



## Decision and Reasons for Decision

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<b>Citation:</b>	<b>Kelvin Grove Landmark Apartments and Brisbane City Council [2026] QICmr 45 (23 March 2026)</b>
<b>Application Number:</b>	<b>318632</b>
<b>Applicant:</b>	<b>Kelvin Grove Landmark Apartments ABN 86343425804</b>
<b>Respondent:</b>	<b>Brisbane City Council</b>
<b>Decision Date:</b>	<b>23 March 2026</b>
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION photographs within private property boundary - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Background

1. The applicant applied<sup>1</sup> to Brisbane City Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to documents regarding compliance of a building structure.<sup>2</sup>
2. Council located 188 pages and decided<sup>3</sup> to give full access to 36 pages and refuse access to 13 pages and parts of 139 pages on the ground that disclosure would be contrary to the public interest.
3. The applicant applied<sup>4</sup> to the Office of Information Commissioner (**OIC**) for external review of Council's decision and submitted '*The body corporate is trying to determine from an impartial source whether [the lot owner's] previous conduct by erecting illegal structures that were connected to the fencing has accelerated the deterioration of the fence and what contribution the [lot owner] should make*'.
4. On external review, the applicant confirmed its particular interest in obtaining access to the **Photographs** taken during a site inspection to which access was refused by

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<sup>1</sup> On 6 February 2025.

<sup>2</sup> 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 two Acts as in force prior to 1 July 2025 remain 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.

<sup>3</sup> Decision dated 28 April 2025. This is the *reviewable decision* for this matter.

<sup>4</sup> On 15 May 2025.

Council's decision and a **voice recording** that, the applicant submitted, Council had not located.

5. In relation to the voice recording, Council provided search certifications and a submission<sup>5</sup> explaining why Council had been unable to locate the voice recording. Council submitted that inquiries with the relevant Council officer who conducted the investigation confirmed that the voice recording *'has not been attached to external documents in this instance'* and *'due to the age of the investigation, a copy of that item is not available'*. While Council can, in some instances, locate deleted items, enquiries with Council's IT department confirmed that *'due to the age of the document and default retention period ... being around 7 years ... it is unlikely that the file will be retrievable'* and that any such attempt would *'involve extensive work and time with a very low possibility of success'*.
6. OIC conveyed a preliminary view to the applicant<sup>6</sup> that the explanations provided by Council were reasonable in the circumstances and consequently, access to the voice recording may be refused under sections 47(3)(e) and 52(1)(b) of the RTI Act on the basis it is unlocatable. The applicant accepted OIC preliminary view<sup>7</sup> that access to the voice recording may be refused on the basis it is unlocatable and therefore, this is no longer an issue in this review and will not form part of this decision.
7. In relation to the Photographs OIC conveyed a preliminary view to the applicant<sup>8</sup> that access may be refused on the ground that their disclosure would, on balance, be contrary to the public interest. The applicant disagreed with OIC's preliminary view and made submissions in support of its position that the Photographs should be released.<sup>9</sup>
8. Therefore, the issue for determination is whether access to the Photographs may be refused because their disclosure would, on balance, be contrary to the public interest.
9. For the reasons set out below, I affirm the reviewable decision<sup>10</sup> and find that access to the Photographs may be refused under section 47(3)(b) of the RTI Act on the basis that disclosure would, on balance, be contrary to the public interest.
10. In reaching my decision, I have taken into account evidence, submissions, legislation and other material as set out in these reasons (including footnotes). I have had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information<sup>11</sup> and have acted in accordance with section 58(1) of the HR Act.<sup>12</sup>

## Relevant law

11. Under the RTI Act, a person has a right to be given access to documents of an agency.<sup>13</sup> However, this right of access is subject to certain limitations, including grounds upon which access to information may be refused.<sup>14</sup> The RTI Act requires the grounds for refusing access to be interpreted narrowly, and decisions on access to be made with regard to the pro-disclosure bias.<sup>15</sup>

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<sup>5</sup> By email correspondence dated 7 July 2025.

<sup>6</sup> Email dated 02 October 2025.

<sup>7</sup> Email dated 20 October 2025.

<sup>8</sup> Email dated 02 October 2025.

<sup>9</sup> Email dated 20 October 2025.

<sup>10</sup> Under section 110(1)(a) of the RTI Act.

<sup>11</sup> Section 21 of the HR Act.

<sup>12</sup> OIC's approach to the HR Act set out in this paragraph has been considered and endorsed by the Queensland Civil and Administrative Tribunal in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23].

<sup>13</sup> Section 23 of the RTI Act.

<sup>14</sup> Section 47(3) of the RTI Act.

<sup>15</sup> Section 47(2)(a) and 44 of the RTI Act.

12. Relevantly, access to information may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>16</sup> 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. There are, however, some recognised public interest considerations that may apply for the benefit of an individual.
13. The RTI Act explains the steps that the decision-maker must take in deciding the public interest.<sup>17</sup> It also identifies a non-exhaustive list of factors in Schedule 4 that may be relevant to deciding the balance of the public interest. I have considered all these factors, together with other relevant information in reaching my decision, and discuss relevant factors below.

### **Applicant submissions**

14. In summary, the applicant has raised the following submissions in support of its right of access to information under the RTI Act:<sup>18</sup>
- the Photographs were taken as part of an on-site inspection meeting with Council, body corporate and the lot owner. '*The redacted DART entry for this meeting records that photos were taken with permission*'
  - the responsibility of the body corporate is to determine what proportion of the fencing replacement costs should be paid by the lot owner, *being a person who actions contributed to the deterioration of the fencing*. The Photographs are the best available evidence of the lot owner actions. '*Without access to them, the body corporate's ability to fairly attribute liability is hampered. With access to them, the body corporate can obtain expert building opinion on the extent of the [lot owner's] contribution to the deterioration.*'
  - '*The [P]hotographs are not taken of the living interior of the [Unit number] but the courtyard area within the lot that can be readily seen from the common property*'
  - the Photographs do not comprise the personal information of the lot owner, are not particularly sensitive information and are part of community living.

### **Findings**

15. In reaching my decision about the Photographs, I have had regard to the RTI Act's pro-disclosure bias<sup>19</sup> and Parliament's intention that the grounds for refusing access to information are to be interpreted narrowly.<sup>20</sup> I have not taken any irrelevant public interest factors into account in making this decision.<sup>21</sup>

### **Factors favouring disclosure**

16. I accept that Council must be transparent and accountable in how it makes decisions, including decisions regarding compliance with building approvals, and that disclosing the Photographs would provide the applicant with further insight into the nature and extent of information before Council. The Photographs were taken as part of Council's functions relating to investigating complaints with regards to the specific property and therefore I recognise that disclosure of the Photographs would further enhance Council's

<sup>16</sup> Sections 47(3)(b) and 49 of the RTI Act.

<sup>17</sup> Section 49(3) of the RTI Act.

<sup>18</sup> External review application dated 15 May 2025 and email dated 20 October 2025.

<sup>19</sup> Section 44 of the RTI Act.

<sup>20</sup> Section 47(2)(a) of the RTI Act.

<sup>21</sup> Section 49(3) of the RTI Act.

transparency and accountability in relation to Council's investigations by enabling access to all responsive government-held information.<sup>22</sup> Additionally, disclosure would give the applicant a more fulsome understanding of the information relied on by Council when considering the issues raised with regard to the property.<sup>23</sup>

17. However, I have also taken into account the information that has already been disclosed to the applicant. The Photographs comprise information of a confined nature, specifically images depicting infrastructure within a private property boundary. Due to the steps taken by Council to advance its transparency in relation to its handling of complaints in relation to building approvals, (including through the release of information in response to the access application), I consider that Council's transparency and accountability of its decision-making process have been significantly discharged. I consider the weight to be afforded to the transparency and accountability factors is reduced. Accordingly, I afford low weight to these factors favouring disclosure.
18. The applicant contends that the Photographs are required to assess whether the actions of the lot owner have accelerated the damage to a boundary fence and to determine what proportion of the fencing replacement costs should be paid by the lot owner.<sup>24</sup> I have therefore considered whether disclosure could contribute to the administration of justice for the applicant.<sup>25</sup> The Information Commissioner previously considered this factor in *Willsford and Brisbane City Council*<sup>26</sup> and discussed the public interest in a person who has suffered, or may have suffered, an actionable wrong, being able to obtain access to information which would assist the person to pursue any remedy which the law affords. The Information Commissioner indicated that a public interest consideration favouring disclosure would arise if it could be established that:
  - loss or damage or some kind of wrong had been suffered, in respect of which a remedy is, or may be, available under the law
  - the applicant has a reasonable basis for seeking to pursue the remedy; and
  - disclosure of the information held by the agency would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available, or worth pursuing.
19. In view of the applicant's submissions and noting that a legal remedy may be available to the applicant regarding the lot owner contribution, I am satisfied that disclosure of the Photographs would contribute to the administration of justice for the applicant to a moderate degree. I however consider the administration of justice factor favouring disclosure has been discharged to some extent by the information that has already been released to the applicant. This is because Council have already provided substantial information in relation to how it conducted its investigation including actions taken by Council.
20. I also note that the applicant is not precluded from pursuing other avenues of legal redress by not having access to the Photographs. In the case of civil litigation, there are alternate avenues for compelling the disclosure of information which is relevant to the issues in dispute. Those avenues involve different considerations to the ones I am required to address under the RTI Act. Accordingly, I afford moderate weight to this factor favouring disclosure.

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<sup>22</sup> Schedule 4, part 2, items 1 and 3 of the RTI Act.

<sup>23</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>24</sup> Email dated 20 October 2025.

<sup>25</sup> Schedule 4, part 3, item 16 of the RTI Act.

<sup>26</sup> (1996 L0008, 27 August 1996). The decision was made in the context of the now repealed *Freedom of Information Act 1992* (Qld) but the discussion is relevant to this factor under the RTI Act.

### **Factors favouring nondisclosure**

21. A factor favouring nondisclosure arises when the disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy.<sup>27</sup> While the concept of 'privacy' is not defined in the RTI Act, it can be viewed as the right of an individual to preserve their personal sphere free from interference from others.<sup>28</sup>
22. The applicant contends that disclosure of the Photographs would not prejudice an individual's right to privacy as the Photographs do not comprise the personal information of the Lot owner, the owner consented to the council to taking the Photographs and '*the [P]hotographs are not taken of the living interior of the [Unit] but the courtyard area within the lot that can be readily seen from the common property*'.
23. It is uncontested that the Photographs are not personal information, as it is not about an individual. This harm factor favouring nondisclosure is therefore not enlivened.<sup>29</sup>
24. The Photographs however, depict infrastructure of a private residential property which is what brings the Photographs into the private sphere of the occupiers and/or owners of the relevant property. Given this context, I consider the Photographs have a private nature, sufficiently linked to the occupiers and/or owners of the property. I am satisfied that the Photographs illustrate particular setup, organisation and infrastructure of a private residential property and it is therefore within the property occupiers' private sphere.
25. The applicant also submits that the Photographs became *part of Council's public records with consent, not compulsion*. Whilst I acknowledge that the Photographs have been taken by Council, they are of a private residence and any consent provided by the Lot owner was given to Council for the purposes of its investigation and inspection. Disclosure under the RTI Act has no restrictions on its use or dissemination and therefore the public interest prejudice resulting from disclosure of the Photographs would be significant. To the extent that the applicant sought information relating to a complaint regarding building structures, I am satisfied this has been released by Council as far as reasonably possible without impacting the privacy of private individuals. Protecting individual privacy is an important public interest, and I afford this factor substantial weight.

### **Balancing the public interest**

26. I have considered the pro-disclosure bias<sup>30</sup> and factors favouring disclosure outlined above. I accept that there is public interest in enhancing Council's accountability and transparency by revealing background information about building approval complaints. However, due to the information released by Council, I afford these factors favouring disclosure low weight. In relation to the administration of justice factor, I have afforded moderate weight.
27. Balanced against this I consider the public interest in protecting the privacy of other individuals carries significant and determinative weight so as to favour nondisclosure of the Photographs.

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<sup>27</sup> Schedule 4, part 3, item 3 of the RTI Act.

<sup>28</sup> See the Australian Law Reform Commission's definition of the concept in "For your information: Australian Privacy Law and Practice" Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

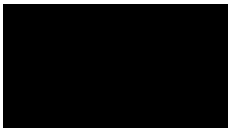
<sup>29</sup> Schedule 4, part 4, item 6 of the RTI Act.

<sup>30</sup> Section 44 of the RTI Act.

28. On balance, I am satisfied that the nondisclosure factor outweighs the disclosure factors and therefore, the Photographs would, on balance, be contrary to the public interest to disclose. As such, access may be refused under section 47(3)(b) of the RTI Act.

### **Decision**

29. For the reasons set out above, I affirm the reviewable decision<sup>31</sup> and find that access to the Photographs may be refused under sections 47(3)(b) and 49 of the RTI Act as disclosure is, on balance, contrary to the public interest.
30. I have made this decision under section 110 of the RTI Act as a delegate of the Information Commissioner, under section 145 of the RTI Act.



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**K Zaidiza**  
**Manager, Right to Information**

**Date: 23 March 2026**

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<sup>31</sup> Under section 110(1)(a) of the RTI Act.