



Decision and Reasons for Decision

Citation: *D26 and Brisbane City Council [2026] QICmr 68 (1 May 2026)*

Application Number: 318421

Applicant: D26

Respondent: Brisbane City Council

Decision Date: 1 May 2026

Catchwords: **ADMINISTRATIVE LAW - RIGHT TO INFORMATION - EXEMPT INFORMATION - LEGAL PROFESSIONAL PRIVILEGE - whether information would be privileged from production in a legal proceeding - whether access may be refused under section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(a) and 48 and schedule 3, section 7 of the *Right to Information Act 2009* (Qld)**

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - CONTRARY TO THE PUBLIC INTEREST INFORMATION - business, commercial, financial information - whether disclosure of information would, on balance, be contrary to the public interest - section 67(1) of the *Information Privacy Act 2009* (Qld) and sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW - RIGHT TO INFORMATION - DOCUMENTS OF AN AGENCY - DOCUMENTS TO WHICH ACT DOES NOT APPLY - information relating to external legal costs incurred in defending the applicant's complaint - whether requested documents are 'documents of an agency' - section 13 of the *Information Privacy Act 2009* (Qld) and section 12 of the *Right to Information Act 2009* (Qld) - whether documents subject to *Information Privacy Act 2009* (Qld)

DECISION

1. For the below reasons, I vary the decision¹ of Brisbane City Council (**Council**) and find:

¹ Under section 123(1)(b) of the *Information Privacy Act 2009* (Qld) (**IP Act**). On 1 July 2025 key parts of the *Information Privacy and Other Legislation Amendment Act 2023* (Qld) (**IPOLA Act**) came into force, effecting changes to the IP Act and *Right to Information Act 2009* (Qld) (**RTI Act**). As the applicant's application was made before this change, the IP Act and RTI Act as in force prior to 1 July 2025 remain applicable to it. This is in accordance with transitional provisions in chapter 8, part 3 of the IP Act and chapter 7, part 9 of the RTI Act, which require applications on foot before 1 July 2025 be dealt with as if the IPOLA Act had not been enacted. Accordingly, references to the IP Act and RTI Act in this decision are to those Acts, which may be accessed at <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-014>> and <<https://www.legislation.qld.gov.au/view/html/inforce/2024-12-31/act-2009-013>> respectively.

- access to the Category A Information² may be refused under section 67(1) of the IP Act and sections 47(3)(a) and 48 and schedule 3, section 7 of the RTI Act
- access to the Category B Information may be refused under 67(1) of the IP Act and section 47(3)(b) of the RTI Act; and
- access to the Category C Information may be refused on the ground the requested documents relating to external legal costs are not documents of Council and there is therefore no right of access to them under section 40(1)(a) of the IP Act.

2. This means no further information is to be released to the applicant.

3. My reasons for the decision follow.



A Rickard
Assistant Information Commissioner

Date: 1 May 2026

² The three categories of information are identified at paragraphs [11] and [12] of this decision.

REASONS FOR DECISION

Summary

4. The applicant applied³ to Council for access under the IP Act to documents between 14 February 2024 and 7 May 2024 concerning a complaint made to the Queensland Human Rights Commission (**QHRC**) which was subsequently referred to the Queensland Civil and Administrative Tribunal (**QCAT**).⁴
5. In its initial decision,⁵ Council decided to give the applicant full access to 1,503 pages, partial access to 83 pages, and to refuse access in full to 104 pages. Access to information was refused either because it comprised exempt information, in particular information subject to legal professional privilege (**LPP**), or because its disclosure would, on balance, be contrary to the public interest.
6. The applicant applied for internal review.⁶ Council did not make an internal review decision within the statutory timeframe, and accordingly is taken to have made a decision affirming Council's original decision.⁷
7. The applicant applied⁸ to the Office of the Information Commissioner (**OIC**) for external review of Council's decision.

Reviewable decision

8. The decision under review is Council's decision deemed to have been made on 3 January 2025.

Evidence considered

9. 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 account of the applicant's submissions to the extent they contain information relevant to the issues for determination in this review.⁹
10. I have also had regard to the *Human Rights Act 2019* (Qld) (**HR Act**), particularly the right to seek and receive information.¹⁰ 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.¹¹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

³ Application received by Council on 7 May 2024.

⁴ In an email to OIC on 31 March 2025, the applicant confirmed the application related to when her complaint was before QCAT, rather than when the complaint was initially made to QHRC.

⁵ Dated 10 October 2024.

⁶ On 3 December 2024. Council agreed to extend the timeframe for this application under section 96(c) of the IP Act.

⁷ Section 97(2) of the IP Act.

⁸ On 20 January 2025.

⁹ Contained in the external review application dated 20 January 2025 and in emails of 10 June 2025, 21 August 2025, 29 September 2025, 26 March 2026 and 27 March 2026.

¹⁰ Section 21(2) of the HR Act.

¹¹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573], wherein Bell J observed '*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 OIC's approach to the HR Act set out in this paragraph was considered by QCAT in *Lawrence v Queensland Police Service* [2022] QCATA 134 at [23] and Justice Member McGill saw '*no reason to differ*' from OIC's position.

Information in issue

11. During the external review, further information was disclosed to the applicant, including unbilled balance totals in relation to Council's internal legal costs as they appeared in a Matter Cost Summary Report (**Report**).¹² The information located by Council which remains in issue comprises:
 - **Category A Information** - 103 full pages¹³ and parts of 79 pages¹⁴ that Council refused access to on the ground it is subject to LPP; and
 - **Category B Information** - parts of the two-page Report,¹⁵ which comprise legal costing information for Brisbane City Legal Practice (**BCLP**).
12. During the review the applicant raised concerns about Council's refusal of access to the above information. The applicant also submitted Council had failed to locate any documents relating to the fees charged to Council by any external lawyers or a named barrister (**External Legal Costs**) when the applicant's complaint about Council was before QCAT (**Category C Information**).

Issues for determination

13. The issues for determination are:
 - a) whether access to the Category A Information may be refused because it is subject to LPP
 - b) whether access to the Category B Information may be refused because its disclosure would, on balance, be contrary to the public interest; and
 - c) whether access to the Category C Information may be refused on the basis that they are not documents of Council within the meaning of section 12 of the RTI Act,¹⁶ and there is therefore no right of access to them under section 40(1)(a) of the IP Act.

Concerns raised by the applicant

14. A majority of the applicant's submissions comprise concerns or complaints about Council generally or about the processing of her application by Council.¹⁷ As has been explained

¹² Part A, pages 1 and 2 of 620. Given the manner in which Council named the documents in Attachment B to its decision dated 10 October 2024, I have in this decision referred to the first 620 pages as Part A, pages 1 to 620; and the next 1068 pages as Part B, pages 1 to 1068. Council released this information to the applicant by email on 7 May 2025. On 10 September 2025, Council disclosed further information from the Report to the applicant.

¹³ Part A, pages 46-50, 53-59 and 64-69, and Part B, pages 449-518, 756, 773, 830-837, 847-848, 852, 853 and 938. While Council's decision referred to 104 pages, having carefully examined the Category A Information, I am satisfied 103 pages were refused in full.

¹⁴ At Part A, pages 1, 2, 42-44, 51, 52, 60 and 62, and Part B, pages 576, 577, 579, 580, 598-603, 605, 626, 627, 654, 697, 749, 754, 757-764, 766-771, 775-779, 787-790, 810-812, 828, 838-841, 843-846, 849, 851, 854, 936, 937, 939, 941, 942, 985, 987-991, 1047 and 1060-1065.

¹⁵ Part A, pages 1 and 2 of 620.

¹⁶ Noting section 13 of the IP Act refers to a 'document of an agency' meaning anything that is a document of an agency under the RTI Act.

¹⁷ These include complaints about the documents disclosed by Council not containing watermarks. While OIC does not have jurisdiction to address these issues, I am satisfied the applicant has been provided with explanations as to why this is the case in formal decisions which have finalised previous external review applications made by the applicant and in this matter in my letter to the applicant dated 2 December 2025. In relation to the applicant's comments that in a previous external review matter, OIC had asked Council to re-release the documents to the applicant with a watermark, I note that, while OIC does not have jurisdiction to require Council to place watermarks on information it discloses, OIC had asked Council if it would agree to do so, in an attempt to informally resolve that matter. Such informal resolution attempts were not pursued in this review, given the applicant's advice that she wished the review to be finalised by way of formal decision. The applicant also submitted that the signature of a particular individual had been redacted inconsistently in the documents disclosed by Council, however I informed the applicant in my letter dated 2 December 2025, that having considered the documents, the signature of the individual appeared to have been disclosed to the applicant in all instances where it appeared.

to the applicant during the review, most of these are either outside of OIC's jurisdiction under the IP Act or are irrelevant on external review.¹⁸

15. In relation to the applicant's concern that some of the redacted information does not contain a notation to identify the basis on which Council refused to disclose the information, OIC has explained to the applicant,¹⁹ that there is no requirement in the IP Act to notate redaction boxes with the ground of refusal, or to use any particular format if doing so.
16. The only requirement under section 68 of the IP Act is that the applicant is given a prescribed written notice which contains reasons for finding the refused information is exempt information or contrary to the public interest information, and identifies the refusal provision relied upon. How that is achieved is a matter for the agency. Agencies may, for example, identify the ground for refusal of information in a schedule attached to their reasons for decision.
17. Nevertheless, I acknowledge that OIC recommends agencies make notations on released documents so as to identify the ground for refusal of any redacted information.²⁰
18. I informed the applicant the majority of pages disclosed by Council where redactions do not contain notations are documents which both the applicant and Council provided to QCAT as part of the QCAT proceedings, that were *already* in redacted form. In other words, Council did not apply these redactions as part of processing the access application subject to this review; they were pre-existing redactions in the documents Council identified as responsive to the applicant's application.²¹
19. In relation to the information Council *did* redact as part of processing the access application subject to this review, I do not accept the applicant's contention that the redaction notations made by Council are inadequate to identify the ground for refusal. This is particularly the case when the notations are considered in conjunction with the explanation contained in Council's decision.
20. For example, the applicant raised information redacted with the notation '*Exempt Information – s48 RTI Act*'.²² The decision contains a section titled '*UNDERSTANDING DOCUMENT REDACTIONS*' which states '[w]here I have determined that the documents contain exempt information that will not be released to you, the redaction is marked "*Exempt information – S48 RTI Act*'. I am satisfied Council's initial decision explains that information refused on the basis it comprises exempt information is information subject to LPP.
21. In relation to the information the applicant submitted has been redacted by Council but does not contain a notation explaining the ground of refusal, this mainly comprises:²³
 - copies of emails Council forwarded to the applicant, in which the applicant stated that Council has redacted the logos of Council, Facebook, Twitter and YouTube; and

¹⁸ Both in this matter and during previous external reviews.

¹⁹ Letter to the applicant dated 2 December 2025 and previous external review applications made by the applicant which have proceeded to formal decision.

²⁰ OIC's Guideline *Providing access to documents* - <<https://www.oic.qld.gov.au/guidelines/for-government/access-and-amendment/accessing-documents/providing-access-to-documents>>.

²¹ For example, the information referred to by the applicant in her submission to OIC dated 27 March 2026 at pages 125 to 126 of '[name of a Council Officer] - part 03.pdf – pages 100-149 – 50 pages' and page 881 of '*Release Material – Legal – part 18.pdf – pages 850 to 899 – 50 pages*'.

²² Submission to OIC dated 27 March 2026.

²³ Submission to OIC dated 27 March 2026.

- a letter from one of the applicant's medical practitioners, in which the applicant submitted that Council had redacted the practitioner's signature without a notation.
22. Despite carefully considering the information Council disclosed to the applicant, I have not been able to identify where Council has redacted the information referred to by the applicant.
23. Finally, in this review and others currently on foot, the applicant has made a complaint about my conduct and requested that I not be involved further in her reviews. The complaint was ultimately considered and addressed by the Information Commissioner, who affirmed my ongoing involvement as her delegate. In the circumstances, I am satisfied there is no basis for finding that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial and unprejudiced mind to the resolution of this matter.²⁴

Category A Information

Relevant law

24. Under section 40 of the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information. However, this right is subject to a number of exclusions and limitations including grounds for refusal of access.²⁵
25. Schedule 3 of the RTI Act specifies the types of information Parliament has determined is exempt information because release would be contrary to the public interest.²⁶ Relevantly, information is exempt information if it would be privileged from production in a legal proceeding on the ground of LPP.²⁷ This exemption reflects the requirements for establishing LPP at common law.²⁸
26. Establishing whether LPP applies to information at common law requires that the information must comprise a communication:
- made in the course of a lawyer-client relationship
 - which was and remains confidential; and
 - which was made for the dominant purpose of seeking or providing legal advice or for use in existing or reasonably anticipated legal proceedings.²⁹
27. When each of these requirements is met, LPP is established.³⁰

²⁴ Paraphrasing the principles applying to the determination of apprehended bias-refer, for example, in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

²⁵ Section 67(1) of the IP Act provides an agency or Minister may refuse access in the same way and to the same extent as under section 47 of the RTI Act. Section 47(3) of the RTI Act contains various grounds for refusal of access.

²⁶ Section 47(3)(a) of the RTI Act allows refusal of access to exempt information.

²⁷ Schedule 3, section 7 of the RTI Act.

²⁸ The doctrine of LPP is both a rule of evidence and a common law right. The High Court in *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commissioner* (2002) 213 CLR 543 (*Daniels*) at 552 relevantly noted 'It is now settled that [LPP] is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings' (footnotes omitted). See also *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49 (*Esso*).

²⁹ *Esso* and *Daniels*.

³⁰ However, qualifications and exceptions to privilege (such as waiver and improper purpose) may, in particular circumstances, affect the question of whether information attracts or remains subject to it, and therefore is exempt under the RTI Act.

Finding

28. Based on the information initially available to me during the review, I conveyed a preliminary view to the applicant that access to the Category A Information may be refused as it comprises either:
- a. confidential communications between Council and its external lawyers made for the dominant purpose of seeking or providing legal advice in connection with the QCAT proceedings, or for use in those proceedings;³¹ or
 - b. information in the Report, that would reveal the nature of the advice or assistance BCLP provided to Council.³²
29. In relation to the information referred to at a., based on the information initially before OIC, I had understood Council had directly instructed the external law firm in relation to the applicant's complaint.³³ However, during the review, Council provided information that it was Council's insurer JLT which had instructed the external law firm, not Council. I address this further in relation to the Category C Information below.
30. Accordingly, I conveyed a preliminary view to the applicant which advised her of this position. I observed that, although Council is in possession of the communications, LPP belongs to JLT as the client of the external law firm, not Council. I also stated I was satisfied that:³⁴
- there was a lawyer-client relationship between JLT and the external law firm at the time the communications were made
 - the information was and remains confidential; and
 - the communications between the external law firm and Council were for the use or in relation to the proceedings in QCAT.
31. In addition, I advised there was nothing before me to suggest the qualification or exceptions to privilege apply.
32. The only submissions made by the applicant concerning the Category A Information is she does not agree that some subject lines in emails should be refused on the ground that they comprise exempt information.³⁵ The applicant submitted that, while she considers the body of an email can attract LPP, she does not accept that is the case with a subject line. I do not agree with the applicant in this respect. Where access to a subject line of an email has been refused on the ground of LPP, I am satisfied this has been done so on the basis disclosure of the information would reveal the nature of the advice or assistance provided to Council.
33. In relation to the information referred to at b. of paragraph 28 above, this comprises narrations of the work undertaken by individuals within BCLP for the time billed in the Report. Information of this nature has been found to be privileged, where its disclosure would reveal the nature of the legal services provided by the lawyer to the client.³⁶ In the circumstances of this matter, I am satisfied that disclosure of the information referred to at b. would reveal the nature of the legal services provided by BCLP to Council and access to the information can be refused on this basis.

³¹ Letter sent to the applicant on 29 April 2025, which was incorrectly dated 29 April 2024.

³² Letter to the applicant dated 2 December 2025.

³³ I also note this was OIC's understanding in previous external review applications made to OIC by the applicant.

³⁴ Letter to the applicant dated 2 December 2025.

³⁵ Applicant's submission to OIC dated 27 March 2026.

³⁶ *Hodgson v Amcor Ltd; Amcor Ltd v Barnes (No 2)* [2011] VSC 204 at [61].

34. For these reasons, I find that the Category A Information satisfies the requisite test and is therefore exempt information.³⁷ Access under the IP Act may be refused on that basis.

Category B Information

Relevant law

35. Another ground for refusal of access is where disclosure would, on balance, be contrary to the public interest.³⁸
36. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision-maker must:³⁹
- identify factors irrelevant to the public interest and disregard them
 - identify factors in favour of disclosure of information
 - identify factors in favour of nondisclosure of information; and
 - decide whether, on balance, disclosure of the information would be contrary to the public interest.
37. Schedule 4 of the RTI Act contains non-exhaustive lists of factors that may be relevant in determining where the balance of the public interest lies in a particular case. I have considered these lists,⁴⁰ together with all other relevant information, in reaching my decision. I have kept in mind the IP Act's pro-disclosure bias⁴¹ and Parliament's requirement that grounds for refusing access to information be interpreted narrowly.⁴²

Finding

38. The Category B Information comprises references to the charge-out rates of individual lawyers employed in BCLP, as well as associated legal costing information which would enable charge-out rates to be calculated.
39. Throughout her submissions the applicant referred to previous access applications that she has made to Council, where she has received Matter Cost Summary Reports⁴³ and her view that there are inconsistencies in how Council discloses information of this nature. As noted at paragraph 11, during the review Council agreed to disclose further information to the applicant from the Report, to ensure consistency with the applicant's previous matters and previous decisions of OIC that deal with information of this nature.⁴⁴
40. In relation to factors favouring nondisclosure of the Category B Information in *Price and Department of Justice and Attorney-General*,⁴⁵ the Information Commissioner found that disclosure of information about lawyers' billing structure and hourly charge-out rates might reasonably be expected to assist the lawyers' competitors to compete with them more effectively in the legal services market generally. The Information Commissioner was satisfied that disclosing such information could reasonably be expected to prejudice

³⁷ Section 67(1) of the IP Act and section 47(3)(a) and schedule 3, section 7 of the RTI Act.

³⁸ Section 47(3)(b) of the RTI Act.

³⁹ Section 49(3) of the RTI Act.

⁴⁰ I have considered each of the public interest factors outlined in schedule 4 of the RTI Act.

⁴¹ Section 64 of the IP Act.

⁴² Section 67(2) of the IP Act and section 47(2) of the RTI Act. In deciding whether disclosure of the Category B Information would, on balance, be contrary to the public interest, I have taken no irrelevant factors into account in making my decision.

⁴³ In addition, the applicant referred to a Matter Cost Summary Report which appears on Council's disclosure log.

⁴⁴ See for example *Murphy and Treasury Department* (1998) 4 QAR 446 at [20]; *Ellis and Department of Environment* (Unreported Queensland Information Commissioner, 20 October 1998) at [20]-[34], and *VSC and Public Trustee of Queensland* (Unreported, Queensland Information Commissioner, 30 June 2008) at [49]-[51].

⁴⁵ (Unreported, Queensland Information Commissioner, 12 March 2002) (*Price*).

the commercial and financial affairs of the relevant firm/entity⁴⁶ given the commercially competitive field in which law firms operate, and would, on balance, be contrary to the public interest to disclose. For government lawyers, who, as in Council's case operate on commercial terms and charge the agency for the legal services provided, the same principles apply to their fee structure. Accordingly, I afford moderate weight to these nondisclosure factors.⁴⁷

41. In relation to my reference to the *Price* decision in my preliminary view, the applicant submitted:⁴⁸

My privacy application to Council is not under the Freedom of Information (FOI), and the [Price decision] matter is from 2002. This is now 2025. My matter is with [Council] (a local government authority), and not Crown Law billing but Council's City Legal Unit lawyers.

42. The applicant is correct in stating that the decision of *Price* was decided under the IP and RTI Acts' predecessor, the *Freedom of Information Act 1992* (Qld), however section 45(1)(c) of that Act which is referred to in the *Price* decision relates to the disclosure of information concerning the '*business, professional, commercial or financial affairs of an agency or another person*'. One of the factors favouring nondisclosure of information under the RTI Act⁴⁹ is drafted in similar terms to the provision considered in *Price*. Given this, the findings in *Price* are relevant to the circumstances of this matter. In addition, BCLP operates in a commercially competitive environment with private sector legal firms in the same way as Crown Law, and accordingly the findings in *Price* are apposite in this sense as well.

43. In relation to the factors favouring disclosure of the Category B Information, the applicant submitted that Council should be accountable for expenditure of public funds.⁵⁰ However, given that Council has disclosed the unbilled balance *totals* to the applicant in this matter and the applicant has received information relating to the total internal legal costs to Council in relation to the applicant's complaint from another access application to Council that is also subject to external review,⁵¹ I consider that this factor only attracts low weight. The applicant submitted that if Council is able to '*get a better deal on legal work, then that would be better for ratepayers. I believe, reasonably, that competition is necessary as it potentially would save the ratepayers of Brisbane money*'.⁵² In this respect, I note and agree with the previous finding of the Information Commissioner in relation to this submission that was raised in another matter:⁵³

Council already engages external law firms to perform legal work for Council. As I understand it, these lawyers are appointed by Council to an approved legal panel following an open tender process in which the law firms nominate their fees and charges. Council is therefore already aware of the fees charged by external lawyers in undertaking legal work for Council and how they compare with BCLP's fees. I am not satisfied that disclosing the hourly rates for BCLP's staff under the IP Act could reasonably be expected to result in significant cost-saving for Council.

⁴⁶ Schedule 4, part 3, item 2 and schedule 4, part 4, section 7(1)(c) of the RTI Act.

⁴⁷ I initially conveyed this preliminary view to the applicant in a letter sent to the applicant on 29 April 2025, which was incorrectly dated 29 April 2024.

⁴⁸ Email to OIC of 10 June 2025.

⁴⁹ In particular schedule 4, part 3, item 2 of the RTI Act.

⁵⁰ Raising the factor favouring disclosure referred to in schedule 4, part 2, item 4 of the RTI Act.

⁵¹ External review number 318669.

⁵² Email to OIC of 10 June 2025.

⁵³ *P54 and Brisbane City Council* [2024] QICmr 54 (23 October 2024) at [17].

44. In addition, the applicant submitted that the Category B Information should be disclosed as it comprises her personal information, which raises a factor favouring disclosure.⁵⁴ Where information in the Report comprises the applicant's personal information it has been disclosed to her. I am satisfied that the Category B Information does not comprise the applicant's personal information and accordingly this factor favouring disclosure does not apply.
45. I am unable to identify any other factors favouring disclosure beyond the general public interest in accessing information held by government.⁵⁵ However, this factor is advanced to a substantial degree by the release of the unbilled balance totals and does not carry significant weight regarding the remaining Category B Information. I therefore also afford this factor only low weight in balancing the public interest.
46. In summary, I afford moderate weight to the factors favouring nondisclosure and low weight to the factors favouring disclosure. I am satisfied that the public interest in protecting the business and commercial affairs of Council's internal legal providers regarding the breakdown of the fees charged outweighs the public interest in the accountability of Council, which I consider is largely discharged by disclosure of the unbilled balance totals in the Report.
47. Upon balancing the various public interest factors weighing both for and against disclosure of the Category B Information, I am satisfied that the factors favouring nondisclosure outweigh those favouring disclosure, such that disclosure of the Category B Information would, on balance, be contrary to the public interest. Access may be refused on that basis.

Category C Information

Relevant law

48. As noted at paragraph 24, under the IP Act, a person has a right to be given access to documents of an agency to the extent they contain the individual's personal information.⁵⁶ Relevantly, section 13 of the IP Act states a document of an agency means '*anything that is a document of an agency under the [RTI Act]*'.
49. Section 12 of the RTI Act states 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
 - in the possession, or under the control, of an officer of the agency in the officer's official capacity.
50. 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.⁵⁷ However, it is limited to instances where the agency is legally entitled to produce the requested documents.⁵⁸

⁵⁴ Schedule 4, part 2, item 7 of the RTI Act. *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*'.

⁵⁵ Schedule 4, part 2, item 1 of the RTI Act.

⁵⁶ Section 40(1)(a) of the IP Act.

⁵⁷ *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].

⁵⁸ *Carmody v Information Commissioner & Ors (No 4)* [2018] QCATA 17 at [66] per Hoeben J.

51. 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.⁵⁹
52. 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 40(1)(a) of the IP Act.

Findings

53. During the review, OIC raised the applicant's concern that Council had not located Category C Information – that is, any documents relating to External Legal Costs with Council.⁶⁰ Council replied:⁶¹
- *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 or the Barrister referred to by the applicant] invoices from JLT.*
54. Information on the LGM Scheme's website states the scheme provides a pooled fund and a scheme to:⁶²
- [M]anage 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.*
55. The LGAQ website states it was established to 'represent the collective interests' of Queensland local governments.⁶³

⁵⁹ *Price and the Nominal Defendant* (1999) 5 QAR 80 at [18]. In that decision, the Information Commissioner went on 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'.

⁶⁰ Email to Council dated 21 July 2025.

⁶¹ Email to OIC dated 10 September 2025.

⁶² *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 28 April 2026).

⁶³ LGAQ website - <<https://www.lgaq.asn.au/About-Us/Our-Story>> (accessed on 28 April 2026).

56. After carefully considering the above, I conveyed a preliminary view to the applicant.⁶⁴

Having considered the information provided by Council, including the relevant aspects of the Scheme Rules, I am satisfied that Council is not in possession of documents relating to external legal fees, costs and associated information, and does not have any present legal entitlement to access those documents as required by the IP/RTI Act. On that basis, it is my preliminary view that the requested documents are not documents of Council for the purpose of the IP/RTI Act, and access to them cannot be requested nor given under the IP Act.

57. In support of her view that documents relating to External Legal Costs are documents of Council, the applicant provided a number of documents.⁶⁵

- from the QCAT proceedings that show the external law firm as the representatives for Council in the QCAT proceedings; and
- previous OIC decisions that refer to the external law firm being Council's lawyers.

58. The information provided by the applicant shows the external law firm represented Council in response to the applicant's complaint, however none of it demonstrates it was Council which instructed the external law firm, rather than JLT as submitted by Council.

59. While the applicant submitted the external legal firm '*regularly corresponded with Council (not JLT or any insurer)*', she also noted that, in relation to the one invoice from the external law firm that has been disclosed to her in a previous application, this was addressed to Council, care of JLT at JLT's address.⁶⁶ This in my opinion supports Council's submission that it was JLT which instructed the external law firm, rather than Council.

60. In relation to the applicant's comment that the external legal firm did not regularly correspond with JLT or any insurer, I note that this comment does not support a conclusion that such correspondence did not occur; rather, the applicant's viewpoint may be attributable to the fact that few communications between the external law firm and JLT have been captured by her access applications.

61. The applicant also raised previous OIC decisions made in response to the applicant's previous external review applications. At the time those decisions were made it was OIC's understanding that Council had instructed the external law firm. As noted at paragraph 29 above, it is only during this review⁶⁷ that Council provided information to OIC that it did not in fact directly instruct the external law firm, rather JLT as Council's insurer did.

62. The applicant questioned why she had received one of the external law firm's invoices in response to a previous access application to Council and noted '*[i]f the Scheme rules do not allow this, then why did Council have the invoices that were sent to me? Or does Council regularly receive information against the rules of the LGM*'.⁶⁸ In this respect, I can only refer to the submission provided by Council (as noted at paragraph 53) '*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*'.

⁶⁴ Letter to the applicant dated 2 December 2025.

⁶⁵ Email to OIC dated 26 March 2026.

⁶⁶ Submission to OIC dated 27 March 2026.

⁶⁷ And a number of other external review applications that OIC is currently progressing for this applicant.

⁶⁸ Submission to OIC dated 27 March 2026.

63. 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 documents relating to External Legal Costs are not under the control of Council, nor is Council legally entitled to produce them to the applicant.
64. In these circumstances, I consider 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 to the Category C Information cannot be requested, nor given, under the IP Act.

Conclusion

65. The above are the reasons for my decision set out at paragraph 1.
66. I have made this decision under section 123 of the IP Act as a delegate of the Information Commissioner, under section 139 of the IP Act.