



## Decision and Reasons for Decision

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Citation:	<i>U18 and Logan City Council</i> [2024] QICmr 46 (26 September 2024)
Application Number:	317894
Applicant:	U18
Respondent:	Logan City Council
Decision Date:	26 September 2024
Catchwords:	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - application for complaint about the applicant's dog - fair treatment and procedural fairness - personal information and privacy - prejudice to the flow of information to a regulatory agency - whether disclosure is, on balance, contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) - section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</b>

## REASONS FOR DECISION

### Summary

1. The applicant applied to Logan City Council (**Council**) under the *Information Privacy Act 2009* (Qld)<sup>1</sup> (**IP Act**) for access to photographs or evidence relating to an infringement notice issued by Council Animal Management.
2. Council located 34 pages responsive to the application and decided to:<sup>2</sup>
  - release 10 pages; and
  - refuse access to 7 full and 17 part pages on the grounds that disclosure would, on balance, be contrary to the public interest.
3. The applicant applied for internal review<sup>3</sup> and Council again decided to refuse access to this information.<sup>4</sup>
4. The applicant applied to the Information Commissioner for external review.<sup>5</sup>
5. For the reasons set out below, I affirm Council's decision.

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<sup>1</sup> By application dated 10 January 2024.

<sup>2</sup> Decision dated 15 February 2024.

<sup>3</sup> On 20 February 2024.

<sup>4</sup> Internal review decision dated 19 March 2024.

<sup>5</sup> Application for external review dated 19 March 2024.

## Background

6. Significant procedural steps relating to the external review are set out in the appendix.

## Reviewable decision

7. The reviewable decision is Council's decision dated 19 March 2024.

## Evidence considered

8. 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 this review.
9. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.<sup>6</sup> I consider 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 IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**).<sup>7</sup> I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.<sup>8</sup>

## Information in issue and issue for determination

10. During the review, the applicant advised that she only sought access to a copy of the witness statement/complaint and photograph that led to Council issuing the infringement notice.<sup>9</sup> As such, the only information in issue is the two page complaint and the attached photograph (**the complaint information**).<sup>10</sup>
11. The issue for determination is whether disclosure of the complaint information would, on balance, be contrary to the public interest.

## Relevant law

12. Under the IP Act, a person has a right to be given access to government held documents containing their personal information.<sup>11</sup> This right is subject to certain limitations, including grounds on which access to a document may be refused. An agency may refuse access to a document in the same way and to the same extent access could be refused under section 47 of the RTI Act, were the document to be the subject of an access application under that Act.<sup>12</sup>

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<sup>6</sup> Section 21(2) of the HR Act.

<sup>7</sup> *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) (**XYZ**) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111]. The Information Commissioner's approach to the HR Act set out in this paragraph has been considered and endorsed by QCAT Judicial Member McGill in *Lawrence v Queensland Police Service* [2022] QCATA 134, noting that he saw 'no reason to differ' from our position [23].

<sup>8</sup> I also note the following observations made by Bell J in *XYZ* at [573], on the interaction between equivalent pieces of Victorian legislation (namely, the *Freedom of Information Act 1982* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic)): '... 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 FOI Act.'

<sup>9</sup> Email received 20 June 2024.

<sup>10</sup> Pages 3, 4 and 5 of the located documents.

<sup>11</sup> Section 40 of the IP Act.

<sup>12</sup> Section 67 of the IP Act.

13. Access to a document may be refused where its disclosure would, on balance, be contrary to the public interest.<sup>13</sup>
14. The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest<sup>14</sup> and explains the steps that a decision maker must take<sup>15</sup> 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 would, on balance, be contrary to the public interest.

### **Applicant submissions**

15. On external review, the applicant submits:<sup>16</sup>
  - the complaint information allegedly depicts her dog off leash and constitutes her personal information
  - the principles of natural justice and fairness require that she be provided with a copy of the evidence relied on by Council so that she can respond to the allegations and infringement notice
  - information released to her by Council refers to a red cattle dog, which raises questions about the accuracy of the information Council holds and whether the infringement notice was issued to her in error
  - transparency fosters public trust in regulatory bodies; and
  - providing a copy of the complaint information with any information identifying the complainant redacted balances the privacy concerns with her right to access information.

### **Findings**

16. No irrelevant factors arise in the circumstances of this case, nor have I taken any into account.

### **Factors favouring disclosure**

#### ***Accountability and transparency of Council***

17. The RTI Act recognises the public interest in disclosing information which could reasonably be expected to:
  - promote open discussion of public affairs and enhance the Government's accountability;<sup>17</sup> or

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<sup>13</sup> Section 47(3)(b) and 49 of the RTI Act. The term 'public interest' refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that, ordinarily, 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. However, there are some recognised public interest considerations that may apply for the benefit of an individual.

<sup>14</sup> Schedule 4 of the RTI Act lists factors that may be relevant when deciding whether disclosure of information would, on balance, be contrary to the public interest. This list is not exhaustive and therefore, other factors may also be relevant in a particular case.

<sup>15</sup> Section 49(3) of the RTI Act.

<sup>16</sup> External review application dated 19 March 2024, and submissions dated 12 and 20 June 2024.

<sup>17</sup> Schedule 4, part 2, item 1 of the RTI Act.

- reveal the reason or a government decision and any background or contextual information that informed the decision.<sup>18</sup>
18. The information released in response to the application demonstrates that two complaints were received by Council in March and May 2023, both of which related to the applicant's dog (a black labrador) being off leash in the street.
  19. Council is responsible for administering animal management local laws, including laws requiring dog owners to keep their pet under effective control. In discharging its functions under these local laws, Council issued the applicant with a compliance notice<sup>19</sup> on 2 June 2023 stating that Council had identified that her dog had either escaped its enclosure or been allowed to wander outside its enclosure, and this contravenes the relevant animal management local law. The notice required the applicant to ensure that the animal is kept under effective control at all times and noted that a failure to comply may result in the issuing of an infringement notice with a maximum penalty of 5 penalty units.
  20. Following this, Council received a further complaint relating to a wandering black labrador along with a supporting photograph (the information in issue in this review). As a result of this complaint, Council issued an infringement notice on 21 September 2023 with a covering letter, noting that the applicant had failed to comply with the compliance notice on 13 September 2023 and imposing a fine of \$774.
  21. Disclosure of the complaint information would enhance Council's accountability and transparency by revealing the information that was supplied to Council and relied upon by Council to issue the fine in September. I acknowledge that the infringement notice and covering letter do not disclose in any significant detail<sup>20</sup> how the applicant failed to comply with the original compliance notice on 13 September 2023, or how Council came to this conclusion. However, the substance of the complaint—that a black labrador was wandering outside the applicant's address—has now been disclosed to the applicant,<sup>21</sup> which I consider somewhat discharges the relevant public interest factors. I therefore afford these public interest factors only moderate weight.

***Advance fair treatment or contribute to procedural fairness***

22. The applicant submits that she should have access to all of the particulars as the complaint information resulted in Council issuing the infringement notice. I have therefore considered whether disclosing the complaint information could reasonably be expected to advance the applicant's fair treatment<sup>22</sup> or contribute to the administration of justice, including procedural fairness.<sup>23</sup>
23. During the external review, the applicant pointed to the released information which notes incorrectly that a red cattle dog resides at her address.<sup>24</sup> The applicant is concerned that the complaints received by Council relate to the red cattle dog and the infringement notice may have been issued to her incorrectly.<sup>25</sup> With the permission of Council,<sup>26</sup> we have confirmed to the applicant that the complaint refers to and the photograph depicts a black labrador, not a red cattle dog.

<sup>18</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>19</sup> Under section 28(1) of Council's *Local Law No. 4 (Animal Management) 2002*.

<sup>20</sup> By stating where or when the subject dog had been observed, for example.

<sup>21</sup> In response to the access application and additional details which were provided to the applicant during the external review.

<sup>22</sup> Schedule 4, part 2, item 10 of the RTI Act.

<sup>23</sup> Schedule 4, part 2, item 16 of the RTI Act.

<sup>24</sup> Emails from applicant received 12 June 2024 and 20 June 2024.

<sup>25</sup> Ibid.

<sup>26</sup> Obtained on 14 June 2024.

24. In addition to this, Council gave partial access to its internal documents recording the complaints received. Each of these documents note that the complaints received in March, May and September relate to an off-leash black labrador at the applicant's address. Given this, I am satisfied that the substance of the complaints has been conveyed to the applicant. I do not consider the notions of fair treatment and procedural fairness entitle the applicant to the actual complaint information. I therefore afford these factors low weight.

### **Personal information**

25. Insofar as the complaint information is about and identifies the applicant, it constitutes her personal information,<sup>27</sup> giving rise to a factor favouring disclosure.<sup>28</sup> However, there is a good deal of information that is *not* about the applicant, instead, it is about the complainant (or other/s) or information that is about the applicant's dog.<sup>29</sup> Although I acknowledge the public interest in individuals accessing their own personal information held by government agencies,<sup>30</sup> I consider that much of the information is not the personal information of the applicant. As such, I afford moderate weight to this factor.

### **Information that is incorrect**

26. The RTI Act recognises that disclosure of information that is incorrect, out of date, misleading gratuitous, unfairly subjective or irrelevant will be in the public interest.<sup>31</sup> I have considered whether this factor applies as the applicant raises concerns about Council having false information about the dogs that reside at her address, and queries whether this has resulted in Council issuing the fine to her in error.
27. For this factor to apply, the information I am considering the release of—that is, the complaint and the photograph—must be incorrect, out of date, misleading, gratuitous, unfairly subjective, or irrelevant. The information regarding the red cattle dog which the applicant says is incorrect has already been released by Council. While the applicant is concerned that the complaint may also contain incorrect information, there is nothing before me to indicate that this is the case. On an objective reading, the complaint and photograph are consistent (depicting a black labrador outside of its yard), and there is no reason for me to consider either to be false. As such, I am satisfied that this factor does not apply in the circumstances of this case.

## **Factors favouring nondisclosure**

### **Personal information and privacy**

28. The majority of the complaint information, as noted above, is not about the applicant. Instead, it describes the complainant's perspectives and experience, comprising information about and identifying the complainant (and other/s). As such, I have considered whether disclosing the complaint information could reasonably be expected to prejudice the protection of the complainant's privacy<sup>32</sup> or cause public interest

<sup>27</sup> Personal information is defined in section 12 of 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'.

<sup>28</sup> Schedule 4, part 2, item 7 of the RTI Act.

<sup>29</sup> *Tomkins and Rockhampton Regional Council* [2016] QICmr 2 (22 January 2016).

<sup>30</sup> Section 12 of the IP Act.

<sup>31</sup> Schedule 4, part 2, part 12 of the RTI Act.

<sup>32</sup> Schedule 4, part 3, item 3 of the RTI Act.

harm<sup>33</sup> through disclosing the complainant's (or other/s) personal information. The applicant submits she understands the importance of protecting the complainant's personal information and privacy, however, argues this can be achieved by redacting any information identifying the complainant.<sup>34</sup>

29. It is not a simple task to de-identify the complaint information as the applicant suggests. The complaint describes the way in which the complainant became aware of the applicant's dog roaming. Put simply, releasing this description will enable the applicant to identify the complainant. In addition, the complaint information describes the complainant's (and other/s) emotions and reactions, making the description inherently personal and deeply sensitive. For these reasons, the extent of the public interest harm that can be anticipated from such disclosure is significant. Similarly, and given the sensitive complaint context, disclosure would also represent a significant intrusion into the complainant's privacy. As such, I afford each of these factors substantial weight.

### ***Prejudice the flow of information to Council***

30. Where disclosing information could reasonably be expected to prejudice the flow of information to a regulatory agency, a public interest factor favouring nondisclosure arises.<sup>35</sup>
31. Generally speaking, wandering dogs may represent a significant health and safety risk to people as well as other animals. To protect public safety, local government relies on members of the public to provide information enabling it to administer and enforce its animal management laws. I am satisfied that routinely disclosing information identifying a complainant would discourage individuals from coming forward with relevant information to agencies undertaking a regulatory function, such as Council. This would reasonably be expected to prejudice Council's ability to obtain such information in future. Given the significant public interest in ensuring that Council can effectively exercise its regulatory function to ensure public safety, I consider that this factor carries substantial weight.

### **Balancing the relevant public interest factors**

32. I have identified five factors favouring disclosure of the complaint information. However, I afford these factors low or moderate weight because Council has released the substance of the complaint to the applicant, and the complaint information is largely not about the applicant.
33. On the other hand, I have identified three factors favouring nondisclosure of the complaint information, each of which carries substantial weight. In this case, I consider the factors relating to protecting the complainant's (and other/s) personal information and privacy and protecting the flow of information to Council in relation to its regulatory functions are of paramount importance and carry determinative weight.
34. Accordingly, I am satisfied that disclosing the complaint information would, on balance, be contrary to the public interest and access may be refused under section 67 of the IP Act.

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<sup>33</sup> Schedule 4, part 4, section 6 of the RTI Act.

<sup>34</sup> Submission dated 20 June 2024.

<sup>35</sup> Schedule 4, part 3, item 13 of the RTI Act.

## **DECISION**

35. For the reasons set out above, I affirm Council's decision to refuse access to the complaint information under sections 67 of the IP Act and 47(3)(b) and 49 of the RTI Act as its disclosure would, on balance, be contrary to the public interest.
36. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

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**Jane Williams**  
**Assistant Information Commissioner**

**Date: 26 September 2024**

**APPENDIX****Significant procedural steps**

<b>Date</b>	<b>Event</b>
19 March 2024	The application for external review was received by the Information Commissioner.
20 March 2024	The Information Commissioner requested preliminary documents from Council.
27 March 2024	The preliminary documents are received from Council.
5 April 2024	The Information Commissioner notifies Council and the applicant that the application for external review had been accepted and requested the information in issue.
19 April 2024	Council provided a submission and the information in issue.
7 June 2024	Council confirmed it did not object to the complaint background being provided to the applicant. The Information Commissioner conveyed a preliminary view to the applicant and asked the applicant to confirm that she only sought access to the September complaint and photograph only.
12 June 2024	The Information Commissioner received a brief submission from the applicant, and the applicant asked a question about the information in issue.
14 June 2024	Council agreed to the Information Commissioner providing an answer to the applicant's question regarding the information in issue, in an attempt to resolve the review. The Information Commissioner conveyed the informal resolution proposal to the applicant.
20 June 2024	The applicant advised the Information Commissioner that she does not agree to resolve the review and provided a submission regarding access to the complaint information.
25 June 2024	The Information Commissioner wrote to the applicant confirming the preliminary view and sought final submissions.
11 July 2024	The Information Commissioner wrote to the applicant to advise that the matter will proceed to a formal decision if she does not agree to resolve the review informally.
16 July 2024	Applicant confirmed that she continues to seek access to the complaint and photograph and requested a formal written decision.