶ Pursuant to section 47(3)(b) of the RTI Act.

⁷ On 21 March 2025.

⁸ Internal review decision dated 1 April 2025.

⁹ Pursuant to sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act.

¹⁰ Decision dated 24 February 2025.

¹¹ Pursuant to sections 47(3)(e) and 52(1)(a) of the RTI Act.

¹² Email to the applicant dated 25 July 2025.

¹³ Email to Council dated 27 July 2025.

¹⁴ On 25 July 2025, being the final day of the original processing period, under section 46(1) of the RTI Act. Council notified the applicant of this in a decision notice dated 28 July 2025.

¹⁵ OIC received the external review applications in relation to the first application on 16 April 2025, in relation to the second application on 17 April 2025, and in relation to the third application on 28 July 2025. All three external review applications were accepted. In terms of the second external review application, although this was received outside of the statutory timeframe under section 88(1)(d) of the RTI Act, a delegate of the Information Commissioner exercised their discretion under that section to accept the external review application. The three external reviews were assigned numbers 318571, 318578 and 318807 respectively.

11. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁶ A decision-maker will be '*respecting, and acting compatibly with*' that right, and others prescribed in the HR Act, when applying the law prescribed in the RTI Act.¹⁷ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

Issue for determination

12. In his external review applications, the applicant raised concerns about Council's refusal, or deemed refusal, of access to certain information. On review, at OIC's request Council agreed to disclose the unbilled balance totals for the costs of Council's internal lawyers in two Matter Cost Summary Reports¹⁸ and did so.¹⁹
13. The applicant also submitted that Council had failed to locate documents relating to time recording of non-legal Council staff.²⁰ On review, the applicant accepted²¹ Council's explanation that '[g]enerally, whilst Council officers do record their time spent for timesheet purposes, most areas of Council do not record time spent per task'.²²
14. The applicant further submitted that Council had failed to locate documents relating to External Legal Costs²³ and External Consultants Costs.²⁴ On review, the applicant accepted²⁵ OIC's view that it was not necessary for Council to conduct searches of its Strategic and Finance Branch and People and Culture Branch for the External Legal Costs.
15. The issue that remains for determination is whether access to External Legal Costs²⁶ and External Consultant Costs²⁷ may be refused on the basis that they are not documents of Council within the meaning of section 12 of the RTI Act, and there is therefore no right of access to them under section 23(1)(a) of the RTI Act.

Relevant law

16. Section 23(1)(a) of the RTI Act provides a general right of access to documents of an agency, subject to the provisions of the RTI Act.²⁸
17. Section 12 of the RTI Act states that a '*document of an agency*' is a document in the possession or under the control of that agency, regardless of whether the document was brought into existence by the agency or received by it, and includes a document:
- to which the agency is entitled to access; and

¹⁶ Section 21(2) of the HR Act.

¹⁷ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573], wherein Bell J observed that '*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*' on the interaction between equivalent pieces of Victorian legislation; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. I further note that OIC's approach to the HR Act set out in this paragraph was considered and endorsed by QCAT in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] (where Justice Member McGill saw '*no reason to differ*' from OIC's position).

¹⁸ One of which was considered in Council's decision subject to external review 318571 and the other of which was located and provided to OIC during external review 318807.

¹⁹ This information was disclosed on 15 July 2025 and 2 October 2025 respectively.

²⁰ In relation to the second application subject to external review 318578.

²¹ Submission to OIC received on 20 October 2025.

²² Email to OIC dated 28 May 2025.

²³ In relation to the first and third applications subject to external reviews 318571 and 318807.

²⁴ Again, in relation to his second application subject to external review 318578.

²⁵ Submission to OIC received on 7 October 2025.

²⁶ As requested in the first and third applications and subject to external reviews 318571 and 318807.

²⁷ As requested in the second application and subject to external review 318578.

²⁸ Section 44(1) of the RTI Act provides that access should be given to a document unless giving access would, on balance, be contrary to the public interest.

- in the possession, or under the control, of an officer of the agency in the officer's official capacity.
18. The term '*possession*' as used in section 12 of the RTI Act merely requires the document to be in the physical possession of an agency. Possession does not require formal legal possession nor is it concerned with the means by which the documents came into the agency's possession.²⁹ However, it is limited to instances where the agency is legally entitled to produce the requested documents.³⁰
19. Physical possession is not, however, the sole test as to whether a document is a document of an agency subject to the RTI Act. A document not in the physical possession of an agency will nevertheless be a '*document of an agency*' for the purposes of the RTI Act, if it is '*under the control*' of the relevant agency. The Information Commissioner has previously explained that a document will be under the control of an agency where the agency has a present legal entitlement to take possession of the document.³¹
20. If the requested document is not a document of an agency under section 12 of the RTI Act, there is no right to access it under section 23(1)(a) of the RTI Act.

External Legal Costs

Findings

21. During the reviews, OIC raised the applicant's concern that Council had not located any documents relating to External Legal Costs with Council. Council provided the following information:³²
- *That Council is a member of the Queensland Local Government Mutual (LGM) Scheme, which provides liability cover to its members.*
 - *That Council notified JLT, the manager of the Scheme, when it received [the applicant's complaint] and was advised that LGM would provide cover for the matter and the claim would be managed by JLT.*
 - *It is JLT as the manager of the claim that instructed [name of external law firm], rather than Council.*
 - *The Scheme Rules provide that while members are entitled to access accounting and all other records of the fund, which is in effect the 'pooled funds' of the LGM, this does not extend to claims information (including [name of external law firm] invoices), which is the property of LGM.*
 - *In relation to the previous [name of external law firm] invoice that Council has disclosed [to the applicant] in response to a previous access application, Council states that although the Scheme Rules do not allow it to access or obtain information that is the property of the LGM, it may nevertheless retain records or copies of information that have come into its possession.*
 - *For the timeframe of this particular access application, Council has not come into the possession of any [name of external law firm] invoices from JLT.*

²⁹ *Kalinga Woolloowin Residents Association Inc and Department of Employment, Economic Development and Innovation; and Another* (Unreported, Queensland Information Commissioner, 19 December 2011) at [14] to [15] and [19].

³⁰ *Carmody v Information Commissioner & Ors (No 4)* [2018] QCATA 17 at [66] per Hoeben J.

³¹ *Price and the Nominal Defendant* (1999) 5 QAR 80 at [18] (**Price**). The Information Commissioner went on in *Price* at [18] to explain that the '*...ruling test imposed by the definition of "document of an agency" is comprised in the words "in the possession or under the control of an agency". The remaining words of the definition illustrate, rather than extend, the ruling test*'.

³² Email to OIC dated 10 September 2025.

22. Information on the LGM Scheme's website states that the scheme provides a pooled fund and a scheme to:³³

Manage liability and professional indemnity risks of [Local Government Association of Queensland (LGAQ)] members which may arise in connection with the members' exercise of their powers, duties or functions.

23. The LGAQ website states that it was established to '*represent the collective interests*' of Queensland local governments.³⁴

24. After carefully considering the above, I conveyed a preliminary view to the applicant that:³⁵

Having considered the information provided by Council, including the relevant aspects of the Scheme Rules, I am not satisfied that Council has possession of documents relating to [name of external law firm] fees or that it enjoys an entitlement to access those documents as required by the RTI Act. On that basis, it is my preliminary view that access cannot be granted to this information under the RTI Act.

25. The applicant made submissions in support of his contention that documents relating to External Legal Costs are documents of Council, which can be summarised as follows:³⁶

- the applicant referred to section 14(3)(a) of the RTI Act, which provides '*a board, council, committee, subcommittee or other body established by government to help, or to perform functions connected with, an agency is not a separate agency, but is taken to be comprised within the agency*' (underlining is applicant's emphasis)
- the LGM Scheme Code of Practice (**Code of Practice**) states '*established by the [LGAQ] as a Member owned organisation [LGM] exists solely to benefit its Members*'
- the members who own it are Local Government Authorities, of which Council is one
- the key terms in section 14 are to '*help*' and '*perform functions connected with*' and the reference to '*benefit*' in the Code of Practice is analogous to '*help*'
- the helping or function performed by LGM and '*connected with an agency*' is to provide insurance services; and
- for the purposes of section 14 of the RTI Act, LGM '*is not a separate agency, but is taken to be comprised within the agency*', the agency being Council.

26. Having carefully considered the applicant's submissions above, I conveyed a further preliminary view to the applicant - in summary:³⁷

- The first requirement to enliven section 14(3)(a) of the RTI Act, is that it is '*a board, council, committee, subcommittee or other body*' that has been established to help or perform functions connected with Council.
- The LGM Scheme cannot be described as a '*board, council, committee, subcommittee*'.
- The word '*body*' is not defined in the RTI Act or the *Acts Interpretation Act 1954* (Qld) and so is to be given its ordinary meaning in accordance with the principles

³³ *Queensland Local Government Mutual – Trust Deed and Scheme Rules*

<<https://www.lgms.net.au/files/assets/lgms/v/1/about/lgms-documents/lgm-trust-deed-and-scheme-rules.pdf>> (accessed on 23 December 2025).

³⁴ LGAQ website - <<https://www.lgaq.asn.au/About-Us/Our-Story>> (accessed on 23 December 2025).

³⁵ Letter from OIC to applicant dated 23 September 2025 for external review 318571.

³⁶ Submission to OIC received on 7 October 2025.

³⁷ Email to applicant dated 30 October 2025.

of statutory interpretation. I referred the applicant to the definition of 'body' in the *Corporations Act 2001* (Cth) (**Corporations Act**) which refers to body as a 'body corporate or an unincorporated body and includes, for example, a society or association'. (While I did not refer to the Macquarie Dictionary in my preliminary view to the applicant, I note, for the purpose of this decision, that it defines the word 'body' for the present purposes as a 'collective group, or an artificial person: body politic;³⁸ body corporate'.³⁹ In addition it defines a 'body corporate' as 'a person, association or group of persons legally incorporated in a corporation').

- In terms of the LGM Scheme being an 'other body' under section 14(3)(a) of the RTI Act, from information that is publicly available, it is clear that the LGAQ is a non-profit public limited company, limited by guarantee under the Corporations Act and accordingly could be described as a 'body' for the purposes of the Act.⁴⁰ However, the LGM Scheme is a trust created by trust deed, with LGAQ being the trustee of the trust.⁴¹
- A trust for which the trustee is a public limited company cannot be taken to be an entity of the same kind, class or nature as an 'other body' for the purposes of the RTI Act.
- Even if it could be established that the LGM Scheme was a 'board, council, committee, subcommittee or other body' that has been established to help or perform functions connected with Council, section 14(3)(a) of the RTI Act also requires that the entity has been 'established by government'. In the circumstances of this matter, the LGM Scheme was established by LGAQ and LGAQ is not 'government', rather it is a not-for-profit association, set up as a corporate entity to represent Queensland local governments.

27. The applicant's submissions⁴² also referred to previous OIC decisions, which he stated had similar facts to his matters and the reasoning and ultimate findings of those decisions should be followed.⁴³ I do not agree with the applicant that the decisions he refers to comprise similar facts to the matters being considered in this decision. The issue that I am required to consider in these reviews - i.e. whether documents relating to External Legal Costs are documents of Council, was not an issue that was raised in the submissions made by the agency in the decisions referred to by the applicant. Regardless, external review is merits review, requiring my consideration of the particular circumstances before me.

28. Further the applicant submitted⁴⁴ that the LGM Scheme Rules are '*not delegated legislation*' and:

The Scheme Rules you mention to me as a fetter on Council have no weight when compared to the provisions of the RTI Act, and in my submission are no fetter or impediment to disclosure.

29. It appears that this submission is founded on a presumption that the LGM Scheme is a part of Council and misunderstands OIC's view to be that the LGM Scheme Rules operate to remove the LGM Scheme from the operation of the RTI Act. However, the matter presumed by the applicant is the very issue for determination in this review.

³⁸ The Macquarie Dictionary defines a 'body politic' as 'a people as forming a political body under an organised government'. Macquarie Dictionary online <<https://www.macquariedictionary.com.au>> (accessed on 12 February 2026).

³⁹ As above at 38.

⁴⁰ See LGAQ website <<https://www.lgag.asn.au/About-Us/Corporate-Governance>> (accessed on 23 December 2025).

⁴¹ See LGM Scheme website <<https://www.lgms.net.au/files/assets/lgms/v/1/about/lgms-documents/lgm-trust-deed-and-scheme-rules.pdf>> (accessed on 23 December 2025).

⁴² Submission to OIC received on 7 October 2025.

⁴³ In particular, *James and Cassowary Coast Regional Council; JLT Risk Solutions Pty Ltd (Third Party)* [2020] QICmr 43 (31 July 2020) and *Mobbs and Cassowary Coast Regional Council* [2020] QICmr 34 (18 June 2020).

⁴⁴ Submission to OIC received on 7 October 2025.

30. As noted above at paragraph 20, if the requested document is not a document of an agency under section 12 of the RTI Act, there is no right to access it under section 23(1)(a) of the RTI Act. While I accept the applicant's submission that the LGM Scheme Rules are not delegated legislation, they form part of the factual circumstances that I must consider to reach a decision as to whether documents relating to External Legal Costs are documents of an agency under the '*provisions of the RTI Act*'.
31. The applicant's submission that '[t]he members who own [the LGM Scheme] are Local Government Authorities. Brisbane City Council is one of them' sets out his rationale for the LGM Scheme being considered to be part of Council.⁴⁵ By the same logic, the LGM Scheme would also be considered part of all other local governments who are members of it. This approach does not take into account the abovementioned nature of the LGM Scheme, being a trust for which the trustee (LGAQ) is a not-for-profit public company limited by guarantee, nor does it take into account the nature of each local government, as a body corporate⁴⁶ and a separate agency under the RTI Act. As such, this approach does not engage with the application of the LGM Scheme Rules to all its members, including Council, nor the limitations on access to documents for Scheme members within those Rules.
32. The applicant submitted that the QCAT proceedings had been ongoing for two years and until OIC conveyed its preliminary view to him, he had '*no awareness that the matter was being run by Council's insurer*'.⁴⁷ In my opinion, how the QCAT proceedings have been conducted in relation to the applicant's complaint is not relevant to my consideration of whether documents relating to External Legal Costs are documents of Council for the purposes of the RTI Act.
33. Based on the information before me, including a copy of the Trust Deed that established the LGM and the LGM Scheme Rules, I accept the submission from Council in relation to the limitations on access to documents of the LGM Scheme that are placed on it by the Scheme Rules. Given this I am satisfied that documents relating to External Legal Costs are not under the control of Council, nor is Council legally entitled to produce them to the applicant.
34. In these circumstances, I consider that documents relating to the External Legal Costs are not documents in the possession or control of Council, and therefore not '*documents of an agency*' for the purposes of section 12 of the RTI Act. Accordingly, access cannot be requested, nor given, under the RTI Act.

External Consultant Costs

Findings

35. In relation to the External Consultant Costs, Council provided OIC with information from one of its business units which stated:⁴⁸

With respect to the external consultants, I am advised that these consultants were not engaged by Council and we do not hold information related to those arrangements.

⁴⁵ Submission to OIC received on 7 October 2025.

⁴⁶ Section 11 of the *Local Government Act 2009* (Qld).

⁴⁷ Email to OIC dated 13 October 2025.

⁴⁸ Email from Council's Connected Communities Unit to its RTI Unit of 30 January 2025, provided to OIC by email on 28 May 2025.

36. Given the above, OIC asked Council to either provide a fuller explanation as to why it would not hold documents relating to the External Consultant Costs or to conduct searches to locate such documents.⁴⁹

37. In response, Council submitted:⁵⁰

[Name of external law firm], *the firm acting on Council's behalf in this matter, have ... engaged these two consultants.*

While these consultants were engaged by [Name of external law firm], City Legal does not, and has not, received any billing information for either of these consultants. All billing information would be given directly to [Name of external law firm] to provide to Council's insurer JLT.

...

Based upon this information - alongside my understanding of Council's structure, functions and our general practices - I am satisfied that the documents sought by [applicant's name] are nonexistent as they are not within Council's possession or control.

38. Having considered the above, I conveyed a preliminary view to the applicant that access may be refused to the External Consultant Costs on the ground that the information is nonexistent.⁵¹

39. In response the applicant submitted:⁵²

There are two issues that become pertinent from that. The first is: is there a document showing the total cost of the two? There may not be such a document, and I cover that below. The second issue is: are invoices submitted by external consultants [names of two individual consultants] to [Name of external law firm], documents of Brisbane City Council? Whether or not they are documents of Council comes down to the question of "what is an agency?" for the purposes of the RTI Act – and I posit they are documents of Council.

40. In relation to the first issue, the applicant submitted that there may not be a document that shows the total cost paid to the external consultants, however he considers that documents would exist that together would show what the external consultants charged the external law firm, as those external consultants '*will have wanted to be paid*'.

41. In relation to the second issue, the applicant repeated his submissions as referred to at paragraph 25 above. In addition, the applicant submitted that the external law firm and Council's insurer, JLT do not '*own*' the documents as '*[t]hey are functionaries, acting for Council in Council's name*' and accordingly the External Consultant Costs are documents of Council for the purposes of the RTI Act.⁵³

42. Further, the applicant submitted that, given his view that the External Consultant Costs are documents of Council, it '*must make all reasonable steps to obtain documents that [the] agency is entitled to access*'.⁵⁴ In this respect, the applicant does not accept that Council has taken all reasonable steps to locate the External Consultant Costs.

43. Given the applicant's submissions, the issue that I must consider is whether the External Consultant Costs are documents of Council for the purposes of section 12 of the RTI Act. In this respect, my findings about the documents relating to External Legal Costs as set out above, are apposite regarding documents relating to External Consultant Costs.

⁴⁹ Email to Council dated 17 June 2025.

⁵⁰ Email to OIC dated 2 July 2025.

⁵¹ Letter to the applicant dated 24 September 2025.

⁵² Submission to OIC received on 20 October 2025.

⁵³ Submission to OIC received on 20 October 2025.

⁵⁴ Submission to OIC received on 20 October 2025.

I am satisfied that the documents relating to External Consultant Costs are not under the control of Council, nor is Council legally entitled to produce the requested documents to the applicant.

44. In these circumstances, I consider that documents relating to the External Consultant Costs are not documents in the possession or control of Council and therefore not '*documents of an agency*' for the purposes of section 12 of the RTI Act. Accordingly, access cannot be requested or provided under the RTI Act.
45. Given my finding above, it follows that it is not necessary to address the applicant's submission noted at paragraph 42 above that Council must take further steps to locate these documents.

DECISION

46. For the reasons set out above, I vary⁵⁵ Council's decisions and find that access to documents relating to External Legal Costs and External Consultant Costs may be refused on the grounds that they are not documents of Council and there is therefore no right of access to them under section 23(1)(a) of the RTI Act.
47. I have made this decision as a delegate of the Information Commissioner under section 145 of the RTI Act.



A Rickard
Assistant Information Commissioner

Date: 25 February 2026

⁵⁵ Pursuant to section 110(1)(b) of the RTI Act.