



Decision and Reasons for Decision

Citation:	<i>Queensland Newspapers Pty Ltd and Ipswich City Council</i> [2016] QICmr 13 (20 April 2016)
Application Number:	312510
Applicant:	Queensland Newspapers Pty Ltd
Respondent:	Ipswich City Council
Decision Date:	20 April 2016
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - applicant seeks information about travel by Council's Mayor to Europe - photographs depicting Mayor and other individuals - personal information of individuals other than the applicant - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under sections 47(3)(b) and 49 and schedule 4, part 3, item 3 and part 4, item 6(1) of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied to Ipswich City Council (**Council**) seeking access under the *Right to Information Act 2009* (Qld) (**RTI Act**) to photographs relating to the Mayor's travel to Europe in September 2012.
2. Council located 25 photographs and decided to refuse access to all of them on the basis that their disclosure would, on balance, be contrary to the public interest.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of Council's decision to refuse access to the photographs.
4. As a result of OIC's informal resolution processes, two of the 25 photographs were excluded from consideration on external review.
5. In relation to the remaining 23 photographs, for the reasons set out below, I affirm Council's decision to refuse access to these photographs on the basis that their disclosure would, on balance, be contrary to the public interest.

Background

6. The applicant applied to Council for access to '[p]hotographs emailed (either received or sent) by [Council's Mayor] relating to Ipswich City Properties travel to Europe in September, 2012'. Ipswich City Properties Pty Ltd (**ICP**) is an incorporated legal entity, the sole shareholder of which is Council.
7. Council located 25 photographs which it considered to be responsive to the scope of the access application. These photographs were in Council's possession or control—and therefore considered documents of an agency for the purpose of the RTI Act¹—as a result of being emailed between two Councillors using their Council email accounts.²
8. Significant procedural steps relating to the application and external review are set out in the Appendix.

Reviewable decision

9. The decision under review is Council's decision dated 23 June 2015.

Material considered

10. The evidence, submissions, legislation and other material I have considered in reaching my decision are disclosed in these reasons (including footnotes and Appendix).

Information in issue

11. On external review, the applicant did not contest OIC's preliminary view that two of the 25 photographs located by Council were taken within Australia and therefore did not fall within the scope of the access application. Accordingly, these two photographs are no longer in issue.
12. The information considered in this decision comprises the remaining 23 photographs (**Photographs**).

Relevant law

13. Under the RTI Act, a person has a right to be given access to documents of an agency.³ However, this right of access is subject to other provisions of the RTI Act, including the grounds on which an agency may refuse access to documents.⁴
14. Relevantly, an agency may refuse access to information where its disclosure would, on balance, be contrary to the public interest.⁵
15. 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

¹ Section 12 of the RTI Act.

² Given this position, the issue of whether documents of ICP are documents of an agency (ie Council) for the purpose of the RTI Act does not arise in this external review. Note—this issue was considered in *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 30 (26 November 2015).

³ Section 23 of the RTI Act.

⁴ Set out in section 47 of the RTI Act.

⁵ Under sections 47(3)(b) and 49 of the RTI Act.

concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

16. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest⁶ and explains the steps that a decision-maker must take⁷ in deciding the public interest as follows:
- identify any irrelevant factors and disregard them
 - identify relevant public interest factors favouring disclosure and nondisclosure
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosing the information in issue would, on balance, be contrary to the public interest.

Findings

Irrelevant factors

17. No irrelevant factors arise in the circumstances of this review. I will now consider the relevant factors for and against disclosure of the Photographs.

Accountability and transparency

18. The applicant submits that disclosure of the Photographs *'would assist in boosting transparency of an elected official by providing the public [with] information about how money is being spent by a [ratepayer] funded company'*.⁸ In this regard, the applicant submits that the Photographs *'have a greater public interest than they otherwise would have as they provide an insight into the activities of [C]ouncil representatives on an ICP business trip'*, particularly given *'the repeated refusal by [C]ouncil to answer media questions about ICP travel'*.⁹
19. The RTI Act recognises public interest factors in favour of disclosure where disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance the Government's accountability¹⁰
 - contribute to positive and informed debate on important issues or matters of serious interest;¹¹ and
 - ensure effective oversight of expenditure of public funds.¹²
20. I have carefully considered the Photographs to assess whether they could reasonably be expected to facilitate the type of public oversight, debate and scrutiny of expenditure of public monies envisaged by the applicant.
21. The applicant submits¹³ that the Mayor was acting in his role as Mayor, as well as a director of ICP, during the trip to Europe. On the material before me, including media

⁶ Schedule 4 of the RTI Act sets out the factors for deciding whether disclosing information would, on balance, be contrary to the public interest. However, this list of factors is not exhaustive. In other words, factors that are not listed may also be relevant.

⁷ Section 49(3) of the RTI Act.

⁸ External review application dated 30 June 2015.

⁹ Email dated 30 October 2015.

¹⁰ Schedule 4, part 2, item 1 of the RTI Act.

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

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

¹³ Email dated 30 October 2015. In support of this submission, the applicant refers to a publicly available letter addressed to the Mayor (in his role as such) from the Mayor of New York in 2010 after a trip to the United States.

articles about the trip to Europe,¹⁴ I accept that the Mayor may have been acting in his capacity as a representative of Council, as well as in his capacity as a director of ICP, at various times during the trip. However, this is a moot point if, as contended by Council, the Photographs were *'mementos taken during personal spare time'* of the Mayor.¹⁵

22. The Photographs were in Council's possession¹⁶ by virtue of them being emailed between Councillors using Council email addresses. Council has previously¹⁷ provided OIC with copies of its ICT Policy and Councillor and Employee Codes of Conduct. I am satisfied that the transmission of the Photographs using Council email addresses fell within the limited personal/private use of Council's ICT infrastructure permitted by the ICT Policy and relevant Code.

23. On consideration of the images captured by the Photographs, I note that:

- the Photographs appear to have been taken on a small number of occasions
- the backgrounds of the Photographs indicate that they were taken in informal settings,¹⁸ rather than locations where official or work activities could usually be expected to occur
- in nearly all of the Photographs, the Mayor and other individuals are dressed either casually or smartly, rather than in business attire¹⁹
- the demeanour of, and interactions between, the Mayor and other individuals recorded in the Photographs²⁰ appear to be informal and relaxed, rather than more formal behaviour consistent with official or work activities; and unlike other photographs taken of the Mayor with international business figures during the trip (which have been released by Council²¹), the individuals depicted in the Photographs do not seem likely to be persons with whom the Mayor would have met in their official or work capacity.

24. The applicant submits²² that disclosure of the Photographs may address the following specific expenditure queries:

- *'who picked up the trip expenses related to the family time'*
- *whether the Mayor visited 'Sicily while on the ICP trip, if so how was this managed with the tight schedule of the ICP trip and who paid for that component of the trip'; and*
- *'how did the inclusion of Rome as a scheduled stop on the trip benefit the aims of ICP'.*

25. However, on careful consideration of the images in the Photographs, I am satisfied that they convey no information capable of addressing these expenditure queries.²³

¹⁴ See, for example—'Ipswich, Abu Dhabi could be linked', *The Queensland Times*, 28 September 2012, <<http://www.qt.com.au/news/pisasale-roadshow-rollsacross-the-globe/1561532/>>.

¹⁵ Council's decision regarding the access application dated 23 June 2015.

¹⁶ And therefore documents of Council for the purpose of the RTI Act—section 12 of the RTI Act.

¹⁷ In external review 312126, which was finalised by *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 12 (12 May 2015), which also considered photographs emailed using Council email addresses.

¹⁸ For example, a streetscape at night time, or the ocean during the day.

¹⁹ Except for two photographs, both of which show the Mayor and another individual in business attire.

²⁰ Including the two photographs in which the Mayor another individual are in business attire.

²¹ Namely, the nine photographs released by Council to the applicant in accordance with its decision dated 5 August 2014 regarding a separate access application (reviewed by OIC in external review 312126 and finalised by *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 12 (12 May 2015)).

²² External review application dated 30 June 2015.

²³ Given this position, I make no finding about whether accountability considerations arising from such queries extend to Council, or relate only to ICP given OIC's decision that ICP is an incorporated legal entity with a separate legal existence to Council, despite Council being its sole shareholder, in *Queensland Newspapers Pty Ltd and Ipswich City Council* [2015] QICmr 30 (26 November 2015).

26. In response to a notice issued by OIC,²⁴ the Mayor provided OIC with a signed statement²⁵ in which he stated:

... those photographs were not taken during my required hours of work as a Councillor and I was acting in a personal capacity. ...

... I was not acting in my official capacity and at the time [another Councillor] was the acting Mayor.

27. However, in relation to personal spare time for the Mayor, the applicant submits:²⁶

- *'[t]here is a much larger overlap between the social activities of an elected representative and their personal activities than those in other occupations';*
- the Mayor has allegedly *'previously argued ... that travel related to his private activities also benefits the city by attracting investment';*
- it is *'well accepted'* that the Mayor does not have required hours of work; and
- the Mayor has stated (in a news article) that he is *'essentially never off-duty'*.

28. It is my understanding that the applicant is submitting that the Mayor has no solely personal spare time (and has admitted as much in the media), and therefore the Photographs must have been taken while he was acting in an official or work capacity. Given the nature of the Mayor's role, I accept that he may have relatively brief personal spare time; however, I am unable to accept that, generally, all activities undertaken by the Mayor are in his official or work capacity, and he has no personal spare time. The fact that there are only 23 Photographs taken on a small number of occasions appears consistent with the Mayor having only a small amount of spare personal time during the trip in question. Also, on consideration of the images in the Photographs themselves, I am unable to identify anything in them to suggest that they record activities subject to the *'overlap between the social activities of an elected representative and their personal activities'* raised by the applicant.

29. Having carefully considered the material before me, I accept that the Photographs were taken as personal mementos during the Mayor's personal spare time. In this regard, I have taken into account the fact that the Photographs were in Council's possession only by virtue of limited personal use of Council email addresses by Councillors, the relatively limited number of them, the nature of the images captured in them, the absence of any information on the face of them or in any other material before me to suggest that they were taken during the Mayor's performance of official or work duties, and the signed statement provided by the Mayor to OIC.²⁷

30. I have noted the applicant's submission²⁸ that a finding that the Photographs were created whilst the Mayor was acting in a personal capacity should be supported by evidence showing that the Mayor himself, rather than ICP, paid for the travel or entertainment associated with the events captured in the Photographs. However, as noted above, the material before me generally supports a finding that the Photographs are personal mementos taken during the Mayor's personal spare time, and there is no material which suggests otherwise. In these circumstances, I consider Council's submission to be credible, and do not consider it necessary to seek supporting evidence of the type raised by the applicant.

²⁴ Under section 103 of the RTI Act.

²⁵ On 30 September 2015.

²⁶ Email dated 30 October 2015.

²⁷ Noting that it is an offence to knowingly give false or misleading information to OIC—section 177(1) of the RTI Act.

²⁸ Email dated 30 October 2015.

31. In these circumstances, I am satisfied that disclosure of the Photographs could further the public interest factors of accountability and transparency of Council, informed public debate or effective oversight of the expenditure of public funds—but only to a limited degree, given the images captured in the Photographs and the fact that they were taken as personal mementos during the Mayor’s personal spare time. Accordingly, I afford these factors favouring disclosure low weight.

Personal information and privacy

32. The applicant submits that, as Council has previously released *‘photographs of the mayor at a private social function to The Courier-Mail under RTI’*, it has *‘set a precedent’*.²⁹

33. The RTI Act recognises public interest factors in favour of nondisclosure where disclosure could reasonably be expected to:

- prejudice the protection of an individual’s right to privacy;³⁰ and
- cause a public interest harm if it would disclose personal information of a person.³¹

34. Council has stated³² that the Photographs:

- do not depict the Mayor in a work setting
- depict the Mayor in a range of social situations, including with family members, at a casual dinner or in rooms at a hotel
- *‘are personal mementos taken during personal spare time’*; and
- include images *‘of family members and friends rather than public figures, which persons are entitled to privacy’*.

35. While the RTI Act³³ precludes me from describing the images captured in the Photographs, I can confirm that:

- the Mayor and various other individuals appear in the Photographs; and
- the Photographs contain no information to suggest that they were taken while the Mayor was acting in his official or work capacity.

36. On consideration of these images and the other matters noted above,³⁴ I am satisfied that an elected official such as the Mayor will have some (albeit brief) personal spare time during a work related trip, and that the Photographs were taken as personal mementos in such time during the trip in question. Accordingly, I am satisfied that the Photographs contain personal information other than *‘routine personal work information’*³⁵ of both the Mayor and other individuals.

37. Further, although the Photographs were attached to emails sent from one Council email address to another, I am satisfied that attachment to such emails does not render the Photographs the routine personal work information of the sender or recipient, or

²⁹ External review application dated 30 June 2015.

³⁰ Schedule 4, part 3, item 3 of the RTI Act.

³¹ Schedule 4, part 4, item 6(1) of the RTI Act.

³² Council’s decision regarding the access application dated 23 June 2015.

³³ Section 108(3) of the RTI Act.

³⁴ Regarding the accountability and transparency factors favouring disclosure.

³⁵ That is, related to the routine day to day work duties and responsibilities.

any other individuals visible in the Photographs. As noted above,³⁶ minor, limited personal/private use of Council's networks and devices is permitted for employees.

38. In these circumstances, I am satisfied the personal information and privacy factors favouring nondisclosure are relevant regarding both the Mayor and other individuals depicted in the Photographs. Further I consider that, if the Photographs were disclosed, the public interest harm and prejudice to privacy that would occur would be significant. Accordingly, I afford the factors favouring nondisclosure significant weight in this review.
39. I have considered the applicant's submission that Council is, in effect, bound to disclose the Photographs, given its previous decision to disclose photographs unrelated to the Photographs in issue. Although a discretion is expressly conferred³⁷ on an agency to release documents, even where those documents otherwise satisfy the requirements for refusing access, an agency is not required to make the same determination regarding similar documents the subject of future applications. Each access application is determined by an agency on a case by case basis on its merits.

Balancing the public interest

40. I have identified enhancing Council's accountability and transparency, facilitating informed public debate and ensuring effective oversight of the expenditure of public funds as public interest factors favouring disclosure of the Photographs. However, in the circumstances of this review, I afford low weight to these factors. On the other hand, I consider that there is significant public interest in protecting the personal information and privacy of the Mayor and other individuals depicted in the Photographs. Balancing these factors against one another, I am satisfied that the public interest in protecting personal information and privacy outweighs the public interest factors favouring disclosure.
41. Accordingly, I find that access to the Photographs may be refused on the basis that their disclosure would, on balance, be contrary to the public interest.

DECISION

42. I affirm Council's decision and find that access to the Photographs may be refused on the basis that their disclosure would, on balance, be contrary to the public interest.³⁸
43. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

A Rickard
Acting Assistant Information Commissioner

Date: 20 April 2016

³⁶ At paragraph 23.

³⁷ Pursuant to section 48(3) of the RTI Act.

³⁸ Pursuant to sections 47(3)(b) and 49 of the RTI Act

APPENDIX

Significant procedural steps

Date	Event
20 January 2015	Council received the applicant's access application.
23 June 2015	Council issued its decision regarding the access application.
30 June 2015	The applicant applied to OIC for external review of Council's decision.
16 July 2015	OIC advised the applicant and Council that the external review had been accepted and asked Council to provide a copy of the 25 photographs.
4 August 2015	OIC received a copy of the 25 photographs from Council.
6 August 2015	OIC requested information from Council relating to the 25 photographs.
8 September 2015	Council responded to OIC's request for information relating to the 25 photographs.
10 September 2015	OIC requested that the Mayor provide a signed statement by the Mayor regarding the 25 photographs.
18 September 2015	Council responded to OIC's request that the Mayor provide a signed statement by the Mayor regarding the 25 photographs. In Council's response, Council confirmed that two of the photographs were taken in Australia.
25 September 2015	OIC issued a notice under section 103 of the RTI Act requesting that the Mayor provide a signed statement regarding the Photographs to OIC.
30 September 2015	The Mayor provided OIC with the requested signed statement.
15 October 2015	OIC conveyed its preliminary view to the applicant that 2 of the 25 photographs fell outside the scope of the applicant's access application and disclosure of the remaining Photographs would, on balance, be contrary to the public interest. OIC invited the applicant to provide submissions in support of its case if they did not accept the preliminary view.
30 October 2015	The applicant advised OIC that it did not accept the preliminary view regarding the Photographs and provided submissions supporting its case.