



Decision and Reasons for Decision

Citation:	<i>06KLXE and Hinchinbrook Shire Council [2019] QICmr 22 (20 June 2019)</i>
Application Number:	314076
Applicant:	06KLXE
Respondent:	Hinchinbrook Shire Council
Decision Date:	20 June 2019
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - animal control complaints - accountability and transparency - administration of justice - allegations of negligent conduct and potential deficiencies in Council administration - personal information and privacy - prejudice to local law enforcement - whether disclosure would, on balance, be contrary to the public interest - whether access to information may be refused under section 47(3)(b) of the <i>Right to Information Act 2009 (Qld)</i>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Hinchinbrook Shire Council (**Council**) under the *Right to Information Act 2009 (Qld)* (**RTI Act**) for access to all Council records concerning animal complaints, reports, investigations, attacks and registration, in relation her property and neighbouring properties.²
2. Council located over 100 pages including records in its customer request database, correspondence, forms and file notes. Council granted the applicant access to approximately 60 pages, subject to minor redactions, but refused access to 45 pages in their entirety, on the basis that disclosure would, on balance, be contrary to the public interest.³ Council's decision to refuse access to information was based primarily on concerns about protecting the privacy and personal information of other individuals involved in the complaints.
3. The applicant sought external review of Council's decision with the Office of the Information Commissioner (**OIC**).⁴ During the review process, Council agreed with OIC's view that some further information could be released to the access applicant to enhance the accountability and transparency of Council's complaint handling and investigation

¹ Access application received by Council on 21 June 2018.

² The applicant and her family have made, and have been the subject of, complaints to Council concerning animal control.

³ Under section 47(3)(b) of the RTI Act.

⁴ External review application received by OIC on 6 August 2018.

process. The applicant remains dissatisfied with the level of information disclosed to her by Council and continues to seek access to all remaining redacted information.

4. For the reasons set out below, I affirm Council's decision to refuse access to the information remaining in issue, under section 47(3)(b) of the RTI Act, on the basis that its disclosure would, on balance, be contrary to the public interest.

Background

5. The decision under review is Council's refusal of access decision dated 26 July 2018.
6. Appendix 1 sets out the significant procedural steps taken during the external review. Evidence, submissions, legislation and other material I have considered in reaching this decision are also disclosed in these reasons (including footnotes).
7. On external review, the applicant raised concerns about Council's actions and made various allegations about the conduct of certain Council officers involved in animal control, and Council's governance system. OIC's external review jurisdiction is confined to determining whether Council was entitled to refuse access to information under the RTI Act. OIC does not have jurisdiction to investigate the conduct of Council officers, nor to review Council's complaint handling or investigation processes relating to animal control. For these reasons, in making my findings below, I have not considered aspects of the applicant's submissions which seek to ventilate such issues, except to the extent they relate directly to the application of relevant public interest factors.

Information in issue

8. The information that remains in issue is about other individuals,⁵ or comprises communications between Council and other individuals involved in Council's investigation of the various animal control complaints (**Third Party Information**).⁶
9. The applicant is concerned that the reasons for redactions are '*ambiguous*'.⁷ For clarity, Appendix 2 lists the documents containing the Third Party Information in further detail.

Relevant law

10. Under the RTI Act, access may be refused to information if its disclosure would, on balance, be contrary to the public interest.⁸ 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.
11. Various factors may be relevant to deciding where the balance of the public interest lies⁹ and a decision-maker is required to take specific steps in reaching a decision on disclosure.¹⁰ My assessment of the public interest factors that are relevant in this case, is set out below.

⁵ Including a signature and mobile telephone numbers of Council officers.

⁶ 13 full pages and 21 part pages.

⁷ Submissions to OIC dated 22 January 2019.

⁸ Section 47(3)(b) of the RTI Act.

⁹ Including the non-exhaustive list of factors in schedule 4 of the RTI Act.

¹⁰ Section 49 of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure and balancing the relevant factors.

Findings

12. 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

13. The applicant provided extensive written submissions to OIC advancing a range of public interest factors favouring disclosure.¹¹ The applicant argues that obtaining access to the refused information is necessary for natural justice and to uncover deficiencies in Council's complaint handling processes. The applicant also points to '*ineffective administration*' and '*anarchy and corruption*' within Council as reasons to support her case in favour of disclosure.¹²
14. As described above, the nature of the Third Party Information is very limited—it comprises information about, or communications between Council and, other individuals involved in the complaint process. The pages which Council has partially released to the applicant contain only minimal redactions. Therefore, the applicant is aware of the surrounding information in those communications to assist her in understanding the context in which the information appears. As for the fully refused pages, the applicant is aware of the nature of those documents, as set out in Appendix 2, in that they comprise correspondence, animal registration forms and an originating handwritten complaint from another individual.
15. In the circumstances, I find that the following public interest factors favour disclosure of the Third Party Information:
- enhance the transparency and accountability of Council in dealing with complaints about animal control¹³
 - disclose the applicant's personal information;¹⁴ and
 - contribute to administration of justice and procedural fairness generally.¹⁵
16. The substance of the complaints against the applicant and her animal/s has already been released by Council.¹⁶ I am satisfied that the *released information* has served to significantly discharge Council's accountability and transparency in terms of how it handles animal control complaints, including how it corresponds with parties involved in the complaint process. Given the limited nature of the Third Party Information, I find that its disclosure would reveal minimal further information about Council's complaint handling processes. For these reasons, I afford the accountability and transparency factors low weight in favour of disclosure.
17. The majority of the applicant's personal information¹⁷ has also, already been released to her by Council. However, a small amount of information about the applicant is intertwined with the Third Party Information and cannot be separated from the personal information of other involved individuals. Largely, this interwoven information has been conveyed to Council by other individuals. Therefore, it appears in their own words and in some instances, is recorded in their handwriting.¹⁸ For these reasons, I find that the weight of

¹¹ Including schedule 4, part 2, items 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, and 18 of the RTI Act.

¹² Submissions to OIC dated 22 January 2019, page 3.

¹³ Schedule 4, part 2, items 1, 3 and 11 of the RTI Act.

¹⁴ Schedule 4, part 2, item 7 of the RTI Act.

¹⁵ Schedule 4, part 2, items 16 and 17 of the RTI Act.

¹⁶ During the processing period, or through the external review process.

¹⁷ As defined in section 12 of the *Information Privacy Act 2009* (Qld) (**IP Act**).

¹⁸ A person's handwriting has been found to be their personal information. See *O'Hagan and Building Services Authority* (Unreported, Queensland Information Commissioner, 4 December 2012) at [32].

the public interest factor favouring disclosure of the applicant's own personal information is somewhat reduced, and I afford it moderate weight.

18. The applicant sought to argue that disclosure would assist her to *'form a proper response and obtain proper legal advice as to the allegations made against us'*.¹⁹ I consider this submission requires analysis of the administration of justice factors.²⁰ In connection with this submission, the applicant also argues that release of the documents would advance the fair treatment of individuals, by allowing her to seek a legal remedy.²¹
19. For the administration of justice factors to apply, the Information Commissioner has previously found²² that an applicant needs to demonstrate that:
 - they have suffered loss or damage of some kind of wrong, in respect of which a remedy is, or may be, available under the law
 - they have a reasonable basis for seeking to pursue the remedy; and
 - disclosing the information would assist the applicant to pursue the remedy, or to evaluate whether a remedy is available or worth pursuing.²³
20. The applicant states that *'there are dog matters currently being discussed before the Ingham Magistrates Court'* however, the exact nature of such proceedings was not particularised by the applicant. Also, the applicant has not provided any evidence to demonstrate the damage suffered, the remedy sought, or how disclosure of the Third Party Information would allow evaluation or pursuit of a legal remedy.²⁴ In the absence of such evidence, I am unable to find that disclosure of the Third Party Information *could reasonably be expected to*²⁵ advance the administration of justice, procedural fairness or the applicant's fair treatment. Therefore, I afford the disclosure factors at paragraph 18 above no weight.
21. As stated above, the applicant holds concerns about Council's administration and governance and raises *'allegations of negligence, misfeasance, nonfeasance or malfeasance'*.²⁶ These allegations feature throughout the applicant's submissions and it is clear that the applicant holds grievances about Council's conduct and governance. However, based on my objective assessment of the Third Party Information, I am not satisfied that its disclosure could reasonably be expected to²⁷ reveal unlawful or negligent conduct, deficiencies in Council's administration/conduct, or incorrect information.²⁸ Accordingly, I find that those factors do not apply to favour disclosure.
22. The applicant strongly believes that Council's handling of the animal control issues raises a matter of serious interest that is deserving of public debate.²⁹ Having considered the limited personal nature of the Third Party Information, I am satisfied that its disclosure could not reasonably be expected to advance that public interest factor. The Third Party Information does not detail Council's decision making process or deliberations which

¹⁹ Submission to OIC dated 22 January 2019.

²⁰ Schedule 4, part 2, items 16 and 17 of the RTI Act.

²¹ Schedule 4, part 2, item 10 of the RTI Act.

²² *Willsford and Brisbane City Council* (1996) 3 QAR 368 (**Willsford**).

²³ *Willsford* at [17]. This approach was affirmed by the Information Commissioner in *10S3KF and Department of Community Safety* (Unreported, Queensland Information Commissioner, 16 December 2011).

²⁴ The applicant also submits that the identity of the other individuals involved is known to her.

²⁵ It is well-settled that this expression refers to an expectation that is reasonably based, not irrational, absurd or ridiculous: see *Attorney-General's Department v Cockcroft* (1986) 64 ALR 97 at 106. Also, an expectation of an occurrence that is merely a possibility (ie speculative, conjectural or hypothetical) is unreasonable: see *Murphy and Treasury Department* (1995) 2 QAR 744 (**Murphy**) at paragraph 44, citing *Re B and Brisbane North Regional Heath Authority* (1994) 1 QAR 279 at paragraph 160.

²⁶ Submission to OIC dated 22 January 2019, page 2.

²⁷ See footnote 26 above.

²⁸ Schedule 4 part 2, items 5, 6 and 12 of the RTI Act.

²⁹ Schedule 4, part 2, item 2 of the RTI Act.

may, in certain circumstances, warrant public debate. Accordingly, I find that factor does not apply.

23. I have considered the applicant's submissions regarding the application of further public interest factors favouring disclosure³⁰ and am satisfied that the additional factors which the applicant seeks to raise, cannot be found to apply to *disclosure* of the Third Party Information.³¹ The Information Commissioner has long recognised that the expectation must arise as a result of *disclosure* of the information in issue, rather than from other circumstances.³² I am satisfied that the Third Party Information, which is of a limited personal nature, has no apparent connection with the public interests that those factors are intended to serve and therefore, could not reasonably be expected to³³ have the intended consequence prescribed by those factors. Accordingly, I find that those disclosure factors do not apply.

Factors favouring nondisclosure

24. Given the personal nature of the Third Party Information, and the complaint context in which it appears, I find that the following factors favouring nondisclosure are relevant:
- disclosure could reasonably be expected to cause a public interest harm if disclosure would disclose personal information of a person³⁴
 - disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy,³⁵ and
 - disclosure of the information could reasonably be expected to prejudice the flow of information to a law enforcement or regulatory agency.³⁶
25. Personal information is defined by 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'*.³⁷
26. I am satisfied that the Third Party Information comprises the personal information of other individuals involved in the animal control complaint process, including complainants, witness(es) and Council officers. Some of the Third Party Information names the complainants or witness(es) and other information comprises direct personal contact details, eg. mobile numbers and addresses. Also, information that has been provided by complainants and witnesses to Council about the animal control issues setting out their version of events, opinions and emotions, also comprises their personal information. Lastly, the handwriting of other individuals and the signature of a Council officer can also be described as personal information. Given the nature of the Third Party Information, I am satisfied that disclosing the personal information of the various other individuals involved, could reasonably be expected to lead to a public interest harm.
27. An individual's dealings and communications with a government agency attract a level of privacy as they form part of an individual's private and personal sphere.³⁸ In this case,

³⁰ Schedule 4, part 2, items 8, 14, 15 and 18.

³¹ I have also considered the remaining factors in schedule 4, part 2 of the RTI Act and am satisfied no further factors apply. Nor am I able to identify any additional public interest disclosure factors that could be taken to be raised from the applicant's submissions.

³² *Murphy* at [54].

³³ See footnote 26 above.

³⁴ Schedule 4, part 4, section 6 of the RTI Act.

³⁵ Schedule 4, part 3, item 3 and the RTI Act.

³⁶ Schedule 4, part 3, item 13 of the RTI Act.

³⁷ Section 12 of the IP Act.

³⁸ The concept of 'privacy' is not defined in the IP Act or RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others see *Matthews and Gold Coast City Council* (Unreported, Queensland

the relevant communications with Council occurred in the context of animal control and local law enforcement which I am satisfied is a sensitive context attracting a significant level of privacy. The applicant submits that she is aware of the identities of other individuals involved and argues that this should negate protection of any right to privacy. I accept that, given the residential/neighbourhood context of the complaints, the applicant may have suspicions as to the identity of the complainant(s). However, the Third Party Information comprises more than just names of other individuals, it comprises their written version of events, including expression of feelings and emotions associated with the complaints. I find that disclosure of such information would be an unwarranted intrusion into the personal sphere of the other individuals involved in the animal control complaints. Accordingly, I afford this factor high weight in favour of nondisclosure of the Third Party Information.

28. I am also satisfied that disclosure of the mobile telephone numbers of Council officers that appear in the Third Party Information attract privacy considerations. The Information Commissioner has previously found that a mobile telephone number which allows an individual to be contacted directly or potentially outside of working hours, falls outside the realm of routine work information and attract a level of privacy.³⁹ I am satisfied that is the case here and afford the public interest factor moderate weight.⁴⁰ Similarly, the signature of a Council officer which appears on the Council file note also attracts a moderate level of privacy. I accept that the signature is not highly sensitive but am satisfied it forms part of the Council officer's private sphere and this weighs in favour of nondisclosure.
29. Lastly, there is a recognised public interest in ensuring Council's local law enforcement functions are not prejudiced through disclosure of information provided by individuals involved in a complaint process.⁴¹ Council relies on members of the public to provide information which enables it to administer and enforce relevant laws, in this case the *Animal Management (Cats and Dogs) Act 2008* (Qld) and *Local Law No. 2 (Animal Management) 2012* (Qld). I am satisfied that routinely disclosing information identifying and/or provided by complainant(s) and witness(es) under the RTI Act would discourage individuals from coming forward with information and cooperating with Council. This, in turn, could reasonably be expected to negatively impact Council's ability to obtain this information in future. I afford this factor significant weight in favour of nondisclosure of the Third Party Information.

Balancing the relevant factors

30. Having identified and examined the relevant public interest factors in this case, I find that disclosure of the Third Party Information would, to some extent, serve the public interest in enhancing Council's accountability and transparency and disclosing the applicant's personal information. However, I also find that the public interest factors that are intended to protect other individuals' personal information and privacy, and the effectiveness of Council's local law enforcement processes, carry significant weight in favour of nondisclosure. On balance, I am satisfied that those nondisclosure factors carry higher

Information Commissioner, 23 June 2011) at [22] paraphrasing 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, available: <https://www.alrc.gov.au/publications/report-108>.

³⁹ See *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012) at [20] and *Castley-Wright and Mareeba Shire Council* [2018] QICmr 25 (22 May 2018) at [23].

⁴⁰ Schedule 4, part 3, item 3 of the RTI Act.

⁴¹ Schedule 4, part 3, item 13 of the RTI Act.

and determinative weight to favour a decision refusing access to the Third Party Information, under section 47(3)(b) of the RTI Act.⁴²

DECISION

31. For the reasons set out above, I affirm Council's decision to refuse access to the Third Party Information under section 47(3)(b) of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
32. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

Katie Shepherd
Assistant Information Commissioner

Date: 20 June 2019

⁴² Additionally and in any event, even if I were wrong in the findings expressed – and one or more of the factors which I have not attributed any weight to could be said to apply and carry low weight in this case – I am nevertheless of the view that factors favouring nondisclosure are of sufficient gravity to tip the balance of the public interest in favour of nondisclosure.

APPENDIX 1**Significant procedural steps**

Date	Event
6 August 2018	OIC received the external review application.
7 August 2018	OIC notified the applicant and Council that it had received the application for external review and requested relevant procedural documents.
9 August 2018	OIC received the requested procedural documents from Council.
27 August 2018	OIC notified the applicant and Council that it had accepted the application for external review and requested additional information from Council.
29 August 2018	OIC received the requested information from Council.
8 October 2018	OIC received additional submissions from Council.
23 November 2018	OIC conveyed a preliminary view to Council that additional information may be released to the applicant.
4 December 2018	Council advised OIC that it accepted OIC's preliminary view regarding disclosure of additional information to the applicant.
2 January 2019	OIC conveyed a preliminary view to the applicant that access to some information may be refused, and that Council had agreed to release some additional information.
7 January 2019	Council confirmed to OIC that the additional documents had been released to the applicant.
23 January 2019	The applicant provided OIC with written submissions contesting OIC's preliminary view.
25 February 2019	OIC provided Council with an update on the status of the review. OIC wrote to the applicant to address her submissions, confirm OIC's preliminary view and allow her a final opportunity to provide submissions.
11 March 2019	The applicant provided OIC with further submissions.
13 March 2019	OIC provided Council with an update on the status of the review.
24 April 2019	OIC provided the applicant with an update on the status of the review.
4 June 2019	OIC provided Council and the applicant with an update on the status of the review.

APPENDIX 2

Information in issue

Description of documents	Refused information
Correspondence sent by Council to other individuals about animal control issues	5 full pages
Animal registration forms – completed by other individuals (handwritten)	4 full pages
Handwritten correspondence sent to Council by another individual about animal control issues	4 full pages
Customer request database entries involving the applicant, her property and related animal control issues	6 part pages - names and personal/contact details of other individuals redacted
Handwritten Council file note of attendance at property involved in animal control complaint (8.30pm, undated)	1 part page - names and personal/contact details of other individuals redacted
Council animal complaint form completed by another individual	2 part pages - names and personal/contact details of other individuals redacted
Emails sent by or to Council in relation to the animal control complaints and investigation	7 part pages ⁴³ - names and personal/contact details of other individuals redacted
Council file note dated 5 May 2018 regarding Council officer's site visit to applicant's property and ongoing issues about animal control	5 part pages - names and personal/contact details of other individuals redacted

⁴³ Including some duplicates.