



Decision and Reasons for Decision

Citation:	<i>Russell and Brisbane City Council</i> [2020] QICmr 56 (30 September 2020)
Application Number:	314857
Applicant:	Russell
Respondent:	Brisbane City Council
Decision Date:	30 September 2020
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - DOCUMENTS NONEXISTENT OR UNLOCATABLE - applicant contends further documents exist - whether agency has taken all reasonable steps to locate documents - whether access may be reused on the basis that the documents do not exist or are unlocatable - sections 47(3)(e) and 52(1) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - LEGAL PROFESSIONAL PRIVILEGE - City Legal file - whether access may be refused sections 47(3)(a) of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - access refused to personal information of third parties - personal information and privacy - whether disclosure would, on balance, be contrary to public interest - whether access may be refused under section 47(3)(b) of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied¹ to Brisbane City Council (**Council**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for 21 items of information broadly relating to a basketball court at a suburban park, the applicant's complaint against a Councillor, and related Council and Ombudsman investigations.

¹ Application dated 27 May 2019.

2. Council purported to make its decision in relation to the application in stages, with the first stage covering 517 pages,² and the second stage covering a further 263 pages.³ Prior to release of any third stage, the applicant applied⁴ to the Office of the Information Commissioner (**OIC**) for external review.
3. During the review, the applicant agreed to limit the information he was seeking (**Narrowed Scope**). Council then located 466 additional pages (**Additional Documents**). These Additional Documents were released to the applicant, subject to the redaction of some information that Council claimed to be exempt, or contrary to the public interest to disclose.
4. Having considered the relevant law, the Additional Documents, and the parties' submissions, for the reasons set out below, I vary Council's decision and find:
 - Council has taken all reasonable steps to locate information responding to the Narrowed Scope, and access to any further information may be refused under section 47(3)(e) of the RTI Act on the basis that is nonexistent or unlocatable under section 52(1) of the RTI Act
 - access to part of one page and 90 full pages of the Additional Documents may be refused under section 47(3)(a) of the RTI Act, as they are exempt under schedule 3, section 7 of the RTI Act; and
 - disclosure of the remaining redacted information in the Additional Documents would, on balance, be contrary to the public interest and therefore, access to this information may be refused under section 47(3)(b) of the RTI Act.

Background

5. Significant procedural steps taken by OIC on external review are set out in the Appendix.
6. By way of background, in 2018, Council installed a basketball court (multisport games arena) and outdoor gym at a suburban park (**Basketball Court**). The applicant held concerns about the Basketball Court and raised these concerns with his local Councillor. Subsequently, the applicant complained to Council and to the Queensland Ombudsman about matters concerning the Basketball Court and the local Councillor.
7. The applicant provided extensive written submissions on external review.⁵ Certain concerns the applicant has raised are not matters which the Information Commissioner has jurisdiction to consider in conducting an external review under the RTI Act.⁶ In reaching this decision, I have only considered the applicant's submissions to the extent they are relevant to the issues for determination on external review.
8. I have also had regard to the *Human Rights Act 2019* (Qld),⁷ particularly the applicant's right to seek and receive information.⁸ 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 RTI Act.⁹ I have acted in this way in making this decision, in accordance with section 58(1) of the HR Act.

² Decision letter dated 4 July 2019.

³ Purported decision letter dated 18 July 2019.

⁴ External review application received 25 September 2019.

⁵ Submissions to OIC dated 17 February 2020, 20 February 2020, 13 July 2020, 19 July 2020, 23 August 2020, 26 August 2020 and 4 September 2020.

⁶ As explained in correspondence with the applicant, most recently on 26 August 2020.

⁷ Referred to in these reasons as the **HR Act**, and which came into force on 1 January 2020.

⁸ Section 21 of the HR Act.

⁹ *XYZ v Victoria Police (General)* [2010] VCAT 255 (16 March 2010) at [573]; *Horrocks v Department of Justice (General)* [2012] VCAT 241 (2 March 2012) at [111].

Reviewable decision

9. Council sought – initially with the applicant's approval¹⁰ – to process the access application in stages. The first decision was issued on 4 July 2019,¹¹ the second purported decision was made on 18 July 2019¹² and Council indicated to the applicant¹³ that a third batch of documents would be released towards the end of August 2019. Council did not meet this timeframe, and the applicant sought external review.
10. The applicant has raised concerns about Council's method of processing. It appears that the staged approach was proposed by Council¹⁴ when it became apparent that the wording of the application captured a very large number of documents.¹⁵ The legislation does not contemplate this type of staged approach. Under the RTI Act, the agency must make a considered decision, and give the applicant written notice of this decision.¹⁶ If this does not occur by the end of the processing period, then on the last day of the processing period the principal officer of the agency is taken to have made a deemed decision refusing access.¹⁷ The agency may extend the processing period by seeking a further *specified* period to consider an application, and then may continue with processing, provided the applicant has not refused the request or applied for external review.¹⁸
11. Having considered the relevant correspondence between Council and the applicant, I am satisfied that Council initially sought a further specified period to consider the application,¹⁹ and then issued the first decision within this period. To the extent that Council requested further time to consider the remainder of the application, this was open-ended, rather than a specified period.²⁰ Accordingly, the decision under review is Council's first decision dated 4 July 2019, and Council's deemed refusal in relation to the remaining documents.²¹

Evidence considered

12. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (particularly footnotes and Appendix).

Information requested

13. The applicant sought 21 categories of information, as described in a two-page table attached to his access application. Generally-speaking, the categories are about the Basketball Court, the former local Councillor, the park's equipment and facilities, and other matters including the installation of basketball (and half basketball courts) in any Council park. Council made submissions on external review concerning the work

¹⁰ Emails dated 1 and 2 July 2019.

¹¹ Concerning 519 pages.

¹² Concerning a further 263 pages.

¹³ By email dated 19 July 2019.

¹⁴ By email to the applicant on 1 July 2019.

¹⁵ I note that where agencies consider that an application is too large to process, there are other options available. These include seeking a further specified period to consider an application, seeking to narrow the scope with the applicant, or, in appropriate cases to rely on section 41 of the RTI Act to refuse to deal with the application.

¹⁶ Section 45 and 54 of the RTI Act.

¹⁷ Section 46 of the RTI Act.

¹⁸ Under section 35 of the RTI Act. The agency did this on 1 July 2019.

¹⁹ Council's email to the applicant dated 1 July 2019 seeks until the end of the week, being 5 July 2019.

²⁰ Council's email to the applicant dated 1 July 2019 notes *'We would definitely be aiming at having a significant portion of your application finalised by the end of July, where possible, although some of the items will undoubtedly need a further extended timeframe due to their broad nature.'*

²¹ I have considered Council's subsequent purported decision and correspondence with the applicant, and to the extent that these documents are relevant, I have treated them as submissions in this external review.

involved in dealing with the application, and subsequently, I conveyed my view to the applicant that Council was entitled to refuse to further deal with the application.²²

14. Subsequently, the applicant agreed to the Narrowed Scope:²³

- **Item 1:** all records examined by the CEO or his advisors associated with the complaint the applicant made against a Councillor's behaviour.
- **Item 2:** the complete file and records associated with the applicant's complaint to the CEO regarding a Councillor's conduct.
- **Item 4:** all records associated with the Administrative Action Complaint made by the applicant or his wife.

15. I confirmed to Council and the applicant that the external review would be progressed on the basis of the Narrowed Scope only and that items 3, and 5-21 of the access application would not be considered further on external review.²⁴

Issue for determination

16. The primary issue for determination in this review is whether Council had taken reasonable steps to locate documents falling within the Narrowed Scope.²⁵ After the Additional Documents were located, the applicant also raised concerns with the redactions in the Additional Documents.

17. Accordingly, the two issues for determination in this review are:

- whether access to any further information may be refused under section 47(3)(e) of the RTI Act on the basis that is nonexistent;²⁶ and
- whether access to the redacted information in the Additional Documents may be refused under section 47(3)(a) and (b) of the RTI Act.

18. During the review, the applicant also raised concerns about the conduct of Council's decision-maker in processing his access application, and more generally about Council's actions in relation to the Basketball Court. Council's processes (both in dealing with the access application and in dealing with the complaint) are not within my external review jurisdiction. Rather, my role, in conducting merits review is to *step into the shoes* of the primary decision-maker (in this case, in relation to the Narrowed Scope) to determine what is the correct and preferable decision concerning access to documents.²⁷

19. The applicant has also raised concerns²⁸ about the procedure followed on external review. I am satisfied that this process has been conducted in accordance with the requirements of the RTI Act. Noting that the Information Commissioner²⁹ has the broad discretion as to the procedure to be followed on a review, I consider the applicant has been afforded an opportunity to advance submissions in support of his case, with adequate time to respond, and that the agency's position and OIC's view on the issues was conveyed clearly, with reference to relevant legal provisions.

²² On the basis it would substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions. This view was conveyed to the applicant on 17 February 2020.

²³ This was confirmed by email from our Office to the Applicant on 20 March 2020. In this email, we also confirmed the relevant date range to be 1 March 2019 to 27 May 2019.

²⁴ Email to Council and applicant dated 20 March 2020.

²⁵ This was confirmed by email from our Office to the Applicant on 20 March 2020.

²⁶ Under section 52(1)(a) of the RTI Act.

²⁷ Section 105(1)(b) of the RTI Act.

²⁸ Raised by email on 23 August 2020, 26 August 2020 and 4 September 2020.

²⁹ And delegates under section 145 of the RTI Act.

Sufficiency of Council's searches

Relevant law

20. Access to a document may be refused if it is nonexistent or unlocatable.³⁰ A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.³¹
21. The RTI Act is silent on how an agency may satisfy itself about the existence of a document. However, the Information Commissioner has previously recognised that it will be necessary for the agency to rely upon a number of key factors, including its particular knowledge and experience regarding:³²
- the administrative arrangements of government
 - the agency's structure
 - the agency's functions and responsibilities (with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it); and
 - the agency's administrative practices and procedures (including, but not limited to, its information management approaches).
22. An agency may rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents, and searches should not be indiscriminate.³³ In searching, the agency may rely on the factors listed above, together with key factors within the access application, other factors reasonably inferred from information supplied by the applicant, the nature and age of the requested documents and the nature of the government activity to which the request relates.³⁴

Analysis

23. Council has provided search records and certifications to confirm that during the external review, it conducted 31 hours of searches (and related actions, such as review of the documents located) for the documents falling within the Narrowed Scope. In terms of how these searches were conducted,³⁵ Council has explained that it cross-checked two relevant email folders,³⁶ and conducted fresh searches of the following locations:
- correspondence with CMX³⁷ reference numbers identified as relevant by the Council and Committee Liaison Office³⁸
 - the City Legal file;³⁹ and
 - a named Councillor's file.⁴⁰

³⁰ Sections 47(3)(e) and 52(1) of the RTI Act.

³¹ Section 52(1)(a) of the RTI Act. 'Being satisfied' is an evaluative judgment based on the knowledge and experience of the agency. Such judgement requires that the decision be based on reasonable grounds: *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [43], citing Finn J in *Chu v Telstra Corp Ltd* [2005] FCA 1730 (Unreported, Finn J, 1 December 2005) at [10] to [11]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

³² *PDE* at [37]-[38].

³³ As set out in *PDE* at [38] and [49].

³⁴ *PDE* at [38] and *Pryor and Logan City Council* (Unreported, Queensland Information Commissioner, 8 July 2010) at [21]. See also, *F60XCX and Office of the Queensland Parliamentary Counsel* [2016] QICmr 42 (13 October 2016) at [84] and [87], and *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) at [33]-[34] and [49].

³⁵ Council provided OIC with a record of searches and documents located during external review on 19 June 2020.

³⁶ The Council and Committee Liaison Office provided Council's RTI unit with the complete contents of two email account folders identified as relevant. These folders were cross checked against the information released to the applicant, and one additional page was located.

³⁷ CMX is Council's correspondence management system.

³⁸ 14 separate reference numbers were identified as relevant. These are footnoted at the bottom of the information released to the applicant – for example 'CMX CO015056-2018'.

³⁹ Reference number 158/40/446/9060.

⁴⁰ Reference number 137/225/137/283.

24. Appropriately targeted keyword searches were also conducted of both CMX⁴¹ and Council's content manager system.⁴²
25. As a result of the above searches the Additional Documents (466 additional pages)⁴³ were located and released to the applicant (with some exceptions, as discussed below under the heading 'Redactions').⁴⁴ The applicant has raised concerns that there is – or may be – documents still missing. At the heart of these concerns is the allegation that Council has made claims in response to his complaint that are not justified by the information released to him. An example of the applicant's submissions in this regard is as follows:⁴⁵

They are supposed to have thoroughly investigated my Administrative Action Complaint and complaint into (a named Councillor's) behaviours. Through the teleconference you facilitated, the scope of my RTI was reduced to these matters. If the Council made claims as a result of those investigations they must have the information readily at hand. I suspect the reason the Council have spent time on this is that they are dredging up information to suit their story and they cannot find it – and that exercise is what is taking the time. If the investigations had been conducted appropriately it would be a simple matter to produce the information associated with those investigations. Surely for each claim (often repeated many times after being challenged) there would be some corresponding factual information to validate the claim.

26. In further submissions the applicant noted:⁴⁶

I have reviewed the information supplied by Council in response to my RTI. I understand there is substantial information missing from Council's response. It is true to say, I cannot determine if the Council has not supplied information that "should" be available under my RTI, or the Council simply made claims for which there is no evidence. It could be that there are many aspects of my Administrative Action Complaint and complaint into (a named Councillor) behaviours that were actually never investigated i.e. the Council just took enormous amounts of time and did not conduct thorough investigations.

27. These submissions, in essence, take issue with Council's investigation process. In this review, I am required to determine if there are reasonable grounds to expect that the documents do not exist or cannot be located.⁴⁷ Although I have considered these submissions, having regard to the extensive searches conducted by Council, I am not able to identify any additional searches that could reasonably be requested of Council.
28. The applicant has made specific submissions about Council's consultation process in relation to the Basketball Court. He contends that Council's CEO has made certain

⁴¹ Three Lord Mayoral CMX items (38 pages) were located using this search. These pages are footnoted with the reference number CMX LM03403-2018, CMX LM04238-2018 and CMX LM02797-2019.

⁴² 22 pages were located via these searches (and released to the applicant, with the exception of part of one page). These pages are footnoted 'CCL0 - RTI - 2018/19-440 - External review - Other documents located in Content Manager'.

⁴³ 469 pages were located but Council advised that three of these pages were previously released to the applicant.

⁴⁴ On 7 August 2020, a complete copy of a letter from Council to the Queensland Ombudsman dated 23 April 2019 was released to the applicant (this letter was previously released without its attachments, and the applicant raised concerns about this in his submissions to OIC dated 19 July 2020).

⁴⁵ Submissions dated 13 July 2020.

⁴⁶ Submissions dated 19 July 2020.

⁴⁷ The applicant's assertion or belief that further documents 'should' have been created is insufficient to support a reasonable expectation that such documents were, in fact, created: *McCrystal and Queensland Building and Construction Commission* (No. 2) [2017] QICmr 50 (6 October 2017) at [51].

claims about the consultation process for the Basketball Court,⁴⁸ and that these claims are not evidenced by the Additional Documents (or the information previously released to him by Council). In response to my preliminary view that all reasonable steps have been taken to locate documents, the applicant noted:⁴⁹

... My point was not that the newsletters did not exist, moreover the newsletters contain not a single mention of a basketball court and that they are documents (from the second half of 2017 calendar year) and do nothing to indicate either consultation was undertaken or the basketball court was part of the 2016 Election Commitments of the [relevant political party]. Note: the sending out of a newsletter does not meet the test of consultation (which must be timely, targeted, with stakeholders and so on). Certainly, these documents do not highlight the information the Council has that many people have complained about the noise basketball courts make as I have extensively detailed with extracts the Council's very own minutes.

From my reading of your preliminary response you have concluded in your EXPERT opinion the CEO has made claims about the 2016 Election Campaign Commitments, widespread community consultation and so on that are not justifiable. I note your reference that Council does not have to produce documents under the RTI if they do not exist. With your preliminary view being the Council has completed searches you are asserting an EXPERT opinion that there are no documents that that the CEO used to "make up" these claims. I take it you are now certain there is no supporting documentation of any kind.

29. In relation to this, I note that the relevant political party may hold a copy of documents of interest to the applicant within its election campaign documents, but this is not part of Council's records, and Council's searches could not be expected to retrieve these documents. More broadly, while the applicant has framed his submissions about this issue (and about 'missing' documents more generally)⁵⁰ as concerns about Council's searches, in reality, the applicant's submissions amount to a request to conduct a detailed audit of Council's complaints investigation process, and reasoning/outcome of these processes. It is not within my jurisdiction to determine whether Council has 'made up' claims. While I understand that the applicant believes further documents *should* have been created/considered, this is not a matter to be considered on external review.
30. Based on the material before me, I consider that Council has undertaken appropriately targeted searches of all relevant locations for documents falling within the Narrowed Scope. I am unable to identify any further searches that could reasonably be requested of Council. In these circumstances, I am satisfied that:
 - Council has taken all reasonable steps to locate documents responsive to the Narrowed Scope
 - there are reasonable grounds to be satisfied that further documents do not exist; and
 - any further information may be refused under section 47(3)(e) of the RTI Act on the basis that it is nonexistent, under section 52(1)(a) of the RTI Act.

Redactions

31. The Additional Documents were released to the applicant during the review, except for:
 - part of one page and 90 full pages (from the 'City Legal file')
 - working drafts of three letters (and one sentence appearing in another letter); and
 - personal information of third parties.

⁴⁸ That is, consultation for the project was undertaken as part of the material produced by the 2016 election campaign and that the project and its location was circulated widely via media release, social media and written brochure.

⁴⁹ Submissions dated 23 August 2020.

⁵⁰ In submissions dated 23 August 2020, the applicant notes this is 'but one example of many claims that have been made by Council that are not justified by any information contained in the RTI release'.

32. The applicant has raised concerns about these refusals and has noted:⁵¹

The trade-off for not addressing the entirety of the RTI I submitted was that ALL information would be released associated with Items 1, 2 and 4.

33. I acknowledge the applicant's frustration but note that Council agreed to *process* the Narrowed Scope, not to provide the applicant with information that could otherwise be refused. While the RTI Act operates with a 'pro-disclosure bias', it also sets out a number of grounds of refusal.⁵² Relevantly here, access may be refused where information is exempt on the basis of legal professional privilege, or where disclosure would, on balance, be contrary to the public interest.⁵³ I do not have the power to direct Council to give access to information that is exempt or contrary to the public interest to disclose.⁵⁴

City Legal file

34. Under the RTI Act, access may be refused to information that would be privileged from production in a legal proceeding on the ground of legal professional privilege.⁵⁵
35. Legal professional privilege attaches to confidential communications between a lawyer and client made for the dominant purpose of giving or obtaining legal advice.⁵⁶ It is well established that this privilege extends to:
- professional communications between an agency and salaried legal advisers⁵⁷
 - draft working documents prepared by lawyers⁵⁸
 - copies of unprivileged documents attached to requests for, and provision of, legal advice;⁵⁹ and
 - internal communications between agency officers repeating legal advice, whether verbatim or in substance.⁶⁰
36. I am satisfied that the City Legal file information redacted from the Additional Documents⁶¹ is comprised of confidential communications made for the dominant purpose of Council seeking/receiving legal advice from its in-house lawyers. Accordingly, I find that access to this information may be refused under section 47(3)(a) of the RTI Act as it is exempt under schedule 3, section 7 of the RTI Act.⁶²

⁵¹ Submissions dated 19 July 2020.

⁵² Section 44(1) of the RTI Act.

⁵³ Section 47(3)(a) and (b) of the RTI Act.

⁵⁴ Section 105(2) of the RTI Act.

⁵⁵ Section 47(3)(a), section 48 and schedule 3, section 7 of the RTI Act.

⁵⁶ *Esso Australia Resources Ltd v Commission of Taxation* (1999) 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552.

⁵⁷ *Waterford v Commonwealth of Australia* (1987) 163 CLR 54 at 63-64.

⁵⁸ Including documents that record the legal work carried out by the lawyer for the benefit of the client, such as research memoranda, collations and summaries of documents, chronologies and the like, whether or not they are actually provided to the client: *AWB Ltd v Cole* (No 5) (2006) 155 FCR 30 at 46.

⁵⁹ *Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at 509.

⁶⁰ *Brambles Holdings v Trade Practices Commission* (No. 3) (1981) 58 FLR 452 at 458-459, citing *Komacha v Orange City Council* (Supreme Court of New South Wales, Rath J, 30 August 1979, unreported).

⁶¹ Part of page 10 of the document marked 'Other documents located in Content Manager', and 90 full pages marked 'Legal file 158/40/446/9060', pages 1-90.

⁶² During the review, the applicant raised concerns that a report by a particular Council officer was within the information refused on this basis. On 7 August 2020 our Office specifically addressed this concern and advised that the information did not contain a report by this officer.

Contrary to the public interest information

37. Under the RTI Act, access to documents may be refused to the extent they comprise information the disclosure of which would, on balance, be contrary to the public interest.⁶³ 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.⁶⁴
38. In assessing whether disclosure of information would, on balance, be contrary to the public interest, a decision maker must:⁶⁵
- identify factors irrelevant to the public interest and disregard them⁶⁶
 - 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.

Working drafts

39. In terms of the working drafts redacted by Council,⁶⁷ I acknowledge that to a certain extent, disclosure of would enable the applicant to see the full picture of how Council handled his concerns and complaints.⁶⁸ However, in each case, he has been provided with the final version of the letter.⁶⁹ I also consider that Council officers must be permitted to openly discuss complaints, canvass all possibilities and make subjective evaluations on the information without concern that such preliminary comments, assessments and recommendations will be disclosed.⁷⁰ While the harm associated with this is somewhat reduced by the conclusion of the deliberative process, I do not consider it is negated entirely.
40. Having considered the factors for and against disclosure, I consider the very minimal additional insight and transparency that would be achieved by disclosure of the working drafts is outweighed by the harm of disclosing Council's deliberative process. I find that disclosure would, on balance, be contrary to the public interest, and access may therefore be refused to this information

⁶³ Section 47(3)(b) of the RTI Act. Section 47(2)(b) of the RTI Act requires the grounds to be interpreted narrowly.

⁶⁴ However, there are some recognised public interest considerations that may apply for the benefit of an individual. See Chris Wheeler, 'The Public Interest: We Know It's Important, But Do We Know What It Means' (2006) 48 AIAL Forum 12, 14.

⁶⁵ Section 49(3) of the RTI Act.

⁶⁶ No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

⁶⁷ Working drafts of three letters marked 'CMX CO18950-2018 documents' pages 38–46, and 'CMX CO22576-2018 documents' pages 16-17, and one sentence on page 12 of the documents marked 'CMX CO22576-2018 documents'.

⁶⁸ Giving rise to factors favouring disclosure under schedule 4, part 2, items 1, 2, 3 and 11 of the RTI Act. To the extent that the letter re-states the applicant's concerns and opinions, it is also his personal information, giving rise to a factor favouring disclosure under schedule 4, part 2, item 7 of the RTI Act.

⁶⁹ Dated 10 October 2018 and 3 December 2018.

⁷⁰ Giving rise to a factor favouring nondisclosure under schedule 4, part 4, section 4 of the RTI Act.

Personal information

41. Council has redacted personal contact information,⁷¹ a property address,⁷² incidental references to third party individuals',⁷³ third party individuals' faces⁷⁴ and Council staff payroll numbers⁷⁵ in the Additional Documents. Apart from the general public interest in promoting public access to government-held information, given the limited nature of this information,⁷⁶ I am not able to identify any public interest factors favouring disclosure.
42. In contrast, release of this information would disclose personal information, and could reasonably be expected to intrude in the relevant third party/Council officers' '*personal sphere*'.⁷⁷ I find that disclosure of the personal information would, on balance, be contrary to the public interest, and access may therefore be refused.

DECISION

43. I vary the deemed decision and find that access to:
- access to any further information may be refused under section 47(3)(e) of the RTI Act on the basis that is nonexistent under section 52(1)(a) of the RTI Act
 - access to part of one page and 90 full pages of the Additional Documents may be refused under section 47(3)(a) of the RTI Act, as it is exempt under schedule 3, section 7 of the RTI Act; and
 - the remaining redacted information in the Additional Documents may be refused because disclosure would, on balance, be contrary to the public interest under section 47(3)(b) of the RTI Act.
44. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

S Martin
Assistant Information Commissioner

30 September 2020

APPENDIX

Significant procedural steps

⁷¹ On page 2 and 3 of the document marked '*Located missing page from 22 Mar 2019 email thread*' and page 6 of the document marked '*File 137/225/137/283 contents combined*'.

⁷² On page 1 of the document marked '*CMX CO015056-2018 documents*' and page 1 of '*CMX CO24636-2018 documents*', noting that Council has indicated that this is not the applicant's address.

⁷³ On page 6 of the document marked '*CMX CO24636-2018 documents*' and page 3 of the document marked '*CMX CO25028-2018 documents*'.

⁷⁴ On page 6 of the document marked '*CMX CO26334-2018 documents*'.

⁷⁵ On the pages marked '*CMX CO015056-2018 documents*' page 2; '*CMX CO18950-2018 documents*' pages 3-4; '*CMX CO22576-2018 documents*' pages 2 and 14; '*CMX CO24442-2018 documents*' page 2; '*CMX CO24636-2018 documents*' page 2; '*CMX CO25028-2018 documents*' page 2; '*CMX CO26219-2018 documents*' page 2; '*CMX CO26268-2018 documents*', page 2; '*CMX CO26334-2018 documents*' page 2; '*CMX CO26537-2018 documents*' page 2; '*CMX CO26539-2018 documents*' page 2; '*CMX CO26545-2018 documents*' page 2; '*CMX CO27442-2018 documents*' page 2; '*CMX CO04840-2019 documents*' pages 2-3; '*CMX LM03403-2018 documents*' pages 2-3; '*CMX LM04238-2018 documents*' pages 2-3; and '*CMX LM02797-2019 documents*' page 2.

⁷⁶ The pro-disclosure bias is set out in section 44(1) of the RTI Act.

⁷⁷ Giving rise to a factors favouring nondisclosure under schedule 4, part 3, item 3 and part 4, section 6 of the RTI Act.

Date	Event
25 September 2019	OIC received the application for external review.
30 September 2019	OIC sought and received preliminary information from Council.
17 October 2019	OIC advised the applicant and Council that the external review application had been accepted and asked Council to provide further information.
5 November 2019	OIC received information in issue from Council.
22 and 24 November 2019	The applicant raised concerns about the information access process, and the number of documents located by Council, both by telephone and in an email to OIC.
26 November 2019	The applicant emailed OIC with an update concerning the Basketball Court.
26 November 2019	Council made submissions by telephone about the scope of the application and the large number of documents.
4 December 2019	OIC sought submissions from Council concerning whether processing the application would, if carried out, substantially and unreasonably divert its resources from their use by Council in the performance of its functions.
13 January 2020	OIC received Council's submissions.
20 January 2020	OIC sought further submissions from Council.
6 February 2020	OIC received further submissions from Council.
17 February 2020	OIC conveyed a preliminary view to the applicant that processing the application would, if carried out, substantially and unreasonably divert its resources from their use by Council in the performance of its functions. OIC requested a submission in response. The applicant emailed OIC a response, and requested a meeting.
20 February 2020	The applicant emailed OIC a copy of correspondence to the Member for Maiwar, raising concerns about Council and about the external review.
20 March 2020	OIC conducted a telephone conference with the applicant and Council. OIC emailed the parties and confirmed the Narrowed Scope. OIC requested that Council provide evidence of the searches Council had conducted in relation to the Narrowed Scope, conduct further searches for these documents, and provide a copy of any additional located documents, along with Council's position on disclosure.
20 April 2020 19 May 2020 22 May 2020	OIC contacted Council concerning the searches and information requested, and Council requested extensions to provide the information.

Date	Event
22 May 2020	The Right to Information Commissioner issued a notice to Council under section 103 of the RTI Act, requiring evidence of searches, copies of further documents located and Council's position on disclosure by 5pm on 12 June 2020.
26 May 2020 1 June 2020 3 June 2020	OIC provided an update to the applicant by email, and the applicant raised concerns about Council in response. OIC addressed certain concerns by return email.
11 June 2020	OIC received email submissions from Council with its record of searches and its search certifications. Council separately provided a copy of the Additional Documents.
16 June 2020	OIC emailed Council and requested that it release a copy of the Additional Documents (redacted in accordance with Council's view on disclosure) and its search records to the applicant by 23 June 2020.
19 June 2020	Council released its search records to the applicant and provided access to the Additional Documents (redacted in accordance with its view on disclosure) via Sharefile.
20-23 June 2020	The applicant contacted Council to advise that he could not download the files. OIC contacted Council to confirm it had arranged an alternative method of release.
23 June 2020	OIC conveyed a preliminary view to the applicant that Council had taken reasonable steps to search for items within the Narrowed Scope, and requested submissions.
13 July 2020	OIC received submissions from the applicant by email. The applicant also requested (and was granted) an extension of time to provide further submissions.
19 July 2020	OIC received further submissions from applicant.
7 August 2020	OIC requested, and Council provided, a full copy of a letter raised as a concern by the applicant. OIC conveyed a preliminary view to applicant, provided a copy of the letter, and requested submissions in response.
23 August 2020	OIC received further submissions from applicant.
26 August 2020	OIC emailed the applicant concerning certain procedural / jurisdictional issues and confirmed that the next step in the review was a formal written decision. OIC received further submissions from the applicant.
2 September 2020	OIC emailed the applicant concerning certain procedural / jurisdictional issues.
4 September 2020	OIC received further submissions from the applicant.